



Powers & Duties of HOA Boards

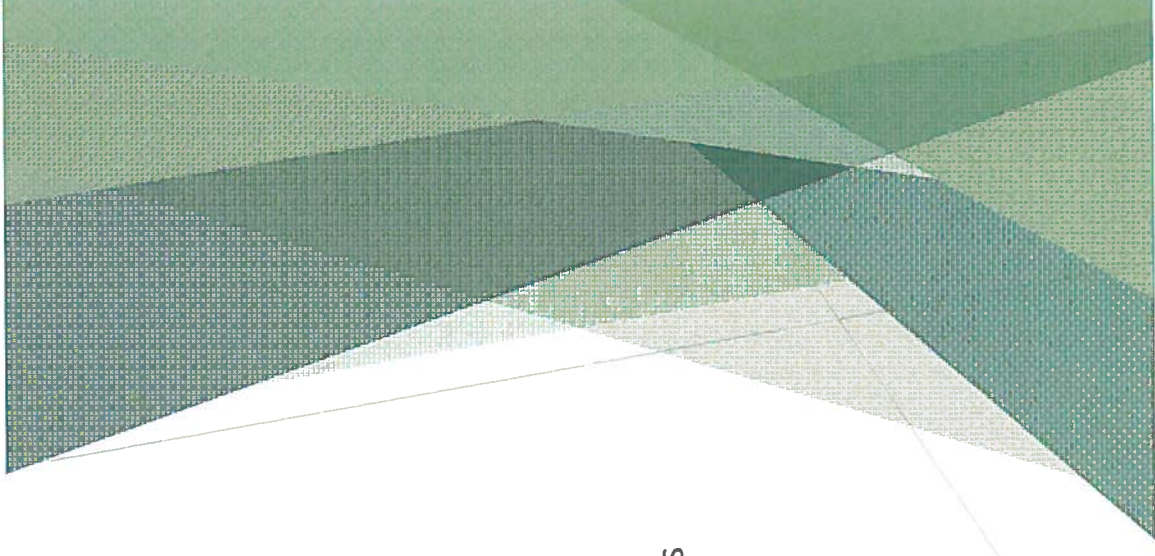
What Boards and Homeowners Need to Know

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Typical Authority of Homeowners

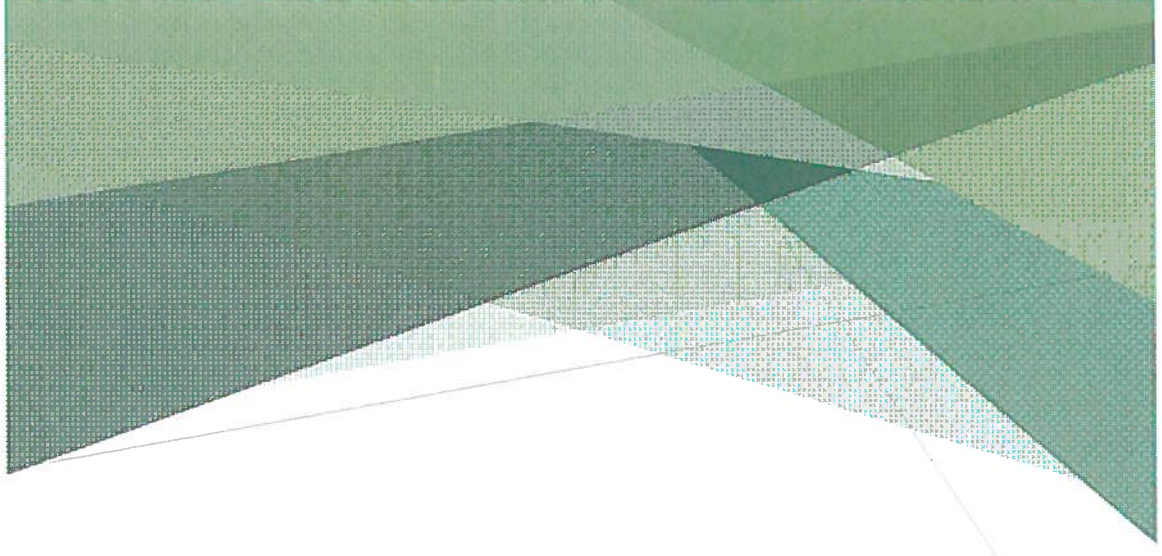
- ▶ Elect Directors
- ▶ Remove Directors
- ▶ Vote to Veto Budgets (CCIOA Communities)
- ▶ Approve Amendments to the Declaration
- ▶ Determine Qualifications, Powers & Duties, and Terms of Office of Directors through Amending the Declaration, Bylaws or Articles of Incorporation
- ▶ Sometimes to Approve Amendments to the Bylaws (Look at the Amendment Provisions of your Bylaws)
- ▶ Sometimes to Approve Loans (Depends on Your Declaration)
- ▶ Sometimes to Approve Special Assessments (Depends on Your Declaration)



Typical Duties of Homeowners

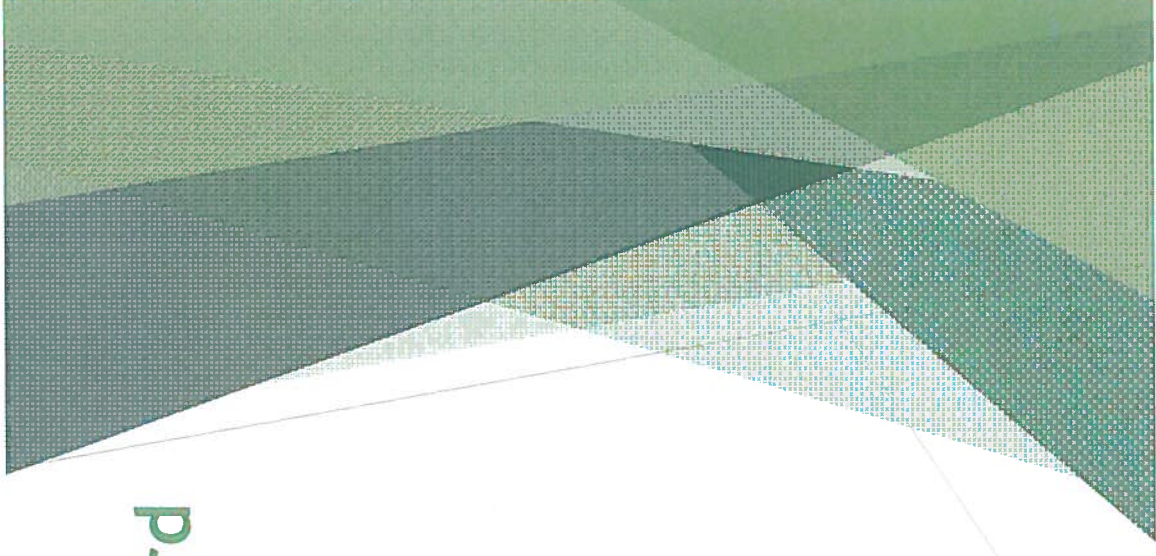
- ▶ Pay Assessments
- ▶ Comply with the Use Restrictions in the Governing Documents
- ▶ Maintain their Unit/Lot as Required by the Declaration
- ▶ Maintain Insurance on their Unit/Lot as Required by the Declaration
- ▶ Participate in the Association (Run for the Board or serve on a Committee)
- ▶ Be Part of the Solution and Not the Problem
- ▶ Attend Meetings and Stay Informed

HOA Boards have Powers **and** Duties



Where do the Powers of the HOA Board come from?

- ▶ The Governing Documents of the Association;
- ▶ The Colorado Common Interest Ownership Act; and
- ▶ The Colorado Revised Nonprofit Corporation Act



Common Powers of HOA Boards

(Not all Powers of HOA Boards are on this list!)

- ▶ Adopt and Amend Rules & Regulations
- ▶ Adopt and Amend Budgets
- ▶ Levy Fines for Violations of Declaration and Rules & Regulations
- ▶ Hire and Terminate Managers, Management Companies, Employees, Agents and Independent Contractors
- ▶ Enter Into Contracts on Behalf of the Association
- ▶ Regulate the Use, Maintenance, Repair, Replacement and Modification of the Common Elements
- ▶ Assign the Association's right to future income, including the right to receive common expense assessments ("dues") - but only if the Declaration expressly gives them this right



Common Duties of HOA Boards

(Not all Duties of HOA Boards are on this list!)

- ▶ Duty to Comply with the Governing Documents of the Association
- ▶ Duty to Collect Delinquent Assessments
- ▶ Duty to Comply with the Governing Documents
- ▶ Duty to follow the open meeting requirements of CCIOA
- ▶ **Duty to Enforce the Governing Documents**
- ▶ Duty to Adopt the 9 Responsible Governance Policies (“SB 100 Policies”)
- ▶ Each Director has a Duty to Ensure that All Directors are Provided with Information Related to Association Responsibilities and Operations
- ▶ Duty to Provide Homeowners with an Opportunity to Inspect and Obtain Copies of Association Records
- ▶ **Duty to Be Part of the Solution and Not the Problem**
- ▶ **Duty to Attend Meetings and Stay Informed**

Adopting and Amending Rules & Regulations

- ▶ The Board Adopts and Revises Rules & Regulations
- ▶ Follow the Responsible Governance Policy for Adoption and Amending
- ▶ Rules and Regulations Cannot Alter or Trump the Declaration - Can Interpret Vague Provisions
- ▶ Rules Should be Reasonable
- ▶ Rules Should be Enforceable
- ▶ Rules Can Regulate Use of Common Elements
- ▶ Rules Can Regulate Conduct in Units, if the Conduct Affects the Use and Enjoyment of the Common Elements or Other Units (Without the express authority in the Declaration to adopt Rules regulating conduct in Units.)

Look at the scope of rulemaking authority in the Governing Documents.

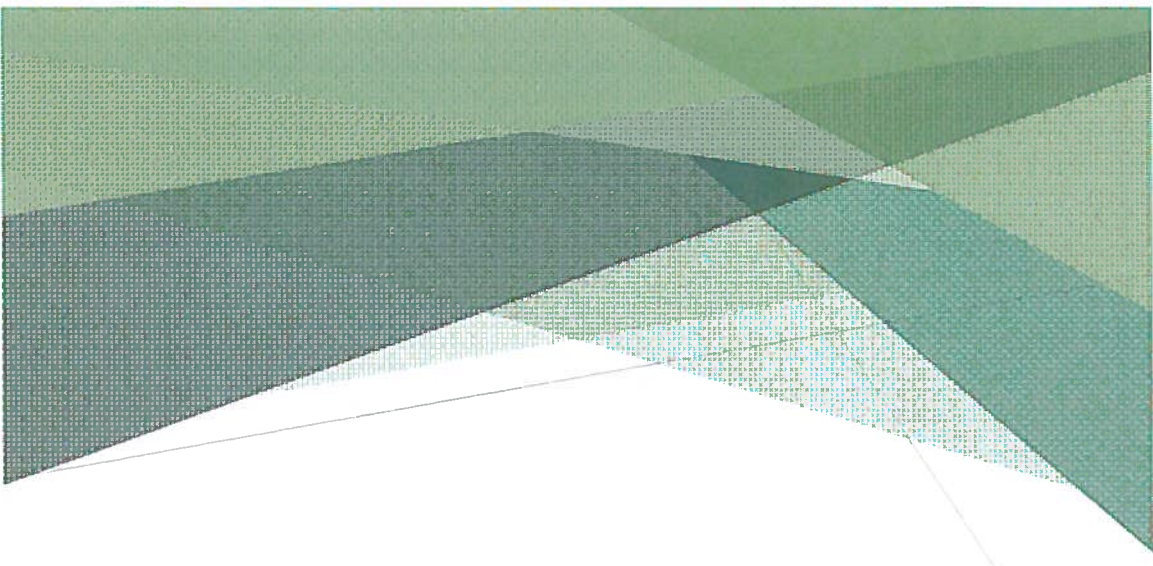
Adopting and Approving Budgets

- ▶ Pre-CCIOA Communities (HOAs created before July 1, 1992)
 - ▶ Follow the requirements in Your Declaration/Bylaws regarding how budgets are approved
 - ▶ Within 90 days after the Board adopts a proposed budget, the Association should deliver a summary or copy of the proposed budget to the homeowners with a Notice of Meeting to discuss the proposed budget. (Can be handled at the Annual Meeting or a Special Meeting of the Members.)
- ▶ CCIOA Communities (HOAs created on or after July 1, 1992)
 - ▶ The Board adopts a proposed budget
 - ▶ Within 90 days after the proposed budget is adopted, the Association should deliver a copy or summary of the proposed budget to the homeowners with a Notice of Meeting to consider the proposed budget. (Can be handled at the Annual Meeting or a Special Meeting of the Members.)
 - ▶ The budget can be vetoed at the meeting by a majority of **all** homeowners, or such higher percentage of all homeowners as stated in the Declaration. (Not a majority of quorum.)
 - ▶ If a majority (or higher percentage) of all Owners do not veto the proposed budget, the budget is automatically deemed ratified.
 - ▶ Quorum requirements do not apply to the budget ratification process.
 - ▶ If a budget is vetoed, then the current budget remains in effect until a new budget is ratified.

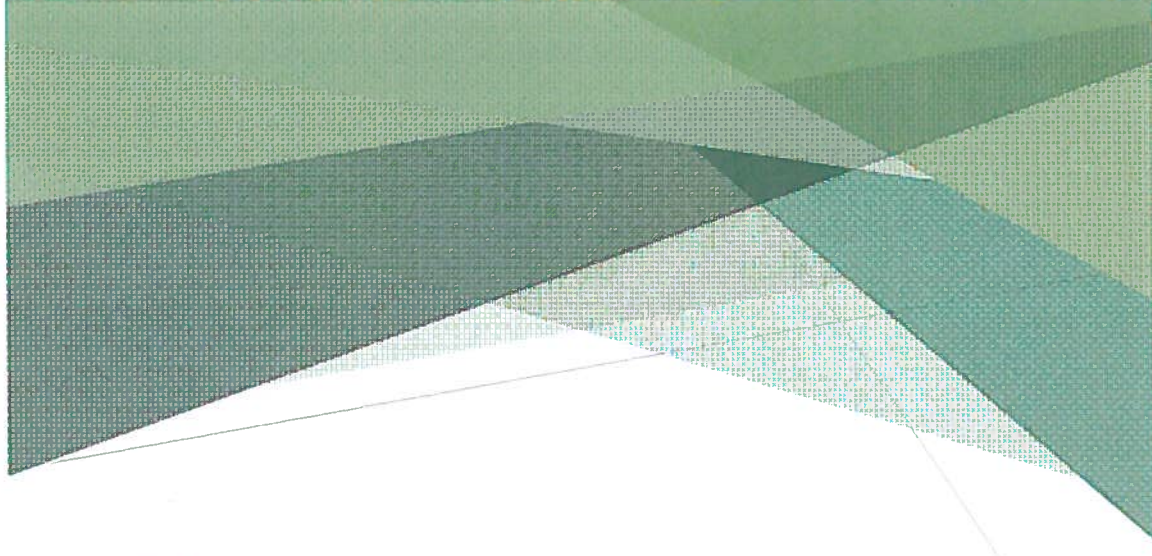
Power to Levy Fines

- ▶ The HOA must have an Enforcement Policy (1 of the 9 Responsible Governance Policies.)
- ▶ The homeowner must be given notice and an opportunity for a hearing **prior to fines being levied**;
- ▶ The hearing must be before an *Impartial Decision Maker*. (No direct personal or financial interest in the outcome of the hearing.)
 - ▶ Can be the Board;
 - ▶ Can be part of the Board;
 - ▶ Can be other individuals appointed by the Board.
- ▶ A fine must be reasonable.
- ▶ If a fine **is not** assessed by the Impartial Decision Maker, the Association's legal fees cannot be assessed against the homeowner.
- ▶ If a fine **is** assessed by the Impartial Decision Maker, the Association's legal fees can be assessed against the homeowner.
- ▶ Fines can be treated as assessments for purposes of collections.

Questions



Thanks APCHA for hosting this Seminar!



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