



OCEAN PINES ASSOCIATION, INC.  
BOARD OF DIRECTORS' ORIENTATION MEETING  
AGENDA  
Friday, August 24, 2018  
7:00 a.m., Assateague Room, Community Center

- 7:00 Continental Breakfast
- 7:10 Welcome, Introduction, Overview, Goals for the Day – Doug Parks, Association President
- 7:15 Adjournment to closed session for the purpose of consultation with the OPA attorney on legal matters, specifically pertaining to pending legal matters, as permitted by the MD Homeowner's Association Act, Section 11B-111(4)(iii).
- 8:00 Adjournment to Open Session  
Governing documents – Jeremy Tucker  
Lerch, Early, Brewer company profile, contract with OPA, and scope of legal services currently provided  
General review/explanation of governance documents, form of governance and roles of Board and General Manager. Review of key issues that relate to legal counsel such as communication and board/staff interaction, open/closed meeting requirements, and freedom of information. Standards for conducting business in meetings.
- 10:00 Review of Association's Financial Condition – John Viola, Association Treasurer
- 10:30 OPA Departments and Department Heads Meet and Greet — John Bailey, General Manager
- 11:00 Status report on Forensic Audit and Mediacom Contract — John Bailey, General Manager
- 11:15 Public Comments (limit 5 minutes)
- 11:30 Tour of OPA Facilities — John Bailey, General Manager
- Sanctuary Crabbing Pier
  - Bulkhead Project Work Site
  - Swim & Racquet Complex
- 1:15 Lunch at Tern Grille & Tour of Country Club
- 2:45 Priorities for Board of Director Relations/Interaction — Doug Parks, Association President
- OPA Mission and Vision Focus
  - Director-to-Director Communication and Effective Use of Meeting Time in Conducting Association Business
  - Financial Stewardship
  - Engagement with Strategic Planning Needs
  - Effective Board/Management Relations: Communication and GM performance Review
- 3:45 Adjournment



**OCEAN PINES ASSOCIATION, INC.  
MOTION TO ADJOURN TO  
CLOSED SESSION**

At a meeting of the Board of Directors of Ocean Pines Association, Inc., held on this 24<sup>th</sup> day of August 2018, 9:00 AM in the Assateague Room of the OPA Community Center the Board voted to adjourn to closed session for the purpose of discussion of legal matters with the OPA Attorney; specifically pertaining to currently pending legal actions as permitted by the MD Homeowner's Association Act, Section 11B-111 (4)(iii).

Motion made by: Doug Parks. Motion seconded by: \_\_\_\_\_

**Discussion:**

**VOTE TO CLOSE SESSION for the above purpose only:**

<b>Director</b>	<b>In Favor</b>	<b>Opposed</b>
Doug Parks		
Steve Tuttle		
Colette Horn		
Frank Daly		
Slobodan Trendic		
Ted Moroney		
Esther Diller		

As allowed by the Maryland Homeowner's Association Act, Section 11B-111 (4 & 5).

(4) A meeting of the board of directors or other governing body of the homeowners association or a committee of the homeowners association may be held in closed session only for the following purposes:

- (i) Discussion of matters pertaining to employees and personnel;
- (ii) Protection of the privacy or reputation of individuals in matters not related to the homeowners association's business;
- (iii) Consultation with legal counsel on legal matters;
- (iv) Consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters;
- (v) Investigative proceedings concerning possible or actual criminal misconduct;
- (vi) Consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the homeowner's association;
- (vii) Compliance with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure;
- (viii) Discussion of individual owner assessment accounts; and

(5) If a meeting is held in closed session under paragraph (4) of this section:

- (i) An action may not be taken and a matter may not be discussed if it is not permitted by paragraph (4) of this section; and
- (ii) A statement of the time, place, and purpose of a closed meeting, the record of the vote of each board or committee member by which the meeting was closed, and the authority under this section for closing a meeting shall be included in the minutes of the next meeting of the board of directors or the committee of the homeowners association.

\_\_\_\_\_  
Colette C. Horn  
Secretary, Ocean Pines Association, Inc.

Friday, August 24, 2018

# Ocean Pines Association, Inc. Board Member Overview

Presented by:

**Jeremy M. Tucker**

*Community Associations Attorney* |  
Lerch, Early & Brewer

# Ocean Pines Association, Inc. Board Member

# Characteristics of Common Interest Communities

- Automatically Member
- Founding/Governing Documents:  
Create mutual obligations between members and Association.
- Declaration of Covenants
  - Each section has a separate declaration (17 sections)

# Characteristics of Common Interest Communities (continued)

- Articles of Incorporation
- Bylaws
- Rules/Resolutions/Guidelines

# Characteristics of Common Interest Communities

- Governing Documents: (Cont'd)
  - Rules & Regulations
  - Policy Resolutions

# Characteristics of Common Interest Communities (continued)

- Mandatory Fees
- Owners share an easement of use and enjoyment in common area property & facilities – but the all common areas are open to the public too (501(c)(4))



# Hierarchy of Legal Documents

- Declaration of Covenants
- Plats
- Articles of Incorporation
- Bylaws
- Rules & Regulations
- Resolutions



# Federal, State, and City Laws

## Federal:

- Fair Housing Amendments Act:  
Prohibits discrimination in housing (e.g. familial status, disability, race, national origin etc.).
  - Parking
  - ADA/FHAA
  - Reasonable accommodations

# Federal, State, and City Laws (continued)

- Telecommunications Act (satellite dishes)

## Maryland State Law

- Solar Panels

# Overview of Ocean Pines Association, Inc.

- Multi-Section Community
- 501(c)(4) Tax Exempt Entity – Facilities Open to the Public
- Common Area Properties
- Common Area Facilities
- Control

# Overview of Ocean Pines Association, Inc. (continued)

- Board of Directors
- General Manager
- Committees
- Authority and Restrictions
- “May” vs. “Shall”

# Role and Responsibility as a Board Member

- Powers pursuant to law & documents
- Standards and procedures for Association
- Enforce the governing documents
- Maintain the property



# Role and Responsibility as a Board Member (continued)

- Maintain financial stability of Association
- Purchase adequate insurance
- Enter into contracts
- and more.....



# Role and Responsibility as a board member

- “May” vs. “Shall”: allowance and requirements for certain acts.
- Powers and Duties (Bylaws, Art. III, §3-102)
- Budget Adoption
- Maintenance & Repair of Property
- Maintain Books & Records



# Director and Officer Ethics – B-08

- To attend Board meetings
- Maintain business-like climate of meetings
- Abide by Board decision
- Keep confidential information confidential
- Directors will not give direction to employees unless authorized by the Board or consistent with the officer role.

## Director and Officer Ethics – B-08 (continued)

- Conflict of Interest - . Directors and Officers shall not recommend a course of action, or make a decision on behalf of the Association that materially benefits themselves or certain parties that are related to the Director or Officer, termed "affiliated persons," with respect to any matter in which they have a material interest. – More restrictive than Maryland law

# Conflict of Interest – Maryland Law

- Maryland Corporations and Associations Article §2-419, entitled “Interested director transactions”:
  - (a) General rule. -- If subsection (b) of this section is complied with, a contract or other transaction between a corporation and any of its directors or between a corporation and any other corporation, firm, or other entity in which any of its directors is a director or has a material financial interest is not void or voidable solely because of any one or more of the following: (1) The common directorship or interest; (2) The presence of the director at the meeting of the board or a committee of the board which authorizes, approves, or ratifies the contract or transaction; or (3) The counting of the vote of the director for the authorization, approval, or ratification of the contract or transaction.

## Conflict of Interest – Maryland Law (continued)

(b) Disclosure and ratification. -- Subsection (a) of this section applies if: (1) The fact of the common directorship or interest is disclosed or known to: The board of directors or the committee, and the board or committee authorizes, approves, or ratifies the contract or transaction by the affirmative vote of a majority of disinterested directors, even if the disinterested directors constitute less than a quorum; or (2) The contract or transaction is fair and reasonable to the corporation.

## 501(c)(4) Tax Exempt Status

- Rev. Rul. 74-99 - to qualify for exemption under IRC 501(c)(4), a homeowners' association:
- Must serve a "community" which bears a reasonably recognizable relationship to an area ordinarily identified as governmental

## 501(c)(4) Tax Exempt Status (continued)

- Must not conduct activities directed to the exterior maintenance of private residences, and
- The common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

## Fiduciary Duty

- Is a broad term that includes a duty of loyalty and a duty of ordinary care.
- Duty of Loyalty: Md. Corp & Assn § 2-419-Interested Director Transactions
- Prohibits board members from using their position to take unfair advantage of the Association.

## Fiduciary Duty (continued)

- Undivided loyalty
- Conflict of Interest: Appearance of impropriety



# Duty of Ordinary Care

- Board must perform their duties in good faith, in a manner they believe to be in the best interest of the Association and with such care as an ordinary prudent person in a similar position under similar circumstances.

## Duty of Ordinary Care (continued)

- Good Faith is the absence of any desire to obtain a personal benefit or benefit for some person other than the corporation...In addition, to be acting in good faith, a director may not approve an action that he knows is in violation of the law....[or] apply an invalid provision of corporation's by-laws to the determine of a stockholder. Henry v. Guirand et. al. (2012)

## Duty of Ordinary Care (continued)

- The Court will review the correctness of a Board decision as fraud or bad faith a/k/a: Business Judgment Rule: *Black v. Fox Hills North*

## Ordinary Care (Continued)

- Board members should not miss a series of meetings, needs to be familiar with issues, know how to read a financial statement, stay informed of activities.
- Immunity & Personal Liability.

## Ordinary Care (Continued)

- Md. Cts & Jud. § 5-422: Board members not personally liable for damages.
- D&O Insurance: duty to defend & indemnify

# Open Meetings

- With limited exceptions as laid out in Md. Real Property Code Ann. § 11B-111.1, meetings of the Board of Directors shall be open and held at a time and location as provided in the notice of meeting or Bylaws.

## Open Meetings (continued)

- The Board of Directors shall provide a designated period of time during a meeting to allow unit owners an opportunity to comment on any matter relating to the condominium.
- During a meeting which the agenda is limited to specific topics, unit owner comments may be limited to those topics on the agenda.

# Board Meetings

- Effective board meetings need to be well planned and Board members prepared:
- Prepare agenda ahead of time
- Review Minutes of previous meeting
- Financial reports
- Committee reports



## Board Meetings (continued)

- Management reports
- Special reports, memorandums, correspondence
- Board should be familiar with documents
- Contact meeting participants & provide adequate notice
- Develop agenda

# General Manager Powers

- Section 9.04 of the Bylaws
- Recently Relevant Sections

(a) The General Manager serves as manager of the Association including all departments and units and shall organize, consolidate or combine offices, positions, departments, or units as necessary for efficient operations.

## General Manager Powers (continued)

(b) The General Manager serves as the chief personnel officer of the Association with discretion to appoint, promote, demote, discipline, or discharge employees of the Association in accordance with the personnel policies and procedures established by the Board of Directors under Section 5.14(d). Any new position established must be approved by the Board or provided for in the annual budget.

# General Manager/Board Interactions

- Section 9.03 of the Bylaws - Board and Association Staff Relationships
- Individual members of the Board of Directors shall not give orders to any employee of the Association and, except for routine administrative services and inquires, shall deal with employees through the General Manager. The President of the Association shall be the liaison between the Board and the General Manager.

# Closed Board Meetings

- i. Discussion of matters pertaining to employees and personnel;
- ii. Protection of the privacy or reputation of individuals in matters not related to the homeowners association's business;
- iii. Consultation with legal counsel on legal matters;
- iv. Consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters;
- v. Investigative proceedings concerning possible or actual criminal misconduct;

# Closed Board Meetings

## (continued)

- vi. Consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the homeowners association;
- vii. Compliance with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings or matters from public disclosure; or
- viii. Discussion of individual owner assessment accounts.

# Conduct a Professional Meeting

- Start on time
- Follow Roberts Rules
- Keep Minutes
- Open Forum: positive verbal & nonverbal communication
- Comply with Law

# Covenant Enforcement

- Covenants
- Ensure Compliance with governing documents
- Maintenance issues
- use restriction violations
- Enforcement
- Hearing alleged violations of the governing documents
- Establish due process procedures for violations:
  - Notice
  - Complaint & Hearing
  - Right to Appeal to Board



# Enforcement: Methods, Mechanisms & Styles

- Self help
- Letters & Communication
- Circuit Court Action
- Limited fining authority – Section by Section

# Assessments and Collections

- Authority for Assessment Collection
- Governing documents of the Association establish line of authority for the Board to set and collect assessments
- Documents empower the Board to establish rules and regulations for the collection of assessments
- Collection Policy
- Provides procedures for the collection of assessments
- Clearly communicates the Association's authority and the penalties for non-compliance
- Apply this policy consistently across the board--treat all owners equally and impartially
- Review this policy annually

# Communicatio ns

- Provide consistent communication to owners to promote and facilitate collections
- Starts with budget and annual meeting
- Continue to communicate through the use of welcome letters, re-sale packages, web sites, newsletters and general correspondence
- Informed members will understand the need for prompt payment of assessments
- Town hall meetings

# Establish a Payment Plan

- Establish a system for the payment of assessments, usually established with the assistance of the managing agent
- Various methods can be established: Coupon books, invoices, direct debit, drop-off and credit cards
- Coupon books are widely used but each method has its pros and cons i.e... Costs, convenience, cash flow, automation
- Record the Payments
- Maintain a separate accounting for each owner that shows a complete recap of all transactions i.e. Owner ledger

# Collecting Delinquent Payments

- Once a payment system has been established, a firm due date for payment of assessments must be set (as stated in the collection policy)
- Send reminder letter to owners
- Send late notice to delinquent owners
- Send 15 day letter to delinquent owners
- Late fees are applied to the late notice and 15 day letter
- These notices provide the owner with their entire payment history and gives them the opportunity to pay their assessment before additional steps are taken

# Collecting Delinquent Payments (continued)

- Work with the delinquent owner to collect past due assessments i.e. Payment plans, personal visits or phone calls by a Board member, etc.
- As established by the collection policy, a notice of intention to create a lien is mailed to the owner
- Provides the owner with 30 days to pay before the Association creates and records a lien against the property
- Once the delinquent owner is turned over to the collection attorney, the managing agent will advise the owner that all future communications must go through the attorney until a resolution is reached

# Attorney Action

- Demand Letter to Owner
- NOI: Notice of Acceleration/Notice of Intention to Create Lien (NOI)
- Statutory Notice required by Maryland Contract Lien Act
- Acceleration: warns if payment not made within 15/30 days full year's assessments will be due immediately and lien will be filed
- Details specific amounts owed including costs and fees incurred (and late fees if authorized)

## Filing of Lien

- Creates a cloud on the title to the property that prevents the owner from selling, refinancing, or otherwise voluntarily conveying the property
- Establishes the Association as a “Secured Creditor” if the owner files Bankruptcy & survives Chp. 7 Bankruptcy Discharge
- Creates an interest to allow foreclosure and can lead to payment if any Senior Lien holder forecloses leaving a Surplus



# District Court Lawsuit

- Seeks to obtain a Judgment against the owner personally.
- Judgment
- Execution of Judgment
- Judgment Lien: Secures Lien against all property in County where filed
- Garnishment of Rent
- Garnishment of Bank Accounts
- Garnishment of Wages
- Attachment of Personal Property

# Lerch Early Collected

- From 1/1/18-8/8/18  
\$141,079.63
- From 1/1/17-8/8/18  
\$375,925.26

# Questions?

# Thank You!

## About the Presenter



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**Jeremy Tucker** is a community associations attorney who counsels common interest communities on the legal and practical aspects of making their Maryland and DC properties desirable places to own and live. He helps board members and managers of condominiums, cooperatives, and homeowners associations to govern responsibly and manage effectively.