

Tips on Organizing a Homeowner's Association

Advantages of Incorporating

Separate Legal Entity Status

A corporation is a separate legal entity existing under authority granted by state law. It has its own identity separate and apart from its Membership/owners.

Broad Range of Powers

As a separate legal entity, a corporation has the power to act in any way permitted by law and by its own corporate charter. For example, a corporation can enter into contracts, buy and sell both real and personal property, sue and be sued, and can even be responsible for breaking the law (i.e. committing a crime).

Small Claims Court

In most jurisdictions, including Oklahoma's, any officer or director or employee can appear in small claims court on behalf of the corporation.

Separate Liability for Corporate Debts

As a separate legal entity, a corporation is responsible for its own debts. Normally, members, directors, and officers are not responsible for corporate liabilities. If the corporation suffers losses, the corporation itself must bear those losses to the extent of its own resources, and not the personal assets of the individual members. In effect, however, Members indirectly bear these losses by a decline in the value of the stock they hold in the corporation.

Note however, that members, directors, and/or officers may be held liable for the debts of the corporation where the court imposes "alter-ego liability" or where the individual as personally guaranteed the corporate debt.

The DISADVANTAGES of INCORPORATING

Corporate Formalities

A corporation can be created only by compliance with General Corporation Law of the state of incorporation. This usually requires filing of Articles of Incorporation with the Secretary of State and payment of the requisite state fees and taxes.

A corporation is required to have a board of directors, corporate officers, annual membership meetings, and to maintain detailed books and records. Failure to observe such formalities may result in the personal liability of membership for corporate debts.

Corporate Officers

Typically, the authority and responsibilities of each officer are mentioned in the articles of incorporation and further described in the corporate.

President

The President is the administrative head of the Association and has the following duties:

1. To preside at all meetings of the Board and the membership. The President shall have an equal vote on any question before the Board and membership.
2. Sign all written contracts for the Organization, together with the Secretary.
3. Shall perform all such other duties as are incident to his office.
4. To see that the by-laws and rules governing the Association are enforced.
5. To perform all such other duties as may be imposed on him by the By-Laws of the Organization.

President-Elect (Or Vice President)

The duties of the President-Elect shall be the same as those of the President, **in the absence of the President** which include:

1. Preside at all meetings of the Board and the membership. The President-elect shall have an equal vote on any question before the Board.
2. Sign all written contracts for the Organization, together with the Secretary
3. Shall perform all such other duties as are incident to his office
4. To see that the by-laws and rules governing the Association are enforced.
5. To perform all such other duties as may be imposed on him by the By-Laws of the Organization.

Secretary

The Secretary issues notices of all Board and membership meetings. The secretary attends and keeps the minutes of all meetings. Other duties include:

1. Is in charge of all Organization books, records and papers.
2. Is the custodian of the Organization's seal, shall attest with his-or-her signature and impresses with the Organization's seal all written contracts of the Organization.
3. Keeps written record of rules and regulations for the various committees to be made a part of the Minute Book.
4. Insures that all rules and regulations are copied in their entirety, and given to all members of the Board at the first meeting of each year.
5. The Secretary has charge of all the records and files of the Organization.

6. To perform all such other duties as may be imposed on him by the By-Laws of the Organization.

Treasurer

The Treasurer has custody of all money and securities of the Organization. The duties of the Treasurer include the following:

1. Heads the Budget and Finance Committee.
2. Signs all checks of the Organization.
3. Makes a timely report of the general financial condition of the Organization at the monthly meetings of the Board and Membership.
4. Collects budget requests from all of the committees and submit a prepared Budget to the Board for approval.
5. Performs all such other duties as may be imposed on him by the By-Laws of the Organization.

Committee Chairperson

The Chairperson or Co-Chairperson of the respective committees has the responsibility of the events assigned to them. Each Chairperson is responsible for the following:

1. Determining the time, place, and manner of carrying out the event.
2. Determining the budget requirements and manpower needed.
3. Presenting recommendations and status reports to the Board such as plans, budgets and needs which shall then be approved by the Board.
4. Prepare proposed budgets, which shall be submitted to the Treasurer and confirmed by the Board.
5. All Committee Chairpersons or Co-Chairpersons can be vested with the title of Vice-President.
6. Each Committee Chairperson is responsible for enforcing the committee's individual rules and regulations and insures that the Secretary receives a copy for the Minute Book.
7. Is responsible for any changes or additions to their committee's job description.

Board Of Directors

The Board of Directors is essentially the management body for the corporation. Responsibilities of the Board of Directors include establishing all business policies and approving major contracts and undertakings. Depending on how the Organization's by-laws are written, ordinary business practices of the corporation are carried out by the officers under the directives and supervision of the membership.

The Directors must act collectively for their votes and decisions to be valid. That's why Directors may only act at a Board of Directors meeting. This, however, requires certain formalities. One such formality is that the Directors must all be notified of a forthcoming meeting in a prescribed manner, although this can be waived or provided for in the corporation's Articles of Incorporation or Bylaws.

For a Directors' meeting to be valid, there must also be a Quorum of Directors present. A Quorum is usually a majority of the Directors then serving on the Board; however, the Bylaws may specify another minimum number or percentage.

The Board of Directors must meet on a regular basis (monthly or quarterly), but in no case less than annually. These are the regular Board meetings. The Board may also call special meetings for matters that may arise between regular meetings. In addition, boards should call Membership meetings to inform the membership and keep them involved according to the by-laws.

Incorporation Operating Guidelines

To fully retain the benefits of incorporating, you must observe corporate guidelines. To ensure you are maintaining corporate formalities, ask yourself the following questions while you are organizing your Homeowners' Association:

1. Are meetings of the Board of Directors regularly scheduled and conducted?
2. Are Shareholder meetings regularly scheduled and conducted?
3. Do such meetings adequately cover the business that is currently being conducted in the corporation?
4. Do meetings provide Membership and/or Directors with agendas and goals along with the necessary background information necessary to make an informed decision? Are these materials provided to the Membership and/or Directors in advance of the meeting?
5. Do Directors have a reasonable opportunity to add items of concern to the meeting's agenda before the directors meet?
6. Are agenda items acted upon; or, rather, are they postponed and advanced to future meetings?
7. Does the meeting provide adequate time for Board members or Membership to discuss each agenda item?
8. Is each Director and/or Shareholder afforded a reasonable opportunity to discuss each issue?
9. Are Corporate Minutes of each meeting accurately recorded by the Secretary?
10. Does the Board meet with and/or receive direct reports from legal counsel, accountants, or other outside advisors? Are these reports included with the Corporate Minutes?
11. Are the Corporate Minutes of Board meetings reviewed at subsequent meetings?
12. Are the Corporate Minutes amended or corrected for clarity and accuracy?

13. Are the dissents to the Corporate Minutes duly recorded?
14. Do Board meetings adequately cover substantive policy issues involving the corporation rather than only trivial or administrative detail?
15. Is the Board Chairperson effective in conducting Board meetings?