

## **A FIELD GUIDE FOR BOARD MEMBERS**

### ***Should Board Members Receive Compensation?***

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*This marks the second installment in a series for Board members about commonly faced questions and issues. Many of these challenges require a combination of legal, political, and practical solutions. Hopefully these articles will assist Board members in determining what is in the best interest of the Association.*

Being a Board member is at best a thankless job, and at worst requires the use of a body guard. I personally feel Board members deserve both compensation and medals. Unfortunately, there are more important considerations than my personal beliefs.

You might be surprised to know that compensation for Board members is not prohibited under Georgia law. Almost all associations are formed as non-profit corporations (not to be confused with tax exempt), and there are plenty of non-profit corporations in Georgia that compensate their Board members.

On the other hand, almost all community association Bylaws prohibit compensation for serving on the Board. The most common question I receive regarding compensation is whether or not the Board members' dues can be waived in return for their service. Assuming the Bylaws prohibit compensation, the answer is a clear No. This is that waiver of assessments is a type of compensation. The word 'compensation' is much broader than the term 'payment'. Compensation is defined as receiving something of value in return for service, which means that creative attempts to reward the Board will probably not work. Another obstacle in waiving assessments is the typical covenant provision requiring uniform assessment of the annual dues on all homeowners.

Even though Bylaws may prohibit compensation for Board members', the same may not necessarily be true for Officers. It is important to note that Bylaws usually differentiate between Board members and their specific Officer designations. If you look at your Bylaws, you will probably see that the Article regarding Board members is separate from the Article regarding Officers. In fact, the homeowners usually only elect Board members, and do not elect the Officers (President, Treasurer, Secretary, etc...). It is usually the Board members themselves who decide upon the Officer positions.

Board members duties are to attend meetings and vote on important association issues. But in their dual role as an Officer, they often provide services beyond those of a Board member. The most common example is the role of the Treasurer. If the association is self-managed the duties of the Treasurer can become very extensive. The Treasurer pays the association bills; keeps track of the bank account; and sends out invoices for assessments. The Treasurer may also do the bulk of the work in putting together the annual budget. In these circumstances it may be reasonable, and in the best interest of the association, to compensate the Treasurer in some way for all their time and effort. Still, there are practical and political issues to consider before compensating Board members or Officers.

Many homeowners are not aware how much work and expenses are involved in running an association. This in turn makes some suspicious about how their money is being spent. If Board members or Officers receive compensation it may only compound suspicions and cause further resentment. If the compensation is substantial, homeowners might run for the Board with money as the main motive rather than the best interest of the association.

As it becomes more difficult to find owners who want to serve on the Board, the compensation issue will continue to grow. If compensation becomes an issue, the best alternative may be to amend the Bylaws. A provision could be allowing compensation for the Board in an amount equivalent to the annual assessments. This way there is a reasonable limit on the compensation, while at the same time adding some extra incentive for homeowners to serve. If compensation at a higher amount is being considered, a Bylaw amendment requiring approval by a vote of the homeowners may be more appropriate.

The least desirable option would be for the Board to pass a resolution without a vote of the homeowners granting compensation to an Officer. This could be a much more divisive approach among the members since they would feel they had not input. In addition, there may be conflict questions and procedures that would have to be addressed. In fact, if your Bylaws prohibit all conflicts on the part of the Board, it may not be possible for the Board to pass this type of resolution.

As you can see this is both a controversial and complex area, so it is imperative to first obtain a written opinion from the association's attorney before trying to navigate these waters.