

Detours to Success:  
How to Avoid the  
**10 Wrong Turns**  
Boards Make

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Association Law  
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# #10

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## See No Evil, Hear No Evil



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# Are you Ignoring Covenant Violations?

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- The most common violations are:
  - Leasing Restrictions
  - Architectural Restrictions
  - Use Restrictions
  - Maintenance Obligations
- 2 year statute of limitations from the date the violation commences.
- Board has a duty to enforce covenants.



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# #9

## Frankly My Dear, I Don't Give a Damn



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# Are you Being An Empathetic Director?

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- Boards who listen, even when not in a position to give the members what they want, will usually receive support from the members.
- How do directors listen to members?
  - Get out into the community
  - Have open forums
  - Conduct straw polls
  - Survey members



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# #8

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## It's Our Party and We'll Do What We Want



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# Are You Acting Alone or Asking “What Do the Members Want?”

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- Boards represent homeowners.
- Directors should work within a framework of community, congeniality and fellowship.
- Rules should reflect and balance the needs of the community and the will of the people.



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# #7

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## It's Good to Be King



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# Are You Being Loyal to Your Members?

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- Directors have a legal duty of loyalty to the Association.
- A director should put the best interests of the Association and its members ahead of the director's personal interests.
- A director should avoid prohibited conflicts of interest.



# #6

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## We Can Do it All Ourselves



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# Have You Consulted the Professionals?

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- Hiring outside professionals may be more cost effective.
- Examples of when to hire an outside professional:
  - Billing owners for monthly assessments
  - Working with vendors
  - Getting bills paid in a timely manner
  - Performing a formal financial audit
  - Rebuilding a retaining wall
  - Repaving the common areas



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The logo consists of a stylized 'W' symbol formed by four overlapping geometric shapes in shades of blue and black.

# #5

## Why Do It Today When You Can Put It Off Until Tomorrow?



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# Are you Deferring Maintenance Issues?

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## Duty of Care

- Board Members must act in good faith - with the diligence, care and skill of the **ordinarily** prudent person in the same or similar circumstances.
- The law **does not require** that the officer or director be blessed with unique talents found only in the boardrooms of the largest corporations.
- Duty of care includes: the obligation to **make, or cause to be made, such inquiry** as the director or officer **reasonably believes** to be appropriate under the circumstances - decisions must be **informed decisions**.



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# #4

What We  
Have Here is a  
Failure to  
Communicate



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# Are you being Open and Honest with Your Members?

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- Communication eliminates mistrust and misunderstanding.
- Ways to have better communication:
  - Monthly or quarterly newsletters:
    - Include items of interest happening in the community.
    - Issues of community concern, i.e.: Security.
    - Features on getting to know your Board or getting to know your Neighbors.
  - Email blasts or community website
  - Publish important provisions, such as parking or pet policies.



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# #3

Live for Today



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# Are you Planning for Future Needs by Setting Aside Reserves?

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- Effects of lack of reserves
  - Dangerous amenities
  - Closed amenities
  - Special assessments
  - Harm to property values
  - Condominiums can become non-compliant with Fannie Mae and FHA lending requirements.



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# #2

## What You Don't Know Can't Hurt You



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# Do You Know Your Association Documents?

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- Some key document provisions:
  - architectural and use restrictions
  - maintenance obligations
  - enforcement options
  - board member election requirements
  - voting requirements
  - steps in the assessment collection process
- A director not familiar with the governing documents can breach his/her duty.



# #1

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## A Penny Saved Is A Penny Earned



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# Are You Exercising Good Business Judgment and Looking at the Big Picture?

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- Look at what is best for the Association in the short run and the long run.
- If good business judgment is followed, then courts will usually not second-guess the actions of a Board, absent a showing of fraud, dishonesty, or incompetence.
- Directors should:
  - Be informed, know the Association documents, attend meetings.
  - Make reasonable inquiries so that decisions can be informed ones.
  - Act in good faith, with diligence, care and skill of an ordinarily prudent person in the same or similar circumstances.
  - Rationally believe that the decisions made are in the best interest of the Association.



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The logo consists of three blue squares arranged in a triangular pattern, with the top square slightly offset to the right.

# Thank you!



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