

## SAFE HARBOR FOR DIRECTORS

- Tex. Business Organizations Code § 22.221
- (a) A director shall discharge the director's duties, including duties as a committee member, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.
- (b) A director is not liable to the corporation, a member, or another person for an action taken or not taken as a director if the director acted in compliance with this section. A person seeking to establish liability of a director must prove that the director did not act [as stated above]

## CONTRACTS WITH BOARD MEMBERS

Property Code §209.0052

POA may enter into contract with current board member (related person/company) only if Board member:

- 1) bids on contract along with 2 other non-related bids, if reasonably available; and
- 2) is not given access to other bids; and
- 3) does not participate in any board discussion regarding contract; and
- 4) does not vote on award of contract.

Material facts regarding relationship or interest to contract must be disclosed to or known by POA Board. Board, in good faith & with ordinary care, authorizes contract by vote of majority of disinterested Board members.

POA Board certifies that all requirements have been satisfied by resolution approved by disinterested Board members.

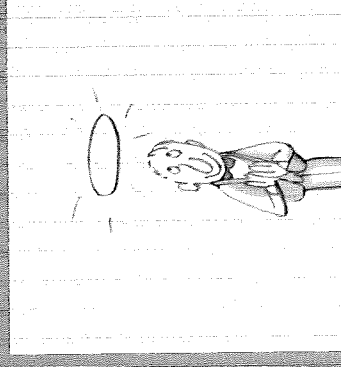
**CAVEAT:** Incorporated POA also subject to BOC §22.230. Applies to contracts & transactions with directors, officers, or members, or entity where they are in management or have a financial interest. Big difference is director can participate and vote under BOC but not under the Property Code. Follow the Property Code procedures, not the BOC.

POA is a Texas non-profit corporation.

A director is not a “trustee” but does have a fiduciary duty to the corporation.

A director must act IN GOOD FAITH, without allowing his/her personal interests to prevail over the interests of the corporation

“Reasonable Man” Standard



## Rights & Responsibilities for Better Communities

### Community Leaders Have the Right To:

Expect owners/non-owner residents to meet their financial obligations.

Expect residents to know & comply with rules & regulations & to stay informed.

Respectful and honest treatment from residents.

Conduct meetings in a positive and constructive atmosphere.

Receive support & constructive input from owners.

Personal privacy at home and during leisure time in the community.

Take advantage of educational opportunities related to their responsibilities.

## TREAT POA AS THE CORPORATION IT IS

Board sets policy; not individual Board members & then instruct staff to execute policy. Hands off!

A director may incur personal liability IF he or she micromanages staff, especially if those instructions contradict Governing Documents or Board votes.

Communicate decisions to staff after every meeting.

Be careful of social media – make & follow policy.

# OPEN BOARD MEETINGS

§209.0051(c)

All board meetings open to all members

Board allowed to adjourn to closed executive session to discuss:

- personnel;
- litigation, pending or threatened;
- contract negotiations;
- enforcement actions;
- confidential communications with POA attorney;
- matters involving privacy of individual owners; or
- matters requested to be confidential by the parties and with Board agreement.

## DUTIES OWED BY MEMBERS

1. To pay assessments timely
2. To abide by the deed restrictions, ACC guidelines, Board policies, rules
3. To actively participate in POA affairs by volunteering for Committees & Board, by attending Board & Annual meetings, by voicing opinions to Board and to community giving only true facts with goal of vigorous debate not interference with POA property rights or contracts

# QUESTIONS?

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# IMPORTANT TAKE AWAYS FOR BOARDS

1. File your management certificate . . . now & keep updated.
2. File all Governing Documents including Board policies you want to enforce later.
3. Properly notice all Board meetings to your members & keep to that agenda.
4. Keep good minutes of all Board & Members' meetings; actions only
5. Be transparent & act in best interest of your Association!