

POA Board November 2022 Election

Two POA Board of Directors openings for the 2023-2025 term will be filled in the 2022 election. Candace Robertson and Regis Falinski will complete their terms this year.

The composition of the Board in 2023 continues to be six elected directors and one developer director.

The By-Laws specify that the qualifying period for those seeking POA Board seats is from March 1 through June 30. The initial qualification step is for interested persons to pick up a Petition for Election and related information documents from the Director of Administrative Services at the POA offices sometime during the qualifying period. Signatures on these petitions by owners of at least twenty-five separate lots in Big Canoe will be required for candidates to be considered. Petitions for Election must be returned by 5:00 p.m. on Thursday, June 30, 2022 to the POA offices.

Candidates must meet the following qualifications in order to be considered for the position of Elected Director:

1. Own property in Big Canoe for a period of at least twenty-four (24) consecutive months prior to September 20, 2022;
2. Be at least twenty-one (21) years of age by September 20, 2022;
3. Be in good standing with the POA at the time of qualifying;
4. Secure a signature from at least twenty-five (25) different Members representing at least twenty-five (25) of the Lots in Big Canoe;
5. Be willing to authorize a criminal and credit background check by the POA, if requested.

When Petitions for Election are obtained from the POA offices, prospective candidates will also receive and sign for copies of the Election Process: Information and Expectations. Third parties may pick up Petitions for Election and the other documents in the name of a prospective candidate. The person obtaining the materials will also receive a document for the prospective candidate to sign and return to the Director of Administrative Services prior to June 30. The document will confirm that the candidate has received the informational items.

If more than four people qualify for these two positions, there will be a primary election this summer followed by the general election in the fall. For further information about the election process contact Debbie Pickett, any board member or any Election Committee member.

Election Committee

Election Process Information and Expectations

The following are key considerations and processes for candidates and Board members.

I. POA board member elections should be a positive community experience and the comportment of the candidates and supporters is critical to the positive experience. These voluntary guidelines have been adopted by the board and set forth to the community:

Guidelines for POA Candidates

1. Candidates shall enter into a positive campaign which addresses issues and not personalities;
2. Candidates shall not make statements, written or oral, which disparage the character or reputation of another person;
3. Candidates, in the preparation of written material that references the positions of an opponent, shall not take statements out of context, but shall use the entire statement either in the body of the document or as a footnote;
4. In making any oral representation of an opponent's position, candidates shall make a full and fair statement of such position.
5. Candidates, in making any statement, either written or oral, with regard to actions and positions of the POA Board and its members, all being reasonable subjects for discussion and debate in election campaigns, shall be responsible for ascertaining the full facts with respect to these actions and positions, and making a fair presentation of them in any such discussion.
6. Candidates shall make a good faith effort to maintain control of campaign related statements, written and oral, issued for public consumption by their workers.

Guidelines for POA Elected Directors

1. Elected Directors, as well as the Board's Elections Committee, should encourage Property Owners to become informed about community and governance issues and the candidates' positions on these issues.
2. Elected Directors and members of the Elections Committee should encourage Property Owners to vote in all elections.
3. Elected Directors and members of the Elections Committee should encourage Property Owners to serve the community in committee and board capacities.
4. POA directors have traditionally maintained a position of public neutrality with respect to candidate preferences during election campaigns. In keeping with this practice and in the spirit of promoting free and open elections, it is recommended that Elected Directors and members of the Board's Election Committee voluntarily maintain a posture of public

neutrality with respect to candidates for the office of POA Elected Director.

Guidelines for Property Owners

1. Property Owners should be informed voters. They should assume responsibility for becoming knowledgeable about community issues and the qualifications of the candidates.
2. Property Owners should practice civility and decorum in any political discourse or activity, and show encouragement of all candidates for elective office, doing so in appreciation for their willingness to serve the community.

II. The POA is pleased to assist Elected Director candidates in becoming better known by Property Owners prior to any election for the office. Support is organized in a manner such that the POA administrative operation will not suffer frequent and extensive disruptions for this purpose. Support provisions include:

1. The POA will permit candidates to submit biographical information in digital format along with a digital picture for posting on the POA web site, and this information will remain until the election results are announced.
2. The POA will permit candidates to submit campaign material in digital format for broadcast emailing to all registered Property Owners no more often than once every two weeks. (No material negative to another Property Owner, the Association, or the Company will be permitted.)
3. The POA will provide mailing address labels with a minimum of five working days' notice, and no more often than once every two weeks per candidate. The POA will sort the labels by Big Canoe mailing addresses and non-Big Canoe addresses if requested, but will provide only one additional sort beyond that level (e.g. alphabetic, zip code, etc.)
4. The POA will provide the address labels at no charge for materials or labor. However, the POA will not incur any other costs or supply any other materials. Postage and mailing will be the candidates' responsibility.
5. All candidate requests for information, review of POA documents, etc. will be handled according to the existing policy pertaining to all Property Owners.
6. Such support shall not begin until the qualifying period has closed, and prospective candidates have been advised that they did, in fact, qualify to run. For the annual General Election prior to the Annual Meeting, such support shall not begin until September 1 of each year.
7. Such support shall terminate two weeks prior to the final date for receipt of ballots.

III. The Big Canoe POA Directors have a responsibility while serving as a Board member to conduct themselves according to ethical standards which may typically be expected by the members of the Association. The successful operation of the POA also requires each member of the Board of Directors to discharge his/her duties and behave in a professional, courteous, and respectful manner to each other. The Directors have an obligation of loyalty not to compete with the POA, and not to usurp an Association opportunity, and to avoid conflicts of interest and members of the Big Canoe Board of Directors must demonstrate by their example the highest standards of ethical and professional conduct in discharging his/her duties, such that the members may justifiably have trust and confidence in the integrity of the Board and its decisions

The Directors serve for the benefit of the POA and its members and shall recognize that acting in the best interest of the POA is their primary concern, and shall discharge the duties of their position in the best interest of the Association regardless of personal considerations and the Board wishes to ensure that Directors maintain high ethical standards of conduct and professionalism as the Directors carry out their designated duties.

Standards of Conduct

Each Director shall:

1. Strive for "consensus";
2. Recognize that it may be necessary to compromise to help the group reach "consensus";
3. Protect and not disclose confidential information gained because of his/her position;
4. Respect others' ideas;
5. Be respectful of start/stop time;
6. Listen to and consider comments of the entire group before decisions are made;
7. Operate as a team;
8. Share information in a timely manner;
9. Honor commitments;
10. Adequately prepare for meetings including review of all materials pertinent to the meetings;
11. Exhibit professional courtesy to all Property Owners, POA staff, and management;
12. Make full disclosure in writing to the Board at any time that he/she acquires an interest that might reasonably tend to create a conflict with the POA's interest.

No Director shall:

1. Solicit or accept any gift, benefit, or favor, directly or indirectly under circumstances in which it can reasonably be inferred that the gift, benefit, or favor is intended to influence him/her in the performance of his/her POA duties;
2. Engage in any business transactions or activity or have a financial interest in any business transaction, direct or indirect, which may tend to impair his/her independence of judgment in the performance of his/her duties;
3. Use his/her position as a Board member for private gain;
4. Make unauthorized promises committing the Board to specific actions;
5. Harass, threaten, or attempt through any means to control or instill fear in a member of the staff or Property Owner;
6. Vote on a question before the Board in which he/she has a direct or indirect personal or pecuniary interest not common to other members of the Board;
7. Be employed by or do any work for the Big Canoe POA while serving as a member of the POA Board as provided in the By-Laws [per Section 3.6 of the By-Laws, this provision only applies to directors elected at the 2007 annual meeting and thereafter]; and/or
8. Fail to disclose any conflicting interest/conflict of interest.*

* Conflicting Interest/Conflict of Interest:

A conflict of interest exists when an outside influence affects one's ability to make an unimpeded, independent decision or when an individual owes duties to separate entities with different interests.

A conflicting interest is the interest a Director has involving a transaction in which a Director or a related person is either a party to the transaction or has a beneficial interest in the transaction such that it would reasonably be expected to exert an influence on the Director's judgment.

A Director with a conflicting interest shall comply with the requirements of the Georgia Conflicting Interest Transactions Statute, O.C.G.A. 14-3-860-865.

Elected directors deemed to have acted inappropriately may be subject to removal as provided in the POA By-Laws.

BIG CANOE PROPERTY OWNERS ASSOCIATION, INC.

Roles, Responsibilities, Duties and Obligations for Board Members

To be effective, a property owners association needs a strong Board of Directors that understands its role and pursues it with passion and a concise mission in mind. ~Association Times~

<p>BASIC RESPONSIBILITIES</p> <ol style="list-style-type: none"> 1. Protect, preserve, and enhance the values and assets of the Association and its members 2. Read, understand, and adhere to Association's governing documents 3. Select, support, and evaluate the General Manager 4. Adopt and cause to be implemented policies for the maintenance, administration, and financial well-being of the Association. 5. Attend and participate in meetings 6. Set amount of assessments to ensure adequate resources to meet the Association's purpose 7. Oversee resources and finances and ensure financial controls are in place 8. Determine the scope of services and monitor 9. Enhance the association's public image 10. Act legally and ethically 11. Recruit new Board members 12. Adopt rules and regulations 	<p>LEADERSHIP & MANAGEMENT</p> <ul style="list-style-type: none"> • Directors lead by "directing" the business of the Association in adopting policies that reflect the benefits and services to be provided. Directors define objectives and delegate authority to staff to achieve • General Manager and staff are responsible for achieving the objectives of the Board within boundaries set by the Board. <p><i>The Board governs and the staff manages.</i></p>	<p>BEHAVIOR</p> <ol style="list-style-type: none"> 1. Be prepared for meetings 2. Understand the difference between governance and management 3. Respect fellow Board members and the office of the President, agenda, rules of order 4. Respect confidentiality
<p>BASIC ROLES</p> <ol style="list-style-type: none"> 1. <u>Governance</u> – policy-making, includes defining and differentiating responsibilities of and among the Board, management, and staff 2. <u>Decision Making</u> – on issues that are strategic and significant 3. <u>Oversight</u> – is accountability of staff, obtaining objectives, and is not management of day-to-day operations 	<p>STANDARD OF CONDUCT</p> <p>O.C.G.A § 14-3-830 requires a director discharge his or her duties:</p> <ul style="list-style-type: none"> • in a manner the director believes in good faith to be in the best interest of the association; AND • with the care an ordinary person in a like position would exercise under similar circumstances <p>LEGAL DUTIES</p> <ul style="list-style-type: none"> • <u>Duty of Care</u> – must exercise good judgment; includes an obligation to make informed decisions; ignorance is no defense • <u>Duty of Obedience</u> – must comply with the association's governing documents and act consistent with goals • <u>Loyalty Duty</u> – must be loyal to the Association and never use position for personal gain or illegal acts; loyalty includes confidentiality 	<p><i>What you hear, see, or do here, when you leave, let it stay here.</i></p> <ol style="list-style-type: none"> 5. Recognize you do not speak for the Association without authority to do so 6. Do not bad-mouth any person, decision, or action – vote against or register a dissent in the minutes 7. Support Board decisions even if you voted against it: Board speaks as one 8. Participate not dominate 9. Work for consensus and unity 10. Disclose any potential conflict of interest
		<p>CONFLICT OF INTEREST</p> <p>O.C.G.A § 14-3-860</p> <ul style="list-style-type: none"> • Arises when an outside influence could affect a director's ability to make unimpeded, independent decision • Director has duty to disclose the existence of or a potential conflict • Transaction must be approved by a majority of the disinterested directors <p><i>There is no evil in an association conducting business with a Board member, the evil is in the hiding of a director's interest</i></p>

GOVERNING DOCUMENTS

- Amended and Restated General Declaration of Covenants and Restrictions of the Big Canoe Property Owners Association and Big Canoe Company (changes require vote of 50% members)
- Third Amended and Restated By-Laws of Big Canoe Property Owners Association, Inc. (changes may be made by Board without vote of members)
- Restated Articles of Incorporation of Big Canoe Property Owners Association, Inc.
- Rules and Regulations – adopted by Board of Directors (changes may be made by Board without vote of members)
- Georgia Non-Profit corporation Code (O.C.G.A § 14-3-101 et seq)

NUTS-N-BOLTS

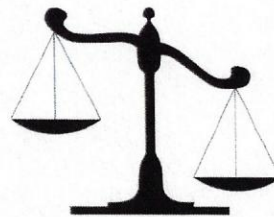
- Board consists of 7 directors, 6 elected by the property owners, 1 appointed by Developer (By-Laws Article III, Section 3.4)
- Term of Office is 3 years (By-Laws Article III, Section 3.5)
- Annual meeting to be held on first Saturday in December (By-Laws Article II, Section 2.2)
- Minimum quorum is 25% of eligible votes (By-Laws Article II, Section 2.4)
- Special meetings of members can be called by President, Secretary, Board of Directors, and members entitled to cast 25% of the votes (By-Laws Article II, Section 2.2)
- Officers required are President, Secretary, and Treasurer; Vice President is discretionary (By-Laws Article VI, Section 6.1)
- Four directors constitutes a quorum to transact business (By-Laws Article III, Section 3.8)
- Fiscal year is calendar year (By-Laws Article VIII)

ENFORCEMENT

- Board has obligation to enforce all of the governing documents
- Board has authority to adopt rules and regulations (Declaration Article VII, Section 5)
- Rules and regulations should be enforced or deleted
- Board has the authority to impose fines, suspend use of common property, and enter property to correct violation (Declaration Article VII, Section 5)
- Board cannot be arbitrary or capricious
- Goal is compliance, not profit or vindication

DIRECTORS LIABILITY

- Board members are not immune from being sued personally
- Board members not personally liable for action or inaction if decisions made in conformance with duty of care
- Personal liability for breach of fiduciary duty
- Association obligated to indemnify Board members
- Directors and Officers (D&O) insurance should be maintained by association primarily to pay cost of defense
- Fidelity/crime insurance should cover all persons that have access to funds



*Prepared by George E. Nowack, Jr.
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UNIQUE CHARACTERISTICS OF PROPERTY OWNERS ASSOCIATION

- Membership in association is mandatory for property owners (Declaration Article III, Section 1)
- Every member obligated to pay assessments regardless of use of amenities or common property (Declaration Article VII)
- Construction and modification of residential structures subject to approval (Declaration Article VIII)
- Developer has authority separate and apart from the Board (Declaration Article X)
- Class A Members get one vote for a Residential Lot and two votes for Family Dwelling Unit (Declaration Article III)
- Association owns common property, owners have easement of use subject to restrictions imposed by Board (Declaration Article IV, Section 1)
- Members privileges, including voting, may be suspended if assessments not paid (Declaration Article VII, Section 5)

ROLE OF GENERAL MANAGER

- Supervise, coordinate, and manage all employees and vendors
- Implement policies of the Board
- Responsible for achieving the directives of the Board
- Manage all aspects of the Association on a day-to-day basis
- Handle all employment matters with staff (Board members should never reprimand an employee)
- Ensure Association assesses long range plans and goals
- Comply with fiscal controls imposed in governing documents (By-Laws Article V)

PETITION FOR ELECTION TO POA BOARD OF DIRECTORS

Candidate's Information:

Name: _____
Account number: _____
Mailing address: _____
Telephone: _____
Email address: _____

Note: A minimum of 25 Big Canoe Property Owner signatures is required. Only one name allowed for each lot number.

	Printed Name	Signature	Lot #
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I certify that: **(1)** I have owned property in Big Canoe for at least twenty-four (24) consecutive months, **(2)** I am at least twenty-one (21) years of age, **(3)** I am current in all respects of my POA billing account, and **(4)** I will authorize a criminal and credit background check by the POA if requested to do so.

Candidate's

Signature: _____ Date: _____

Submit this petition to: Chairperson of the Election Committee, c/o General Manager's Office, 10586 Big Canoe, Big Canoe, GA 30143

Board Member Obligations and Authorities

Kimberly C. Gaddis, Esq.

The primary purpose of a Community Association's annual meeting is to elect members to serve on Association's Board of Directors. Once elected, those individuals become legally obligated to operate the Association in accordance with the documents – Declaration, By-Laws, rules and regulations, and Georgia law.

Community Associations are organized as non-profit corporations. As such, they are subject to the Georgia Non-Profit Corporate Code. That Code establishes the general duties and responsibilities of Board members. OCGA § 14-3-830 creates a standard of conduct for Directors. It requires a Director to discharge his/her duties in a manner the Director believes in good faith to be in the best interest of the corporation, and with the care and ordinarily prudent person in a like position would exercise under similar circumstances. That standard is known as the "business judgment rule".

So, what does it mean?

It requires a member of a Board of Directors to take their position seriously and, if they don't, they can be personally liable for their mistakes. In making decisions, it requires a Board member to act in the best interest of the Association, even if it means it is not what the Board member prefers. For example, assume an Association pool needs to be repaired and it will cost \$25,000 to bring the pool up to health code standards. One member of the Board never uses the pool and personally does not want to spend the money. That Board member has the duty to act in the best interest of the Association by approving the expenditure even though that Board member doesn't use the pool.

The business judgment rule also requires a Board member to make informed decisions. It requires the exercise of common sense. Directors must have enough information on issues to enable them to act in the Association's best interest. That requires attendance at Board meetings and a review of materials submitted to the Board. It also requires Directors to request and receive sufficient information on which to base their decisions. If a report does not make sense or is incomplete, a Director has the duty to ask questions and receive additional information.

In the above example, the decision to spend \$25,000 should be justified by reports on the necessity of the repairs and supported by several bids. That additional information provides the justification for a Board member's decision. Without that information, a Board member could not possibly make an informed decision to authorize the repairs and no decision should be made until that information is made available.

It is important that Board members follow the business judgment rule because it serves as the basis for a court to determine if the Board acted properly. As a general rule, a court will not second-guess the result of a Board's decision if the procedure established by the good business judgment rule was followed. In other words, Board members will not be personally liable for decisions that turn out to be mistakes so long as the Board acted in good faith and with the care an ordinary person would exercise in the same position. If the Board of Directors in the example received reports from a structural engineer and a pool maintenance company, and also reviewed bids and checked references from three companies, and the Board made the decision to go forward with the repairs based on that information, the members of the Board of Directors will not have liability to the members if the company that performs the repairs botches the job.

Conversely, if a member of the Board of Directors simply comes to the other Board members and reports that it will cost \$25,000 to repair the pool and that serves as the justification for authorizing the expenditure, there may be personal liability if the result of the decision turns out to be a mistake.

While the Non-Profit Corporate Code establishes the general responsibilities of the members of a Board of Directors, an Association's documents establish the specific duties and responsibilities. Most Declarations or By-Laws will contain a section entitled "Duties and Powers", which requires a Board of Directors to: prepare and adopt a budget; impose assessments to pay common expenses; maintain the common property; collect assessments; and enforce the documents. Those are express powers. Most documents also contain a catch-all statement that authorizes the Board to take all action necessary for the administration of the Association, except on those matters which the documents require approval by the members. Those are implied provisions. The Directors must act in accordance with the business judgment rule in discharging those powers, especially the implied powers.

The business judgment rule recognizes that members of the Board of Directors of non-profit corporations generally serve as volunteers and that they may not have the breadth of knowledge of Directors on profit corporate Boards. The business judgment rule tries to protect the members of non-profit Boards of Directors by allowing a Board member to rely upon experts, such as legal counsel, public accountants, or any other person a Director believes to be reliable and competent in the matters presented. A Director is not liable to the corporation, any member, or any other person for any action taken or not taken as a Director if the Director relied on the opinion of such an expert.

So, once elected to a Board of Directors, a Board member has the duty to act in the best interest of the Association. That can only be done if the Board member attends meetings, asks questions, and investigates the issues to be decided. A Board member should rely on the opinion of an expert in making decisions. A member of a Board will not be liable for injury or damage caused by a decision, no matter how unwise or mistaken it may turn out to be, if the requirements of the business judgment rule were met.

As you can see, being on the board of directors of a community association involves a variety of duties and responsibilities. Community associations are typically charged with responsibility for physical maintenance of the common areas, sound financial policy, collection of assessments, insuring the property in accordance with the legal documents and keeping permanent records. The board of directors is responsible for ensuring that the association fulfills these responsibilities and for managing the business affairs of the association.

To meet their obligations, board members must establish the association budget and a collection policy, establish and enforce rules and penalties, and employ, as needed, accountants, attorneys, administrative and maintenance personnel, and a manager or management company.

Because of the power and control vested in the board and the mandatory nature of community associations, board members must act with great care, particularly when handling the funds of the association. In order to comply with these standards of care, board members should become familiar with the association's governing documents, including the declaration, bylaws, and rules and regulations. Before taking any action, the board must make sure it has the authority to act. Actions taken by boards of directors must derive from the authority granted in the governing documents. Care should be taken to follow procedures established for member and director meetings. This would include giving proper notice, achieving a quorum and obtaining the requisite vote for any member or board action.

As stated above, the business judgment rule requires that board members exercise ordinary and reasonable care in the discharge of their duties. The business judgment rule does not require that directors act with any extraordinary talents or skill; rather directors must act in good faith, with the diligence, care and skill of an ordinary, prudent person in the same or similar circumstances. The rule requires that directors make any necessary inquiries as the directors reasonably believe appropriate under the circumstances in order to make informed decisions and that the directors make decisions on behalf of the association that the directors rationally believe are in the best interest of the association.

A board of directors is expected to abide by a standard of care in making its decisions. The standard of care is imposed by the courts to prevent those in whom special trust or confidence is placed from representing their own interests over those of the association. As it relates to board members, this duty of care and loyalty means that directors may not compete with the association, may not take advantage of an association opportunity and must avoid conflicts of interest.

Contrary to many board members' understanding, every decision made by the board is not based on a fiduciary duty. The fiduciary standard is limited in its applicability and most decisions of the board are judged on the basis of the good business judgment rule. Boards should refrain from referring to their "fiduciary duty" and should focus more on exercising good business judgment.

To be effective board members and meet the requisite standards of care, directors should do their best to be fully informed about the association, attend board, annual and special meetings, register dissents, know the association legal documents and act when required