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***Management Case Study #1 — BOD good faith conduct**

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December 22, 2021

Disclaimer: I am not a lawyer nor work for a lawyer, and I'm not providing legal opinion or advice.

(* See Overview, page 8).

“Pay no attention to the man behind the curtain”

(Wizard of OZ)

As applied to HOA-Land, the “man” is the BOD manipulating and controlling the images, propaganda, and marketing designed to placate the wants and desires of the members.

The task

For this case study, you have been engaged to advise the BOD as to its conduct in deciding these difficult and controversial issues, and are free to comment on any or all aspects of the problem situation. What will you advise? The value of your recommendations lies in the quality of your supporting arguments.

The case study situation.

Board of Directors upcoming election in a month faces a radical election procedure whereby the member's right to vote is denied if the number of candidates are equal to or less than openings. In such a situation all candidates are accepted and if more openings exist then the BOD fills the position by appointment. This can be seen as a *voter suppression* covenant (approved by the members) that puts the HOA on the slippery-slope path to “democratic dictatorship.”

The president had announced a vote to compensate a director in direct violation of the bylaws, using a covenant that allows such an exception under certain circumstances. However, two other covenants overrule the exception. An emergency meeting was held

to vote the issue, but no announcement or minutes were made available to the members. Another executive session was improperly announced that did not indicate the topic or reason for the meeting.

The events as they unfolded.

Pres. EG in his Verse 20 release informed the members about the resignation of its CAM. Databoy (his appellation) hints at hiring a Director, RR, as “*temporary Interim GM,*” and pay him a salary. (Word games again?) There is the “teaser” that it could remain a permanent position, pending BOD approval.

Justification is given as “*hiring RR will give us a little breathing room while we interview for a longer term, interim GM and subsequently a permanent GM;*” and RR is highly qualified for the position. It is obvious that RR is highly qualified, but why retain him as a Director? Seems as though . . . is having a difficult time getting candidates for the BOD.

EG then tosses out, apparently recognizing he may be getting some flack, urging non-believers (my words) to go check out the BOD’s authority under Bylaws, §3.11, which allows payments under certain circumstances. This section addresses compensating Directors.

“Nothing herein shall prohibit the Association from compensating a director . . . in a capacity other than as a director pursuant to a contract or agreement with the Association . . . and such contract was approved by a majority of the Board, excluding the interested director.”

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To clarify my understanding, and perhaps yours also, Director RR can be paid a salary for work as the “temporary Interim GM.” Nice isn’t it? Again I wondered, why doesn’t RR resign? There is good reason for him to resign: under the Bylaws he would violate “the separation of powers” — yes like in public government — under §3.1 and §3.16. (My emphasis). These two sections reveal that the . . . governing model is based on the widely used local government council-manger style.

Sec. 3.1: “*The affairs of the Association shall be managed by a Board of Directors which shall serve as the corporate policy-making body of the Association.*”

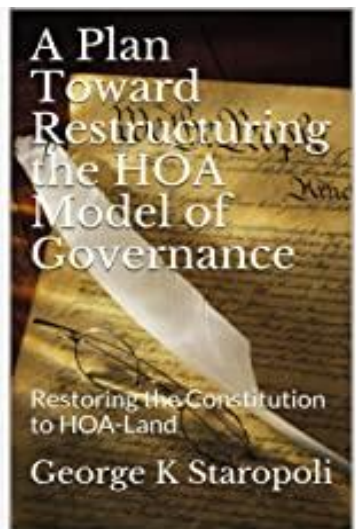
Paragraph 1, Sec. 3.16:

“The primary duty of the Board of Directors shall be to establish the operational policies of the Association The Board is not responsible for nor authorized to perform day-to-day operations of the Association. The day-to-day operations of the Association shall be carried out by CAM . . . “

Paragraph 2, Sec. 3.16:

“[I]t shall be the policy of the Association . . . that the Board refrain from unreasonably interfering with the performance of delegated functions by CAM. . . . [N]o individual member of the Board shall be authorized to speak or act on behalf of the Board unless specifically authorized to do so in writing by the Board.”

So, as it turns out, 3.1 says you can pay a Director but 3.16 says it would be a conflict of interest for a Director to also be the GM or CAM. RR should resign as a Director or forgo being hired as GM, paid or not paid. President EG misrepresents the true nature of this pending decision by the BOD by referring solely to 3.1 as his authority to act. An oversight by someone with an MBA?



The role of individual Directors

The role of a director is not a sinecure or to just rubber stamp the president’s actions.

This dual role question raises a much larger question of the role and responsibilities of the individual Directors. It is the BOD that manages . . . not the president! The president is appointed by the BOD and is answerable to the BOD. Statements made by EG in his capacity as president are presumed to have been approved by a majority of the BOD.

The absence of any director statement to the contrary may be seen as joining the board’s decision and may result in the Director being held personally responsible.

Who is advising President EG and the BOD?

Rebuttal to emergency BOD meeting, 12/14/21 on director compensation

Apparently, president EG felt the need to immediately take action on this important issue as a result of my Sunday post here (Speaking on the grapevine) spelling out the problems before the BOD. . . . faces a “constitutional” crisis with today’s emergency board meeting on paying a director in a dual role as CAM.

The president mislead the members in his Verse-20 statements in that only Bylaws 3.11 applies – exclusions to allow compensating a director. As I pointed out, Bylaws 3.1 and 3.16 apply and overrule 3.11. My solution is simple: RR to resign as a director or reject the interim temporary CAM position. What is so important that RR is needed and needed today to call an emergency meeting? To not allow adequate time for appropriate discussion of my points? Not explained adequately by Greenberg.

I also raised the question as to the BOD's conduct – YES men or independent people with obligations “in the best interests of the members.” Will the directors rally around the EG as a show of solidarity, in spite of violations of the Bylaws, or will they insist that . . .'s CAI member attorney, CE, explain why §3.1 and §3.16 don't apply? And not in executive session. It is not a case of being sued, personal info, etc. It's their duty to act in good faith and as a prudent person would!

What happened at the meeting to pay a director?

On Dec.16 I asked for a copy of the recording, or ZOOM record, of the Dec. 14th meeting when no minutes posted, even in draft form, or any comments, as to what took place at the meeting. From the email exchanges.

From: george@starman.com
Sent: Thursday, December 16, 2021 2:05 PM
To: 'Adam Nunez'; 'Angelica Bland'; 'Cassandra Navarro'
Cc: 'earle greenberg'; Carol White, . . .; 'grandrankin@icloud.com'
Subject: RE: video of g 12-14-21

Thanks for your response. If the BOD is fearful of lawsuits then maybe they should be more careful about their conduct, yet members were invited to view a webinar for that meeting. So much for such fears! Was it destroyed? I think not, if BOD was truly fearful of a lawsuit - good evidence FOR THEM!

I would like to view that . . . corporate document as part of my right as a member with access to . . . documents. Please forward a link to that webinar.
BTW, all minutes from August 20121 are market DRAFT. Why?
Cc: . . . Members (AZ)

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From: AN
Sent: Thursday, December 16, 2021 9:41 AM
Subject: Re: video of g 12-14-21

Good morning, George,

The Emergency Board Meeting on December 14th was not recorded. Over a year ago, the Association stopped recording

Board Meetings (except Town Hall Meetings) due to potential liability concerns. Following each meeting, minutes are provided on suncitygrand.com for residents.
Let me know if you need anything else.
Have a great day!

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Sent: Wednesday, December 15, 2021 10:49 AM
To: AN
Subject: video of g 12-14-21

I missed the webinar. How can I view the recording? Vimeo? Youtube? GrandTV?

Thanks.
George Staropoli,

Sudden wrongful posting of an executive session to be held next day, without providing any reason

In response to my simple question of "Does anybody now anything?" I received the following email from the president, 2 our after my posting.

Mr. Staropoli,

I will attempt to address your many items as succinctly as possible.

- 1) Your statement that my email was non-responsive is erroneous. The mere fact that you acknowledged my email means that I responded and I also addressed all of your points even if you didn't like or believe the responses.
- 2) The fact that you don't believe that "nothing has been destroyed because nothing existed" is something with which you need to come to terms because the communications department which sets up our zoom meetings does not record the Board workshops or meetings and have not recorded them for about 18 months now. Just because a webinar takes place does not mean it is being recorded. In fact, if a meeting is being recorded on Zoom, when an attendee logs on, there is a disclaimer on the screen that tells them it is being recorded and a voice that tells them it is being recorded. If you have ever been on one of the Zoom workshops or meetings, you will notice that this has never appeared or been heard because the meetings are NOT being recorded.

Quoting from the Zoom site: "Last Updated: December 10, 2021 The recording consent disclaimer prompts participants in meetings or webinars to provide their consent to be recorded. Participants receive a notification when a recording starts or when they join a session that is already being recorded. "

3) Regarding your statement and personal agenda: "To clarify my motivation, there is a need for "Reorienting the HOA board and its followers" away from CAI dominance." From what I have been told, we have actually not been a paying member of CAI in 2 years. As far as you believing that there is a "need to reorient the Board," everyone is entitled to their own opinion.

4) Also erroneous in your email, we do not receive legal counsel from CAI.

5) As you noted in your copying of the AZ open meetings statute, the statute ALLOWS for the Board to record meetings. It appears that you are the only one who is playing "word games" as you repetitively state that I am. No matter what you think the "intent" is, the AZ legislature spends a great deal of time analyzing and crafting statutes. If their intent were for all Board meetings to be video recorded, they would have used the word "require" and not "allow." So based on the AZ statute with regard to open meetings, we are in complete compliance.

6) If you have a problem with the HOA laws in Arizona, I would suggest you contact the state legislators.

7) There is no need for further discussion.

EG, President
Board of Directors

My reply to president's email and to personal attacks

If certain members would stop attempting to defend and protect a pattern of wayward conduct by . . . boards . . . can become the association it claims to be.

Earle, in his defensive email to me today, does not address the important questions of Rankin's status or the minutes of the Dec. 14th meeting that I informed him was, in my layman's opinion, a violation of the governing documents §3.1 and §3.16, or the failure to provide a 48 hours notice of the Dec.22 meeting, ARS 33-1804(E), or the fact that executive meeting notice must contain a statement as to the reason for the executive meeting — listing all exceptions dodges the requirement. He ends with, "There is no need for further discussion." So much for making progress toward a BOD more responsive to its legal obligations.

In view of the continued board failure to act in good faith "in the best interests of the members" — as stated in the CC&Rs — the need to restructure the HOA legal scheme as I've described in my, "A Plan Toward Restructuring the HOA Model of Governance," becomes paramount. The Plan requires a reorienting and reeducation process to overcome the teachings of and indoctrination by the CAI School of HOA Governance in order to make the HOA a true community association under the US Constitution.

The foundation and principles of the School can be traced back to CAI's Public Policies, the CAI Manifesto (its 2016 "white paper" found word for word in . . . Strategic Plan, Appendix, p. 202-235). Recall that there have been some 13 members who are or were CAI members while they were serving on . . . board or committees, going back to 2015.

. . . .

The most horrendous act by the BODs was the unprecedented amendment procedure of 2019 that amounted to the acceptance of a voter suppression covenant – not requiring member voting for Directors under certain circumstances. This puts xxx on the slippery-slope path to the complete control of the member's home by means of BOD appointments of Directors, and the effect it would have on potential buyers.

Do not accept the . . . party's pre-approved candidates, where conformity and approval by the BOD filters out potential candidates. Organize and enter write-in candidates having a member focused view. While cumulative voting is not allowed, you do not have to vote for 4 candidates, or whatever it may be, but you can vote for only 1 or more write-in candidates.

BUT YOU MUST ACT IN THIS UPCOMING BOD ELECTION NEXT MONTH.

PS. In the days of the cold war the story goes that the Peoples Democratic Republic of China was claiming to be a democracy because the people could vote, although its constitution stated that it was "a democratic dictatorship." WOW, real gutsy! A reporter, surprised by the claim, pointed out that there was only one party in China. The Chinese spokesperson replied, "China needs only one party."

HOA Case Study Overview

Simply put, the case method is a discussion of real-life situations that business facing executives. IT IS AN EDUCATIONAL PROCESS FOR ALL HOA MEMBERS and will help in becoming a more meaningful, relevant, and productive participant in the governance of your HOA. It is members only and independent of any HOA approval or regulations.

If properly conducted, the outcome should provide your BOD with a solution[s] that has much more merit than listening to the views gathered at focus groups or Q & A sessions (workshops, fireside chats, meet the board, etc.).

The method consists of being presented with a real event or issue , the case, facing an executive – president, BOD, committee chair – and asked a question or two regarding what you would decide. As you review each case, you'll put yourself in the shoes of the key decision maker, analyze the situation, and decide what you would do to address the challenges. Importantly, there is the requirement to present your views or opinions before the study group (online participants), and after a discussion with other group participants you will be asked to volunteer your decision and reasons why.

If you feel that your decision[s] have merit you can present them to the president or BOD as you feel comfortable. It would be appropriate to indicate the basis for your recommendations, the **HOA Case Study Group** that you participated in.

How to participate in a meaningful and instructive manner. YOU are the decision maker! What to do? (Harvard Business School, Executive Education).

Here's your chance to deal effectively with HOA issues and resolve the problems in a practical manner. No unsupported opinions, feelings, likes/hates, etc.

- What are the most important issues being raised?

- Each case begins with a text description followed by exhibits. Ask yourself: What is the case generally about, and what information do I need to analyze?
- Put yourself in the shoes of the case protagonist, and own that person's problems. Ask yourself: What basic problem is this executive trying to resolve?
- What recommendations should I make based on my case data analysis?

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Focus Group methodology stands in sharp contrast to the *Case Study* approach, which is a top-down, managerial process, while focus groups are a bottoms-up approach to provide guidance to decision-makers. The key aspect here is how does the researcher use the data gathered, which is dependent on the depth and quality of its analysis. Or, on the negative side, focus groups can be used to advance personal agendas.

[WHY ARE FOCUS GROUPS USED?](#) (Copley Focus Centers)

‘Focus Groups are generally used to gather people’s opinions, ideas, and beliefs on a certain topic or product. While surveys or questionnaires can be useful, they can not capture what a person is thinking or feeling. This is where a focus group will come into play. . . . The main purpose of focus group research is to draw upon respondents’ attitudes, feelings, beliefs, experiences and reactions in a way where other methods are not applicable.

“Focus Groups are generally used when there is little or no knowledge about the target market. Most commonly Focus Groups are used when a new . . . service is being developed and the company is not sure how the public will react. In this instance, a Focus Group is conducted to get opinions, ideas, suggestions, and reactions before the product or service is available to the public. Once the information is gathered, changes may be applied to the service or product to make sure that it will be received well by the target audience.”