



April 2019 - The Sharper Focus - HOA Board Edition

Thank you for reading our newsletter. The goal of this newsletter is to touch on general industry news and helpful topics that may help you in your role as an HOA board member.

Every Association is different in their type, size, scope, and how things are organized and established via the Governing Documents. There are, however, a number of universal topics common to all Associations. We hope you will find this newsletter a valuable source of information!

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Sharper Scramble Golf Tournament

We hope you will join us for our 3rd Annual Sharper Scramble Golf Tournament to be held **Friday, July 19** at Boulder Pointe Golf Club in Elko! This **FREE** day of food, fun, fellowship, and golf is Sharper's way of showing our appreciation to you - our valued client.



Registration begins at 11 am, and all participants will receive a free boxed lunch. The scramble/best ball format golf round will officially kick off at noon and be followed by a delicious dinner and awards banquet.

If you are interested in securing your spot for the Sharper Scramble, we recommend you do so

A Lesson in the Business Judgement Rule



There are two key legal terms that are often times thrown around but seldom understood in regard to serving on the Board of Directors: responsibilities and protections. As to the former (responsibilities), it is important to understand the concept of Fiduciary Duty.

In short and very simplistically, it is the premise that Board members are acting for the benefit of all and for the association - and not for one's self-interests. For a more in depth exploration of this concept, see the article from last fall: <https://sharpermanagement.com/2018/10/fiduciary-duty/>.

As to latter (protections), if the Board is, indeed, acting for the benefit of all and exercising their "duty of care" and "duty of loyalty," then they are typically protected from lawsuits under the umbrella known as the "Business Judgement Rule."

This premise means that actions taken by the Board, if within their powers, must reflect a reasonable and honest exercise of judgment. Given that Board members cannot always ensure success in whatever the initiative may be, the business judgment rule specifies that the court will not review the business decisions of directors who performed their duties (1) in good faith; (2) with the care that an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner the directors reasonably believe to be in the best interests of the corporation.

The Cornell Law School has a rather concise overview here: https://www.law.cornell.edu/wex/business_judgment_rule.

1. **Good Faith** - has been covered a number of times. Acting in the best interest of the collective.
2. **With Care** - this is the one that is fairly subjective and where a Board is susceptible to claims of negligence or ill-intent. Boards must always use their resources, illustrating careful thought and having researched information as contributing factors to a decision. Some examples illustrating this would include: reviewing a Management Report prior to a meeting; asking for an attorney to review a detailed or complex contract/agreement prior to executing; utilizing an engineer for an in-depth study of a complex structural problem and gathering formal recommendations; engaging with an accountant to do an annual audit of the financials; speaking directly to an insurance agent before binding coverage. Engaging with experts and showing due diligence is always a good way to prove "duty of care" was taken.
3. **Best Interest** - if meeting minutes reflect these steps were taken, and if the discussion and decisions happened in a recognized open meeting of the Board, the Board is acting in a reasonable manner and in the best interest of the association.

As volunteers of a non-profit corporation, it is sometimes hard to recognize and accept there is a significant amount of liability put on the Board. If Fiduciary Duty is understood and followed, and Directors & Officers insurance is put in place, the Board should be comforted in the protections afforded under the Business Judgement Rule doctrine.

Don't Break Your Own Rules in Rule Enforcement

Spring is here and that means Community Managers and Board members will be active in walk-arounds/site inspections while hoping to whip the association back

in to shape after a long winter's nap. Rule violations are always a focus in these efforts.

Melted snow un-earths pet damage to turf; holiday lights still adorn balconies; neglected exterior maintenance items that homeowners may be responsible for become apparent; "big-boy toys" like boats and RVs begin to come out and park in driveways and guest parking; kid toys and sports equipment litter patios and common areas; and on and on. While associations should be assertive and fair in cleaning up these and other rule violations, there is one area that Boards can get themselves in trouble when it comes to enforcement - adhering to their own appeal opportunities and hearing processes.

Many Declarations documents give some parameters and rights to members/homeowners when it comes to compliance and remedies in regard to rule enforcement. It is always wise to not only have a thorough Enforcement Policy (warning, first fine, second fine, etc), but also an appeal and hearing procedure as part of the Rules & Regulations document. This policy should mirror or further enhance -but never contradict - any existing language in the Declarations or ByLaws.

The most common approach to creating fairness when it comes to rule remedies is to allow for an appeal and hearing procedure. Some rule violations, after all, might have extenuating circumstances, or sometimes the violation might have been applied to the incorrect offender. Allowing for an appeal procedure creates an opportunity to hear this out. This "appeal" should come in way of a "hearing" before the Board. Additionally, the Minnesota Common Interest Ownership Act ("MCIOA") contemplates this notion when it provides that owners should be able to speak before the Board.

A common approach that has been incorporated into more recent governing documents is to allow for a rule offender to be given 10 days to request a hearing before the Board. The Board then has 30 days to schedule said hearing from receipt of a formal request for a hearing (tip: which could and should be at the next scheduled Board meeting). The Board then has a reasonable amount of time to further deliberate the information presented and provide a formal written response to the owner either upholding or altering the rule violation and any corresponding sanctions.

The key, however, to making this procedure work, is to be appropriately notify the homeowners of their right to appeal and hearing in all correspondences that related to the rule violation. Many Declarations (and therefore coinciding rules and enforcement policies) do state something along the lines of "the offender shall be given notice of the nature of the rule violation and the right to a hearing..." If any of the rule violation letters, be it the original warning or certainly any subsequent fines, did not state the owner had a right to an appeal and/or hearing, the Association did not follow through on their requirements for enforcement. Should the matter end up in court, a judge might likely side with the homeowner.

While no one wants to add administrative steps, particularly with regards to owners breaking rules, it is important to be aware of any appeal and/or hearing procedures that may already be in place - and certainly it is important to be incorporating those requirements in enforcement efforts.



Construction Chat: To Blacktop or Not to Blacktop?

Similar to concrete, your association's blacktop makes a statement about the community. After the extreme temperatures from this winter, it's important to include pavement maintenance or replacement on property inspection lists.

When reviewing your pavement, look for damage such as potholes, large cracks, and persistent puddles.

Potholes and cracks in pavement are a common occurrence for Minnesota in the spring, and residents will have to deal with them enough driving around the city. They'll likely not be pleased dealing with them at their residence, and it can negatively affect your association's curb appeal for potential buyers.



Insistent puddles, the ones that just won't go away, let you know there is a drainage or ponding

issue with your lot. When this happens, the long-standing water begins to wear down the blacktop. It also increases the chances of the pavement being drastically affected by Minnesota's extreme freeze-thaw.

The best way to solve these issues is by getting a professional out to examine the parking lot and give an estimate on the work needed. For the potholes and cracks, if they're not too extensive, they may be patched or solved with a mill and overlay, which is less expensive than a complete tear out and replacement.

Once your new blacktop is installed, but sure to maintain it properly with regular sealcoating. This extends the pavement's durability and strength so the association can save money over time through preventative action.

Sharper News



Sharper Scramble Golf Tournament - mark your calendar for the 3rd Annual Sharper Scramble Golf Tournament to be held Friday, July 19 at Boulder Pointe Golf Club in Elko. This FREE afternoon of fun, food, and golf is Sharper's way of showing our appreciation to you, our valued client, to our Sharper staff, and to our trusted vendors.

If you are interested in securing your spot for the Sharper Scramble, contact Matt Froehlich by emailing matt@sharpermanagement.com.

Sharper Management Welcomes Hague Commons Condominiums - Sharper Management, has recently been brought on board to manage the Hague Commons Condominium Association in St. Paul, MN.

"We're excited about our growing presence in St. Paul," states Dan Cunningham, Partner and Managing Broker. "Our clients truly appreciate our ability to tailor services to their specific needs. This flexibility along with the exceptional and reliable property management services we offer is continuing to be a deciding factor in many local association's choice to hire Sharper. We're happy to grow with our clients and help board members throughout the area."

Your Feedback Is Important to Us:

As Board members, we truly value your feedback. If you appreciate the work we do for you and your association, we want to encourage you to take a few moments and write some positive feedback and comments via an online "review." Among others, Google, Yelp and BBB are common sources of reviews that pop up on search engines. Please help us establish a review log that is reflective of the excellent service we feel we provide!



Additionally, in the coming month, you will receive a survey to help us better understand our performance for you and your association. This is an annual initiative and we use the information to improve our processes and to incorporate the feedback into performance annual employee performance reviews. Please watch for an email and take the time to share your valuable feedback.

Need Help Renting and Managing a Townhome or Condo?

Think Advantage Home



A sister company to Sharper Management, Advantage Home helps homeowners and investors manage their single-family residences.

Since your Association is already affiliated with Sharper Management, renting your home through Advantage would have extra benefits you wouldn't find in another property management company. Those benefits include:

- A thorough understanding of Associations
- Information sharing regarding governing documents, rules, and regulations is efficient between Sharper and Advantage Home - Advantage is literally right down the hall
- The Sharper Management maintenance staff is already familiar with your Association's property
- Our emergency response team is fast and effective

If you or someone you know is interested in renting their townhome or condominium, have them contact jeff@advantagehomemn.com.

Learn more at advantagehomemn.com

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