

**LUNCH & LEARN**  
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TUESDAY, APRIL 21  
NOON TO 1:00 P.M.

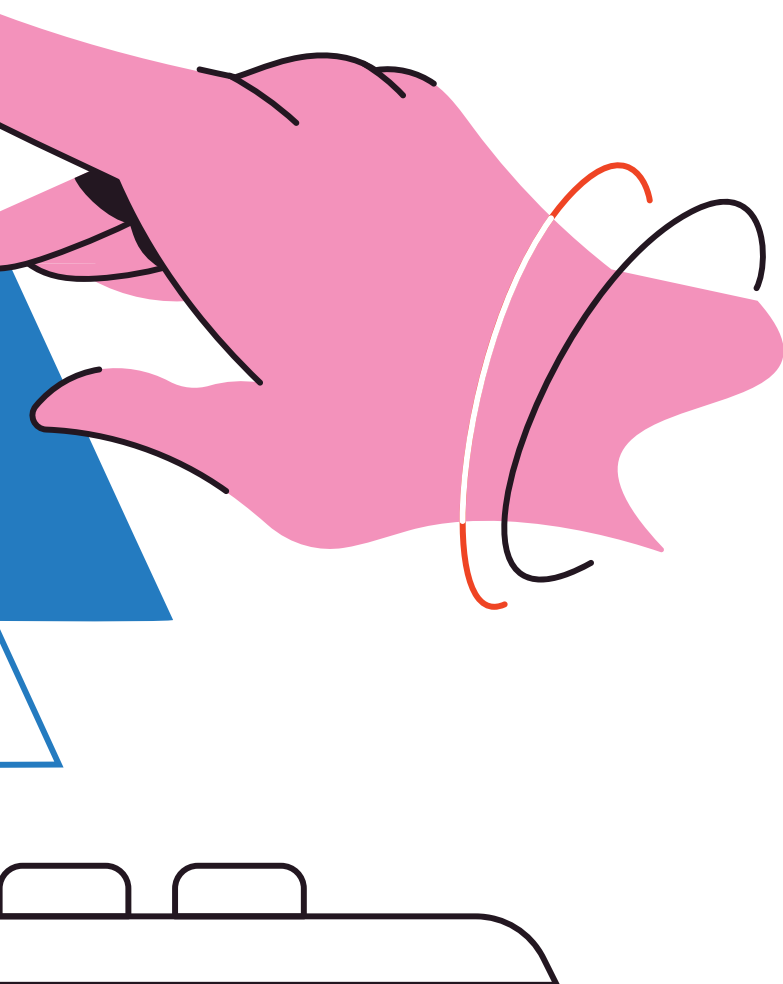
# AI IN ASSO



# ASSOCIATIONS

## THE INTERSECTION OF ARTIFICIAL INTELLIGENCE AND BOARD MEMBER FIDUCIARY DUTIES

BY KIMBERLY A. BIELAN, ESQ., CMCA



**WHEN MY COLLEAGUE** Katherine Brady, Esq., wrote an article for the December 2024 edition of *Condo Media* entitled “Planning for the Future: Using AI in Communities,” she observed that, “Artificial Intelligence (AI) is not quite ready to take over everything just yet, but there is no looking away.” As I write this article little more than a year later, I think that the sentiment remains true; however, given the promulgation of AI tools, it can increasingly feel like AI is inching closer to taking over everything. Even those reluctant to embrace AI find it inescapable in their day to day. From home electronics, to Zoom meetings, and the cell phone in your pocket, the incorporation of AI into our world has become inescapable.

While many articles have addressed the manners in which AI can be beneficial (or harmful, for that matter), for those living in condominium associations and guiding the management of such organizations, few have specifically touched upon the intersection of such technologies and board members’ fiduciary duties. That is the aim of this article.

### BOARD MEMBERS' FIDUCIARY DUTIES

It is well-established that board members owe a fiduciary duty to the association. A fiduciary duty is a “duty of utmost good faith, trust, confidence, and candor.” It is, in common parlance, a duty to act in the best interest of the association, rather than in the best interest of any individual unit owner. In fact, while many unit owners often believe that association board members owe a fiduciary duty to each (and all) unit owner(s), this is not the case; rather, the duty is owed to the association.

Board members' fiduciary duties are characterized by three core obligations:

- » **Duty of Care.** Association board members have a duty to act with reasonable prudence and diligence. Board members should participate in meetings, be informed, review materials, and make informed decisions. While this duty requires board members to educate themselves, it does not presume that they will, individually, be possessed of all necessary skills and qualifications as to every issue that a board might confront. Rather, the duty of care calls upon board members to consult with experts when appropriate, such as engaging an attorney to interpret governing documents or to prepare amendments, consulting with an engineer to prepare reserve studies, and employing an accountant to review financial records.
- » **Duty of Loyalty.** Board members have a duty to exercise undivided loyalty to the association. Such duty entails avoiding conflicts of interest and self-dealing. It requires that board members be forthcoming about any such conflicts and, in order to avoid the appearance of impropriety, individuals may need to recuse from participation in particular issues.
- » **Duty of Obedience.** Board members have a duty to act in accordance with governing law, including the association's governing documents. This ensures that the association is operated in accordance with the provisions that all homeowners bought into, eliminates selective enforcement, and encourages adherence to established procedures.

While these three obligations go to the core of a fiduciary duty, they are not exhaustive. Association board members should exercise good faith, adhere to confidentiality when appropriate, make decisions prudently, and be accountable for their decisions and actions.



### ARTIFICIAL INTELLIGENCE IN ASSOCIATIONS

As noted, there are numerous resources detailing the myriad manners in which AI can be employed to facilitate operation of associations, and this article is not intended to identify every AI tool that may be employed by an association. While in no way an exhaustive list, typical, fairly innocuous uses of AI in community associations include creating meeting agendas, transcribing board meetings to create meeting minutes, researching vendors, preparing written correspondence, and even preparing a preliminary budget based on previous years' information. In such scenarios, and as discussed in greater detail below, the information generated by AI in these scenarios can often – and should – be verified by lay board members.

However, AI can also be utilized in manners that present more significant concerns, such as drafting legal documents, obtaining legal opinions, and delegating board decisions. Use of AI tools for these purposes is particularly concerning because it often entails disclosure of confidential or private information to open-source AI, which is not secure. In addition, if a board member does not have expertise, then they have no way of confirming the accuracy of the information provided by the AI tool. By way of example, most lawyers are familiar with a case out of New York (but since experienced elsewhere, as well) in which ChatGPT generated a fictitious case citation in support of an attorney's argument. While an attorney is trained to verify case law, and is equipped to do so, a lay board member would not necessarily have the tools to identify any inconsistencies or deficiencies when seeking a legal opinion through AI, which could have significant consequences for the association if the board makes a decision premised upon inaccurate, or even fictitious, information.





## MAINTAINING FIDUCIARY DUTIES WHILE UTILIZING ARTIFICIAL INTELLIGENCE

**Relying on AI tools** without verifying the information generated or analysis provided can constitute a violation of board members' duty of care and, thus, a violation of their fiduciary duty. Board members are called upon to review the accuracy of materials and to ensure that they are acting in the association's best interests. Blind reliance on meeting minutes generated by technology or legal opinions proffered by ChatGPT falls far short of the diligence that board members are called upon to exercise.

While utilizing AI may present issues for board members in terms of maintaining their fiduciary duties, it does not mean that board members should put their heads in the sand and avoid such beneficial technologies. In fact, to purposely remain ignorant of tools that the board could use to streamline its processes and manage the organization could, itself, constitute a breach of fiduciary duty. How, then, are volunteer board members supposed to ensure that their use of these technologies is permissible and appropriate?

My response – and hopefully the biggest takeaway from this article – is to “remain human.” In other words,

just because a board opts to utilize AI does not mean that they should wholly eliminate humanity from any given task. In fact, it is just the opposite. While AI can be effective at simplifying tasks, it is still incumbent upon board members to ensure that the tasks have been satisfactorily completed. By way of example, if the board utilizes a notetaking tool for video conferencing in order to maintain minutes (admittedly, a huge help in synthesizing significant amounts of information), the board should not simply rely upon the transcript as its final meeting minutes. Instead, the board should read through the transcript to ensure that it accurately reflects the discussion and the takeaways.

The approach should be the same when the board utilizes AI in an attempt to gain clarity on issues that would typically require an expert. While, in these circumstances, a board should be exceedingly cautious, it is also important that board members should continue to rely upon the experts around them. While there may be a tendency to think that boards can utilize AI to eliminate their need to consult experts, likely saving time and cost, this is simply not the case.

Experts have knowledge and expertise premised upon years of experience, familiarity with jurisdiction-specific law, and the intricacies and ambiguities of governing documents. This expertise cannot be replaced with AI, and any short-term savings could result in significant adverse long-term consequences.

Finally, before board members use any AI tools, it is important that the board adopt an AI Use Policy, as such policy can establish the framework for utilizing AI tools while ensuring that board members are doing so in such a manner so as not to breach their fiduciary duties. An AI Use Policy can, among other things, identify approved uses, address confidentiality/privacy issues, and require that consultants and experts be engaged to confirm specific information.

As AI is an unavoidable technological reality, maintaining a human touch can ensure that board members fulfill their fiduciary obligations while enjoying the benefits that AI presents. ■



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