

# 01-29-24 Meeting - Discussion: Board Duties & Selective Enforcement

## I. Hierarchy of HOA Documents

1. Federal Laws
2. State Laws, namely:
  - a. AZRS Title 33
  - b. AZRS Title 10 - **Arizona Nonprofit Corporation Act** - business organization & practices such as granting members the right to:
    - remove officers/ directors
    - amend the association's articles of incorporation
3. City of Mesa & Fire Dept. Ordinances
4. Recorded Map, Plan or Plat
5. Alta Mesa Master Governing Documents
6. Town Square HOA CC&RS
7. Town Square HOA ARTICLES OF INCORPORATION
8. Town Square HOA BYLAWS
9. Town Square HOA RULES, REGULATIONS, AND RESOLUTIONS
10. Town Square Other HOA Documents

## II. Primary HOA Board of Director Roles

1. Ensure Compliance with Governing Documents
  - a. Promote esthetically pleasing communities - *preserving property values* for all members.
  - b. Ensure consistent compliance
2. Maintain Common Areas/Elements (Streets, signs)
3. Conduct Financial Business of the Association

## III. Fiduciary Duty and Duty of Loyalty

While we are entitled to our opinions, we are not entitled to put the association at risk by acting on those opinions that support selective enforcement of the governing documents. Being a fiduciary means that you have to refocus your perspective to act as a member of a corporate association rather than as a homeowner in a community. This requires total objectivity and the ability to use business, not personal, judgement. A fiduciary in the HOA space represents the best interests of the community as a whole *rather than the individual*.

*Spectrum Association Management:* "In the HOA management industry, we often run into board members who not only don't understand a law, but don't even know it existed in the first place. Sure, most have a basic idea of what they can or can't do and why they can or can't do it; but, as a result of a lack of a bar to entry in the board member field, it is a very common occurrence to run into board members who implement actions without realizing they are breaking a law. While expected, and not at all rare, this can often lead to some very unfortunate circumstances that—sadly—may result in lawsuits, which is certainly something you want to avoid".

### **1. Breakdown of Arizona HOA Fiduciary Law**

#### **1. Fiduciary Duty:**

Board directors must make decisions that are believed, to the extent of their knowledge & skills, to be for the good of the association. These actions & decisions must be made:

- with reliance on "information, opinions, reports, or statements...presented by one or more officers or employees of the corporation, legal counsel and public accountants...
- [or] a committee of or appointed by the board of directors of which the director is not a member". Without the above counsel, the director may be considered to not be acting "in good faith" which can be grounds for discharge of duties, or even lawsuits in certain situations.

## 2. Duty of Loyalty:

1. Conflict of interest isn't reserved to making decisions & drawing up contracts – it also has to do with ***equal enforcement of the governing documents***. This means you must ensure that everyone follows the same rules outlined by the CC&Rs, Bylaws, Rules & Regulations. If you are found to have enforced the documents unequally you may set the association up for legal actions.

## IV. Breach of Contract & Arizona HOA Law

1. HOAs can file lawsuits against homeowners who:
  - a. do not pay required fees
  - b. do not abide by governing documents.
2. Homeowners can file lawsuits against the HOA when the Board or Board Director:
  - a. Breaches fiduciary duty
  - b. Breaks its own set of rules – e.g. governing documents unequally or not enforced
  - c. Common area negligent care & maintenance
  - d. A legal suit can be warranted if a homeowner can show that the HOA is acting in a discriminatory manner by not enforcing the rules; or if the HOA fails to put the community's interests above any individual interest.

## V. Fire Lanes // [fire.mesaaz.gov](http://fire.mesaaz.gov)

Approx. 70,000 Mesa Fire Dept calls per year. According to the National Fire Protection Association (NFPA), ***Christmas Day and Christmas Eve*** are among the leading days of the year for home fires. Board Directors inarguably have the responsibility to enforce their fire lane restrictions at all times.

1. "Fire lanes are critical to the safety of life and property. This means when fire lanes are blocked, we are unable to get our equipment & vehicles close to the emergency and time is lost. Those 15 minutes that someone parks in a fire lane can cost someone else their home or their life."
2. The fire department may issue fines directly to the HOA if cars within the neighborhood are found to be blocking the fire lines. The HOA could then choose to pay the fine itself, or fine the driver of the offending vehicle and pass the fine to them.
3. Private & Public streets: Fire access roads: (note: Town Square streets are 27' wide curb to curb)
  - a. At least 28' wide but less than 34' – no parking on one side
  - b. Less than 28' wide – no parking on either side
  - c. Mesa Code Title 10: Obstructing a Fire Lane
    1. The required width of access roadways shall not be obstructed in any manner. No person shall, stop, stand or park any vehicle within a fire lane, whether on public or private property.

## VI. Selective and Discretionary Enforcement

1. **Dennis Legere**: Founder & Lead Advocate & Lobbyist AZ Homeowners Coalition
  - a. "The Board is provided with the authority to use discretion to excuse compliance for a rule based on specific circumstances with a homeowner **that does not apply to other homeowners**".
2. <https://www.hopb.co> Restrictions on HOA Power
  - a. Arizona law places certain restriction on HOAs, regardless of the powers given to the HOA in the community documents.
    1. Board members must act as fiduciaries to the association - board members must put the interests of the community ahead any individual interest
    2. HOAs may not selectively enforce community rules against particular homeowners. HOA rules must be enforced as equally as possible (not knowingly failing to enforce).
    3. Some states, such as Arizona, have laws that expressly require homeowners' associations to enforce the rules uniformly