

# A BOARD RUN AMOK

This Course is approved by the DBPR Council of Community Association Managers, for 4 hours of continuing education credit in the area of:

## Human Resources (HR) and Additional Instruction (ELE)

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## INTRODUCTION

### Course Description

Welcome to the 4-Hour CAM CE course A Board Run Amok Thank you for choosing Gold Coast Professional Schools. Our objective is to provide you with the best possible course and materials.

This course examines the dynamics of an altogether too common occurrence in the world of community associations, the dysfunctional board of directors (BOD). The course is written to stimulate thought for you as a student and provide you with the necessary tools to identify the types of dysfunction, their respective methods of repair, and the means to determine whether if what is broken can be fixed. Additionally, we'll review Florida statutes as they apply to specific issues that are addressed throughout the course.

The title of this course is "A Board Run Amok," because we present the ideas and concepts of an uncontrollable and disruptive board of directors as though looking through the prism of a fictional Florida homeowners' association.

### Outline

The following topics are covered in this course.

- The Beautiful Dreamer - HOA
- Causes of Dysfunction
- Things Get Worse
- Chaos Management
- Hope for the Future
- Summary

1 **THE BEAUTIFUL DREAMER**

2 **Disclaimer**

3 As we mentioned earlier, the subjects in this course are presented by using a fictional Florida community - The  
 4 Beautiful Dreamer Homeowners' Association (hereinafter referred to as "the Dreamer"). The Dreamer is a  
 5 fictional association with a fictional board of directors.

6 Any resemblance to any specific association or persons, living or dead, is strictly coincidental. The description  
 7 of this dysfunctional board of directors should not be understood as a disparagement of the many thousands of  
 8 effective board members who unselfishly and efficiently serve the community associations of our beautiful state.  
 9 The Dreamer and its board members are described here strictly to illustrate types of events that, unfortunately,  
 10 all too frequently occur in many community associations. The extreme nature of the events depicted here is for  
 11 illustration and educational purposes only.

12 **Background**

13 The Dreamer is a 25-year-old gated community of 250 single-family homes with an annual budget of  
 14 \$1,000,000. It's a relatively upscale community that has both a generationally and ethnically diverse population.

15 During the past few years, there has been an influx of young couples with children moving in. Concurrently,  
 16 there has been a roughly equivalent decrease in the number of elderly owners, many of whom have relocated  
 17 to live with their children or to assisted living facilities, and sadly, some have died.

18 **The Board**

19 The Dreamer has a seven-member board of directors whom are elected  
 20 for two-year staggered terms. The current members of the board  
 21 include five men and two women, who are all retired. Their average age  
 22 is 76 and they have been serving on the board for the past six years.

Board Position	Name	Occupation
President	Bernie Bernstein	Retired Owner of a scrap metal company
1st Vice President	Consuela Delgado	Retired veterinarian
2nd Vice President	Simon Schuster	Retired publishing executive
Secretary	Myra Capua	Life-long homemaker, now an empty nester
Treasurer	Rafael Tejeda	Retired trucking union executive
Member	Mickey Moskowitz	Retired illustrator
Member	Sidney Pepper	Retired soft drink manufacturer

23 This chart details our fictional board of directors at the Dreamer.

24 **The Property**

25 The Dreamer has a clubhouse with a fitness center and sauna, a swimming pool and spa, tennis courts, and a  
 26 children's playground. It also has a gatehouse that is staffed with a security guard on a 24/7 basis.

27 During the past few years, concerns about money have resulted in a marked decline in the quality of both  
 28 routine and preventive maintenance.

29 **The Conflict**

30 The Dreamer has been a relatively peaceful association for many years. However, it's now beginning to  
 31 experience the early stages of conflict. Younger members are voicing unhappiness about what they consider  
 32 to be the inadequate response of the board to their desires for better-maintained facilities, a more child friendly  
 33 environment, and a more inclusive, democratic style of management. The Dreamer's board members and  
 34 owners will appear at various times throughout our course.

35 **CAUSES OF DYSFUNCTION**

36 **Outline**

37 In this section regarding the causes of dysfunction, we'll cover the following topics:

- Power struggles
- Personality conflicts
- Generational conflicts
- Gender conflicts
- Ethnic conflicts
- Selective enforcement

1 **Introduction**

2 Community associations, like all forms of human organizations, are susceptible to conflict, corruption, and  
3 mismanagement.

4 No community association is totally free of one or more of them. Yet, many find ways to use conflict to generate  
5 creative problem solving solutions.

6 The boards of these associations are able to do the following:

- 7     ▪ Frequently implement preventative and responsive practices to minimize discrimination, crime, and  
8     other corrupt practices
- 9     ▪ Manage their operations in a manner that allows for the protection, maintenance, and enhancement of  
10     its property
- 11    ▪ Foster a harmonious community of owners and residents

12 Unfortunately, there are other boards that don't incorporate these strategies.

13 Let's look at some typical causes of dysfunction, beginning with the power struggle.

14 **Power Struggles**

15 The "Take No Prisoner" Approach to  
16 Conflict Resolution

17 Let's exam the types of people who are  
18 most likely to occupy a board of directors  
19 position and how their role contributes to the  
20 power struggle.

Type	General Attributes	BOD Attributes
Corporate Success (e.g., retired corporate executive)	<ul style="list-style-type: none"> <li>• High-level skills</li> <li>• Excellent communication skills</li> <li>• Excellent personnel management skills</li> </ul>	Unsuccessful in applying corporate skills to their director's position
Self-Employed (e.g., retired sole proprietor)	<ul style="list-style-type: none"> <li>• Self-made man or woman</li> <li>• Responsible for own success</li> <li>• Used to being in charge</li> </ul>	Often believes that the reason for their success is the absence of meaningful opposition in the workplace
Authority Figure (e.g., retired office manager)	<ul style="list-style-type: none"> <li>• Excellent organizational skills</li> <li>• Works best in position of authority</li> </ul>	The often lengthy, convoluted, and at times, politically motivated decision-making process of community association boards can be frustrating and stressful
Other (e.g., stay-at-home mom)	<ul style="list-style-type: none"> <li>• Little to no business experience</li> <li>• Some organizational skill</li> <li>• Very good intrapersonal skill</li> </ul>	Hard to understand the workings and politics of a community association and its board

21 *BOD Differences*

22 A major difference between a community association BOD and a corporate (or other) board is that the members  
23 of the BOD are usually residents of that community.

24 In addition to sharing ownership of the corporation and the common property (often times of the same or similar  
25 proportional interest), they are also neighbors.

26 Conflicts in most business organizations are typically left at the office at end of the business day.

27 Those same conflicts in a BOD are frequently communicated within the community, become the subject of  
28 gossip, and especially, if the conflict threatens the financial interests of some owners, can become emotionally  
29 charged, highly divisive, and present at the members' door steps.

30 At times, the result of this might become an area of combat that resembles a battleground, with no quarter given  
31 and no prisoners taken, especially since the community is comprised of people who have dissimilar  
32 backgrounds, reside in close residential proximity, and have a perception of vital interests at stake.

33 **Personality Conflicts**

34 You're Just Not My Type!

35 In the following section, we'll exam the different personality types and the effect they have on a community  
36 association board.

37 *Personality Types*

38 It's said that opposites attract. Well, perhaps in romance, but not so much among community association board  
39 members.

40 There are many standards for personality classifications, from astrology to extremely sophisticated, in depth,  
41 psychological evaluations, such as the Myers-Briggs Type Indicator (MBTI) as shown on the following page.

# What's Your Personality Type?

Use the questions on the outside of the chart to determine the four letters of your Myers-Briggs type. For each pair of letters, choose the side that seems most natural to you, even if you don't agree with every description.

**1. Are you outwardly or inwardly focused? If you:**

- Could be described as talkative, outgoing
- Like to be in a fast-paced environment
- Tend to work out ideas with others, think out loud
- Enjoy being the center of attention

then you prefer **E** Extraversion

- Could be described as reserved, private
- Prefer a slower pace with time for contemplation
- Tend to think things through inside your head
- Would rather observe than be the center of attention

then you prefer **I** Introversion

**2. How do you prefer to take in information? If you:**

- Focus on the reality of how things are
- Pay attention to concrete facts and details
- Prefer ideas that have practical applications
- Like to describe things in a specific, literal way

then you prefer **S** Sensing

- Imagine the possibilities of how things could be
- Notice the big picture, see how everything connects
- Enjoy ideas and concepts for their own sake
- Like to describe things in a figurative, poetic way

then you prefer **N** Intuition

**3. How do you prefer to make decisions? If you:**

- Make decisions in an impersonal way, using logical reasoning
- Value justice, fairness
- Enjoy finding the flaws in an argument
- Could be described as reasonable, level-headed

then you prefer **T** Thinking

- Base your decisions on personal values and how your actions affect others
- Value harmony, forgiveness
- Like to please others and point out the best in people
- Could be described as warm, empathetic

then you prefer **F** Feeling

**4. How do you prefer to live your outer life? If you:**

- Prefer to have matters settled
- Think rules and deadlines should be respected
- Prefer to have detailed, step-by-step instructions
- Make plans, want to know what you're getting into

then you prefer **J** Judging

- Prefer to leave your options open
- See rules and deadlines as flexible
- Like to improvise and make things up as you go
- Are spontaneous, enjoy surprises and new situations

then you prefer **P** Perceiving

Authorized use of image.

- 1 One of the simplest is the Type A - Type B Personality Profile developed by Drs. Meyer Friedman and Ray Rosenman in the 1950s as a predictor of heart disease.
- 2
- 3 Although never validated as a successful predictor of heart disease, the terms have been adopted into the language and, to some degree, can be usefully applied to understanding personality types.
- 4

5 The characteristic of a Type A and Type B personality are explained next.

6 **Type A - Type B**

**Type A**

- Ambitious
- Organized
- Status-conscious
- Sensitive
- Impatient
- Quick to anger
- Highly competitive

**Type B**

- Lower stress level
- Work steadily
- Creative
- Reflective
- Enjoy exploring ideas and concepts

7 **Type A BOD**

8 Let's imagine a board that's predominantly composed of Type A personalities with a Type A president.

9 This board knows and understands one another. We might think they work well together and accomplish mutually agreed upon goals and objectives within the budgetary framework. This, of course, assumes that they have successfully agreed on the association's goals and objectives, as well as the methods to implement them.

12 Unfortunately, this is not always a reliable assumption. All too often, community association boards fail to achieve agreement on goals and objectives, if they even bother to formulate them at all.

14 Without such agreement, a board primarily composed of ambitious, impatient, and highly competitive Type A personalities is likely to be conflict ridden and stressful. This may suit some of its members, but certainly not the few Type B personalities among them.

17 There is also a high probability that the personality conflicts lead to dysfunction, especially if its president can't exercise strong and effective leadership to mitigate and channel the conflict towards productive outcomes.

1 *The Dreamer's BOD*

2 Now, let's meet the following Dreamer BOD members.

- 3     ▪ Bernie Bernstein, president
- 4     ▪ Rafael Tejada, treasurer
- 5     ▪ Myra Capua, secretary

6 **Bernie Bernstein, President**

**BOARD MEMBER PROFILE**

**Name:** Bernie Bernstein  
**Title:** President  
**Personality:** Type A  
**Opposition:** None



**Management style:** Bernie runs the board with an iron hand, making unilateral decisions, and tolerating no opposition. During his tenure, there have been neither maintenance fee increases nor special assessments. He has retained his presidency since he's the only board member willing to accept the responsibilities of the position.

**Adversaries:** Rafael Tejada, treasurer  
(Just recently, Bernie and Rafael, another Type A personality, had an angry confrontation.)

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7 **Rafael Tejada, Treasurer**

**BOARD MEMBER PROFILE**

**Name:** Rafael Tejada  
**Title:** Treasurer  
**Personality:** Type A  
**Opposition:** None



**Management style:** As a Type A personality, Rafael takes his position as treasurer very seriously.

**Conflicts:** Recently, Rafael's feelings were hurt during a board meeting in which Bernie refused to answer a question regarding a non-budgeted expenditure. Rafael now demands that any expenditure over \$500 must have board approval. He refuses to counter-sign any checks without such approval.

**Adversaries:** Bernie Bernstein, president

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8 **Myra Capua, Secretary**

**BOARD MEMBER PROFILE**

**Name:** Myra Capua  
**Title:** Secretary  
**Personality:** Type B  
**Opposition:** None



**Management style:** As a Type B personality, Myra is creative and hardworking. She's open-minded and loves hearing new ideas and concepts.

**Conflicts:** Since Myra is uncomfortable with conflict, she has agreed with Bernie to counter-sign the checks that Rafael refuses to sign without BOD approval. Being intimidated by Bernie, she has become his ally in the current struggle between president and treasurer.

**Adversaries:** None

9 *Personality Conflicts Q&A 1*

10 Does Bernie, as president, have the authority to make unilateral decisions regarding expenditures?

11 That depends on how the association's governing documents (usually its bylaws) define the duties of the  
12 president. And/or if the board of directors has passed a resolution that limits the president's authority to spend  
13 money.

14 Typically, the documents simply state that the president shall have the general powers and duties of the chief  
15 executive officer and don't specify as to what those powers and duties are. Some documents assign the  
16 responsibility for describing and defining those duties and powers to the board of directors.

## 1 *Personality Conflicts Q&A 2*

2 **What are the treasurer and board's responsibilities with respect to Bernie's actions?**

3 Typically, the governing documents assign the care and custody of the association's monies and securities, as  
4 well as maintaining the books of the association, in good order, to the treasurer. They may also require him or  
5 her to sign checks.

6 In practice, many BODs require both the president and treasurer to sign checks, unless one or both are  
7 unavailable.

8 In this situation, the board could vote to limit the president's discretionary spending authority to \$500 (or another  
9 amount) and require board approval to spend a greater amount. If the board doesn't vote to impose such limits  
10 and the treasurer refuses to perform his assigned duty, the board, rather than bypass the treasurer, should  
11 replace him on the grounds that he is not fulfilling his responsibility. Alternatively, if the directors have lost  
12 confidence in the president's management of the association's monies, they should consider replacing him.

13 In many such conflicts, the officer who hasn't been supported simply resigns and board action becomes  
14 unnecessary.

## 15 *Personality Conflicts Q&A 3*

16 **As the CAM, what recommendations would you make to the board in order to resolve or mitigate these issues?**

17 As the CAM, you could remind the board members of their respective duties and authority of the president and  
18 treasurer as stated in the association's documents and options, as described before. Additionally, you could  
19 provide the directors with publications from educational institutions. You might even recommend that the board  
20 consult its attorney before taking action.

## 21 **Generational Conflict**

22 Grumpy Old Men and Young Turks

23 It's an age old story - the generation gap!

24 The mature individual believes that the status-quo is fine. They like to leave things the way they are.

25 The younger person believes that trying something new and different is the way to go!

26 It's no different in a community association.

## 27 *The Retiree*

28 Florida is a preferred destination of retirees from the north, many of whom choose to live in a community  
29 association. Many of these residents are recently retired and are in the process of creating a new life style,  
30 which often involves more leisure and at-home time.

31 Some may be used to a structured environment where they exercised authority over subordinates and engaged  
32 in the competitive "give and take" of corporate politics. These retirees might find the transition from a structured  
33 work environment to a relatively unstructured environment without subordinates, unsettling and unstimulating.

34 Many believed they were retiring to a paradise in which their days would be full of entertaining and interesting  
35 activities. Instead, they find themselves bored, without meaningful events to fill their days. Instead of retirement  
36 fulfilling their life-long dream, it has become their nightmare. They begin to explore their new environment; many  
37 finding satisfaction performing volunteer work for charities and not-for-profit organizations, engaging in  
38 recreational activities such as golf, tennis, and bridge, and involving themselves in local social and political  
39 organizations.

40 For some, these activities prove unrewarding or don't adequately meet their needs for structure, authority, and  
41 competition.

42 Let's meet one such retiree who is a resident of the Dreamer.

1 **Juan Del Toro - Owner**



New owner and recent retiree, Juan Del Toro, is suffering from boredom and feelings of inadequacy. Then, one fortunate day, a letter arrives from the association's manager, Bonnie Delaney. The letter is a citation for not obeying the HOA rules. The violations include ...

- 5       ▪ Failure to maintain a clean roof
- 6       ▪ Parking on the street after hours
- 7       ▪ Planting a tree without obtaining prior authorization from the association's architectural review board

8 Juan contacts Bonnie and arranges a meeting.

9 At the meeting, Bonnie reminds him of the relevant rules and regulations included in the governing documents,  
10 which she reviewed at his new owner orientation meeting.

11 Juan expresses appreciation and promises to correct the violations.

12 Bonnie's request reminds Juan of a notification he had just received that announced the association's annual  
13 meeting and election, and solicited candidates for the board. He decides that, with his extensive business  
14 background (as a purchasing agent for a hobby stores franchise), he would make a great board member, maybe  
15 even an outstanding president. He wisely consults with his wife, Esmeralda, who tells him that it's a thankless  
16 job, the only compensation is aggravation, and it's a bad idea. After agreeing with her, he sits down at his desk,  
17 completes the application form, as well as the candidate information sheet, and mails them to the management  
18 office.

19 Juan is now a BOD candidate.

20 *Successful Young Owner*

21 Earlier, we stated that the Dreamer has a diverse population.

22 Therefore, in contrast to the retirees, who make up the majority of the Dreamer's residents, are the young  
23 successful career-types, who are either single or have a new family.

24 Let's meet one of our young successful owners.

25 **Wendy Bird - Owner**



At the same time that Juan completed his candidate application, 34-year-old owner, Wendy Bird, drives through the entrance of the community on her way home from a busy day at the office. She looks at the front entrance water feature, which is in disrepair, and thinks, "What an eye sore!"

29 As she drives past the clubhouse, her thoughts turn to her daily exercise routine in the fitness center. She had  
30 expressed her dissatisfaction with its cleanliness and frequent equipment breakdowns to Bonnie, the manager,  
31 a couple of weeks ago. She also complained about the poor condition of the water feature.

32 As Wendy drives up to her house, she becomes painfully aware of the absence of her mailbox, which had been  
33 accidentally knocked down by a careless neighbor while backing his vehicle out of his driveway.

34 That neighbor, coincidentally, is the board president. Bernie had assured her that he would pay for the damage.

35 As she enters her house, Wendy picks up the mail that was left on her doorstep. Among the bills and junk mail,  
36 she finds a letter, signed by the president, citing her for failure to replace her mailbox.

37 Additionally, she discovers a notification of the annual meeting and election. Given her busy work schedule and  
38 full social calendar, she had never considered running for the board. This time, being considerably agitated and  
39 upset, she thinks,

40 "The old men have to go!"

41 She picks up the application, completes it, and places it in her neighbor's mailbox for tomorrow's pick up.

42 Wendy is now a BOD candidate.



1 **The Annual Meeting**

2 Two and a half months later, at the annual meeting, Juan and Wendy discover that there are just four candidates  
3 for the four open board seats. Two incumbents, Simon Schuster and Sidney Pepper, who were unhappy with  
4 the conflict within the board, decided not to run for the board again.

5 By default, Juan and Wendy are now members of the Dreamer’s BOD.


6 **The New Board**

7 With the recent changes, the Dreamer’s new board looks like this ...

Board Position	Name	Occupation
President	Bernie Bernstein	Retired Owner of a scrap metal company
1st Vice President	Consuela Delgado	Retired veterinarian
2nd Vice President	Simon Schuster	Two-year term expired
Secretary	Myra Capua	Life-long homemaker, now an empty nester
Treasurer	Rafael Tejada	Retired trucking union executive
Member	Mickey Moskowitz	Retired illustrator
Member	Sidney Pepper	Two-year term expired
Member (New)	Juan Del Toro	New owner and recent retiree
Member (New)	Wendy Bird	Owner, young, successful career-type

8 **The Next Board Meeting**

At the next board meeting, Juan and Wendy are welcomed and given an opportunity speak.




**Juan**

Thank you for the warm welcome to the board. I'm looking forward to making some changes. I believe that the community can operate more efficiently with a lower monthly maintenance fee.

A number of the owners in attendance, all seniors, respond with enthusiastic applause.

No, Rafael. I haven't had a chance to do that yet.




**Rafael**

Hi, Juan. I'm Rafael Tejada, the treasurer. I'm wondering how you can make such a bold proclamation. Have you even looked at the association's financial reports? Have you examined the budget and income and expense statements?

Feeling a bit defeated and embarrassed, Juan sits down.

Next, Wendy stands up and addresses the board.



**Wendy**

Hi, I'm Wendy. I'm so excited to be on the board! Firstly, I think we need to either repair or replace the water feature at the front entrance. Every night when I come home, I have to pass that eye-sore! Secondly, what is going on with the fitness center? It's a total disgrace! Don't we have maintenance staff to keep it clean? And the equipment! Please! Some of the machines look like they were bought in the 70s!! And, finally, there are so many wonderful children and teens in our community. As the board, shouldn't we see to their safety? We should build an ADA compliant playground for the children, and some sort of cool rec center for our teens. Furthermore, as a member of the board, I feel it's our responsibility to ensure proper maintenance, make all necessary improvements, sustain and increase the property values, and promote a healthy and enjoyable life style for our residents. And, that takes money, folks!

President, Bernie Bernstein responds ...

Wendy, in my opinion, our community is doing just fine! The changes you're advocating are expensive and unnecessary!



**Bernie**

1 Other directors and senior owners are equally dismissive. They criticize her as inexperienced and insensitive  
2 to the financial problems of those who are on fixed incomes.  
3 Before the meeting, Wendy was able to garner support for her suggestions and concerns from friends and co-  
4 owners in the community. They were also at the board meeting and responded heatedly to her critics. They  
5 accused them of being antichildren, anti-family cheapskates, whose only concern is their own pocketbook!  
6 The board then turns its attention to the agenda and the meeting quickly degenerates, once again, into a  
7 shouting match between Bernie and Rafael, interspersed with angry comments from members that nothing is  
8 getting done. Some of the younger members voice their opinion that it's time for a change.

### 9 Gender Conflict

10 The Girls vs. The Good Old Boys

11 The women's liberation movement arrived late at the Dreamer's board of directors. Historically controlled by  
12 elderly men, Wendy's dramatic debut has had a greater impact than simply generating generational conflict.

### 13 Woman Power

A day after the meeting, Wendy receives a phone call from Consuela Delgado, the 2nd vice president of the board. (She and Myra are the other two female board members.) With the recent changes, there are now four men and three women on the board.

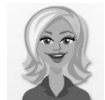


Consuela

Good afternoon, Wendy. I commend you for your courage in standing up to the "good ol' boys" who have run this board forever! There've been numerous incidents where I've been patronized and spoken to in a condescending manner by those men, just like you were! So, I regard you as a potential ally in bringing a "woman's touch" to the board and community. I believe that women bring a greater sensitivity to the needs of family and children. We're also more aware of the community's aesthetics.

Myra? Hmm ... I think she's too intimidated by Bernie and the other men. But, if we support and encourage her, she might just join us.

Consuela, you don't have to convince me! I agree that this place needs a woman's touch! Since there're three of us on the board, do you think we can depend on Myra to join us?



Wendy

One afternoon, Consuela runs into Myra at the clubhouse.



Consuela

Myra! How nice to see you. So what did you think of the board meeting last week?

Well, Myra cleared that up! We definitely can't depend on her support.

You know, Consuela, Bernie is my friend. It was shameful what Wendy did - putting him on the spot like that! This just reinforces my belief that women aren't as capable of handling leadership and the stresses that come with it as men are. Have a good evening.



Myra

1 **Ethnic Conflict**

2 Working in a Multicultural Community

3 As mentioned before, the Dreamer’s residential demographic composition is in a state of change to be more  
4 diverse.

5 Originally populated by retirees from up north, often of the East-European Jewish and Italian descent, it has  
6 become populated by more younger people who are of a Latino descent.

7 The Dreamer has become a more diverse and multicultural community.

8 The conflict between President Bernie Bernstein and Treasurer Rafael Tejada was exacerbated during a recent  
9 board meeting.

10 Rafael and new member Juan Del Toro were engaged in a side conversation in which they were speaking  
11 Spanish. When he heard them, Bernie demanded that they speak English.

12 This remark evoked responses from the Latino members accusing Bernie of prejudice, and support for Bernie  
13 from the native-born members, asserting that English should be the only language spoken during board  
14 meetings.

15 Some Dreamer owners are now taking sides on the basis of ethnicity without considering the best interests of  
16 the association.

17 **Selective Enforcement**

18 Violation is in the Eye of the Beholder

19 Soon after the board meeting, Rafael (board treasurer) and Wendy (new board member) receive notices of rule  
20 violations from Bonnie, the association manager. Each is baffled by the receipt of the notice.

21 *Rule Violation Notices*

Rafael has been cited for leaving his car parked on the street after midnight. He's all too aware that others are guilty of the same infraction. He immediately calls Bonnie, the CAM.

I'm so sorry! I sent the notices at the request of the board president, Bernie. No other notices have been issued.

Wendy is cited for failing to maintain a clean roof. She has seen the roofs of her neighbors and knows that hers is no worse than theirs. She calls Bonnie right away.

This was done as retaliation ...  
... Bernie!!

Rafael

Bonnie

Wendy

... for our opposition to the board president  
... Bernie!!

22 **Conflict Summary**

23 The Dreamer community is now in the middle of a nightmare, divided by personality, generational, gender, and  
24 ethnic conflicts, and seemingly unable to conduct the business of the association.

25 The president and treasurer, the members with the highest level of fiduciary responsibility, as well as other  
26 board members, are engaged in a struggle for power and control. Some appear to have placed their personal  
27 agendas ahead of their fiduciary responsibilities. It also appears that the power of the board to enforce its rules  
28 and regulations is being used in an attempt to punish and intimidate the president's opponents.

29 Can things get any worse?

## 1 Conflict Q&A

2 What is your role as the CAM, if any, in managing conflict in a community association?

3 Your primary role is to advocate, during board and other formal and informal meetings, for a civil discourse on  
4 the issues, and to remind the participants that their conduct during meetings is governed by Roberts Rules of  
5 Order (if referenced by the governing documents) or other written policies.

6 The manager should seek to meet with each board member individually and attempt to re-focus them on their  
7 fiduciary responsibilities. She may also enlist the intervention of the association's attorney, which could lead to  
8 a closed meeting in order to resolve the disputes and avoid possible litigation.

9 The manager may also recommend that the board employ a certified mediator to attempt to reduce the  
10 interpersonal conflict.

11 If the manager believes that the president's or other directors' actions are in violation of the association's  
12 documents or state statute, such as selective enforcement, the manager should advise them of her concerns  
13 and refer them to the association's attorney for guidance. She should document her actions, perhaps by a  
14 memorandum to file.

## 15 THINGS GET WORSE

### 16 Outline

17 In this section, we'll discover how the situation at The Beautiful Dreamer gets worse and what could have  
18 prevented it. Topics include:

- Planning and budgeting
- Inadequate resources
- Financial mismanagement
- Corruption
- Record mismanagement
- Buildings and facilities
- Litigation
- Insurance claims
- Employee morale and performance
- Manager in "no man's land"

### 19 Planning and Budgeting

20 A number of owners, including Jeff Robbins, an accountant, and Lou Vincent, an attorney, are concerned about  
21 the apparent chaos and inability of the board to conduct business. They each write a letter to the manager  
22 requesting copies of the operating and reserve budgets, the most recent financial report, and a copy of the  
23 annual audit. Within the required ten days, they receive copies of the budgets and financial report, but no audit.  
24 Bonnie attached a note to inform them that the association hasn't had a professional audit performed for the  
25 past three years.

After receiving the note, Jeff calls Bonnie.



Jeff

Hi, Bonnie. Can you please tell me how the budget is developed?

Ok. So, is there any kind of planning or priority setting process?

Hi, Jeff. Of course. Bernie, the BOD president, always directs me to keep the maintenance fee at the same level and simply play with the expense accounts so that the budget is balanced. Because the expenses have increased over the past few years, we are no longer funding the reserve account.

Well, I'm not aware of any planning process. All priorities are set by Bernie, who told me that his financial decisions are determined by the type of breakfast he has that morning. He is more likely to spend money if he has bran flakes, and less likely if he has a bagel with cream cheese.



Bonnie

1 **Planning and Budgeting Q&A**

2 **How should community associations create their basic financial strategy?**

3 A properly prepared and realistic annual budget functions as the plan to fund an association’s annual and long-  
4 term expenses. This requires an understanding of the statutory requirements and setting of association specific  
5 objectives and priorities.

6 An accurate estimate of the actual costs of properly operating the association, based on historical data and  
7 projections of inflation and other causes of price increases is essential for the operating budget.

8 The reserve budget, updated annually, is developed based on a professional evaluation of the condition of the  
9 association’s structures and equipment, replacement cost, and remaining years of useful life. It provides the  
10 long-term plan to fund capital expenses and deferred maintenance. The cost for the current year is determined  
11 by dividing the replacement cost, less the balance in each account type (painting, paving, roof replacement,  
12 etc.) divided by the remaining years of useful life. The cumulative cost of all items is required to be included in  
13 the annual budget, unless waived or reduced by a vote of the members.

14 **Inadequate Resources**

Jeff begins to feel uncomfortable. He’s been an owner for six years and has never thought to question how the association was being managed, until now. He calls Bonnie to find out a few things.

**Jeff:** Do you know when the front entrance water feature will be repaired?

**Bonnie:** Well, Jeff, when that feature was installed about five years ago, it was built by an unlicensed contractor who used substandard materials. The vendors who came out to inspect it, all stated that it could no longer be repaired. It should be replaced.

**Jeff:** Do you know if other projects have been done in the same way?

**Bonnie:** Unfortunately, while I've been here, the governing principal has always been "cheaper is better." Mostly because the owners are happiest when their maintenance fees are kept to a minimum. Bernie believes that it's more economical to replace equipment only after it fails. This way the full value of the item is received for the cost.

15 **Inadequate Resources Q&A**

16 **Why is cheaper not better?**

17 Cheaper is not better because cheaper equipment typically results in a failure to properly perform routine and  
18 preventive maintenance. This results in a reduction of the useful life of structures and equipment. The lack of  
19 maintenance ultimately costs the association significantly more to replace such items.

20 The use of less expensive, sub-standard providers and materials typically results in poor workmanship and  
21 more frequent breakdowns and replacement. Frequent breakdowns, resulting from a lack of maintenance,  
22 creates inconvenience, and possible hazardous conditions for owners.

23 **Financial Mismanagement**

24 During his review of the Dreamer’s financial reports, Jeff observes the following:

- 25 ■ The operating cash account is equal to less than two months of the budgeted operating expenses.
- 26 ■ Over 15% of the owners are at least three months in arrears.
- 27 ■ The reserve budget is not being funded.
- 28 ■ Funds were transferred from the reserve account to the operating account (without authorization from  
29 the owners) in order to avoid a deficit.
- 30 ■ The owner’s equity (i.e., the association’s assets less liabilities) is in negative territory.
- 31 ■ A number of large expenses were charged to the miscellaneous account.

After his review of the financial reports, Jeff presents his findings to a concerned group of owners.



Jeff

I have reviewed the Dreamer's financial reports. This is what I found:

- The association is being mismanaged.
- Money might have been misappropriated.
- There's a need for an immediate audit.
- There's the possibility that the association may be approaching insolvency.

1 **Financial Mismanagement Q&A 1**

2 **How many months of operating expenses should an association maintain in its cash accounts?**

3 Community association accountants typically recommend maintaining a minimum of three months of expenses  
 4 in the community association's cash accounts. This cushion is necessary in order to pay for unanticipated  
 5 and/or large, onetime-only expenses.

6 **Financial Mismanagement Q&A 2**

7 **What is the purpose of adequately funding reserve accounts?**

8 The purpose of adequately funding reserve accounts is to have funds available for capital expenses and  
 9 deferred maintenance in order to avoid special assessments and loans.

10 **Financial Mismanagement Q&A 3**

11 **How can reserve funds be legally transferred to the operating account?**

12 Reserve funds can be legally transferred to the operating account by an affirmative vote of a majority of the  
 13 association's voting interests, unless a different percentage is stated in the documents, at a properly noticed  
 14 and quorumed members' meeting.

15 **Corruption**

The group of concerned owners receives Jeff's report with expressions of outrage. A few of them want to report the president, Bernie, and the treasurer, Rafael, as well as some other board members to the police for theft of the association's funds.

I, being an attorney as well as an owner in the Dreamer, recommend that we find additional information to determine the likelihood that funds have been stolen before bringing in the authorities. The association might have crime insurance or a fidelity bond to cover the loss, if a theft has occurred. Also, we need to pressure the board to obtain an audit. The HOA Act requires an annual audit base on the revenue amount we collect. If it hasn't been done, the association is in violation of the statute. I'll be happy to write the board a letter to demand that an audit be performed.



Lou



Jeff

Bonnie has been very helpful in providing information. I'll ask her for additional financial and insurance records.

16 **Corruption Q&A 1 & 2**

17 **What type of financial report is the Dreamer required to prepare and distribute to its members?**

18 **How frequently is the Dreamer required to prepare a financial report and provide notice to its owners of the  
 19 availability of that report?**

20 If an association's annual revenue is \$500,000 or greater, it is required to prepare and distribute an audit by a  
 21 CPA annually, unless a majority of the owners at a duly noticed and quorumed members' meeting vote in favor  
 22 of a less comprehensive financial report, such as a compilation, review, or statement of cash receipts and  
 23 expenditures.

1 **Corruption Q&A 3**

2 **When is the report to be made available to the owners?**

3 The report must be completed within ninety days of the end of the fiscal year or on the date provided in the  
 4 bylaws. The association shall provide each member with a copy of the report or a written notice of its availability  
 5 at no charge within twenty-one days after the report is completed, but not later than one hundred-twenty days  
 6 after the end of the fiscal year, or other date as provided in the bylaws,

7 **Note:** The Dreamer’s revenue exceeds \$500,000, therefore, it’s required to comply with these requirements.

8 **Records Mismanagement**

Keeping his promise to the owners, Jeff sent a letter to Bonnie requesting information.



Hi, Bonnie. Did you get my letter requesting documentation on the five purchases that were charged off to the miscellaneous account?

Hi, Jeff. Yes, I received your letter. Since those records are being held by Bernie, the president, I'll have to pass your request to him.



After two weeks, Jeff realizes that he hasn't receive the records he requested. Because of this, the association has violated Florida law. He promptly contacts the association's secretary, Myra.



Hi, Myra. I submitted a request for some financial documentation over two weeks ago. Since I haven't received the requested information, the association is in violation of Florida law. Are you aware of your fiduciary responsibility to maintain the association's records?

Yes, Jeff. I'm aware of my fiduciary duties; however, if the president chooses to maintain the records himself, he has the authority to do so. You're nothing but a troublemaker, Jeff. Good day!

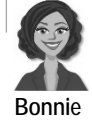


Enraged, Jeff rushes to the management office.



Bonnie, I demand to see where and how the financial and other records are being maintained!

Jeff, the records are all over the place. Some are in the treasurer's house and others are kept by the secretary or president. The records were in chaos when I took the position two years ago, and unfortunately, I haven't had the time to straighten them out yet. Let me show you the storeroom, so you'll understand what I mean.



Bonnie takes Jeff to a locked storeroom where he sees nearly one hundred boxes. Many are in poor or damaged condition and unlabeled. Also, there are stacks and stacks of unfiled, loose documents.

Yes, I see very well what you mean. I can tell you that there's likely to be an official investigation of the financial records.

See what I mean?

I understand. I will give the investigator my full cooperation.

1 **Records Mismanagement Q&A 1 & 2**

2 Within how many days is the Dreamer required to comply with an owner's written request for access to its  
3 financial records?

4 F.S 720 requires that owners be provided access to records within ten days of a written request.

5 **What is the penalty for non-compliance?**

6 Failure to provide the records within ten days of a written request may result in a \$50-per-day fine beginning  
7 the eleventh day. The fine is limited to ten consecutive days.

8 **Records Mismanagement Q&A 3 & 4**

9 What are the statutory requirements that govern the access to records for owners of condominiums and  
10 cooperatives?

11 A condominium and cooperative association is required to provide access to the records within five days of a  
12 written request from an owner.

13 **What are the penalties for non-compliance?**

14 Failure to provide the records within five days of a written request may result in a \$50-perday fine beginning on  
15 the eleventh day. The fine is limited to ten consecutive days.

16 **Buildings and Facilities**

17 Board member, Wendy Bird, decides to conduct an inspection of the Dreamer's building, grounds, and  
18 recreational facilities. She gathers some of her supporters, one of whom is Diana Viera. Diana is a professional  
19 engineer. They set out on the expedition.

20 First, they inspect the exterior of the clubhouse, where they see that in several areas the paint is faded,  
21 discolored, or peeling.

22 Diana's attention is immediately drawn to the cracks, chips, bulges, and rust spots on the building's surface.  
23 While looking directly at a section of the cornice, a large bird lands on it then flies off. To her amazement, from  
24 that very spot, a fist-sized chunk of the cornice molding falls to the ground in front of her. Diana immediately  
25 concludes that a concrete restoration project is required.

26 The group completes its inspection, having identified multiple roadway, fencing, swimming pool, and playground  
27 equipment deficiencies, as well as both exterior and interior building defects.

28 That evening, Wendy receives a call from Lou Vincent, who tells her that he's contacting her because he  
29 understands that she's committed to resolving the problems that appear to be driving the community to  
30 destruction.

31 Wendy assures Lou that she is and related her experience during the building inspections. Lou, in turn, shares  
32 the activities of his group and its belief that there are serious financial irregularities, even the possibility of  
33 outright theft of the association's funds. Lou shares Jeff's experience when attempting to gather financial  
34 documentation.



Lou

So, we're in agreement then. It's time to call a community meeting to alert the owners to the dire state of the association and to map out an emergency strategy to address the issues that've been uncovered and to punish the wrongdoers.



## 1 **Litigation**

### 2 *The Community Meeting*

3 A substantial percentage of the Dreamer's association membership attend the meeting.

4 The group loudly denounces the current board as crooks and incompetents (with the exception of the new  
5 members and Consuela).

6 They then agree to constitute themselves as "The Beautiful Dreamer HOA Council and Concerned Owners," or  
7 COCO for short.

8 Wendy and Consuela agreed to serve as co-chairpersons for the group.

### 9 *COCO's Resolutions*

10 COCO proceeds to pass the following resolutions:

- 11     ▪ Hire a forensic accountant<sup>1</sup> to perform a comprehensive audit of the Dreamer's finances
- 12     ▪ Hire an attorney to bring a lawsuit against the association and directors Bernie, Rafael, and Myra
- 13     ▪ Obtain a court order that requires the board to provide access to the association records
- 14     ▪ Remove Bernie, Rafael, and Myra from the board for failure to perform their fiduciary responsibilities
- 15     ▪ Initiate an investigation to determine whether criminal acts had been committed.

16 Unfortunately, the group disregards Lou's advice, and agrees to deposit their monthly maintenance payments  
17 into an escrow account to be used to pay legal and forensic audit expenses.

### 18 *Mad Dog*

19 Within two weeks, COCO hires a forensic accountant and retains Attorney Jose Schultz, referred to by his  
20 colleagues as "Mad Dog" Schultz, as a tribute to his aggressiveness as a litigator and his questionable ethics.

21 Mad Dog files a lawsuit with the circuit court to petition it to order the association to:

- 22     ▪ Turn over financial records for the past five years to the forensic accountant
- 23     ▪ Remove the three aforementioned directors from the board
- 24     ▪ Require those directors to pay damages and legal expenses

25 At the same time, he draws up the papers to initiate the recall of the board members. COCO members began  
26 the process of obtaining the number of signatures required to remove the three from the board.

### 27 *Bernie's Revenge*

28 Upon being served, Bernie immediately contacts the association's attorney, Julie Garfinkel. Julie requests that  
29 they hold a closed-door board meeting to discuss the allegations in the lawsuit.

30 She asks Bernie if any of the board members are associated with COCO, to which he responds, "Yes, Wendy  
31 and Consuela." Julie directs him to exclude them from the meeting. She also advises him to contact the  
32 association's insurance agent to determine if the association's policies provide for legal defense against these  
33 types of claims.

34 Bernie agreed to contact the agent and to call the meeting.

35 Bernie then demands Julie to initiate a countersuit against the members of COCO and, in particular, Wendy  
36 and Consuela for the slanderous statements they made against him and the other board members.

37 Julie responds that slander can be difficult to prove, expensive to prosecute, and that the amount of damages  
38 awarded is frequently disappointing to the plaintiff. Plus, such a lawsuit won't be covered by the association's  
39 insurance. It's possible that the director might have to pay for the countersuit - not the association.

40 Bernie advises her that he'll find an attorney that's willing to represent the association AND pursue a slander  
41 suit. He added, "I intend to make those people sorry that they ever dared to challenge me!"

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<sup>1</sup> Forensic accounting is the specialty practice area of accounting that describes engagements that result from the actual or anticipated disputes or litigation.

1 *Litigation Q&A 1*

2 How many votes are required to recall a director?

3 A majority of the voting interests<sup>2</sup> are required to recall a director.

4 In the Dreamer, a majority of the voting interest is 126 parcels.

5  $250 \text{ parcels} / 2 = 125 + 1 = 126$

6 Only an individual on the deed may vote. So, for instance, if an owner's wife, who is not on the deed signs a recall petition, it's not valid. Only owners may sign recall petitions.

8 *Litigation Q&A 2*

9 Can owners of an HOA legally withhold payment of their maintenance fees because they believe the association funds are being misused or stolen?

11 No. Owners of an HOA may not withhold their maintenance fees for any reason. They can initiate a recall of some or all of the current board members, for no reason or any reason, including those whom they believe to be misusing funds. If owners have evidence that a criminal act has occurred, they should report it to the police and/or initiate legal action.

15 **Insurance Claims**

16 *The Dreamer's Insurance*

17 Bonnie and Bernie contact Ezekiel Habib, the association's insurance agent. After receiving a copy of the lawsuit, Ezekiel informs them that the board didn't renew its directors and officers (D&O) insurance policy, therefore neither the directors nor the manager are protected should they become defendants in an association related lawsuit.

21 Ezekiel informs them that he will forward the claim to their liability carrier; however, he said, "Don't hold your breath. Your carrier is nonrated, has a reputation for denying legitimate claims, and its only redeeming quality is its low premiums."

24 Bonnie asks Ezekiel if the association has a fidelity bond or crime policy.

25 Ezekiel informs her that the association has coverage up to \$50,000.

26 Bonnie knows that at any given time the association has between \$150,000 and \$200,000 in its cash accounts, so the \$50,000 fidelity bond is too low.

28 Now she's concerned about the safety of the association's money and even more concerned that she might be named in a future lawsuit although she hasn't done anything illegal.

30 *Insurance Claims Q&A 1*

31 Is the association legally required to carry directors and officers (D&O) insurance?

32 The association is only required to carry D&O insurance if it's required to do so by its governing documents or by a resolution of the board.

34 However, we strongly recommend that every board carry a D&O policy to protect the association and its officers, directors, volunteers, and employees.

36 *Insurance Claims Q&A 2*

37 Is the association required to carry a crime policy or fidelity bond?

38 Yes. The bond must be for the highest amount of cash the association might have in its account at any given time during the duration of the policy. This includes reserve funds as well as operating funds.

40 If, "Yes," what must the bond amount be?

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<sup>2</sup> A voting interest is the total number of parcels or units that are eligible to cast a vote on an issue within an association. This excludes any members whose vote has been removed by the board and confirmed by the fining committee for not paying assessments or violation of the rules.

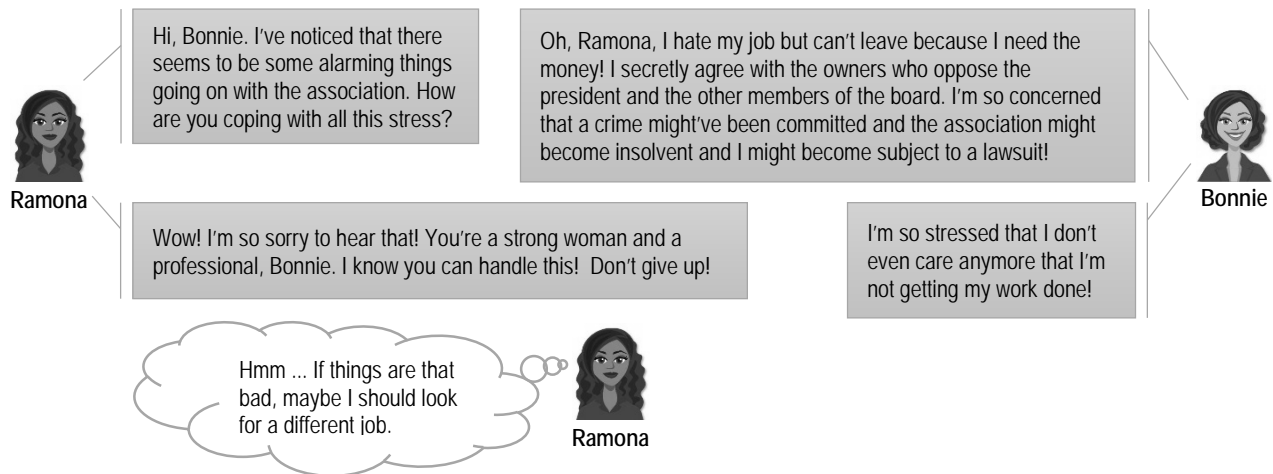
## Employee Morale and Performance

The Dreamer has two employees, Bonnie, the CAM, and Ramona, the maintenance supervisor.

Although Bonnie and Ramona are in frequent communication regarding work orders and maintenance issues, Bonnie hasn't discussed her concerns about the Dreamer's board and the community upheaval with Ramona.

Ramona has noticed a change in Bonnie over the last several weeks. She's noticed that Bonnie went from being a happy, enthusiastic, and communicative person to a depressed, quiet person who is frequently looking at the office clock. Ramona has overheard owners discussing the various things going on with the association.

Ramona decides to approach Bonnie to determine how she's coping with the stress of being in the middle of the conflict.



## Manager in “no man’s land”

After her conversation with Ramona that morning, Bonnie sits at her desk not knowing what she should do next. The office makes her feel like she's in a desert, all alone with no means of escaping this nightmare. She knows that she needs to find a means of emotional support and a strategy to sustain her during her remaining time at the Dreamer.

Bonnie decides on several actions to take to relieve her stress:

- Meet with supportive family members and close friends
- Exercise more regularly and take a yoga class
- See her doctor for an examination and possible prescription
- Speak with a minister at the local church

Before Bonnie leaves the office, she's already feeling better. With a plan to help herself, she's positive she can handle what's happening at the Dreamer.

After all, she's a professional!

## Summary

The Beautiful Dreamer community is now at a point where issues have surfaced that can no longer be ignored. The owners' head-in-the-sand approach that seemed to work in the past is no longer operable.

The question that the board and owners must face is how to fix the association so it can get through the current crises and become, once again, a vibrant and healthy community.

# 1 CHAOS MANAGEMENT

## 2 Outline

3 In this section, we'll discuss how the Dreamer resolves its conflicts.

4 Topics include:

- 5     ▪ • Methods of conflict resolution
- 6     ▪ • The role of leadership
- 7     ▪ • Rule enforcement
- 8     ▪ • Fixing the financials
- 9     ▪ • Records management
- 10    ▪ • Fixing the property
- 11    ▪ • A litigious situation
- 12    ▪ • Personnel management

## 13 Methods of Conflict Resolution

14 Formal methods of conflict resolution that the Dreamer's owners and board might employ include mediation, arbitration, and litigation. Other methods include discussions among the parties and diplomacy.

### 16 Diplomacy

- 17 1. The profession, activity, or skill of managing international relationships
- 18 2. Skill and tact in dealing with people

19 For this presentation, the second definition applies.

### 20 *Mediation*

21 In order to avoid the destructive consequences of continued conflict and litigation in the community, Bonnie decides to enlist the services of a mediator who is trusted and respected by both factions - Moises Davidovitch.

23 Moises is an owner who had served for many years as the chairperson of the fines committee, during which he established a reputation for fairness and intelligence by seeking peaceful and creative resolutions to disputes among neighbors who were referred to the committee.

26 As a snowbird, Moises returned to the Dreamer after the emergence of the community conflicts. Hopefully, he remains neutral to either side.

28 Bonnie contacts Moises. During the phone call, she advises him of the situation in the association, including the recent history of dysfunction, confrontation, and litigation.

30 Moises immediately understands the gravity of the situation and agrees to help.

31 Moises begins his mission of mediation. First, he contacts two of the board members with whom he has friendly relationships, Myra (BOD secretary) and Consuela (BOD 1<sup>st</sup> VP). From each of the woman, he receives different accounts of the situation - as expected.

34 Myra's version relays the disrespectful and unappreciative behavior of the opposition and that they had filed a lawsuit. She's convinced that neither Bernie nor Rafael have done anything illegal. She states that Bernie has receipts for the money he charged to the miscellaneous account.

37 Consuela's explanation conveys the opposition's concerns and suspicions regarding the association's records and financial accounts. They suspect that Bernie and Raphael have stolen association funds. She also explains how COCO was formed and that they have retained an attorney, Mad Dog.

40 In another conversation, Bernie presents Moises with the receipts for the purchases charged off to the miscellaneous account. Bernie explains that he uses the miscellaneous account to pay for unanticipated repairs that don't fit into any other budget line item.

1 Moises suggests that a meeting is necessary in order to resolve the situation with minimum cost to the owners  
2 and the association. Among those with whom he spoke, only Bernie refused to meet in person with the  
3 opposition.

4 Moises realizes that he has to use subtle diplomacy until tensions cool enough to the point when everyone can  
5 sit at the same table.

## 6 **The Role of Leadership**

### 7 *Elements of a Crisis*

8 Management theorists have written that there are three elements common to a crisis ...

- 9       ▪ A threat to the organization
- 10       ▪ The element of surprise
- 11       ▪ A short decision time<sup>3</sup>

12 Steven J. Venette contends that,

13 “Crisis is a process of transformation where the old system can no longer be maintained.”<sup>4</sup>

### 14 *Leadership Abilities Required*

15 Erika Hayes James identifies the following five leadership abilities required to facilitate organizational  
16 restructuring during and after a crisis<sup>5</sup>.

- 17       ▪ Building an environment of trust
- 18       ▪ Reforming an organization’s mindset
- 19       ▪ Identifying obvious and obscure vulnerabilities of the organization
- 20       ▪ Making wise and rapid decisions as well as taking courageous action
- 21       ▪ Learning from crisis to effect change

22 The Dreamer’s owners must now determine if their current board has the necessary leadership abilities. If not,  
23 they must make changes in its composition. Without effective leadership, the Dreamer will only descend deeper  
24 into its collective nightmare.

### 25 *Change of Leadership*

26 Bernie and Rafael determined that it’s in their best interest to resign from the board. Their replacements, Moises  
27 and Jeff, are elected as president and treasurer, respectively.

28 The new leadership immediately initiates the following actions:

- 29       ▪ Creates a newsletter and website to keep owners informed of board planning and activities
- 30       ▪ Opens additional channels for residents to voice their concerns

## 31 **Rule Enforcement**

32 Moises wastes no time in cleaning up the association. He knows that to garner the community’s support, the  
33 board must function in a fair and equitable manner. He needs its support in order to facilitate the strong, and at  
34 times, painful measures necessary to create order from chaos.

35 He directs Bonnie to take the following actions:

- 36       ▪ Rescind the violation notices that were sent to Wendy and Rafael
- 37       ▪ Schedule regular inspections of the community to identify the most egregious rule violations and to  
38       send out notices to those owners
- 39       ▪ Meet with Mickey Moskowitz, the chairperson of the compliance committee, for guidance regarding  
40       violations

<sup>3</sup> Seeger, Matthew W.; Sellnow, Timothy L.; Ulmer, Robert R. (1998). "Communication, Organization, and Crisis". *Communication Yearbook* 21: 231-275.

<sup>4</sup> Venette, Steven J. (2003), "Risk Communication in a High Reliability Organization: APHIS PPQ's Inclusion of Risk in Decision Making."

<sup>5</sup> James, Erika H. (Spring 2007). "Leadership as (Un)usual: How to Display Competence in Times of Crisis," *Leadership Preview*.

## 1 **Fixing the Financials**

2 The new treasurer, Jeff, takes his new fiduciary duties very seriously.

3 He takes the following actions to fix the Dreamer's financial situation:

- 4     ▪ Hires a CPA firm to conduct a forensic audit on the Dreamer's financials
- 5     ▪ Conducts a workshop meeting with the board during which they do the following:
  - 6         ○ Review the current financial report
  - 7         ○ Identify priorities
  - 8         ○ Initiate action to revise the budget so it reflects those priorities
  - 9         ○ Discuss the possibility of bidding out major current service contracts, specifically security and
  - 10         ○ Landscaping
  - 11         ○ Prepare the owners for a possible special assessment
- 12     ▪ Review the aging report and request a status report from the association's attorney, Julie. Upon
- 13     completion of his review, Jeff takes the following actions:
  - 14         ○ Directs Bonnie to mail an initial demand letter to all of the owners who are over thirty days
  - 15         ○ delinquent and have not been sent the letter
  - 16         ○ For those owners who received the initial delinquent letter but failed to respond or submit payment
  - 17         ○ within the required timeframe, Jeff instructs Julie to file claims of lien against those properties
  - 18         ○ For owners who already have claims of lien on their properties, but have failed to respond or submit
  - 19         ○ payment within the 45-day timeframe, Jeff authorizes Julie to initiate foreclosure actions on those
  - 20         ○ properties
  - 21         ○ For owners who are currently in association-initiated foreclosure proceedings, Jeff authorizes Julie
  - 22         ○ to expedite legal action to foreclose on those properties
  - 23         ➤ However, if the association received a qualifying offer from a delinquent owner to which the
  - 24         ➤ association did not respond, Jeff authorizes Julie to contact that owner to determine if they are
  - 25         ➤ willing to renew their qualifying offer

### 26 *Fixing the Financials Q&A*

#### 27 **What is a qualifying offer?**

28 A qualifying offer is a written offer from a delinquent owner, whose property is under foreclosure, to pay all

29 amounts secured by the lien of the association, plus amounts accrued during the pendency of the offer.

30 The owner's filing of the qualifying offer with the court stays the association's foreclosure action for the period

31 stated in the qualifying offer, which may not exceed 60 days following the date of service of the qualifying offer

32 and no sooner than 30 days before the date of the trial, arbitration, or the beginning of the trial docket, whichever

33 occurs first. If the owner fails to adhere to the terms of the qualifying offer, the association can immediately

34 move to foreclose.

## 35 **Records Management**

36 Moises, the new BOD president, is aware of the association's records situation, and sets out to take care of it.

37 Since Myra is the association secretary, it's her responsibility to ensure that the records are complete, in good

38 condition, and readily accessible.

39 However, when Moises approaches Myra regarding the records condition and his directive to clean them up,

40 she promptly resigns from the board, citing that it's too big of a job for her.

41 Moises understands and requests her resignation in writing, which she gives to him right then.

42 Desperate for a willing secretary, Moises calls Wendy, who was just recently elected to the board, and asks for

43 her help. Wendy tells Moises that she's perfect for the job since she's obsessive-compulsive with great

44 organizational and technological skills.

- 1 Moises and Wendy agree to form a records committee with Wendy as the chairperson and several of her friends  
2 within the community as members.
- 3 Moises promptly sends an email to the board members and Bonnie to inform them of Myra's resignation and  
4 Wendy's new records committee. Additionally, Moises instructs Bonnie to confirm that all out-going board  
5 members have returned all of the association records that they had in their possession.
- 6 Shortly thereafter, the records committee meets and agrees on a set of objectives, priorities, and strategies.  
7 One of which is to achieve a paperless office by maintaining all documentation online and protected by the most  
8 modern security and backup technology.
- 9 Moises is pleased with the progress in cleaning up the mess.

### 10 *Records Management Q&A*

11 **Once directors and officers are no longer on an association's board, within how many days must they return all  
12 official records to the association?**

- 13 Florida statutes are silent with respect to when an HOA's outgoing directors and officers must return the official  
14 records, therefore, an HOA must rely on its documents or its rules and regulations to determine this timeframe.
- 15 Condominiums and cooperatives require outgoing board members to return official records within five calendar  
16 days<sup>6</sup>. [Condo - F.S. 718.111(12)(f)] [Coop - F.S. 719.104(2)]

### 17 **Fixing the Property**

#### 18 *Structural Issues*

- 19 Bonnie receives a citation from the city's code enforcement department in which the association is cited for  
20 unsafe structures. Apparently, an anonymous owner has reported the state of disrepair of the clubhouse and  
21 water feature to the city. The Dreamer's association has sixty days in which to correct the identified deficiencies  
22 or pay a significant fine.
- 23 Promptly, Moises hires a professional structural engineer to provide an analysis of the structural integrity of the  
24 clubhouse and water feature. Shortly thereafter, the engineer provides Moises with his report. In it, the engineer  
25 recommends extensive structural repairs and exterior painting for the clubhouse at an estimated cost of  
26 \$500,000; and, the replacement of the water feature at an estimated cost of \$100,000.

#### 27 *Capital Projects*

- 28 At the next board meeting, the association determines to enlist the services of the engineer to do the following:
- 29     ▪ Create bid specifications for both projects
  - 30     ▪ Assist in the contractor bid and selection process
  - 31     ▪ Oversee each project to ensure its proper completion

#### 32 *Funding the Projects*

- 33 The board discusses how to fund these two projects as well as other anticipated repairs and renovations. Jeff,  
34 the treasurer, informs the members of the following relevant information:
- 35     ▪ There is \$75,000 in the building and facilities reserve account.
  - 36     ▪ The approximate shortfall of \$425,000 must be raised through a special assessment, a bank loan, or a  
37 combination of both.
  - 38     ▪ The cost of the authorized forensic audit might significantly reduce their cash reserves and might have  
39 to be included in the special assessment or loan application.

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<sup>6</sup> Please visit our website at [www.goldcoastschools.com](http://www.goldcoastschools.com), click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the statute regarding association official records, "Condo Official Records F.S. 718.111(12)" or "Coop Official Records F.S. 719.104(2)."

## 1 **A Litigious Situation**

### 2 *The Forensic Audit*

3 The board receives the results of the forensic audit. Among other issues found in the audit, the most disturbing  
4 one is that no receipts were found for \$70,000 in expenditures from the association's operating account four  
5 years ago.

6 Julie, the association's attorney, advises Moises to contact the police immediately, and to file a claim under the  
7 association's crime policy.

### 8 *Criminal Investigation*

9 Moises explains the situation to Sgt. Mike, the detective in charge of the fraud unit at the local police station.  
10 Mike asks Moises to come to the station to file a report and sign an affidavit.

11 During the conversation, the detective advises Moises to restrict knowledge of this report to the association  
12 attorney, accountants, and insurance agent. He could also share the information with the current treasurer and  
13 manager, but only if they didn't hold those positions four years ago when the alleged crime occurred. Moises  
14 expressed relief that neither were involved.

### 15 *Insurance Claim*

16 Bonnie contacts the association's insurance agent, Linda, to inform her of the audit results.

17 Linda informs Bonnie that the current crime policy covers crimes only within this current period of coverage;  
18 however, the crime policy effective four years ago, would cover the association for the alleged theft up to  
19 \$25,000 per occurrence and \$100,000 in the aggregate.

20 Linda requests a copy of the audit and told Bonnie that a claims adjuster will contact her.

### 21 *Slander Lawsuit*

22 A week later, Julie advises Bonnie that, as the registered agent for the Dreamer, she was served with a notice  
23 from Bernie Bernstein's attorney that the association, Wendy Bird, and Consuela Delgado are being sued for  
24 slander.

25 During a closed-door board meeting, Julie brings the board up to date on the criminal investigation and the  
26 lawsuit. She informs all present that they are not to discuss anything related to the investigation and lawsuit  
27 with anyone, including family members.

28 She also recommends that the association contact its insurance agent to determine if its D&O or liability policies  
29 provide coverage for the legal defense of the association and the named members.

## 30 **Personnel Management**

### 31 *Bonnie - The CAM*

32 In a meeting with Bonnie, Moises expresses his concern for her since she appears fatigued. Bonnie explains  
33 that the work load has become increasingly harder to handle. With the additional burden of litigation, insurance  
34 claims, capital projects, special assessments, and other crisis-related activities, her day-to-day responsibilities,  
35 such as monitoring work orders and routine inspections, are not getting done.

36 Moises promises that he'll enlist a few volunteers to pitch in.

37 Bonnie suggests that they could reactivate the landscape and building maintenance committees so that they  
38 could take part of the responsibilities. Moises likes the idea and will look into it immediately.

### 39 *Ramona - The Maintenance Supervisor*

40 Next, Moises meets with Ramona, the maintenance supervisor. He asks her how she's doing. She responds  
41 tersely that everything is OK.

42 Moises asks to see her daily work log. Ramona informs him that she hasn't completed any reports since Bonnie  
43 discontinued their daily meetings. Moises replies that she needs to submit those reports and, if Bonnie is  
44 unavailable to review them with her, a volunteer will be appointed to fulfill that function.

45 He assures Ramona that she's doing a good job and that things will get better. At the same time, he's thinking  
46 that she will require close monitoring and perhaps a change of personnel might be required.



## 1 *Personnel Management Q&A*

2 How can the activation of a committee be helpful to the manager and the board?

3 The activation of a committee can be helpful to the board if it has an effective chairperson who ensures that the  
4 committee acts within the scope of its responsibilities, and communicates effectively with the manager,  
5 president, and board. In this way, it can significantly reduce the workload and stress of the manager and board  
6 members.

## 7 **HOPE FOR THE FUTURE**

### 8 **Outline**

9 In this section, we catch up with what's happened at the Dreamer after six months. We'll hear from the following  
10 specialists:

- 11     ▪ The specialists speak
  - 12         ○ Professional engineers and designers
  - 13         ○ Attorney
  - 14         ○ Accountant
  - 15         ○ Management consultant

### 16 **The Specialists Speak**

17 Six months have passed. The Dreamer's new leadership has made substantial progress toward achieving its  
18 primary goals of bringing order out of the chaos and creating a viable future for the association.

19 More than a few owners, including some board members, have expressed concern about the high cost of the  
20 special assessment, increased maintenance fees, and the seemingly never-ending legal costs. Many of them  
21 say that they're willing to pay for the special assessment, but are concerned that it might be the first among  
22 many others to come. They fear that they might be caught up in an expensive lost cause and may be throwing  
23 good money after bad.

24 Moises realizes that the board and the owners might've been in denial with respect to saving the Dreamer, that  
25 perhaps they should've simply pulled the plug on the association's life support systems and permitted it to go  
26 into receivership. The board agrees to his recommendation to obtain professional opinions on the status of the  
27 association.

### 28 *Professional Engineers and Designers*

29 The Board passed a special assessment to fund the concrete restoration of the clubhouse.

30 The contractor has submitted his monthly invoices using the American Institute of Architects (AIA) reporting  
31 format that provides information on the scope of work, items completed, and unit and total costs.

32 Bonnie requested from the structural engineer a projected estimate of the total cost of the project, including his  
33 fees. The engineer responded that, as evidenced by the many change orders, it's impossible to provide an  
34 accurate estimate of the total cost of the project. He reminded Bonnie that the board special assessed for 10%  
35 over the winning bid to pay for change orders. He suggests that at least an additional 10% might be required.

36 Bonnie also contacted the landscape designer who is functioning as the project manager for the front entrance  
37 water feature.

38 He informed her that the project has been operating within budgetary limits, but that they've just encountered  
39 plumbing and electrical problems that weren't originally anticipated or funded.

40 He adds that the board will have to retain an electrical and a plumbing engineer to draw up specifications to  
41 replace corroded conduits and perform extensive rewiring.

42 Until those tasks are accomplished, he won't be able to provide an estimate.

1 *Attorney*

2 Julie Garfinkel has been providing the board with legal status reports and invoices on a monthly basis.

3 Moises now directs her to provide the board, and the recently hired accountant, with a written report on the  
4 likely outcome of each case, its probable duration, and an estimate of the legal fees the association will accrue.

5 Julie advised him that there's no way she can provide the information requested with any degree of accuracy  
6 because of the unpredictable behavior of defendants, their attorneys, and the courts.

7 She, instead, forwards a comprehensive status report to the accountant and the board.

8 *Accountant*

9 Moises is aware that accountants, like any other service provider, might have conflicts of interest between their  
10 desire to serve their client and their desire to retain a paying customer.

11 He recalls that the annual audit performed by its accountant a number of months ago identified cash flow and  
12 receivable problems, but it didn't characterize them as critical.

13 The board decides that it might be best to hire another firm to access the Dreamer's financial records, and make  
14 it clear to that firm that it's being retained for a one-time service.

15 The new accountant reviewed the attorney's, engineer's, and landscape designer's reports, in addition to  
16 obtaining completed questionnaires from the association's insurance agent, manager, and president.

17 He analyzed the annual and forensic audits, the current balance sheet, and the income and expense statement.  
18 In particular, he looked for trends in the receivables reports to determine whether there is evidence of significant  
19 improvement or further decline.

20 The final report issued to the board concludes that, while there's been significant improvement in the financial  
21 position of the association, the Dreamer's prospects for future solvency remain unclear until the litigation,  
22 insurance claims, and in particular, the cost of capital projects, can be accurately determined.

23 *Management Consultant*

24 Given the uncertainty of the reports received from the professionals, the board determined to continue in its  
25 current direction.

26 They also decided to seek professional guidance from a highly regarded community association management  
27 consultant, Benjamin Francois and Associates. The board directed Benjamin to evaluate the management and  
28 maintenance systems of the association, to identify areas requiring improvement, and to recommend cost  
29 effective changes.

30 Benjamin and his team reviewed the association's governing documents, its rules and regulations, financial  
31 reports, board and committee meeting minutes, insurance policies, contracts, records management, and  
32 information systems as well as the reports submitted by the experts.

33 He then spent most of the next five business days observing the manager, maintenance director, security  
34 personnel, and other contractors in the performance of their duties. He also interviewed the president and other  
35 officers.

36 Within a month, Benjamin delivers a comprehensive report to Moises and Bonnie. The report describes the  
37 operations of the association and its deficiencies. It also contains numerous cost savings measures  
38 recommendations with respect to almost all systems, but it especially focuses on the largest budget items, such  
39 as security, insurance, legal, landscaping, janitorial, and management.

40 Benjamin informed the board, in both the report's preface and summary, that its operations are characterized  
41 by inefficiency and waste, and, if significant changes are not made within a short period of time, the association  
42 will most likely be forced into receivership within the next year. He further states that, if the board adopts the  
43 report's recommendations, he's confident that the association will be restored to financial and organizational  
44 health.

1 **SUMMARY**

2 The Beautiful Dreamer has come a long way on its journey. It's now at a fork in the road, not knowing which  
3 way to turn.

4 If it takes the management consultant's advice, it will be forced to make many radical changes that will be, at  
5 the worst, disruptive and, at best, contentious. Although there are no guarantees of success, it might be its only  
6 path to survival. If it continues going in the same direction, it may or may not muddle through.

7 One thing appears clear, however, this is no longer a board run amok. It now consists of reasonable and  
8 competent people who have the community's best interests at heart. It remains to be seen whether the new  
9 board, functioning in an environment of doubt and uncertainty, can transform the Dreamer into a viable reality.

10 Thank You!

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## A BOARD RUN AMOK

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Use the answer sheet on page 119 to indicate your responses

1. **What is an important difference between community associations and other corporate boards of directors?**
  - a. Community association directors, unlike other corporate directors, must be qualified.
  - b. Community association officers are not financially compensated by the association. (This answer would also be correct if “not” is used. Deleted.)
  - c. Community association directors are frequently neighbors residing in the same community.
  - d. Community association directors are required to be civil to one another during board meetings.
  
2. **When does a personality, generational, ethnic, or gender conflict within a community association board of directors require management intervention?**
  - a. Immediately upon occurrence
  - b. If a board member is offended
  - c. If it has a negative impact on the operation of the association
  - d. If an attorney is on the board
  
3. **What harmful result might selective enforcement have on an association?**
  - a. Remediation of a violation
  - b. Less vocal opposition to the association president
  - c. Loss of rule enforcement capability
  - d. Prioritization of the type of violations requiring enforcement
  
4. **Select the best phrase to correctly complete this statement: Community association members**
  - a. Are not responsible for the quality of their association’s management and maintenance
  - b. Do not have to comply with the rules of their association if the owner believes the rules are unreasonable
  - c. Should discuss current repair projects with contractors in order to keep themselves informed
  - d. Can recall directors with whom they are dissatisfied
  
5. **What should the community association budget accomplish?**
  - a. Limit maintenance fees to the amount the association president is willing to accept
  - b. Not be a financial hardship on persons on fixed incomes
  - c. Identify the amount of funds needed to accomplish the annual and long term objectives of the association
  - d. Ensure that the costs of disasters are funded
  
6. **Which statement accurately describes the community association’s records?**
  - a. The records must be maintained in written form rather than electronically.
  - b. The records are the primary responsibility of the association’s secretary.
  - c. The records, without exception, must be made accessible to all owners upon request.
  - d. The records must be written in English.
  
7. **Select the statement that most accurately describes the effective performance of facilities and grounds maintenance.**
  - a. It cannot be accomplished without a lot of owner complaints.
  - b. It requires a committee of owners who are retired building trade professionals.
  - c. It is best accomplished in conformance with a comprehensive preventive maintenance schedule and work order system.
  - d. It costs less if expensive equipment is permitted to fail before being replaced.
  
8. **Which statement correctly describes an association’s attorney’s responsibilities?**
  - a. The attorney must provide information to any owner upon request.
  - b. The attorney does not have to comply with a board resolution to communicate only with the association president.
  - c. The attorney must interpret the law in a manner acceptable to the board of directors.
  - d. The attorney, under certain circumstances, can exclude directors from attending a closed meeting of the board.

- 9. What is the purpose of directors and officers insurance?**
  - a. To prevent directors from being sued by other directors
  - b. To provide legal defense for directors who are sued for slander or libel
  - c. To protect managers from being sued by the association for errors they make resulting in costs to the association
  - d. Cannot be placed with a surplus lines carrier
- 10. What must the association's crime policy accomplish?**
  - a. It must cover the maximum amount of money the association will have in its accounts at any one time.
  - b. It must provide coverage for claims against the board of directors for spending more than the amount budgeted for management services.
  - c. It must be issued by an A-rated or higher company.
  - d. It must protect the manager from losses resulting from investing with a foreign prince on the office computer.
- 11. How can managers who are under stress improve their job performance?**
  - a. Increase their alcohol consumption
  - b. Exercise and meditation
  - c. Work longer hours
  - d. Express their concerns to unit owners and co-workers
- 12. Which of the following is NOT a method of conflict resolution?**
  - a. Mediation
  - b. Arbitration
  - c. Diplomacy
  - d. Blame shifting
- 13. Which of the following is NOT a leadership ability during and after a crisis?**
  - a. Building an environment of trust
  - b. Reforming an organization's mind-set
  - c. Making wise and rapid decisions
  - d. Minimizing exposure of the leader to criticism
- 14. When is an HOA required to conduct an audit?**
  - a. When the board determines there is a need
  - b. If the association's annual revenue is at least \$500,000
  - c. If there is a \$50,000 budget deficit
  - d. Upon direction of the association's accountant
- 15. When is a community association board required to seek competitive bids for a construction project?**
  - a. When it's required by the governing documents
  - b. When the amount is less than 10% of the association's annual budget, including reserves
  - c. When the construction project is a repair rather than a replacement
  - d. When its attorney says competitive bids are required
- 16. When are unit owners not required to pay maintenance fees?**
  - a. When the board members do not properly perform their fiduciary responsibilities
  - b. When they are in litigation with the association
  - c. When the association is in receivership
  - d. Never
- 17. What should a CAM do if he or she is employed by a dysfunctional board of directors?**
  - a. Immediately seek new employment
  - b. Obey the directions of the association's president
  - c. Send out fewer violation notices in order to reduce conflict
  - d. Explore different approaches to reduce the dysfunction
- 18. Which of the following statements best describes a CAM's responsibility when he or she is involved in a capital project?**
  - a. Is not required to ensure that required permits are obtained if the association's president objects
  - b. Is not required to review a contractor's invoice if the designated project manager authorizes payment
  - c. Is required to be well informed and knowledgeable of the technical aspects of the project
  - d. Is responsible to facilitate the effective operation of the project and keep the board informed of its progress

**19. Which of the following statements accurately describes the possible results when there are conflicts among board members?**

- a. Conflicts always lead to dysfunction and should be immediately resolved.
- b. Conflicts can result in board members becoming aware of previously unknown problems.
- c. Conflicts require the president to act to ensure that during a board meeting all agenda items are addressed.
- d. Conflicts can always be resolved by respecting each board members right to express themselves.

**20. For which of the following is an association accountant not responsible?**

- a. Preparing accurate financial reports including a balance sheet, income and expense statement, accounts receivable, and accounts payable reports
- b. Providing a management productivity analysis to the board
- c. Alerting the board to cash flow problems
- d. Preparing the annual financial report

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