THE ROLE OF THE BOARD OF DIRECTORS

A Board of Directors is a body of elected or appointed members who jointly oversee the activities of an Association. The activities of the Board of Directors are determined by the powers, duties, and responsibilities delegated to it or conferred on it by an authority outside itself. These matters are typically detailed in the Association's bylaws. The bylaws commonly also specify the number of members of the board, how they are to be chosen, and when they are to meet. The legal responsibilities of boards and board members vary with the nature of the Association, and with the jurisdiction within which it operates.

Typical duties of boards include:

- governing the Association by establishing broad policies and objectives;
- ensuring the availability of adequate financial resources;
- approving annual budgets;
- accounting to the stakeholders for the Association's performance;

Association governance begins with engaged, capable, and experienced Directors, a coherent strategy and business plan, and clear lines of responsibility and accountability. The Board of Directors oversees the development of the overall business strategy for the Association and the decisions made by management personnel in the pursuit of strategic objectives. The Board of Directors assesses both the appropriateness of the strategy and decisions and the success with which they are implemented. Management personnel, with input and approval by the Board of Directors, develops the business strategy, makes significant decisions to implement that strategy, and oversees day-to-day decisions and actions by subordinate staff, to ensure that these decisions support the long-term objectives and policies as determined by the Board of Directors.

The achievement of the strategic and operational objectives of the Association must be supported by the development and maintenance of a strong system of internal controls and effective risk management. An effective internal control and risk management environment is essential to provide reasonable assurance that assets are adequately safeguarded, critical information is relevant, reliable and timely, and resources are utilized in an effective and efficient manner, as well as to evaluate compliance with management policies, standards, laws, regulations and sound fiduciary principles.

<u>Overview – A Fiduciary:</u> A fiduciary is a legal or ethical relationship of trust between two or more parties. Typically, a fiduciary prudently takes care of money for another person. In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance and trust in another whose aid, advice or protection is sought in some matter. In such a relation good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one who trusts.

A Fiduciary Duty: Of the principal fiduciary obligations/duties owed by Directors to their corporations, the one duty specifically implicated by Association compliance programs is the *duty of care*.

As the name implies, the *duty of care* refers to the obligation of Association Directors to exercise the proper amount of care in their decision-making process. State statutes that create the duty of care and court cases that interpret it usually are identical for both for-profit and non-profit corporations.

In most states, duty of care involves determining whether the Directors acted (1) in "good faith," (2) with that level of care that an ordinarily prudent person would exercise in like circumstances, and (3) in a manner that they reasonably believe is in the best interest of the corporation. In analyzing whether Directors have complied with this duty, it is necessary to address each of these elements separately.

The "good faith" analysis usually focuses upon whether the matter or transaction at hand involves any improper financial benefit to an individual, and/or whether any intent exists to take advantage of the corporation. And, finally, Directors are obligated to act in a manner that they reasonably believe to be in the best interests of the corporation.

A fiduciary duty is the highest standard of care at either equity or law. A fiduciary is expected to be extremely loyal to the person to whom he owes the duty: he must not put his personal interests before the duty, and must not profit from his position as a fiduciary, unless the principal consents.

In considering Directors' fiduciary obligations, it is important to recognize that the appropriate standard of care is not "perfection." Directors are *not* required to know every-thing about a topic they are asked to consider. They may, where justified, rely on the advice of management and of outside advisors.