



HindmanSanchez

  
HindmanSanchez

**The ABC's of Being a Board Member**

Presented for the City of Boulder  
Melissa M. Garcia, Esq.

April 28, 2016

Your Community Association Partner




---

---

---

---

---

---

---

---

  
HindmanSanchez

**What is a Community Association?**

- A nonprofit corporation
- A business
- A community
- A neighborhood

Your Community Association Partner




---

---

---

---

---

---

---

---

  
HindmanSanchez

**What does the Board do?**

- Manages finances
- Maintains common elements
- Enforces governing documents
- Provides services
- Oversees managing agent
- Builds community

Your Community Association Partner




---

---

---

---

---

---

---

---



HindmanSanchez

  
HindmanSanchez

**What are the fiduciary duties of Board members?**

- Duty of Care (standards of conduct)
- Duty of Loyalty (conflicting interest transaction)
- Duty of Obedience
- Duty of Confidentiality

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

**Standards of Conduct (Duty of Care)**

A director shall discharge his/her duties

- ✓ In good faith
- ✓ With the best interests of the association
- ✓ Prudently

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

**In good Faith**

- ✓ Legal term
- ✓ Without ill will or malice
- ✓ Without bad intentions

**Your Community Association Partner**




---

---

---

---

---

---

---

---



  
HindmanSanchez

### In Best Interests

- ✓ Best for the association
- ✓ Put aside self interests
- ✓ Not necessarily best for self or neighbor

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

### Prudently

- ✓ Be informed before acting
- ✓ Act carefully
- ✓ Exercise sound judgment
- ✓ Examples

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

### How to be Informed Examples

- Read and be familiar with governing documents
- Follow requirements in governing documents
- Be familiar with and follow laws

**Your Community Association Partner**



---

---

---

---

---

---

---

---



  
HindmanSanchez

**Examples**

- Attend meetings and participate
- Seek and follow advice from qualified professionals
- Read and understand board packet

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

**Examples**

- Read and understand financial statements
- Attend workshops and seminars
- Ask questions
- Hire qualified professionals and vendors

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

**Directors are entitled to rely on**

- Information
- Opinions
- Reports
- Statements

**Your Community Association Partner**



---

---

---

---

---

---

---

---



HindmanSanchez

  
HindmanSanchez

**Director is entitled to rely on information, opinions, reports and statements if prepared or presented by:**

- A committee that director believes merits confidence
- Experts

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

**Exception**

- NOT good faith/prudent if:
- Director has knowledge that makes reliance on another person unwarranted

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

**Business Judgment Rule  
(No Liability Rule)**

**Your Community Association Partner**




---

---

---

---

---

---

---

---



  
HindmanSanchez

**Director is NOT liable to association or members for any action taken or omitted if the director acted:**

- In good faith
- With best interests of association
- Prudently (informed)

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

**What's missing?**

- Decision does not have to be right

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

**How to establish compliance**

- Minutes
- Records
- Reports
- Correspondence
- Internal notes/memos

**Your Community Association Partner**



---

---

---

---

---

---

---

---



HindmanSanchez

HindmanSanchez

**Duty of Loyalty  
(Conflict of Interest)**

Your Community Association Partner

---

---

---

---

---

---

---

---

HindmanSanchez

**Board member with a conflict of interest**

What is a conflict of interest?  
A contract, transaction, or other financial relationship between:

- The association and a board member or
- The association and a person related to a board member or
- The association and an entity in which the board member has a financial interest

Your Community Association Partner

---

---

---

---

---

---

---

---

HindmanSanchez

**A conflicting interest transaction cannot be voided on behalf of the association if:**

- The material facts of the conflict are known or disclosed to the board and the board authorizes, approves, or ratifies the transaction in good faith or
- The material facts of the conflict are known or disclosed to the members and the members authorize, approve, or ratify the transaction in good faith or
- The conflicting interest transaction is fair to the association

Your Community Association Partner

---

---

---

---

---

---

---

---



HindmanSanchez

  
HindmanSanchez

### Practical vs. Legal

- Disclose conflict
- Abstain from voting
- Don't participate in discussion
- Leave meeting during discussion/vote
- Have policy in place before (now required)

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

### Tips to Safeguard You and Your Association

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

### Obtain broad D&O insurance

- Why?
- Parties covered
- Types of claims
- Amounts

**Your Community Association Partner**



---

---

---

---

---

---

---

---



HindmanSanchez

  
HindmanSanchez

**Get a legal audit/checkup (or document review)**

- Review governing documents
- Review rules, regulations, guidelines, policies and procedures, and resolutions
- Review all contracts
- Review board minutes
- Review yearly audit
- Walk through community
- Written summary & meeting with board

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

**Get an insurance audit/checkup**

- Review of governing documents
- Review all insurance policies
- Review related endorsements and compare documents to coverage
- Identify deficiencies and gaps
- Identify overly broad coverage
- Written Summary
- Meeting with board

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

**Get Fidelity insurance that covers directors and managers**

Coverage:

- Employees
- Directors
- Manager
- Committee members

**Your Community Association Partner**




---

---

---

---

---

---

---

---



  
HindmanSanchez

**Obtain workers compensation insurance**

- Needed even if no employees
- Statutory exemption for independent contractors

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

**ALWAYS comply with and understand the requirements of governing documents**

**Your Community Association Partner**



---

---

---

---

---

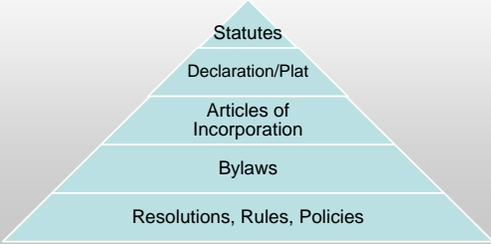
---

---

---

  
HindmanSanchez

**Hierarchy of Governing Documents**



Statutes  
Declaration/Plat  
Articles of Incorporation  
Bylaws  
Resolutions, Rules, Policies

**Your Community Association Partner**



---

---

---

---

---

---

---

---



HindmanSanchez

  
HindmanSanchez

### Governing Documents

Hierarchy of Governing Documents

- Statutes
  - Colorado Common Interest Ownership Act CIOA (pre and post CIOA communities) & Nonprofit Act
- Declaration of Covenants, Conditions & Restrictions (CC&Rs, Covenants)
  - Creates rights and obligations

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

### Governing Documents

- Articles of Incorporation
  - Brings association into existence
  - Defines basis purposes and powers
- Bylaws
  - Operational procedures
- Rules & Regulations / Architectural Guidelines / Policies
  - Supplement and clarify, but cannot contradict, any of the above governing documents

**Your Community Association Partner**




---

---

---

---

---

---

---

---

  
HindmanSanchez

### Collection and Enforcement Matters

- Necessity to adopt and follow policies
  - Collection Policy
  - Enforcement Policy

**Your Community Association Partner**




---

---

---

---

---

---

---

---



HindmanSanchez

  
HindmanSanchez

**Make informed and prudent decisions and document**

- Be Reasonable
- Don't expect your manager to accomplish all of this overnight
- Prioritize

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

**Q&A and Additional Resources**

Website: [www.hindmansanchez.com](http://www.hindmansanchez.com)  
Blog: <http://www.hindmansanchez.com/blog>  
Melissa Garcia, [mgarcia@hindmansanchez.com](mailto:mgarcia@hindmansanchez.com)

**Your Community Association Partner**



---

---

---

---

---

---

---

---

  
HindmanSanchez

**THANK YOU!**

**Your Community Association Partner**



---

---

---

---

---

---

---

---