

WHAT HAPPENS WHEN THE PRESIDENT OF YOUR ASSOCIATION IS OUT OF CONTROL?

Guess whose fault it is? Since the owners vote for their Directors and the Directors pick the officers, the members of the Board of Directors as a whole are at fault when they don't get *any* of the officers under control.

Mr. or Madame President, you are not totally in control of the Association. Unless you have been given authority by the Governing Documents or the Board of Directors, to do something, you can't just run amuck. Many owners get on the Board and campaign to be the President thinking that they are now totally in control of everything. If you happen to be one of these individuals, you probably have stopped reading by now, but in the event you are open minded and care about your personal finances you are continuing on.

Many volunteer Presidents in our industry feel that since they were elected as President that they are now lord and king of their little kingdom. Unless the Board or your documents have given you specific authority to take an action, and it is recorded in the minutes, you may be out there on your own in the event of a claim with the Real Estate Division or a law suit.

Any insurance company responding to a claim filed against your Directors and Officers policy will be looking for an "out". It costs them money to defend you in a law suit by contracting with attorneys willing to take a reduced rate defending insurance claims. They are not necessarily the best attorneys to defend you and/or your association as it takes many, many and many years for a lawyer to understand the intricacies of our industry. Give them an out and they will take it. If the rest of the Board takes action against a rogue President, the policy may not cover it either since Director to Director lawsuits are not covered in some policies.

One of the reasons that many of the documents and some State laws (Nevada) require that the Board rely on the experts is to help keep the volunteers out of trouble. The key goal of the Board is NOT to just keep the assessments down, but to maintain the property according to the standard set by the Developer and/or the area in which it resides. A majority of your owners are expecting you to do so. It is the very small minority who wants you to just keep the assessments down at the expense of the property and the values.

I recently heard of a case where the President took it upon herself to just mark 100 + trees for removal and contract for their removal without approval from the Board. Since so many were marked for removal, a meeting should have been called to advise the owners on why this was being done. The why of the reason this should be done is at the direction of an arborist for safety reasons or disease reasons, etc. This President is assuming more liability that she realizes as she is acting independently without the rest of the Board.

The auditor at the end of the year will be looking to see that the cost of the removal was in the minutes and that the proper steps were taken. The owners will be upset if the cost

is not in the reserves and the cost of removal was not in the budget. The removal of that many trees will certainly hurt the property values. Yes, the Developer normally puts in too many trees to make the property look better when they are trying to sell in a new development, but in many areas the mature trees provide shade during the hot summer months, increase the property values and provide privacy in some cases.

Unless there are view protections in the documents, owners claiming that their view is obstructed really isn't an issue and removal of the trees by the owners from the common area is not allowed. Does it happen, yes, but they need to understand the consequences of taking this action when they don't seek approval of the Board and receive it.

Some members of the Board get onto the Board to take some of the above actions. They have an agenda that is definitely not in the best interest of the Corporation. Each Director should understand that they are part of a team and the team makes the decisions. At the meetings the Board through proper notice and placement on the agenda decide items, but those items must have the authority given to them in the documents and must be in the best interest of the Corporation vs. individual owners.

The remainder of the Board has the responsibility to make sure that no individual directors are out of control and definitely don't make an out of control director an officer.