SOUTH COAST HOMEOWNERS ASSOCIATION

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IN THIS ISSUE

MEMBER QUESTIONNAIRES SENT

In mid-September, we mailed out a 2-page questionnaire to all our association and manager members to gather data about association problem areas, assessments, reserves, board meetings and elections. To date, we have received over 60 responses. Our goal is 100 or more responses so that we can provide useful information to you and so you can see how your association compares to others in our area. Results will be tabulated and distributed later in the year. If you haven't filled yours out yet, please do so and mail in the return envelope provided with the questionnaire.

This type of information is rarely, if ever, gathered from association board members. We will share the summary results with the media, planners and developers to provide them with perspectives about associations that they do not currently have. Some of the questions address issues being considered by the legislature or publicized through the media. Your answers will provide evidence to support or counter the notions that are popular with decision-makers.

A copying glitch resulted in a number of the questionnaires only being printed on one side. If you have one of the "one-sided" questionnaires, please call or email and I will get you a complete one. Thank you for taking the time to participate in our member survey.

2004 MEMBERSHIP BILLING NOTICES

Your 2004 South Coast dues notices will be mailed during October. As always, there will be a discount for prompt payment. There is a selfish reason for me wanting to complete the

billing and collection process before December 31. I get swamped after January 1st and I want to know that I don't have to worry about billing and collection during "tax season". In some cases, the person receiving the bill is not the one who pays it. Please forward the bills to your manager or Treasurer immediately in order to secure the best rate. We plan to distribute the 2004 *Condominium Bluebook* upon publication that usually occurs at the first of the year.

E-NEWSLETTER AVAILABLE

During the past several years, we have asked for an email address for each member association through our billing process. We haven't gotten too many email addresses yet. Recently, we have had several inquiries regarding receiving the newsletter via email as well as regular mail. Those who have received the newsletter via email have given us positive reviews. No one has said not to do it, yet. The newsletter is done in Microsoft Word and is sent as an attachment that can easily be emailed to other members of your board. We have also emailed reminders about our meetings several days ahead. Over the last year, between 30-50 people have attended our meetings. I believe that part of the increased attendance is due to the email reminder.

If you would like an email newsletter (one per association), just send me your email address along with your name and association or business name and I will add you to the list. My email is gartzke@silcom.com.

CAI HOMEOWNERS ASSOCIATION EXPO AND BOARD TRAINING

CAI's 2003 annual Homeowner Association Expo and Conference will be held **Friday, October 17**, at Seaside Park in Ventura from 2-7 PM. This free event provides you an opportunity to talk with many professionals and contractors who service homeowners and associations and attend round table Q & A sessions on legal, insurance, accounting and reserve issues. Make an evening out of it and go to dinner afterwards and help boost Ventura County's economy! We included a flyer in September's newsletter. Additional information is available from CAI at 658-1438 or email at caicic@earthlink.net

In addition, CAI is conducting its very popular course, ABCs (A Basic Course) for Association Leaders on **Saturday, October 18** at the San Luis Bay Mobile Estates, 6375 Firehouse Canyon Road in **Avila Beach.** The seminar runs from 8:30 – 4 and includes continental breakfast and lunch. Course units include legal and structure, problem solving, maintenance, finances, board meetings and rule enforcement. A 200-page manual and other course materials are also provided. Cost before October 10 is $69 for CAI members and $79 for nonmembers. After October 10, the cost is $75/$85.

MEDIAN CONDO PRICES

According to the Santa Barbara County Real Estate and Economic Outlook, median condominium prices in South Santa Barbara County increased $ 65,000 from 2002 to $469,900 for all of 2003, an increase of 16%. For August 2003, the median was $515,000.

The median, which is different from an average, is where one half of the units sell for less than the median and one half sell for more.

North Santa Barbara County homes increased 20-25% from last year while South Santa Barbara County properties increased 15-20%. Note that low interest rates and low inventory of homes are driving up prices. Will these prices be sustained when interest rates go up?

Keep these increases in mind when making maintenance and assessment decisions. You are responsible for maintaining property that in some cases is worth twice as much as it was only 4 years ago. Peer pressure to keep assessments low and defer maintenance may not be in the best interests of your association. Is your insurance up-to-date for increased building costs? Have you noticed that the wholesale price for plywood has more than doubled since the spring? According to a recent news story, the increased cost of plywood has added $3,000 to the price to build a new home. Not to mention the increased insurance and workers comp costs.

RED FLAG WORDS YOU CANNOT IGNORE
INDEMNIFICATION
HOLD HARMLESS
DEFENSE

By: Glenn H. Youngling, Esq.

Glenn Youngling is an attorney with offices in Northern California whose practice includes a sizeable number of common interest developments. He is a member of the ECHO Legal Resource Panel. Mr. Youngling can be reached at 415-454-1090. Thanks to him and the Executive Council of Homeowners (ECHO) for their permission to reprint this article for our members.

If you sign a contract containing a provision such as the one below, you may be putting your association into the role of insurance company to the vendor or service provider. You may he opening yourself up to liability you never dreamed of, even if you or the Association does nothing wrong.

Indemnification: *The Client agrees to the fullest extent permitted by law to **hold harmless** and to **indemnify** Provider, Provider's partners; servants, agents, and employees (collectively the "indemnitees'), and to defend the indemnitees using the counsel satisfactory to the Provider, from and against all claims, liabilities, losses, damages, judgements, awards, and costs arising from or connected with the Work and/or the performance of the Work described herein, but only if such claim, damage, loss, or expense is caused in whole or in part by passive or active negligence, by Client, or Client's employees, agents, contractors, subcontractors, disgruntled homeowners, aunts, uncles, or any party directly or indirectly employed or retained by them, regardless of whether or not it is caused in part by the passive or active negligence of a party indemnified hereunder. However, this provision shall not apply to the liability of any indemnitee arising out of said indemnitee's sole negligence or willful misconduct.*

Often provisions similar to this are included in the standard contracts of reputable vendors and service providers. These provisions are often put there by the other party's attorney. It may well be that the party whose contract includes the provision does not know what this section means. It is possible to balance some of these concepts with appropriate companion provisions such as insurance, limitations of liability and alternative dispute resolution. Legal counsel should be consulted about such sections so that risk management can be appropriately addressed.

GOTCHA!

In each of the following examples the association could have averted a significant problem by addressing simple contract basics before it signed on the line. Do you know what the association should have done as part of the contacting process? Will you check next time before you sign on the line?

The Suspended Corporation: When the Secretary of State corporate information forms are sent to the former manager or the invalid address of a former director who has moved, they go unresponded to. The State then suspends the corporation. The association has just contracted to perform expensive deck repairs and an irate owner learns the corporation has been suspended. The owner threatens to litigate. A suspended corporation lacks the legal capacity to enter into contracts and has no standing to appear in court as a plaintiff or defendant!

Worker's Comp Surprise: The Association enters into an agreement with a contractor without confirming the validity of the contractor's license. Months after the job is complete, the Association's insurer performs an audit of contractors hired by the association and discovers the discrepancy. The insurer retroactively levies an expensive workers compensation premium against the Association.

Unlicensed Contractor Equals Uninsured liability Claim: A landscaper who is not licensed to work on tall trees nevertheless has an employee climb to the top of a tree to perform pruning. The employee falls and is seriously hurt. The worker (employed by an unlicensed contractor) is deemed an employee of the owner of the property. The worker sues the association. The association's liability insurer refuses to defend saying it is a workers compensation claim. The association has no workers compensation on the landscaper's employees.

No Scope of Work Means Claim Debatable: The Association procures bids to 'paint" the buildings. The low bidder proposal (which, when signed, became the contract) describes the work as a complete two coat paint job. The low bidder's proposal is signed but two years later the paint job is failing. The painter says the association got the two-coat job it paid for with one coat being a sweep of the spray gun one direction and the second coat being a sweep back. In looking back at one of the higher bids it is noted that the scope of work includes a description of the preparation, the brand and type of paint to be used and a minimum thickness of the paint coating that would end up on the building. Does the association have a breach of contract claim against the first painter?

No Additional Insured Status Means No Insurance Coverage At All: A pest control company performs routine chemical treatment around several units. There is no request that the contractor add the association as an additional insured on its policy, although this could be done at no additional cost. The contract with the association is simply the signed proposal. A resident dies unexpectedly and the family sues the association with a claim that is somewhat unclear but based on the use of the chemical. The Association's insurer refuses to defend, pointing out the exclusion for claims arising out of exposure to toxic chemicals. The pest control company's insurer refuses to defend the association as well because it is not an insured.

RESOURCES FOR VERIFYING WITH WHOM YOU ARE CONTRACTING

CALIFORNIA CONTRACTORS STATE LICENSE BOARD:
http://www.cslb.ca.gov/consumers/
At this site you can confirm that a contractor is properly licensed, review the basics of what must be in a construction contract and review dispute resolution options offered by the board.

CALIFORNIA SECRETARY OF STATE:
http://kepler.ss.ca.gov/list.htmi

At this site you can confirm that corporations (the other party and your Association) are in good standing and able to enter into contracts: If you are dealing with a partnership, you may also find it registered at the same website.

COUNTY FICTITIOUS NAME FILINGS:
You may find that the entity you are dealing with uses a name different from its legal name or the individual who is conducting the business. This is called a fictitious name. Businesses using fictitious names are required to register at the county level. Many counties have interactive web sites where information is available to verify who is the responsible party behind a fictitious name. Generally you can write to the county and for a small fee the clerk will send you a copy of the fictitious name statement that identifies the business and the individual who is using the fictitious name. A few counties, such as San Francisco, permit you to check the name on its interactive web site: http://services.sfgov.org/bns/start.asp

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS:
This umbrella organization maintains a web site where you can verify a wide range of licenses including architects, engineers, pest control operators, alarm companies, locksmiths and security companies. http://www.dca.ca.gov/r-r/r rdca.htm

TOP TEN TIPS TO STAY OUT OF LEGAL (AND OTHER) TROUBLE PART I

By: Beth A. Grimm, Esq.

Beth is an attorney from the Bay Area and is a frequent contributor to South Coast HOA, both as a speaker at our annual summer law forums and as a writer. Beth wrote this article for her house publication, **California Homeowner Association Legal Digest** and is reprinted with her permission. Part II will run next issue. Information on Beth's publications can be had by calling 925-746-7177 or from the web at www.condoguru.com.

I recently gave a program on this topic to a group of about 50 board members and managers in Santa Barbara (The South Coast Homeowners Association). It went over so well I decided to share the tips with the *Digest* readers.

I am in a good position to see the mistakes made by boards, managers, and others in this industry because I am called in when there is a problem. And of course, hindsight is closer to 20/20 than foresight! Everyone can use a little help from someone who sees just what goes wrong in this business. Perhaps you readers can benefit from the experiences I have seen that commonly lead to disaster!

Tip #1: BE COURTEOUS AND PROFESSIONAL AT ALL TIMES.

Be Respectful at Meetings

It is really important when you are on the board or in a management position to be respectful of everyone at a meeting, whether they are respectful or not. The board must have a persona (and management, too) that speaks to organization, courteousness and respect. If the board is disrespectful, the attendees will follow suit.

Be Firm at Meetings

Being "firm" does not mean being heavy-handed. It does however; mean responding to situations that could lead to an "out-of-control" scenario. If the board president or chair keeps control of the meeting, it is less likely that people will act like children. Being kind and being firm are not incompatible. For example, if someone speaks out of turn or attempts to interject a comment when it is not appropriate to do so, the board president could say (after a light gavel tap): "***Excuse me, but we do need to get on with business, and the homeowner forum time is at the (beginning/end) of the meeting. We really appreciate your being here, but we do need to move on."*** If the board has adopted a meeting policy which specifies when it is the homeowners' turn to talk and when it is the board members' time to do business, any homeowner who doesn't understand the rules could be provided a copy of the meeting policy. I encourage boards of directors to adopt a meetings procedure and hand it out with the agendas at the meetings, so the homeowners know the "ground rules." I believe that having a piece of paper with a structured plan on it will, to the extent possible, minimize interruptions and "unprofessionalism", and it certainly will help educate the homeowners as to what the process is. Many times, people speak out of turn because they simply don't understand the "process" that will enable the board to get on with business, and also allow the homeowners to appropriately address the board.

Be Organized at Meetings

Being "organized" does not mean you have to be a master at anything. Parliamentary procedure is a great way to "get organized" at meetings, and to keep control of the meeting process. There are a number of books on parliamentary procedure (including my favorite "***Parliamentary Procedure in Plain English***") available at *Amazon.com*, through CAI (Community Associations Institute) and ECHO (Executive Council of Homeowners). The simpler, the better, I say. I find ***Robert's Rules*** somewhat complicated and cumbersome but if you have a parliamentarian available, more power to you! There are several alternative

options that you can use. If your Bylaws require that board to use Robert's Rules you are stuck with it; I suggest someone on the board get familiar with the basics of it.

Learn a Few People Skills

One does not have to be a master to show respect and courteousness to other people and to help them be heard without a lot of stress. One can go to *Borders, Barnes and Noble,* or *Amazon.com*, and find a wealth of information on negotiations, mediations, and dealing with difficult people. Even when people are not difficult, if one learns how to engage in "active listening," and how to rephrase what people say in a positive way, one can turn around the conversation in very short order that is going the wrong direction. It is also important in all situations to have a certain amount of compassion, and as I said above, treat people respectfully and courteously. If one board member doesn't have any compassion, that may not prevent them from being a good board member, but if the entire board is in that situation, it might find that communicating with homeowners is quite difficult. In that case, someone might want to take a class. Boards of directors often fail to fully understand the importance of getting along with people, and responding in a manner that does not escalate any negative approach.

Do Not Criticize Others in Public

On many, many occasions, I see board of directors "passing the buck," or doing anything to get the heat off of them. When a homeowner is in the audience at a meeting, or the board members are together in any given situation, or the manager is in a situation where there are homeowners and board members present, it is important to do the best of everyone's ability; to avoid pointing fingers and making accusations. I was at a meeting recently where an association board of directors was facing an angry crowd of homeowners. Every time a homeowner raised an issue or problems, there was so much "cross fire" among the board members, that no one could quite figure out "***Who's on first***." The fact of the matter is that pointing of fingers did not resolve any of the problems, nor did it allow the board to move on, because every time someone was accused of something, they wanted to give a "rebuttal argument." The homeowner's forum went on for two and a half hours. Even though I had previously cautioned the board in executive session (on some personnel matters relating to board conduct), ***not*** to get into the "finger-pointing," it started as soon as the first homeowner came forward with a "gripe". One way to avoid finger pointing in front of the members is to say: "***Yes, we have been made aware of that problem, and we are working on it. We appreciate your concern***." This could be the response to almost any issue raised by a homeowner. If there are personnel matters to be dealt with, and arguments about who did what, and whether it was right or wrong, those should be done by the board in executive session, and not in front of the members. At the particular meeting I was attending, finally one of the owners spoke up and said: "***We don't care whose fault it is, we don't appreciate it when the Board members act like children; we just want you to take care of business."***

Tip #2: LEAVE PERSONAL AGENDAS BEHIND WHEN YOU SERVE ON THE BOARD

"It's The Principle of the Thing." (No ..... It's Not!)

Whenever I hear board members (which tends to happen way too often), say: "***It's the principle of the thing,***" I know things are going in the ***wrong*** direction! The truth of the matter is any decision the board has to make should be for good business reasons, not principle (especially when it involves deciding discipline or action against a homeowner that has given the board grief). I do not really want to hear "***It's the principle of the thing***" when that is getting in the way of a reasonable resolution to a problem. I would much prefer to hear ***"I don't like this based upon the principle, but I do recognize my fiduciary duty in this situation to all of the members in the community, so I will act responsibly, whether I like the person or not***." It is the upholding the "principle" that leads to lawsuits, and that present a barrier to settlement through negotiation or mediation. It doesn't matter how much a board member or manager likes or dislikes another person, if there is a dispute which could escalate to litigation or any other dispute that begs for resolution, hanging on to the "principle" is not the right answer, mainly because the person on the other end may not be "*principled*". It certainly may be appropriate for anyone who is making a decision for themselves that has no effect on others, but it not an appropriate stance for a board member or manager if it is getting in the way of acting consistently with application of the rules or disciplinary actions.

Abstain From Decisions That Affect Your Interests

This would seem like a "***no brainier***" to me. Anytime an owner is a board member, architectural committee chair, landscape committee chair, or is in any other leadership position where they are allowed to vote in an important decision, they should abstain if the decision is on something that benefits them. I find it hard to believe, but I recently was involved in a dispute which involved a board member voting on, constituting the vote that resulted in a majority vote, on a contract for services that was very beneficial to the board member, who was also acting as the manager of the association. Maybe it's just me, but that sort of situation seems to beg for a political and legal dispute, and raise eyebrows the minute anyone questions the contract, the compensation, the duties of the manager, or the way that the person is doing their job either as a service provider or a board member. When that person is also a board member, they gain a lot of power, and giving it to themselves seems extremely self serving and, as I know from experience, it leads to serious issues in any case where people are unhappy with the working relationship.

Do Not Focus On One Owner when others are Equally "Guilty"

In many, many of the enforcement situations that come to me, the board of directors has formed a strong opinion about the person who is on the receiving end of the proposed disciplinary action or court action. However, I find that in questioning the board about particular things, that it very often is the case that this person is not really doing offensive things and things that are serious violations, but is just doing things that other people are doing and is "*fighting mad*" because he or she is targeted as the "bad guy." It seems "*the madder they get*," "*the more they* **then** *do*." I find this often with regard to parking issues, pet issues, etc. When one owner is obnoxious and leaves their pet off the leash, and the board is pursuing fines or asking to get rid of the dog, I often find when I ask if other owners keep their dogs on a leash, that they do not. However, the board always has an excuse for them, i.e., "*at least they have control of their dog*" *or "well that one is just a little dog*." For your information, little dogs can cause big problems if they are not on a leash and run off in front of a big dog on a leash. I've seen situations where an owner was dragged because they had their dog on a leash and someone else did not (a reverse leash law lawsuit against the

association for enforcing the leash law inconsistently ensued). If the CC&Rs say that people have to have their dog on a leash, they have to have them on a leash. If the rules don't say the dog has to be on a leash, then the owner may not be required to have their pet on a leash. Certainly, there are all "flavors" of people, and it is more refreshing and self satisfying to punish the "really bad people," but as soon as a board of directors starts an enforcement action against one owner, and the court finds out that there are other owners doing the same thing who have not been pursued in any way, you can imagine what the hearing officer is going to decide. So often, it is not just another homeowner who is doing the same thing, but it is a board member. In many cases, the board does not want to take action against the particular board member, because that board member is either over bearing, has a lot of power, has a lot of respect, or brings cookies to all of the meetings and no one has the heart to pursue them. Inconsistent treatment of owners in enforcement is the #1 basis for lawsuits against associations, or at least that has been the claim of Chubb Insurance Group (Directors and Officers Liability carrier), having gathered statistics on the basis for lawsuits.

Decisions Based On Personal Preferences Can Be Disastrous

I see it happen often. Earthquake insurance is a good example. Board members don't believe it is necessary. They might have the idea that if there is a bad earthquake, everyone will suffer equally, so there is no reason to purchase earthquake insurance. Other board members may have more equity in their property, and believe that purchasing earthquake insurance for the association will benefit them in the end, if there is an earthquake. Either of those board members, if they do not have the benefits of the community in mind, might fail to do the research necessary to find out whether in their particular community, the risks are high or low, earthquake insurance is available or not, if it is expensive or not, or whether the other people in the development may or may not be interested in paying for earthquake insurance. Saving for repairs is another one. Investing is another. When a board member has a personal experience or agenda and makes a decision based on what they would do for themselves, without regard for anyone else, that can lead to a breach of fiduciary duty claim. Some weather losses better than others. Board members must put their personal agenda aside and make decisions on what is best for the community, and if that takes surveying the community to find out about how the members feel about something, they should do it.

Tip #3: HAVE A WORKING KNOWLEDGE OF THE STRUCTURE OF YOUR CID

Know and understand the basics about your community. Is it a condo or a PUD? Do people own the airspace in their units individually, and the buildings collectively, or do they own a Lot from the ground up to the sky? Are the assessments supposed to be imposed on an equal basis or a square footage basis, or otherwise? Where is the Association's insurance policy? Can someone put his or her hands on it when an Owner demands a copy? Do you even know that one has to be provided if an owner asks?

Read Industry Publications

If you don't have professional management in your association, the board members need to get involved and get educated. There are so many laws that affect homeowners associations now, and can lead to serious liability, that at the very least, a board should have a vague idea of what has legal ramifications and what does not, what correct accounting practices are and what are not, etc.

Attend Industry Training

South Coast HOA, ECHO (Executive Council of Homeowners) and CAI (Community Association Institute) provide quite a bit of education for people. They not only have publications, but put on seminars as well. Once again, especially if the board does not have any professional management, board members ***must*** be willing to attend training and get ideas on the right and wrong ways to do things. That will lead them to finding the right kind of people to help, even on a "menu basis" when the board needs services to be provided.

Budget for Education

Every homeowner association should have a budget for board education. I suggest $300 to $500 per year, depending on the size of the board. I suggest at least a majority of the board attend at least two or three programs a year. I can assist in finding local classes or directing boards of directors and managers to training programs, if you have trouble finding any in your area.

Learn Enough To Know How To Run A Meeting

Every board member, as I said above, should have some sense about parliamentary procedure. A lack of structure leads to disrespect in the way people talk to the board, talk about the board, or address the board, and the lack of structure can led to problems outside the meetings as well. "Loose lips sink ships." Disorganization breeds contempt. These things I know to be true through my many years of experience in trying to calm the storm after people without a modicum of good sense open the floodgates.

Learn Enough To Know When You Need To Seek Help!

I don't expect any board member to get to the level of knowledge I or any other professional in this industry has, overnight, or even over a course of years. The kinds of experience we professionals have come from day-to-day training, education, and experience. However, anyone who serves on a board of directors should educate themselves to the extent that at the very least, they know when to seek help. Every board member should understand that type of development (condominiums or townhouses, planned development, etc.), and should know the name of a good attorney, and a management company that provides services, even if what is needed is menu services. Every association should have someone performing or overseeing the management, even if it is a board member, who has some working knowledge of the requirements of the law for associations. A board member does not need to know how to do a reserve study or how to do a budget, or how to enforce a particularly difficult situation, but he or she does need to know who to call. Board members receive insulation from liability (see below) if they contact the right kind of experts to assist them.

PLEASE FEEL FREE TO MAKE COPIES FOR YOUR BOARD MEMBERS
SHARE THIS NEWSLETTER WITH YOUR ENTIRE BOARD OF DIRECTORS

Tip #4: UPHOLD YOUR FIDUCIARY DUTY

Attend Meetings or Resign

Every board member has an obligation to attend meetings of the association. If they cannot do so for a long period of time, it is my opinion that they have a fiduciary duty to resign. Board members can be sued for not participating, the same as they can be sued for participating and making mistakes. Even worse, when someone fails to come to meetings, they are holding a position open where there could be someone else providing input and making meaningful choices by voting. Some people have the misconception that board members can vote by proxy at board meetings (in other words, give their vote to another board member and have the other member vote for them during the meeting). It is my opinion that doing so constitutes a breach of fiduciary duty, because that board member has an obligation to weigh in on any matter in which he or she plans to submit a vote, and educate themselves about it.

Read and Be Familiar with Report Packets and Be Ready to Weigh In On Business

I've been to a number of board meetings where the board members are provided their packets at the beginning of the meeting. In one case, the packet each Board Member was provided a notebook about 4 inches thick! The meeting opens up, and everyone is immediately *swooping* through pages the rest of the meeting, never really getting into what is in the packet, and never really being too educated on what matters come up for a vote. Many boards simply look to the management for feedback and direction, and don't really want to know what's going on. The fact that I am there, and I am there because of a problem (I don't usually get paid to come to meetings unless there is a problem), might give you some indication of this benefit (or not) of this "shoot-from-the-hip" method. Certainly this does not happen in all associations, but it seems to happen more often than it should.

Board members should require that the packets come ***at least*** a day or two before the meeting, and should have read them and be prepared to discuss matters at the meeting, rather than flipping through pages, looking for something to jump out at them.

Take the Business Seriously!

Board members, if they think about it, might take the responsibility of running a "multi-thousand" or a "multi-million" corporation more seriously, than if they are thinking from their own personal perspective and just want to get the architectural rules changed so they can extend that deck or something else that gives them tunnel vision. The business of the association should be taken seriously, even if you are not getting paid. The "you-get-what-you-pay-for" philosophy is pretty scary. The association is a corporation with an income stream that needs to be spent in a responsible manner, and each board member is a "fiduciary" that has responsibilities to the corporation and to all of the members in it.

Do Not Divulge Association Confidences

I get asked to address boards on many occasions where board members are taking the "secrets" of the association and divulging them to the membership, sometimes with quite a twisted perspective. Board members are in breach of their fiduciary duty if they disclose any matters outside of the confidential circle of executive sessions to people who do not belong in that circle. They don't realize it, but the ramifications can be quite serious. If a board member divulges association confidential communications or discussions they may be sued for breach of fiduciary duty, or they may be disciplined for violation of the association rules and

regulatory documents, and/or they may be removed by the court for abuse of their power, if the board decides to take them to court.

Divulging association confidential information can be a very serious offense, and if any board member wants to be a “whistle blower” and feels that certain things need to be divulged, it would probably be a good idea to resign from the board - that might allow them to avoid a breach of fiduciary duty claim.

I believe an association could get a restraining order against a board member to prevent access to records, in a case where a board member is divulging important and legally valid confidences of the association.

Be Careful About E-Mail and Telephone “Business”

Most boards of directors are fairly casual about telephone conversations and e-mail for some reason believing that the conversations are protected in some way. If those processes are used to vote on matters and make decisions before the board meetings occur, and result in board business being treated like a government “consent calendar,” then they are being used improperly. If those tools are being used to communicate and keep other board members out of the loop, purposely, they are being improperly used. If board members are using e-mail to discuss confidential matters, and fail to do anything at all to protect the e-mail (at the very least, fail to include a paragraph about the intended confidentiality), those board members may be creating serious liability for the association. It is very likely that email notes back and forth are discoverable as evidence in litigation, so a case could be won or lost according to what shows up. I have seen emails criticizing owners (for personal reasons) and giving critical “admissions” included in the trail of email notes going back and forth and back and forth between board members - very dangerous!

Tip #5: DON’T PINCH PENNIES

It may feel good to a board to be able to notify the membership that the board has taken measures to reduce the dues or the assessments. I was in a meeting recently there was a huge uproar because the association had eliminated security and closed the pool. While the board had apparently made a hit by reducing the assessments $30 a month, the “joy” didn’t last long. After a couple of weeks of 100-degree temperatures, the community was very, very critical about the pool closure and elimination of security “drive-throughs”. While the board of directors had some very good reasons for closing the pool, and did not believe it could get effective security measures for $30 a month from each owner, reducing the assessments inhibited the ability to creatively seek interim measures that would provide the community with some very important services. I have seen so many situations where the board “saved the owners money” through deferred maintenance, only to end up exposing them to multi-thousand dollar assessments ($5,000 to $60,000). For example, stretching a paint job out an extra two to five years because it “looks okay” often leads to disastrous problems. Using a handyman to make bandaid repairs when someone steps in a “hole” created by dry rot is another example of a situation that escalated into a “$5,000 + per unit” assessment. While some people think the way paint “looks” is what counts, others who have sat in the hot seat know that what paint “does” is much more important. The same goes for any other situation where the wrong criteria are used to roll back or freeze assessments.

Penny pinching can lead to robbing Peter to pay Paul!

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