


**Wooded Glen, Section I
Homeowners' Association, Inc.**


Orientation for Board of Directors

December 3, 2019

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**Community Association
Basics**

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Community Association Basics


- Mandatory membership
- Authority to regulate
- Power to assess
- Protect association assets
- Provide services

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Government Role


- Rule Making – Regulatory Authority
 - Property
 - Conduct
- Governance
- Taxing Authority – Assessments
- Rule Enforcement

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Business Role


- Services
- Policies Established and Implemented
- Administration
 - Finance
 - Asset and property management
 - Personnel
 - Insurance

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Purposes of the Association

- Enforce governing documents.
- Exercise all powers and privileges.
- Perform duties and obligations.
- Fix, levy, collect and enforce payment of assessments.
- Pay common expenses.
- Provide for upkeep of common area.

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Sources of Authority

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Sources of Authority

- **Federal Statutes**
 - Fair Housing Act
 - Telecommunications Act of 1996
 - Flag Act of 2006 →
- **State Statutes**
 - Property Owners' Association Act
 - Nonstock Corporation Act
 - Fair Housing Law
 - Common Interest Community Board
- **Local Ordinances**
- **Association Documents**

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1050 RADER
 ADMINISTRATIVE
 JUDICIAL

Association Documents

- Proffers
- Subdivision Plan or Plat
- **Declaration of Covenants, Conditions and Restrictions of Wooded Glen, Section I**

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Association Documents

- Articles of Incorporation
- Bylaws
- Rules & Regulations (including design guidelines)
- Board Resolutions & Policies

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Declaration Authority

- **Declaration controls**
- **Section 12.01** – Acceptance of a deed to a lot constitutes an agreement that the Declaration, Articles of Incorporation, Bylaws and Association rules and regulations (including architectural guidelines) are deemed and taken to be enforceable equitable servitudes and covenants running with the land.

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Declaration Authority


- Rules governing **common area** – Rules must not **divest** easement right.
 - **Section 4.03** – Board has the right to adopt rules and regulations governing operation, use and enjoyment of the Common Area.
- Rules governing **lots** – Authority must be **express**.
 - Restrictions on lot use established in **Article VIII**.

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Declaration Authority

- **Architectural Control – Article X**
 - Establishes an Architectural Control Committee tasked with regulating the external, design, appearance, location, and maintenance of the property subject to the Declaration and improvements thereon.
 - No structure may be constructed or exterior change made without application to and approval by Architectural Control Committee.

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Judicial Limits of Rule-Making Authority: The Belmont Glen Case

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Belmont Glen: The Facts

The Seasonal/Holiday Decorations Rule

- **Timing: Decorations may be displayed and removed on the following schedule –**

Holiday	Install Date	Remove Date
Halloween	October 1	November 5
Thanksgiving	1 st Saturday in Nov	December 7
Winter Holidays	Sat. after Thanksgiving	January 7
4 th of July	July 1	July 15

Diwali gets 15 days, with specific dates determined each year.

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Belmont Glen: The Facts

The Seasonal/Holiday Decorations Rule

- If the holiday is not listed, decorations must be approved by Association architectural review board.
- Operation: Lights must be turned off no later than midnight each evening.

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Belmont Glen: The Issue

Is there authority for the rule?

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Belmont Glen: The Decision


- No!
- Covenants Considered
 - Exterior Lighting
 - Nuisance
 - Design Control
 - General Rule-Making

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Opinion Nuances


- **Reliance on the *Restatement of Property***
 - What is the *Restatement*?
 - Section 6.7 – Power to Adopt Rules Governing Use of Property
 - Section 6.9 – Design-Control Powers
- **Latin Phrases & Contract Interpretation**
 - Contract Interpretation Principles
 - *Ejusdem Generis*
 - *Noscitur a sociis*

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Impact on Architectural Review


- **Strict Construction**
- ***Express vs. Implied Design-Control***

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Recommendations

- Review design standards & rules on use of lots.
- Confirm authority with legal counsel.
- Pursue compliance carefully.
- Confirm insurance coverage.
- Consider amending recorded documents.

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Making Decisions

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Fiduciary Duty

- The highest standard of care under the law.
- Set aside personal interests.
- Act in the *best interest* of the Association.
- Elements:
 - Take no advantage
 - Disclose interests
 - Confidentiality
 - Support Board decisions

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Fiduciary Duty


- **Duty of Loyalty**
 - "Loyalty" is to Association, not self or neighbors.
 - Disclose conflicts, cannot benefit personally.
 - Maintain confidentiality.
- **Duty of Care**
 - Care in decision-making process.
 - Acting within authority.

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**Board Actions -
Two Standards of Review**


- **Business Judgment Rule** – The court will not review or replace its judgment for that of the Board – if acting in *good faith*.
- **Reasonableness** – Member must exercise the care and skill of an *ordinary and prudent person* in similar circumstances.

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Protections


- Preparation
- Guidance
- Indemnification
 - Governing Documents
 - Nonstock Corporation Act, § 13.1-876
- Insurance Coverage

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Strategies for Limiting Liability

- Active discharge of Board Member duties
 - Know the business of the Association.
 - Prepare for and attend meetings.
 - General understanding of the documents and Board policy.
 - Act in accordance with good business practices.
- Evaluate and act after:
 - Reviewing all the facts
 - Seeking advice, as needed

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Strategies for Limiting Liability

- Register dissent, when appropriate.
- Board Member *Code of Conduct*.
- Maintain insurance coverage.

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Conflicts of Interest

- Disclose
- Withdraw (recuse) from:
 - Discussion
 - Deliberation
 - Vote
- Commercially reasonable

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Insurance Coverage

- Property Damage and Casualty
- General Liability
- Directors and Officers Liability
 - Ensure that Fair Housing discrimination claims are covered.
- Fidelity
- Mechanical
- Workers' Compensation
- Umbrella
- Automobile

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Common Director and Officer Liability Insurance Exclusions

- Defamation
- Discrimination (make sure this is not excluded from coverage)
- Illegal Acts
- Employment Practices

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Board Meetings

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The General Rule

All meetings of the Board shall be open to all members of record.


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Work Sessions

The Board shall not use work sessions or other informal gatherings to circumvent open meeting requirements.

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Quorum

Members must be present – in person or by permissible electronic or telephonic means.

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Electronic

- Telephone or Video Conference
- Other Electronic Means
- Two Members Present - Required
- At Place Identified in Notice
- Sufficient Audio Equipment

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Notice


- To Board Members
- To Association Members
 - Published - Reasonably calculated to be available to a majority of the owners.
 - Written request, at least once annually.
 - Name, address and zip code and e-mail.
- Date, Time and Place
- Special Meetings - Special Requirements

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**Board Meetings -
Robert's Rules**


- Robert's Rules of Order is parliamentary procedure governing conduct of meetings.
- Motion Procedure:
 - Director makes motion
 - Director seconds motion
 - Chair restates question
 - Directors discuss
 - Question is put to vote
 - Chair announces outcome

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Open Forum


- Required
- Subject to reasonable rules
- Designated time period
- Comments on ANY matter affecting association
- Limited agenda topics - limited comments

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Voting


- No Secret Ballot
- Board members only
- In Open Session
- NOT By Proxy

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Executive Session


- Proper Motion
- Limited Purposes
 - Stated in Motion
 - Only those purposes may be discussed
- Affirmative vote in Open Session
- Motion and Purpose in Minutes
- No Action Permitted – Must Reconvene in Open Session

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Executive Session


- Personnel Matters
- Consult with Legal Counsel
- Discuss and consider
 - Contracts
 - Probable or pending litigation
- Document and Rule Violations
- Personal Liability of Owners

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Executive Session


- Information obtained in executive session is *confidential*.
- May only be discussed with Board members, management, staff and Association legal counsel

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Email


- Not a permissible substitute for a meeting.
- Cannot constitute Board or committee action *unless unanimous*.
 - Section 13.1-865 of Nonstock Act
 - Reserve for emergencies or matters that have been given full discussion at open Board meeting.

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Email


- Limit use to transmission of information.
- Avoid discussion.
- May be subject to inspection by members.
- Email is subject to release in litigation.
- Assume that email will be made public.

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Effective Leadership Principles

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Be Effective

- Team approach
- Be a positive force; tone
- Avoid and stop negative mentality quickly
- Seek advice; give feedback
- Accept and act on criticism
- Communicate
- Work the issue, not the person
- Avoid getting personal

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Best Practices

- When you speak, you are heard as a Board member.
- Act only with Board authority.
- *Maintain confidentiality.*
- Support decisions once action is taken, even though you may not agree.


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Best Practices

- Do not assume rights or privileges other owners do not have.
- Recuse yourself from matters in which you have an interest.
- Do not become involved in day to day management.

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Discussion


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**Wooded Glen, Section I
Homeowners' Association, Inc.**

Orientation for Board of Directors

December 3, 2019

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