

TEN MISTAKES YOUR BOARD SHOULD TRY TO AVOID

Why not learn from the mistakes of others so that the mistakes you make are your *very own* mistakes? It really is a good idea to avoid errors when possible, especially the most serious mistakes. Learning from others will help to keep you out of trouble with the State of Nevada and the Commission for Common Interest Communities and Condo Hotels.

Below are listed ten mistakes that new board members make on a continual bases.

I. ABUSE OF POWER

Some candidates get on the board for all of the wrong reasons. In Nevada, the Commission for Common Interest Communities and Condo Hotels has defined those areas that are not acceptable, actions that are expected to be taken and areas that will be used to judge whether a director has fulfilled his or her fiduciary duty. The law in the past stated that the board *shall* do all of the below things, but they were moved to another section to help the Division and owners determine if the board has performed his or her duties as fiduciaries for their community.

Nevada Administrative Code 116.405 states the following (note the bolded and highlighted section 2 in reference to this Abuse of Power section):

NAC 116.405 Executive board: Determination by Commission of whether members have performed their duties. ([NRS 116.3103](#), [116.615](#)) In determining whether a member of the executive board has performed his or her duties pursuant to [NRS 116.3103](#), the Commission may consider whether the member of the executive board has:

1. Acted outside the scope of the authority granted in the governing documents;
2. **Acted for reasons of self-interest, gain, prejudice or revenge;**
3. Committed an act or omission which amounts to incompetence, negligence or gross negligence;
4. Except as otherwise required by law or court order, disclosed confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates;
5. Impeded or otherwise interfered with an investigation of the Division by:
 - (a) Failing to comply with a request by the Division to provide information or documents;
 - (b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or
 - (c) Concealing any facts or documents relating to the business of the association;
6. Kept informed of laws, regulations and developments relating to common-interest communities;
7. Cooperated with the Division in resolving complaints filed with the Division; and
8. Caused the association to:
 - (a) Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;
 - (b) Uniformly enforce the governing documents of the association;
 - (c) Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;
 - (d) **Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association;**
 - (e) Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements;
 - (f) Deposit all funds of the association for investment in government securities that are backed by the full faith and credit of the United States or in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Securities Investor Protection Corporation or a private insurer approved pursuant to [NRS 678.755](#);
 - (g) Maintain current, accurate and properly documented financial records;

(h) Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;

(i) Establish policies and procedures that are designed to provide reasonable assurances in the reliability of financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

(j) Prepare interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of [NAC 116.451](#) to [116.461](#), inclusive;

(k) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws and regulations of this State;

(l) Cooperate with the Division in resolving complaints filed with the Division; and

(m) Adopt and fairly enforce the collection policies of the association.

(Added to NAC by Comm'n for Common-Interest Communities by R129-04, eff. 4-14-2005; A by Comm'n for Common-Interest Communities & Condo. Hotels by R108-08, 4-20-2010)

Many homeowners choose to run for the board because they got a violation letter, they received some other form of communication and they are hell bent on getting back at the person who signed that letter or sat on the board at that time. That action would be considered *revenge*.

II. MISUNDERSTANDING YOUR ROLE

Remember the following:

A. The Board is responsible for everything – That means by majority vote and agreement.

B. What responsibilities do the contractors assume through their contract? When directors' micro-manage or continually interrupt in that contract, you are removing much of the liability that the contractor has assumed in the written contract.

Sometime directors want to just assume the role of the "nice guy" so that everyone just gets along in the community. Notice 8 b above in the duties of the board.

At times, directors want to leave the contractors, including the manager, out of the loop. This can cause huge problems since the Nevada Real Estate Division holds the manager, as their licensee, to a higher standard than they might the volunteer director. They expect the community manager to turn in their client to the Ombudsman's Office if they are violating the laws or not following the governing documents. Don't put your manager in that position.

III. IGNORANCE OF AND/OR IGNORING THE RULES

The State of Nevada laws that surround common interest communities take precedence over the documents, however, the board can't ignore the CC&R's, rules and procedures put in place by prior action of the board, owners or the developer.

The law, section 8 b, above requires equal enforcement of all of the rules. It is so easy to work with an owner who is reasonable, apologetic and/or your friend. It is not as easy, however, to work with the individual who shows up at each board meeting to challenge the board. When they do something wrong, directors tend to lower the hammer and not equally enforce the documents.

If the board is not going to enforce a provision of the documents, they need to change the rule and/or have the owners vote to change the CC&R's. You can't just ignore it. Many owners moved into your

community because of those rules, not in spite of them. They are expecting uniform, but reasonable, enforcement.

IV. NOT LISTENING TO HOMEOWNERS

V. PENNY WISE, POUND FOOLISH – WHO IS WATCHING THE MONEY?

The first question I ask myself when I hear of association funds being embezzled by one of their fellow directors or a manager is, “Where was the board and why didn’t they find it quickly?”

I can’t tell you the number of times that managers have been before the Commission for theft, which has included hundreds of thousands of dollars. As the law requires that you perform certain tasks every 100 days in regard to the financial statements, those boards were obviously ignoring this provision of the law. This is the responsibility of all of the members of the board, not just the Treasurer. Are the financials created on an accrual bases with fund accounting easy to read, NO, but that is not an excuse to not learn how to read them and ensure that the owners’ money is not secure.

Crime insurance, cyber theft, and fidelity insurance are more critical than ever since desperate people do desperate things when it comes to taking money that has been easily made available for them to take.

VI. VIOLATION OF MEETING NOTICING AND OPEN MEETING LAWS

There is much confusion in Nevada about whether common interest communities need to comply with a strict open meeting law. The answer is yes and no. If the board will be making ANY decisions, the board MUST hold a noticed meeting, have the item placed on the agenda, and make any decisions at this meeting.

It was clear, however, earlier in 2012 when the Administrator of the Real Estate Division wanted the Commission to adopt a regulation stating that it was absolutely a violation if a quorum of directors got together for any reason. The Commission would not adopt the regulation as they realize that directors are neighbors first and secondly need to get together to work on projects that are too lengthy or problematic to do at director meetings. An example would be interview contractors after bids have been opened at a properly noticed board meeting.

Since Nevada requires three bids, when applicable to each community, these bids MUST be opened at a noticed meeting by the board. Do they need to be opened by individuals other than directors, NO. The bids, however, must be sealed until that meeting, which does not allow for the manager to do what they do best, compare the bids into a spreadsheet format to compare apples to apples. If the board has a workshop to interview the bidding parties, they MUST make the decision on who to hire at a meeting that was noticed and the item placed on the agenda.

Some communities are having a monthly coffee with the board, which is noticed stating that any bids will be opened at this meeting of the board, but no decisions will be made. This allows the bids to be open, have them compared and presented at the monthly board meeting when a decision can be made.

If the board chooses to have the “workshop”, however, it is *recommended* that the item be placed on the next agenda so that owners can be advised of why they had the workshop and clarification made that no actions were taken.

Do minutes need to be taken? No, as no action was taken.

VII. IGNORING YOUR EXPERTS

Note 8 d above in the NAC 116.405 regulation which has been highlighted. ... (d) Obtain, when practicable, at least three bids from **reputable service providers who possess the proper licensing** before purchasing any such service for use by the association;...”

Even if you have an attorney, a CPA, insurance professional or other expert on the board, the first question a director should ask this board member is, “will your company’s errors and admissions insurance cover you in any advice you give us as the expert in your field”. The answer will be NO. They may be properly licensed, but not as knowledgeable in our unique industry as they should be.

Attorneys, CPA’s, insurance agents and many other professionals specialize just like doctors. My son is a Pediatrician and when I ask him medical questions, he answers with the following and appropriately so; “I treat babies, Mom, not the elderly.” Once I get over the elderly part, I do understand as they all specialize and have special training in the area of their expertise.

Industry professionals in the common interest community all specialize as well. Do you want to pay an expert their hourly fee to train them to give you the proper advice or do you want to pay an attorney to defend you when you take bad advice from someone who didn’t know what they were doing in our industry? I hope not the latter as it is not a good use of the owners’ money. It takes many years for lawyers to understand the ramifications of their advice when they provide it without industry experience.

VIII. MISUSE OF ELECTRONIC COMMUNICATIONS

We continually see that everything is moving towards more and more use of the Internet and electronic use. E-mails are a really good way to communicate basic information, but it is not a good alternative to discussion and debate at a properly noticed meeting.

Nationally, there have been more and more lawsuits surround slander because e-mail can be forwarded so easily. Once you hit send, you don’t know who will ultimately get that piece of communication even if marked confidential.

IX. NOT DOING YOUR HOMEWORK

There is nothing more frustrating for residents in attendance at a board meeting or to the community manager than having a member of the board open their board package as they sit down at the table. Owners know that this is going to be a long meeting as at least that director is not prepared to make decisions.

Many management contracts require that any questions surrounding the financials **MUST** be presented to them before the meeting. If the board only meets every 100 days, that means that the questions may hold up the legal requirement to accept and review them at this meeting.

There should be no “got ya’s” at a board meeting. Many directors love to set up the manager with little tidbits that make the manager look foolish or unknowledgable. Your manager is a critical team member in your community and should be treated with the same respect each owner and director would expect to receive.

In short, do your homework and be prepared to discuss the contents of the board package.

X. OVERDOING IT OR UNDERDOING IT

As some directors treat their board meeting as a social event, the meetings can take forever to get through. This makes the job more demanding and difficult for everyone involved, including the manager. Do social activities have their place in the community? Of course, but social activities should be planned separately from the board meeting. Board meetings are for running the Nevada Not For Profit Corporation. Most directors don't treat it that way and in fact minimize their position to one that has little value. Directors on a common interest community board have the same responsibilities and liabilities as any other director sitting on a Nevada corporate board.

There was one case where the President of the association held every single person to their 3 minute rule when addressing the board. Unfortunately, this included the Mayor of their city who was asked to attend and provide information to the board. Oops! How embarrassing would that have been for the owners in attendance and for the Mayor who had taken his time to attend and was treated with little deference to his position?

There are many more mistakes that boards make, but hopefully this will help directors understand their roles a little better. If you are a new director, you may want to go to the New Director Checklist to go through the list to see more areas that you need to research and or of which you should be aware. www.hoasupport.com - Forms – Board Members - So Now Your On the Board