

## WHAT ARE SOME OF MOST FREQUENT MISTAKES MADE BY NEW MEMBERS OF THE BOARD?

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As a new member of the board for your common interest community, association hereafter, what are your duties and what mistakes can I help you to avoid?

Below is a listing of the most common mistakes that members of the board can make when thinking they are doing what they are supposed to be doing. They are not listed in any particular order, but rather a listing of those most common in the industry.

- 1) **Failure to recognize that they have been elected to serve on the board of a Nevada Not-For –Profit Corporation** with all of the fiduciary duties that come with that position. As a fiduciary, which is the highest standard of care there is in the law in being a steward of others property. All board members must place individual interests behind the best interest of what is best for the corporation. There is a huge difference in this area from most other “volunteer” jobs that individuals may hold outside of an association. This is very structured with duties and covered by more laws to protect the homeowners from *bad* board members than most other not for profit industries. You can replace *bad* with unknowledgeable in the last statement to be more realistic.
- 2) **Failure to get education** – Nevada has many laws that apply to this area that a member of the board who fails to get as much education as possible is setting themselves up for failure. There is a governmental agency that investigates abuses to the laws and can hold individuals responsible for violations of the law. Having been in this industry for over 30 years, I still learn something new with each seminar and consider attending still worth my time.
- 3) **Failure to keep confidential information confidential** – Information that you learn about your neighbors can be really tempting to share. As a director of an association in Nevada, the law demands that you keep the information that you receive as a director confidential. This includes sharing with your spouse or significant other. Gossiping and slandering individuals is destructive in itself let alone against the law for the director in Nevada.
- 4) **Selective enforcement or lack of enforcement of the governing documents** - It is much easier to take enforcement actions against someone who you don't know or don't like than it is against one of your neighbor friends. If you are not willing to enforce any of the documents or only selectively enforcement against some of the residents, but not all, consider putting the rule out for a vote for all of the owners to decide if this rule should be voted out. Let the owners as a whole decide as it is not the board's decision to make. The law requires that the board enforce the documents equally and consistently, which includes against members of the board.
- 5) **Failing to be prepared for all meetings** - Showing up to a board meeting and opening up the large package, which should have been received at least 3 – 5 days

before the meeting, is showing disrespect to the remaining members of the board. Opening the package as you sit down at the meeting can cause frustration for the other individuals in attendance as they know you are not prepared and are in for a longer meeting. Be prepared and get any questions you have to the appropriate person so that there are no “got yas” at the meeting.

- 6) **Failure to disclose conflicts of interest or perceived conflicts of interest** – Before running for the board, in Nevada, any conflicts of interest must be disclosed with the ballots so that owners can make an informed decision when voting. Failure to disclose these conflicts can have your term on the board start off in violation of the law and if someone files a claim with the Real Estate Division an investigation can be started. Is this the way you want your term to start?

Pushing self serving decisions breach the trust that the community should have in their directors in making decisions that are in the best interest of the community as a whole.

- 7) **Failure to follow the documents or the law when writing checks or withdrawing funds from the association banking accounts** – Regardless of how convenient it may be to have the manager be a signer on your banking accounts, the documents may not allow him or her to even be one of the signing parties. Nevada law does not allow the manager to be a signer or even be shown on the signature card for the reserve account. On the operating account, the manager can only be one of the signers, but never a single signer. If the documents state that officers must sign the account, the manager cannot be one of the signing parties, ever.....

Most of the embezzlements that have been occurring in the associations have been when members of the board don't pay attention to their funds. If you don't pay attention to the money and make it easy for someone to take your money, you are almost as guilty as the person who steals the money. As a fiduciary, again, it is your responsibility as a director to protect the corporation's money. Most directors feel it is the Treasurer's responsibility, but this responsibility falls on every single director. If you can't understand the financial statements, it is important to have someone from the management company provide training.

Every 100 days, the board must review specific documents and show in the minutes that these things have been done. Make sure that you minutes consistently show that the board has done so.

- 8) **Failure to prepare Committee Charters** to enable the volunteers who serve on any committees to know what is expected from them. Under *forms* in this website there are sample charters shown under Committees. How can you expect individuals to know what they are expected to do when serving on a committee if they don't have a “job description.” Nothing can turn members of the community against the board quicker than when they volunteer to serve on a committee and work really hard doing what they “think” the committee should be doing only to have the board question their work or reprimand them at a meeting. Having the

charters in place and conducting committee training will go a long way in getting volunteers to understand that the board is responsible for everything that the committee does and that the board has many limitations in the laws as to what can be done and can't be done.

- 9) **Failure to use the appropriate professionals as needed when making decisions** – Many members of the board want their manager to be an expert in everything. This is not going to happen. The manager facilitates the decisions of the board and does not do everything nor needs to know everything. In Nevada, one of the decisions that will help the Division or the Commission determine if a board has fulfilled their duty as directors will be by determining which experts were consulted in making a decision. The role of the director is not to just keep the assessment down, but to make knowledgeable decisions that are in the best interest of the corporation. This at times cost money when you consult with the CPA, reserve study profession, attorney, asphalt engineer or risk analyst. Put funds in your budget for this purpose.
- 10) **Failure to have contracts reviewed by the corporate attorney** – Every contract that is written by one of your business partners/vendors is written in their favor. If you don't have it reviewed by your attorney the contract is already biased away from the association's interests. Many cases have shown that even small contracts have huge results IF something goes wrong. Most contracts are written to show that the maximum of liability of the vendor is the amount of the contract. Examples of these types of problems are with paper shredding (think identity theft), fire sprinkle systems, (if the building burns down because of their negligence who will pay to replace the building), and collection company contracts (think of the contract requiring that the association defend them in a lawsuit and they get to pick any attorney that they choose – any high powered/expensive attorney for their defense.)
- 11) **Failure to communicate** – If the board does not communicate with the owners as required by law, but with regular newsletters, welcome letters, and website communications, the owners will think that the board is meeting in secret, not caring what they think and tensions will build. The more you communicate, the less the owners will second guess board decisions and be informed of what is happening in their community. Can you make them read the communication? No! You can feel better, however, when you know that you have done your best to let owners know of the decisions and the rationale behind them.
- 12) **Choosing the wrong officers** – At times the loudest and most obnoxious person is chosen to be the President as the other directors don't want to deal with arguing with this person. Wrong decision!!!! The best President is a person who takes their position responsibly, but also understand that they need to help set the tone for the meetings and ensure that each director gets to speak. Having a Robert's Rules of Order resolution, which is used during all meetings, will go a long way to ensuring that all opinions are heard not just the loudest voices.

Changing the officers for the association is as simple as putting it on the agenda of a board meeting and the board voting for the change. The directors are elected by the owners and the officers are elected by the members of the board.

13) **Understanding what type of meeting is being held** – Owners meeting and board meeting agenda items can NOT be put on the same agenda. They are totally separate types of meetings. Can you conduct them the same night? Yes, but they have to be on separate agendas with separate minutes for each. This is an area that even seasoned managers mix and swap since it is easier to get things on one agenda and handle them as they come along at an appropriate time. Owners meeting issues must be on separate agendas and any minutes must be kept separate as well.

There are obviously many more mistakes that can be made, but educating ones self in the above areas and avoiding the pitfalls will minimize some of the big ones that consistently happen in our industry.