



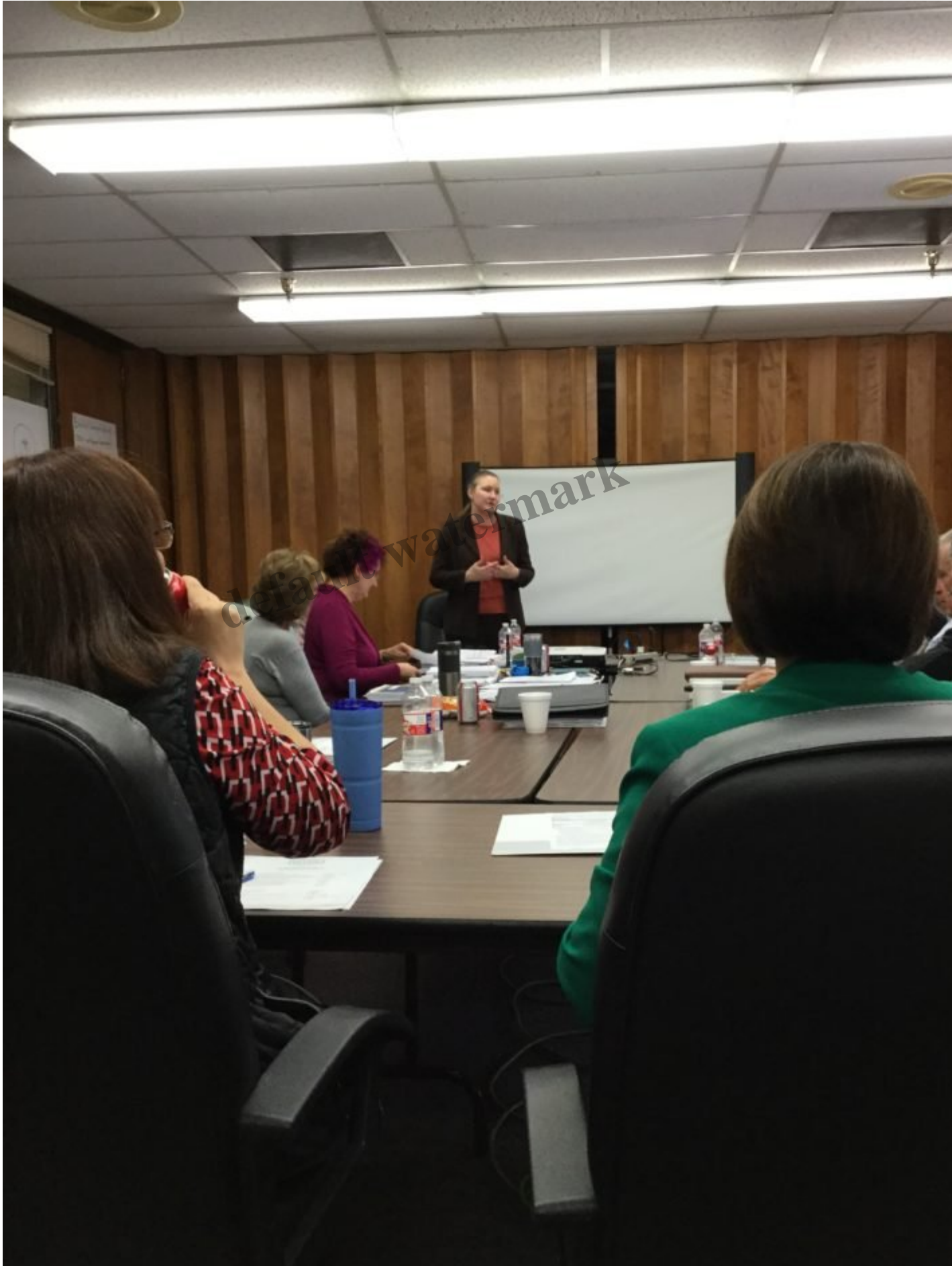
HSV POA Nonprofit Corporation

Description

HSV POA is a nonprofit corporation

Hot Springs Village Property Owners' Association held a HSV Nonprofit Corporation Board Candidate Orientation on March 27 and 28, 2019. This article discusses the first day. This meeting was conducted by Clinical Psychologist, **Doctor Ruth Czirr**, and **Attorney Michelle Allgood**. Below is a brief synopsis of the professionally-conducted meeting. Additionally, not only was the meeting informative, but it was also very interesting.

Truthfully, we did not stay for the full day or attend the second day, due to the uncomfortable seats. This complaint has nothing to do with the way the meeting was conducted or the presenters.



HSV POA Nonprofit Corporation Board of Directors Orientation

Newly elected Directors, current Directors and management were seated around a large cluster of tables. The members were seated in rows of chairs.

Dr. Czirr shared history of HSV

Delightfully, Doctor Czirr shared some of the highlights of the history of the HSV nonprofit Corporation, which led us to where we are today. She said we are not an incorporated city or governmental entity. To be an incorporated city, we must open the gates. John Cooper registered Hot Springs Village as a POA nonprofit corporation in 1970.

HSV POA nonprofit corporation history 1963 to 1986 Slide1

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Hot Springs Village POA nonprofit corporation history 1987 to 2006 Slide 2

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Hot Springs Village POA nonprofit corporation history 2007 to 2011 Slide 3

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Hot Springs Village POA nonprofit corporation history 2012 to 2016 Slide 4

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Hot Springs Village POA nonprofit corporation history 2017 to 2019 Slide 5

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History of [HSV POA](#) Corporation

HSV POA is unique nonprofit corporation

HSV POA is a nonprofit corporation of a property owners association.

Attorney Allgood was clear and concise, stressing how HSV POA nonprofit corporation is unique. The uniqueness is due to the size of our Property Owners' Association, in terms of buildings, roads, land, membership, amount of funds received, etc. Allgood repeated the word "unique" several times. Also, another unique characteristic of HSV POA nonprofit corporation is that we have members. Most nonprofit organizations do not have members.

Because of this uniqueness, there are not many examples of precedent set for us to follow.

A practical guide

One practical guide that our BOD and management seem to follow is from Attorney Paul T. Terry, Jr., who specializes in Home Owners' Associations. Terry is licensed to practice law in several states including, California, Florida, Colorado, Nevada, and Texas.

January 30, 2018, **Hot Springs Village Voice newspaper** in an article written by Lewis Delevan, quoted information from Terry.

"A HOA is not a representative form of government."

HSV POA Corporation is a non-profit corporation and is governed by the laws of all non-profit organizations. The directors do not serve the members as they would if they were elected government representatives.

Further, quoting Terry, "Instead, a board member must act in the best interest of the homeowners association as a whole, and can be held liable by any member of the homeowners association for acting in the interest of the minority interests which elected him or her, rather than the interests of the whole organization," Terry penned.

In other words, the BOD does not serve the will of the people, but must use their own best judgment to decide what is best for the HSV nonprofit CORPORATION in which we live. The HSV POA BOD does not serve the minority who elected them, but instead the Corporation.

Governed by top-down approach

- The first laws HSV POA nonprofit Corporation must follow are the Constitutional laws of the United States.
- Next, we cannot be in violation of any Federal law which includes labor laws, insurance, medical privacy, tax code, etc.
- Then we fall under all Arkansas state laws which include law pertaining to tax codes and licensing boards.
- Lastly, our governing documents dictate the rules and regulations to which we adhere.

The way the Village is governed is from a top down approach.

Everything in level 4, must agree with levels 1-3. Everything in level 3 must not violate anything in the Constitution or Federal law. So, in other words, the BOD cannot put something in the governing documents which violates the Constitution, federal laws, or Arkansas state laws.

Former Director Bill Roe said, “**A lot of people don’t believe that we really are a corporation,**” he said. “It’s taken a while for me to accept.”



Possible change in lettering on the HSV POA Corporation fountain? (Image used to make a point.)

Corporate compliance

Directors must be in “CORPORATE COMPLIANCE”. According to Priori, “[Corporate Compliance](#) is the way that a COMPANY ensures that it is following all the **laws** and regulations that apply to their BUSINESS. This generally involves the design, implementation, and monitoring of policies, trainings, procedures and practices.”

Directors must use the concept of Business Judgment which means that the law and Judge do not expect Directors to be super humans.

From Wikipedia, “The [business judgment rule](#) is a [case law](#)-derived doctrine in [corporations law](#) that courts defer to the business judgment of corporate executives. It is rooted in the principle that the “directors of a corporation... are clothed with presumption, which the law accords to them, of being [motivated] in their conduct by a [bona fide](#) regard for the interests of the corporation whose affairs the stockholders have committed to their charge”.^[1] While HSV is a nonprofit corporation, this definition applies for both for profit and nonprofit corporations.

Care, obedience, loyalty

Directors must act:

- Prudently or with **CARE**, thoughtfulness, conservatively, but not necessarily in the most-conservative manner. Decisions are made after a logical and sensible investigation.
- To avoid risk (which is referred to as risk management). The Governance Committee is a risk management committee, which is responsible for supplying the BOD with information as to anything which may violate our governing documents.) Taking care to follow the governing documents is also known as “**OBEDIENCE**”. Obedience does not mean to obey a person, but to obey our laws, rules, governing documents. All risk cannot be eliminated and there will always be some risk.
- With **LOYALTY**. The BOD is elected by the membership to be a fiduciary of the corporation.

HSV POA nonprofit Corporation board of directors are NOT representatives of the people. They are fiduciaries. “A [fiduciary](#) is a person who acts on behalf of another person, or persons to manage assets. Essentially, a **fiduciary** is a person or organization that owes to another the duties of good faith and trust.”

To recap, the HSV POA nonprofit Corporation Board of Directors must act with **Care, Obedience** and **Loyalty**.

Decision making process

The process of making decisions should be conducted using the following steps:

- Define the issue
- Look at the legal context
- Work with the Governance Committee in order to establish that there are no violations of HSV POA governing documents.
- Determine how the issue fits in with the bigger picture of HSV.

- The HSV nonprofit Corporation Director must determine if he/she is truly able to make an impartial and independent decision. In other words, does he/she have a conflict of interest which could affect his/her decision making?
- Determine if there has been an informed and reasonable job of determining the financial costs and implications.
- Is there anything about the decision that makes people feel uneasy?

HSV corporate BOD responsibilities

The BOD is responsible for the assets, property values, interests, quality of life and value of life of:

- Property owners,
- All residents whether property owners or not, and
- All businesses in the community.

Acts HSV POA corporate Director must avoid

There are several bad acts a HSV POA nonprofit Corporation Board Director must avoid.

- **Self-dealing** or acting in one's own self-interest. According to Wikipedia, self-dealing is, "the conduct of a trustee, attorney, corporate officer, or other fiduciary that consists of taking advantage of his position in a transaction and acting in his own interests rather than in the interests of the beneficiaries of the trust, corporate shareholders, or his clients."
- Favoritism. A BOD member must show consistency in the application of policies. They cannot make exceptions and show favoritism in order to receive the adulation of friends.
- Punitiveness. Punishment or "getting back at someone" is the opposite of favoritism.
- Cronyism is favoring a friend.
- Nepotism is favoring a family member.
- Kickbacks. A situation where the director receives a financial incentive for a board action. According to Wikipedia: "A **kickback** is a form of negotiated bribery in which a commission is paid to the bribe-taker in exchange for services rendered. Generally speaking, the remuneration (money, goods, or services handed over) is negotiated ahead of time."

Freedom of Information Act

In an **article in the Hot Springs Village Voice**, on May 1, 2018, written by Lewis Delevan, obligations of HSV POA to be transparent were discussed. According to Allgood, "Executive sessions enable the board to meet specific legal obligations, she said. As a private body, the POA does not fall under the state Freedom of Information Act, Algood said, but the board has chosen through bylaws and policy to make meetings public, with the stated purpose of transparency."

Summary

In summation:

- First, we are a CORPORATION
- Secondly, the Directors are fiduciaries. They must act in the best interest of the CORPORATION. Directors decide the best interest of the Village.
- Thirdly, there are certain acts the BOD Directors should not commit.
- Lastly, the BOD shares information with us because they CHOOSE to, through bylaws and policy. The BOD is not required to share information. The **Freedom of Information Act** does not apply, according to Allgood.

We would like to thank Doctor Ruth Czirr and Attorney Michelle Allgood for an informative and interesting presentation. Furthermore, we would also like to thank current and new HSV POA nonprofit Corporate Board of Directors for their voluntary service and hard work. In addition, thanks also go to HSV POA Corporate managers. Without you, this meeting would not have been possible. The staff did a great job of assembling notebooks for all of the HSV POA nonprofit Corporate BOD members and making necessary arrangements.

Written by [Cheryl Dowden](#)

Category

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