

Starwood Homeowners Association Board of Trustees

Principles of Governance

Fiduciary Duty and the Business Judgment Rule

The Trustees owe a fiduciary duty to the homeowners to manage and operate the Association using the care that an ordinarily prudent person would use under the same or similar circumstances (The Business Judgment Rule). To exercise business judgment, Trustees must act in good faith, within the powers of the Association, and act reasonably (that is, not arbitrarily or capriciously) in making decisions while operating or managing the Association. Business judgment involves making rational, informed decisions in good faith. The Board must strictly follow the law and its governing documents and apply and enforce them fairly in what it believes to be the best interests of the Association and its membership.

It behooves the Board to engage professionals as appropriate before making major decisions. The Association should have an accountant and an attorney, and consult them when appropriate, and have tax and financial advisors to help handle and invest funds. Obtaining the advice of counsel may support the reasonableness of the Board's action under the business judgment rule.

Transparency and Accessibility

The Board should communicate openly and honestly. Communication should include, at a minimum, the following elements:

- Publicizing meeting agendas well in advance (whenever possible) to all owners and encouraging owners to attend.
- Communicating with homeowners about current Board projects and important issues.
- Consistent Trustee attendance at meetings.
- Posting of minutes of the meetings in a timely manner.
- Providing a method for owners to contact Trustees outside of meetings.

Homeowners have the right to speak at Board meetings before the Board takes formal action on any discussion item. If more than one person desires to speak and there are opposing views, the Board should allow a reasonable number of persons to speak on each side of the issue. The board may place reasonable time restrictions on persons speaking during the meeting. The right of a member to speak prior to any action being taken by the Board of Trustees only applies to meetings of the Board that are open to the members (i.e. not in executive sessions).

Whenever practical, regular meetings of the Board of Trustees should be scheduled well in advance, ideally at the beginning of each year. The dates, times, and locations of such meetings shall be posted on the Association's website and in newsletters. Board meeting agendas shall be available at all meetings.

As a general matter, a quorum or more of Starwood HOA Board of Trustees members should not meet to discuss HOA business other than at a properly convened Board meeting.¹

The Board will communicate with homeowners through personal contact, meeting minutes, letters from the Chairman, informational meetings, the Association's website and other means as appropriate. The objective is to be as transparent as possible and foster trust and confidence in the Board's decision-making.

Ethics and Conflicts (i.e. Duty of Loyalty)

Trustees should avoid actions and comments that might create an appearance of unethical behavior. Each Board member should strive to:

- Apply the provisions of the community's governing documents consistently and without prejudice.
- Make decisions that are in the best interests of the Association and the community, even if contrary to the Trustee's individual interests.
- Be familiar with the laws, rules, regulations, and recorded documents that govern Starwood. The Trustee should not advocate or support any action or activity that is inconsistent with the rules, regulations, or terms of the governing documents.
- Follow the Association's conflict of interest policy maintained in accordance with CCIOA².
- Avoid conflicts of interests or even the appearance of a conflict. A conflict of interest occurs when a Trustee has a direct or indirect personal interest, not shared by all members, in a transaction conducted with the Association.

A Trustee has a direct interest in a transaction with the Association when the Trustee, or a member of the Trustee's immediate family, has either a material financial interest in the transaction or a relationship with other parties to the transaction that reasonably might be expected to affect the Trustee's judgment adversely to the Association and its members.

A Trustee has an indirect interest in a transaction when an entity in which the Trustee has a personal and material financial interest, or in which the Trustee is a director, officer, or trustee, is a party to the transaction. If a Trustee is uncertain if a conflict exists, the Trustee should present the relevant information and facts to the other Trustees and be prepared to refrain from participating in the discussion of the issue being considered or voting on it.

¹ Colorado's Open Meetings Law contains more restrictive requirements on meetings of elected officials and applies to the Starwood Metro District, but does not apply to the Starwood HOA.

² "CCIOA" is the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101, *et seq.*), which, along with the Colorado Nonprofit Corporation Act (C.R.S. § 7-121-101 *et seq.* to C.R.S. § 7-137-101 *et seq.*) are the primary Colorado statutes governing common interest communities their homeowners' associations.

Under certain circumstances, disinterested Trustees may waive a conflict of interest because it is not material or it is in the best interests of the Association to waive the conflict.

By exhibiting sound ethics and integrity, the Board will maintain the trust and confidence of the community.

Reasonable Actions

A Trustee should always take the Trustee's responsibilities to the community seriously, exercise sound judgment, and not hesitate to rely on simple common sense. Discussions with homeowners and other Trustees should be respectful even if the individuals vigorously disagree with one another;

Each Trustee's opinion should be given consideration and shown the respect of the rest of the Board even if that opinion is contrary to the majority.

Sound judgment is one of the most crucial assets required of a trustee. Exercising sound judgment requires a Trustee to think about things clearly, calmly, and fact-based as much as possible so that a good and timely decision can be made.

Be Fiscally Responsible and Informed (Duty of Care)

Financial stability is essential to the success of an association. A Trustee should always support sound fiscal policies, help develop a workable budget, exercise informed oversight on expenses and capital investments and look for ways to carry out the purposes of the Association in a responsible and efficient manner.

Duty of Confidentiality

An individual Trustee is not a spokesperson for the Association and should always make clear his or her views are personal. The Board must approve or otherwise authorize formal communications on behalf of the Association.

When Trustees meet in executive session the proceedings are considered confidential and should not be discussed with anyone other than fellow Trustees that participated in the meeting. Some Board communications are protected by the attorney-client privilege, which may arise out of executive session meetings. Trustees must be careful to not inadvertently destroy that privilege by discussing the content of meetings held in executive session.

Keeping Books and Records

The Association must keep detailed and accurate records. This includes accurate copies of the HOA's:

- CC&Rs
- Articles of incorporation
- Plats of survey
- Rules and regulations (and all amendments of these)
- Minutes of all Board and homeowner meetings
- Insurance policies
- Contracts, leases, and other agreements in effect
- Current list of the names, addresses and contact information of the members
- Copies of ballots and proxies from past elections
- Itemized accounting of the budgeted and actual receipts and expenditures of the HOA with supporting budgetary and financial documents

Homeowners should have reasonable access to these books and records and consistent with the requirements of applicable law and the Association's records policy.

Executive Sessions

Colorado law requires all board meetings to be open to the members of the association, unless the board goes into an executive session. Colorado law (C.R.S. 38-33.3-308(4)) allows the executive board or any committee thereof, to go into executive or closed session and can prohibit homeowner attendance for the following limited matters:

- Matters pertaining to employees of the association or the managing agent's contract or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the association;
- Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;
- Investigative proceedings concerning possible or actual criminal misconduct;
- Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
- Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.
- Review of or discussion relating to any written or oral communication from legal counsel.

Prior to the time the members of the Board or any committee thereof convene in executive session, the chair of the body shall announce the general matter of discussion as enumerated in the statute.

Where appropriate and consistent with effectively addressing the matters under consideration, the Board can allow attendance of such other persons as requested by the Board (such as their attorney, committee members, employee(s), homeowner(s), etc.).

No rule or regulation of the Board or any committee thereof shall be adopted during an executive session. A rule or regulation may be validly adopted only during a regular or special meeting or after the body goes back into regular session following an executive session.

The minutes of all meetings at which an executive session was held shall indicate that an executive session was held, consistent with preserving necessary confidentiality, and the general subject matter of the executive session. Usually the minutes of an executive session do not state the details of what was discussed during that executive session. The Association may as appropriate, withhold executive session records from inspection by homeowners.

Parliamentary Procedure:

Parliamentary procedure (Robert's Rules of Order) is specifically designed to help certain discussions go smoothly, especially at a larger or more contentious meeting. It helps to ensure that everyone in such a meeting gets a fair and equal opportunity to participate and speak, utilizing formal motion procedures. As a general matter, Robert's Rules of Order shall apply to the conduct of Starwood HOA Board meetings.

The Board may consider, from time to time, adopting additional rules of order on a temporary basis when that particular need arises and when they would be useful for effectively running the meeting.

For instance, these rules can:

- Require that everyone who wishes to speak must sign up to do so. Provide that if a vote is to be held on an issue, speakers must sign up on either the "in favor" or "against" list.
- Have speakers present their position in the order that they sign up, and then alternating between "in favor" or "against" points of view.
- Can allow people who wish to speak a second time to be called on after everyone has had an opportunity to speak once.
- Allow for a timekeeper, or parliamentarian, who can be in charge of time limits for speakers and to make sure that speakers stay on the issue at hand.
- Limit the length of time that an individual is allowed to speak on an issue.
- Require formal motions and seconding of motions, as well as properly amending motions.

Homeowners' Meetings

Meetings of the homeowners of the Association are to be held at least once a year. The Articles of Incorporation call for the annual meeting of the members to be held the second Tuesday in August. These meetings are usually held for election purposes, budget approval, amendments to governing documents, and other important matters of interest to the Association and its members.

Notice of the homeowners' meeting must be given not less than ten (10) days, and no more than fifty (50) days in advance of any such meeting. The secretary of the Association or another officer specified in the Articles shall cause the notice to be hand delivered or sent prepaid by US mail to the mailing address of each homeowner or the homeowner's designated address.

The notice shall also be physically posted in a conspicuous place for the homeowners, which is both practical and feasible, and is in addition to any electronic posting or electronic mail notices that may be sent out. The notice shall state the time and place of the meeting and the items on the agenda.

Special Meetings

Special meetings of the homeowners can be called by the Chairman, a majority of the Board, or by homeowners having twenty percent (20%), or any lower percentage as stated in the Association's Articles, of the votes in the Association. Proper notice of the special meeting must be given to the homeowners.

Collection of Assessments

In the event of a delinquency, the HOA must (1) provide notice of the delinquency to the owner advising them of potential legal action and offer the delinquent homeowner a payment plan of at least six months duration, (2) not proceed with a foreclosure action unless the Board specifically resolves to approve such action, and (3) not proceed with foreclosure unless the homeowner is at least six months delinquent on dues.

Reserve Funds

In Colorado, it is not mandatory that an HOA maintain reserves, but it is highly advisable that HOAs have a written plan/study for reserve needs, and that there are also meaningful collections such that large future special assessments will not be required. There should be a policy for safe investment of reserve funds.

Operational Decisions and Owner Surveys

Owners elect Trustees specifically to govern and make decisions on behalf of the HOA, except on matters that require a vote by the homeowners. The Trustees are charged with becoming fully informed concerning HOA matters and making the best decisions for the HOA. In making decisions, the Board will consider the comments and input of owners

Websites and Blog

To the extent possible, the HOA will maintain a website containing the following items:

Public Section:

- Articles
- Declaration
- Responsible Governance Policies
- Architectural Design Guidelines

Password-Protected Section

- Notice of any pending Board meetings, complete with agenda
- Board and homeowners meeting minutes
- Current budget
- Information on capital reserves on hand
- HOA insurance certificates

Good practice is to password-protect the above items, since the matters should not be on the Web for general public review.

Insurance

The Board should ensure the HOA maintains maintain proper liability insurance for common elements. Such insurance will protect the HOA from liability in the event someone is injured on HOA property. Good practice is to also purchase Directors & Officers (D&O) insurance, which will cover the Trustees individually in the event of legal claims against them.

***Disclaimer:** This document is intended to serve as a summary of applicable law and best practices for the Association, and not be a binding, governing document as a matter of law. Thus, to the extent this document conflicts with Colorado law or the HOA's governing documents, the applicable law shall control.*