

The following outline of owner associations is meant to be a summary and the initial step in the investigation of your specific organization document.

Tim D. Swanson  
Young, Morphis, Bach, & Taylor, LLP  
Attorney's at Law  
Website: [www.hickorylaw.com](http://www.hickorylaw.com)

## Home Owners Associations Board of Directors Guidelines

North Carolina requires that board members act with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. *Guidebook for Boards of Directors of North Carolina Nonprofits* P. 12 (2003).

Directors are required to discharge their duties in good faith, with the care of an ordinarily prudent person in a like position under similar circumstances, and in a manner he/she reasonably believes to be in the best interest of the corporation.

### **Good Faith.**

The duty to discharge their duties in good faith demands that a director always discharge his/her duties honestly, conscientiously, fairly, and with undivided loyalty to the corporation. Robinson, Russell, II, *Robinson on North Carolina Corporation Law* § 14.02 (2000).

### **Duty of Care.**

The duty of care requires a director to conduct himself/herself with the care of an ordinarily prudent person in a like position would exercise under similar circumstances. Robinson, Russell, II, *Robinson on North Carolina Corporation Law* § 14.03 (2000).

### **Duty of Loyalty.**

The duty of loyalty requires a director to act in a manner he reasonably believes to be in the best interest of the corporation. This requirement prohibits a director from using his/her position for his/her own personal gain to the detriment of the corporation. Robinson, Russell, II, *Robinson on North Carolina Corporation Law* § 14.04 (2000).

## **OFFICER DUTIES**

Each officer has the authority and duties set forth in the bylaws or, to the extent consistent with the bylaws, the authority and duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the authority and duties of other officers.

### **President.**

The President is generally the presiding officer at corporate meetings.

### **Vice President.**

The Vice President acts for the President in the event of his absence or disability.

**Secretary.**

The Secretary principal functions are to prepare and send out notices of membership and directors' meetings, to keep and authenticate minutes of all such meeting and records of action without meeting, to keep custody of the corporate seal and affix and attest it on certified copies of corporate records and other documents, and to be responsible for maintaining the record of members.

**Treasurer.**

The treasurer normally has the responsibility of seeing that the corporation maintains appropriate accounting records as required by North Carolina law.

**BOARD MEETINGS**

**Notice.**

Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting. N.C.G.S. 55A-8-22.

Special meetings of the board of directors shall be held upon such notice as is provided in the articles of incorporation or bylaws, or in the absence of any such provision, upon notice sent by any usual means of communication not less than five days before the meeting. N.C.G.S. 55A-8-22.

Unless the articles of incorporation or bylaws provide otherwise, the presiding officer of the board, the president or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board. N.C.G.S. 55A-8-22.

**Waiver.**

A director may waive any notice required before or after the date and time stated in the notice. The waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records, except that a director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. N.C.G.S. 55A-8-23.

### **Action Without Meeting.**

Non profit boards act at meetings. In fact, board actions taken outside of meetings are invalid, unless all the board members have given their written consent. *Guidebook for Boards of Directors of North Carolina Nonprofits* P. 16 (2003). The action taken shall be evidenced by one or more written consents signed by each director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records reflecting the action taken. N.C.G.S. 55A-8-21. The action taken is effective when the last director signs the consent, unless the consent specifies a different effective date.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. N.C.G.S. 55A-8-20.

### **Quorum.**

Except as otherwise provided under North Carolina law, the articles of incorporation, or the bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles of incorporation or bylaws authorize a quorum of fewer than one-third of the number of directors in office. N.C.G.S. 55A-8-24.

### **Action of Board.**

If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless: North Carolina law, the articles of incorporation, or the bylaws require the vote of a greater number of directors. N.C.G.S. 55A-8-24.

### **Assent v. Dissent.**

A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he files written notice of his dissent or abstention with the presiding officer of the meeting before its adjournment or with the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. N.C.G.S. 55A-8-24.

### **Conducting Board Meeting.**

There is no mandated procedure for conducting nonprofit board meetings. The board can adopt whatever rules are appropriate to its size and membership. *Guidebook for Boards of Directors of North Carolina Nonprofits* P. 17 (2003). It is the role of the President to conduct the meeting.

The Secretary should be responsible for preparing minutes of the meeting. Important actions should be presented as a formal resolution and the vote recorded in the minutes. *Guidebook for Boards of Directors of North Carolina Nonprofits* P. 18 (2003).

The minutes of every board meeting should be prepared and made available to the board for approval at its next meeting. The minutes should then be kept in a minutes binder.

### **Meeting Open to Public.**

Generally, the board can decide whether to open its meeting to people other than board members. This means that these individuals may attend meetings only at board invitation. However, sometimes there may be specific obligations to have an open meeting. *Guidebook for Boards of Directors of North Carolina Nonprofits* P. 18 (2003).

### **Board Member Attendance.**

Attendance of board meetings is important. If, at the beginning of a director's term on the board of directors, the articles of incorporation or bylaws provide that a director may be removed by the board for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal. N.C.G.S. 55A-8-08.

The articles of incorporation or bylaws may provide that directors elected after the effective date of such provision shall be removed automatically for missing a specified number of board meetings. N.C.G.S. 55A-8-08.

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