

**If your board wants to avoid embarrassing and costly missteps, check out this list of common mistakes.**

# oops!

**By Paul M. Krawzak**

## **No one is perfect, obviously.**

Everyone makes mistakes. If this is true of the human race in general, why would it be different for community association board members?

Of course, boards make errors. Mistakes occur in the legal realm, as well as in management, planning and human relations. Some can cost associations hundreds of thousands of dollars or open a community to litigation. Others are minor. Still others are amusing.

It's a good idea to avoid errors when possible, especially the most serious ones. Knowing what a mistake looks like may help. To this end, we present the top 10 errors made by associations.

## 1 Abuse of power.

Some homeowners get on the board for the wrong reasons. They want to settle old scores, pursue a narrow agenda or use their authority for personal benefit.

Paul D. Gruzca, CMCA, AMS, PCAM, executive vice president of Classic Property Management in Arlington, Texas, recalls a homeowners association in Fort Worth a few years ago where one of the homeowners launched a reign of terror as soon as he won election to the board. He badgered other board members until they resigned.

"Over a period of six to seven months, this new guy and his appointees re-evaluated the rules and regulations, much against our advice, and made them autocratic and difficult to enforce, and essentially clamped down on just about everything in the community," Gruzca says.

Rife with favoritism, the tyrant board granted the requests of its friends, while denying proposals submitted by other homeowners. Neighbors stopped talk-

responsibility is to make policy and provide general direction and oversight, not to micromanage the community.

Elaine Warga-Murray, CMCA, AMS, PCAM, who is CEO of Regency Management Group in Howell, N.J., recalls the board member at a townhouse association in Toms River, N.J., two years ago who decided "to open the pool during the week even though there were no lifeguards" to provide a cool dip for the kids after school. He appointed himself the pool monitor, but failed to test the pool water every two hours as required by state law. Warga-Murray says the manager didn't find out until one of the homeowners remarked on how "nice" it was that the hours had been extended. "We didn't know what they were talking about."

When board members act as managers, "it winds up cutting the manager out of the picture," Warga-Murray says. "It becomes a gap in communication. It also alienates the contractors and mainte-

bor's barking dog is bothering them at night," says Jim Slaughter, an attorney in Greensboro, N.C. "Boards often want to become involved in such situations, which is a no-win scenario. Unless the governing documents specifically deal with this issue or it rises to a level of community nuisance, the board should stay out of the dispute."

Slaughter, who is a member of CAI's College of Community Association Lawyers (CCAL), advises letting the neighbors work it out between themselves, or letting the aggrieved party call the police in such instances.

## 3 Disregard for rules or procedures.

Boards and associations are governed by covenants, rules and procedures, as well as state law. When they ignore these, fail to document their decisions or apply rules inconsistently, problems are rarely far behind.

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ing to neighbors. Management was unable to do its job in the midst of board dysfunction. Community spirit eroded.

The association finally had its fill and removed the offending board members. But it took time for wounds to heal, according to Gruzca.

In retrospect, less damage may have been inflicted if more board members and residents had been willing to stand up to the rogue group.

## 2 Misunderstanding your role.

This mistake takes many forms. It often occurs when a board member plays manager, forgetting that the board's

nance staff if they have too many bosses."

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"I've had to really pull in the reins and explain to them you can't act that way," says Anne Calarco, CMCA, AMS, general manager of Las Vegas Country Club Estates Master Association. "Everything has to be enforced uniformly. You've hired us in management to do the job, and we have to do it the same for every homeowner."

Some boards act as if they have police powers. "We regularly hear about the owners who are upset that a neigh-

Take the case of the grandson who inherited and moved into the condominium of his deceased grandparent in Florida a couple of years ago, as recalled by Joel W. Meskin, CIRM, vice president for community association products at McGowan & Company Inc., an insurance company in Fairview Park, Ohio.

The grandson painted his front door and garage door in vibrant colors that clashed with the existing color scheme at the small condominium association. The neighbors, retirees who had lived there for 20 years and all knew each other, were shocked. The grandson received a notice from the board that his color choice violated the rules. The grandson responded, "Show me the rule." The board said, "We

decided this 10 years ago.”

In fact, says Meskin, the board had no ground to stand on because it had never passed a formal rule specifying colors permitted on doors. “They basically made this decision sitting at the pool,” he says. Because the board had been lulled into a false sense of informality and had never voted on or documented the rule, it was not binding. The grandson won.

In more serious cases, boards have been sued when they tried to enforce a rule that lacked standing or had been applied inconsistently in the past.

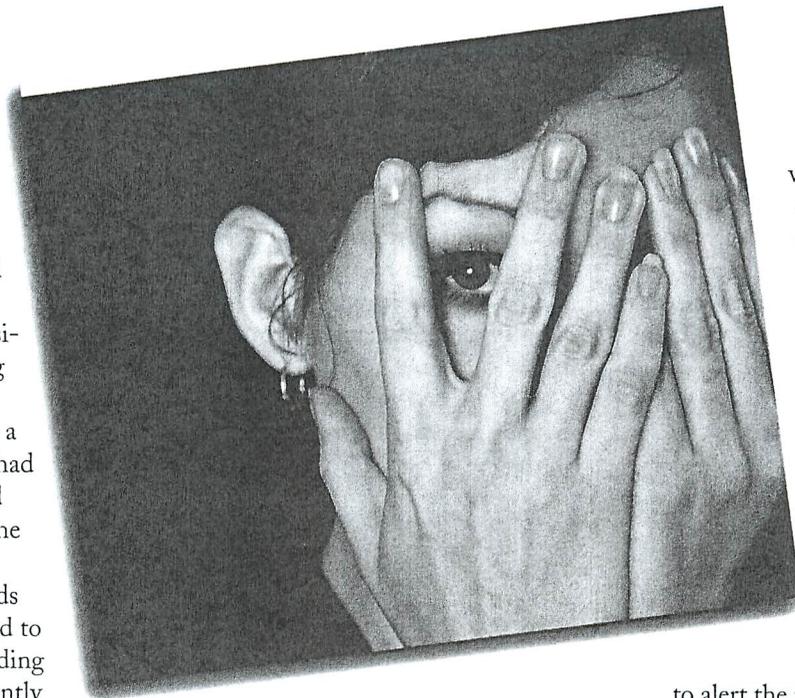
## 4 Not listening to homeowners.

Board members sometimes forget to listen. Or they allow themselves to be influenced by a vocal minority without considering the interests of the broader community. In some cases, they ignore homeowners intentionally.

Amelia J. Adair, an attorney in Arvada, Colo., recalls a handful of dissident owners who got elected to a homeowners association board in Mill Creek, Wash., a few years ago with the goal to end enforcement of the covenants. The board fired the manager and landscape service and jettisoned the rules and standards. “That suited the group that supported them ... but it didn’t suit the majority of homeowners who started getting upset that there were different color fences and there were weeds growing and just a lot of architectural violations,” she says.

The homeowners eventually became fed up and ejected the insurgent board. Adair says the successor board rehired the manager and landscaping services, resumed enforcement and, as a result, “the community looks really good now.”

Those who scream loudest are not always right. Adair recalls an association in Port Orchard, Wash., that recognized this truth and made a good decision. The community had been overwhelmed



by a blizzard that shut down services for days. A vocal group of homeowners clamored for the board to hire its own snowplowing service even though the municipality was responsible for clearing the roads. The board may have been on the verge of acceding to the demands. Then, “an older gentleman from the back of the crowd put his hand up and said, ‘You know, I’ve lived here for 35 years, and I’ve never seen the snow fall like that. I don’t think we should spend extra money in our budget for that,’” according to Adair.

She credits the board for listening to the man, who she said was more representative of the majority than the group pressing for snow removal service.

## 5 Penny wise, pound foolish.

It’s called false economy. A board thinks that by ignoring problems, deferring maintenance or doing a project on the cheap, it can save money. Another way to make this mistake is by considering only price, not qualifications, when hiring managers, attorneys, accountants or others who provide services to the association. More often than not, the result is higher costs in the long run.

A condominium association in Marin County, Calif., offers a dramatic example of the dangers of this approach. Soon after the community was built, water began leaking in through

windows, the roof and other areas, the result of construction defects, recalls Debra A. Warren, CMCA, PCAM, principal with Cinnabar Consulting in San Rafael, Calif. Instead of confronting the problem or hiring an attorney, the board put its head in the sand. “They ignored it primarily because they didn’t want to alert the public to the fact that there were construction defects, which sometimes has an implication on sales,” Warren says. The leakage and resulting damage to the units only worsened. By the time the board acted some 20 years later, paying for the repairs required imposition of a \$56,000 special assessment on each unit. Warren says 17 of the 72 homeowners were forced to walk away from their units and allow the bank to foreclose because they were unable to afford the assessment or sell their condos.

## 6 Violation of open meetings laws.

Although state laws vary, boards typically must comply with open meetings statutes that require them to conduct business and vote in the open with the opportunity for homeowners to be present, except in special circumstances.

Boards violate this law when they make decisions or even, in some states, when they discuss association business outside of meetings or by e-mail.

J. Patrick Moore, CMCA, administrator of King City Civic Association in King City, Ore., recalls a three-member board in Hillsboro, Ore., several years ago that regularly conducted meetings by e-mail, which was illegal.

“It made it difficult for me to manage because there were directions coming from the board without any board meeting minutes to back up what they were saying,” he says. Moore warned

the board to end the practice, but he was ignored.

Violating open meetings laws opens a board to lawsuits and generates distrust among residents because of the perceived secrecy, he and other experts say.

## 7 Ignoring your experts.

Boards often ignore their own experts or specialists, including professional managers, attorneys and accountants. The consequences can be disastrous.

Consider the homeowners association in central New Jersey whose treasurer lost hundreds of thousands of dollars in a bad investment during the 1990s. Attorney Ronald L. Perl, who represented the association at the time, recalls the treasurer convinced the board to invest a big chunk of reserve funds in commercial paper, a short-term, unsecured debt instrument that is more risky than conventional association investments.

"I'm not sure any of the board members, even the treasurer, understood what it was. But financial markets were very strong, and it was a time when the rate of return was significantly higher (for that investment) than associations could get on certificates of deposit, which were the traditional safe investments," Perl says. The board never sought the advice of its accountant or attorney. Perl didn't find out about the suspect investment until after the loss.

"The worst-case scenario occurred," Perl says. "At least a couple of hundred thousand dollars in principal was lost. I think this treasurer thought he was smarter than any manager that they were dealing with."

## 8 Misuse of electronic communications.

We've all heard that everything is moving to the Internet. But everything does not—or at least should not—include association business. E-mail may be an effective way to communicate some basic information, but it's not a substitute for discussion or debate.

"People will say the most doggone

things on e-mail, and you risk getting into a tit for tat," says Adair, the Colorado attorney. Attorneys also urge caution in the use of social networking sites such as Facebook and Twitter, because their informality can get boards into trouble, they say.

At a homeowners association in Florida recently, a lapse in judgment in the use of e-mail led to board members being slapped with a lawsuit. As insurance provider Meskin explains, the board had been under assault from a disgruntled homeowner who was "out of work with way too much time on his hands" and had been challenging everything the board did for several months.

One day, the board president did a Google search and discovered the homeowner had his professional license suspended by a state regulatory agency and had several ethical violation complaints pending. "The president basically cut and pasted this information, put it into an e-mail and hit send to 240 association members," Meskin says. "As you can imagine, the gentleman with too much time has plenty of time to file a lawsuit for defamation." It cost the association "quite a bit of money" to defend against the litigation, according to Meskin.

## 9 Not doing your homework.

Reading the meeting packet, studying the issues, scrutinizing the financial reports and asking questions are important duties of a board member. When members fail to do this, they are asking for trouble.

Perl recalls a case about a decade ago in Monmouth County, N.J., where a community manager was embezzling from several associations that employed him. The manager was stealing money through a scheme in which he transferred funds between association accounts and his own account. According to Perl, if the board had scrutinized its bank statements and canceled checks each month "rather than simply accepting the management company's own financial statements," it would have dis-

covered the fraud. The embezzlement ultimately came to light when auditors for another association noticed irregularities during a year-end accounting.

## 10 Overdoing it.

There is such a thing as excess. When a board meeting drags on hour after hour, something is wrong. Some board members mistake the board for a social club, use the board as a stage or turn their role as an elected representative into a greater calling. The result: the job becomes more demanding and difficult for everyone than it has to be.

Warga-Murray, the New Jersey management company executive, says it's common for boards to overdo it. "We have boards that will meet by themselves a week in advance of the board meeting to go over the board packet. They just go on and on and on ad infinitum," she says. "Not every board member can make these meetings, and they feel they are being left out."

Occasionally, a board goes in the other direction. Grucza recalls the board president who had a big bell. He was a stickler for protocol. Guests with business before the board were given three minutes to talk and that was it. "That guy would watch the timer," Grucza says, "and I'll tell you, at three minutes he would ring that bell. It was like the gong you'd hear to start a boxing match."

One night, the mayor was the guest. He had come to describe planned improvements and the impact they would have on the community. The board president told the mayor, "We're glad you're here. You've got three minutes to tell us everything that's going to impact us, because we've got an agenda we're going to follow." The mayor got up and began to talk, but unfortunately he did not end at the exact three-minute mark. Grucza recalls, "I'll be damned if he didn't get gonged, and they made him sit down. That's taking protocol to the extreme." **cg**

PAUL M. KRAWZAK is a freelance writer in the Washington, D.C., area.