

VIVO MASTER ASSOCIATION

**CLUB VIVO RESORTS, A.C.**

POLICY REGARDING DIRECTORS FIDUCIARY  
RESPONSIBILITY

Resolution # 6

Adopted April 16, 2020

Members of the Board of Directors volunteer their services to the Association for numerous reasons, ranging from a desire to participate more closely in making decisions that affect the community to a desire to undertake a significant challenge. Frequently, however, directors accept positions on the Board without an appreciation and understanding of the nature of the responsibility, which they have undertaken. Board members owe a fiduciary duty to the Association which obligates directors to perform their duties in good faith, in a manner the director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing their duties directors will rely on information, opinions, reports, or statements, including financial statements, and other financial data prepared by (i) one or more officers or employees of the Association or Management Company; (ii) counsel, independent accountants or other persons as to matters that the director believes to be within such person's professional or expert competence; or (ii) a committee of the Board upon which the director does not serve, as to matters within its designated authority, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted. These fiduciary duties begin at the time a person becomes a director, and except for the duty of confidentiality, terminate once he or she is no longer a director.

A violation of these duties may result in personal liability to a director. While a director may be protected by either the Association's directors and officer's liability insurance policy or a personal liability insurance policy, a director must be aware of the responsibility he or she has and the duties each director owes to the Association in order to avoid potential liability.

**WHEREAS**, the Board wishes to avoid self-dealing, actual or apparent, in its administration of the Association; and

**WHEREAS**, the Board wishes to adopt requirements for Directors in order to assure sound management of the Association:

**NOW THEREFORE BE IT RESOLVED THAT** the following shall apply:

- \* Each Director shall exercise his or her powers and duties in good faith, to the best of each Director's abilities and with the utmost loyalty to the Association and the Owners.
- \* Each Director shall have sufficient familiarity with the Governing Documents, prior Board Minutes and Resolutions (if any) and the Association's Rules and Policies and the budgets, financial statements, and capital replacement reserve studies so that he or she can effectively access and use the information presented in those documents to assist the Board in the procedural and substantive decision-making process.
- \* Each Director shall seek to understand and fulfill the responsibilities of his or her position as a Director, including the additional responsibilities he or she may assume as an officer and/or committee member. If unable to perform these duties because of the time required or any other reason, that Director must advise the full Board.
- \* Each Director shall prepare in advance for meetings so as to make the best use of all participants' time. This includes review of relevant material received prior to meetings.
- \* A Director shall not discuss Executive Session business outside of Board meetings, unless expressly authorized to do so by the Board. This duty extends even after his or her term has expired. (See attached Exhibit "A" for a description of the circumstances under which the Board is entitled to meet in Executive Session. Executive Sessions under certain enumerated circumstances in which there are transactions involving the Associations and actions and deliberations of the Board that merit confidentiality in order to protect the best interests of the Association and its members, as a whole.
- \* Copies of any documents or correspondence from the Association's legal counsel that are marked as "Attorney/Client communications" or "Confidential Communications/Attorney Client Privilege" or words of a similar nature are privileged and copies are not to be distributed beyond the Board, unless expressly authorized to do so by the Board. This duty to maintain the confidentiality of Attorney/Client communications continues even after his or her term as a Director has expired.
- \* A Director must be in good standing with all Association related fees and assessments paid in full and not in violation of any Governing Documents,
- \* Unless expressly excused, a Director must attend all Board meetings, failure to attend may result in removal from the Board. Per the bylaws, if a Board member is absent from three (3) meetings of the Board without leave, the remaining Board members may resolve at a duly called Board meeting that his office be vacated.

Caution: It is not the intent of this resolution to establish a Director's standard of care for a particular situation. Rather it is intended to assist and encourage Directors to act in a

manner that may well be above the minimum standard of care required of corporate directors in order to avoid claims or accusations having merit as well as those without merit.

NOW, THEREFORE, IT IS RESOLVED that the Association does hereby adopt the following policy regarding directors' fiduciary responsibility

Vivo Resorts Master Association

**CLUB VIVO RESORTS, A.C.**

By: \_\_\_\_\_

Title

Note: In this case, the word Director refers to the same acceptance as the word administrator of the condominium law of the state of Oaxaca

**Exhibit A  
Description**

**EXECUTIVE SESSION MEETINGS**

Purpose: Executive sessions of the board of directors are private sessions which members are not allowed to attend. Executive sessions are provided for boards to address issues which involve privileged information or matters of a private nature. These include:

1. Litigation. Both current and potential litigation matters may be discussed in executive session. This preserves attorney-client privilege, litigation strategy and settlement strategies.
2. Matters relating to the Formation of Contracts. So as to avoid unfair bidding practices, the Board may meet in executive session to review and vote on bid proposals. The Board may also meet in executive session to discuss the formation of offers or counter-offers that may be offered or presented in the course of negotiating contracts on behalf of the Association.
3. Disciplinary Hearings. Boards must meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline. Under such circumstances the member who is the subject of the action or proposed action shall be entitled to attend the executive session.
4. Personnel Issues. Personnel matters include but are not limited to the hiring of employees (including, without limitation, the terms of employment that the Association may offer), the firing of employees, employee disciplinary matters and performance reviews.
5. Payment of Assessments. Board may meet with members in executive session to discuss requests by such members for payment plans for delinquent assessments.

Who May Attend Executive Sessions? Directors, managers, recording secretaries, association attorneys, members subject to disciplinary action as well as witnesses called by either side (but only for that portion of meeting involving them), and others invited by the Board (such as vendors bidding on a project) may attend executive session meetings. As a general rule, in order to protect the confidentiality of matters discussed in Executive Session attendance should be limited to those persons who have a right to be in attendance by law, or those persons whose attendance is considered by the Board to be necessary or appropriate to enable the Directors to make informed decisions that are in the best interest of the Association. The Board can meet in executive session apart from an open meeting and may vote on matters in executive session and then generally note the topics discussed in minutes of the next open meeting (such as: the board discussed a settlement offer made by the defendant in the association's current litigation).