

**RESOLUTION
OF THE
SOUTHPARK HOMEOWNERS ASSOCIATION NUMBER 2
ADOPTING POLICIES AND PROCEDURES
REGARDING BOARD MEMBER CONFLICTS OF INTEREST**

- SUBJECT:** Adoption of a Fiduciary Duty and Conflict of Interest Policy.
- PURPOSE:** To adopt a policy for the fiduciary responsibility of Board Members and other volunteers acting on behalf of the Association.
- AUTHORITY:** The Declaration, Articles and Bylaws of the Association, and Colorado law.
- EFFECTIVE DATE:** January 1, 2006

RESOLUTION

The Association hereby adopts the following policy and procedure regarding board members and other volunteers conflicts of interest and code of ethics:

1. General Duty The Board of Directors shall use its best efforts at all times to make decisions that are consistent with high principles, and to protect and enhance the value of properties of the members and Association. All Directors shall exercise their power and duties in good faith and in the best interest of, and with utmost loyalty to the Association. All Directors shall comply with all lawful provisions of the Declaration and the Association's Articles, Bylaws, and Rules and Regulations.
2. Definitions (1) **Fiduciary** - A fiduciary is someone who transacts business or handles money or property on behalf of others. Because of the nature of the relationship, entails a duty of loyalty, care, and good faith. In the context of our community association, this means the Directors, committee members, and other Association volunteers must always make decisions based on what is best for the Association as a whole. They may not place their own interests or those of their friends and neighbors above those of the other members. They must act in good faith and use the same degree of care that a reasonably prudent person would use. This includes getting expert advice when appropriate.

Also, Directors, committee members, and other volunteers should avoid accepting gifts or discounted rates from Association vendors and avoid accepting gifts sponsored by the Association for its general membership. Neither should they expect their fellow board members/volunteers, bookkeeper, or property manager to bend rules for them or give them other special treatment. Directors, committee members, and other volunteers must set an example for other Association members of how to behave.

(2) **Conflict of Interest** - A conflict of interest exists whenever any contract, decision or other action taken by or on behalf of the Board would financially benefit: (i) a Board Director; (ii) a parent, grandparent, spouse, child, or sibling of the Director; (iii) a parent or spouse of any of the persons in subsection (ii); (iv) an entity in which a Director is a director or officer or has a financial interest.

3. Disclosure of Conflict Directors shall not enter into any contract or financial transaction with the Association. Any other conflicts of interest on the part of any Director or other volunteer shall be verbally disclosed to the other Directors in open session at the first open meeting of the Board of Directors at which the interested Director or volunteer is present prior to any discussion or vote on the matter. The interested Director or volunteer may not be present during or participate in the discussion or voting on the matter. The minutes of the meeting shall reflect the disclosure made, the abstention from voting of the interested Director, the composition of the quorum and a record of who voted for and against.
4. Failure to Disclose Conflict Any contract entered into in violation of this policy shall be void and unenforceable. In such event, the Board, at the next meeting of the Board, shall vote again on the contract, decision or other action taken in violation of this Policy.
5. Code of Ethics In addition to the above, each Director, the Board as a whole, or other volunteers acting on behalf of the Association shall adhere to the following Code of Ethics:
 - A. **Acting in the Best Interests of the Association.** Community members trust their boards to make decisions on behalf of the entire community, based on what is best for the Association as a whole. This means Directors cannot favor certain members over others, either because of personal relationships, or because someone might have voted for a Director while another person voted against him/her. Nor can Directors or other volunteers put their own interests above those of the Association or its members.
 - B. **Personal Enhancement.** No Director or other volunteer shall use his/her position for private gain, including for the purpose of enhancement of his/her financial status through the use of certain contractors or suppliers.

- C. **Acting with Care, Including Seeking Advice from Experts when Appropriate.** Directors and other volunteers must exercise the same degree of care that a reasonably prudent person would under the circumstances. Sometimes, this requires getting experts' advice before making a decision. Generally, Directors should consult with experts, such as attorneys, accountants, and engineers, on issues that require specialized knowledge not possessed by anyone on the board.
- D. **Political Contributions.** No contributions will be made to any political parties or political candidates by the Association.
- E. **Acting with the Scope of Authority.** Community association boards usually get their authority from two places: the association's governing documents (declaration, bylaws, policies, and rules and regulations) and state and/or local laws. When Directors or other volunteers take actions that are not authorized by the governing documents, for example, they are breaching their fiduciary duty to the Association. Even if a Director or other volunteer takes an action that is authorized by the governing documents, it could be a breach of fiduciary duty if that action is forbidden by state or local law.
- F. **Gifts, Gratuities, Favors, etc.** No Director shall solicit or accept, directly or indirectly, any gifts, gratuity, favor, entertainment, loan or any other thing of monetary value from a person who is seeking to obtain contractual or other business or financial relations with the Association. No Director shall accept a gift or favor made with the intent of influencing decisions or actions on any official matter.
- G. **Acting in Good Faith.** Directors' and other volunteers' motives must be to further the legitimate best interests of the Association. Decisions based on favoritism, discrimination, or malice – or decisions made arbitrarily – constitute a breach of fiduciary duty. This does not mean that board members cannot create and enforce rules that affect some members differently from the way they affect other members. This obligation to act in good faith simply means that the decision to create a rule must be made based on the Directors' or other volunteers' honest and best judgment of what is best for the community as a whole.
- H. **Compensation.** No Director shall receive any compensation from the Association for acting as a volunteer.
- I. **Misrepresentations.** No Director shall willingly misrepresent facts to the members of the Community for the sole purpose of advancing a personal cause or influencing the Community to place pressure on the Board to advance a personal cause.

- J. **Contractor Relations.** No Director shall interfere with a contractor engaged by the Association while a contract is in progress. All communications with Association contractors shall go through the Association's agent and be in accordance with this policy.
 - K. **Harassment or Control.** No Director shall harass, threaten, or attempt through any means to control or instill fear in any member, Director or agent of the Association.
 - L. **Unauthorized Promises.** No promise of anything not approved by the Board as a whole can be made by a Director to any subcontractor, supplier, or contractor during negotiations.
 - M. **Felony Convictions.** Any Director convicted of a felony shall voluntarily resign from his/her position.
 - N. **Board Meeting Decorum.** Language and decorum at Board meetings will be kept professional. Personal attacks against Owners, residents, agents, service providers and Directors are prohibited and are not consistent with the best interest of the Community.
6. The Integrity Letter In accordance with this policy, the Southpark Homeowners Association Number 2, requires that before assuming their role, each Director receives a copy of this policy and signs the attached Integrity Letter in which he/she acknowledges that he/she has read and understands the fiduciary duty to Southpark Homeowner's Association Number 2 and agrees to undertake the important job of being a Director. Upon signing and dating the letter, the original will be given to the Association Secretary for safekeeping with other important Association records and the Director retains a copy of the policy and letter.
 7. Definitions Unless otherwise defined in this Resolution, initially capitalized or terms defined in the Declaration shall have the same meaning herein.
 8. Supplement to Law The provisions of this Resolution shall be in addition to and in supplement of the terms and provisions of the Declaration and the law of the State of Colorado governing the Community.
 9. Deviations The Board may deviate from the procedures set forth in this Resolution if in its sole discretion such deviation is reasonable under the circumstances.
 10. Amendment This policy may be amended from time to time by the Board of Directors.

Integrity Letter

To the Members of the Southpark Homeowners' Association Number 2:

By my signature at the bottom of this letter I am acknowledging that I have read the attached policy and understand my fiduciary duty and its attendant conflicts of interest as outlined and that I agree to abide by the principles set forth in this policy.

I understand that the law imposes certain legal obligations on all Directors. Failure to fulfill these obligations could lead to a lawsuit against the association, the board, or even me personally. Chief among these obligations is what is called fiduciary duty to the association and disclosure of potential conflicts of interest. This means that I must perform my duties as a Director in good faith and with the degree of care that an ordinarily prudent person would use under similar circumstances in matters of importance to him/herself, being at all times loyal to the Southpark Homeowners' Association Number 2.

While it's impossible to enumerate every possible situation I might face, here are some basic guidelines that I agree to follow as a Southpark Homeowners' Association Number 2 Director.

1. I agree to try at all times to act in the association's best interests, making decisions based on what I understand and believe to be best for the association as a whole.
2. I agree to act with care, including seeking advice from experts when appropriate.
3. I agree to act within the scope of my authority as defined in the association's governing documents and by applicable state and local laws.
4. I agree to act in good faith with my motives being at all times to further the legitimate best interests of the association. I agree to avoid making decisions based on favoritism, discrimination, or malice – or make arbitrary decisions.
5. I agree to avoid the following four common mistakes: (a) taking personal advantage of business opportunities that should benefit the entire community; (b) doing business with the association unless it is disclosed and appropriate approval obtained; (c) giving preferential treatment to friends and supporters, or expecting it for myself; and (d) accepting gifts from vendors or others doing business or seeking to do business with the association.
6. I agree to disclose in an open meeting if any contract, decision, or other action taken by or on behalf of the Board would financially benefit me or any person who is my parent, grandparent, spouse, child, or sibling or a parent or spouse of any of those persons. After making such a declaration, I agree that I may not participate in the discussion or vote on that issue.

Sincerely,

Board Member Name

Date

