

15--What Is a Board Member's Duty of Care?

Board Members and officers of both HOAs and Condo Associations owe a duty of care to their Associations and to individual Owners. They also owe a lesser duty of care to members of the general public. The specific statute which governs the Association will set forth the duty and standard of care owed by the Board Members.

The duty of the Board of Directors of a Home Owners' Association organized under chapter 64.38 of the RCW is the same as the degree of care owed by "an officer or director of a corporation organized under chapter 24.03 RCW".¹ Chapter 24.03 requires that a director serve "in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances."² The courts have latched onto the reasonable inquiry requirement when deciding if Board Members have performed their duties.³

The Washington Uniform Common Interest Ownership Act ("WUCIOA") takes a similar approach as RCW 64.38. WUCIOA cites directly to the standard of care found in chapter 24.06 of the RCW.⁴ The language of RCW 24.06 is almost identical to that found in RCW 24.03 and any differences are likely a matter of form rather than substance. RCW 24.06 states that a director must exercise their authority:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances;
- and

CondoLaw's 2018 Handbook for Community Associations

- (c) In a manner the director or officer reasonably believes to be in the best interests of the corporation.⁵

Both RCW 24.03 and RCW 24.06 permit Board Members to satisfy their duty by relying on reports prepared by officers or employees of the Association, or by professionals working within their area of expertise.⁶ However, it is clear that the Board must conduct a reasonable investigation to ensure that the information inside the reports is accurate and not misleading.⁷ Failure to do so could invalidate the Board's decision and expose individual members of the Board to liability for the Board's actions.⁸

Condominium Boards organized under either RCW 64.34 or 64.32 are governed by the provisions found at chapter 64.34.308 of the RCW. When appointed by the Declarant, the Board must exercise the level of care required of a fiduciary⁹ of the Unit Owners.¹⁰ Once the Board has been elected by the Unit Owners, the directors are held to the lower standard of ordinary and reasonable care.¹¹ The separate standards reflect concerns that there is a potential for conflicts of interest between the Unit Owners and the Declarant, and a desire to encourage owners to serve as members of the Board.¹² Despite these concerns, this distinction does not appear to have been carried over into WUCOIA.

Board Members' duty of care is owed to the Association itself and to individual homeowners. It does not extend to future purchasers or to members of the general public, to whom a Board Member owes only the duty to avoid gross negligence.¹³

¹ RCW 64.38.025(1)

² RCW 24.03.127

³ See, *Riss v. Angel*, 131 Wash.2d 612, 681 (1997)

Note: This standard allows a Board member to rely on the information or opinions presented by:

CondoLaw's 2018 Handbook for Community Associations

- A) Other officers whom the Board member believes to be reliable and competent in the specific matter;
- B) Counsel, public accountants, or others if the Board member believes the matter to be within the person's professional/expert competence;
- C) A committee of the Board on which the Board member does not serve if the matter is within the committee's authority (and the Board member acts in good faith, after reasonable inquiry, and without knowledge that reliance is undeserved.)

⁴ RCW 64.90.410(1)(b) (“...officers and board members must exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized...under chapter 24.06 RCW. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.”)

⁵ RCW 24.06.153(1)

⁶ See, RCW 24.03.127(1)-(2); and RCW 24.06.153(2)

⁷ See, *Riss*, 131 Wash.2d at 684.

⁸ *Id.*

⁹ A fiduciary is one who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. If you are appointed to a Board by the declarant, you must act with the care that a fiduciary of the unit owners would take.

¹⁰ RCW 64.34.308(2)(a)

¹¹ RCW 64.34.308(2)(b)

¹² *Washington Condominium Act Official Comments*, p. 52.

¹³ *Alexander v. Sanford*, 181 Wn. App. 135, 169-70 (2014) (denying unit owners' breach of fiduciary duty claims against Board members because, at the time of the alleged breaches, owners had not yet purchased property within the community); *Waltz v. Tanager*, 183 Wn. App. 85, 91 (2014) (noting that Board members are only liable to parties other than the Association and its members under a standard of gross negligence).