

# MANAGERS' BREAKFAST: D&O CLAIM AVOIDANCE & RISK MANAGEMENT

## SPEAKERS:

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THE AQUA TURF IN PLANTSVILLE, CT • 8:30 -10:00 AM



# WHY DO PEOPLE CHOOSE A COMMUNITY ASSOCIATION IN THE FIRST PLACE?



**I Give Up, Why?**

# TO PROTECT THEIR TWO GREATEST ASSETS

• **THEIR HOME & THEIR LIFESTYLE**





# WHAT PROTECTS ASSOCIATION ASSETS?

**By-Laws, CC&Rs & applicable Local, State & Federal Laws**

**Fees & Assessments**

**Directors & Officers**

**+**

**CAMS the**



# SOMETIMES THIS IS HOW IT SEEMS





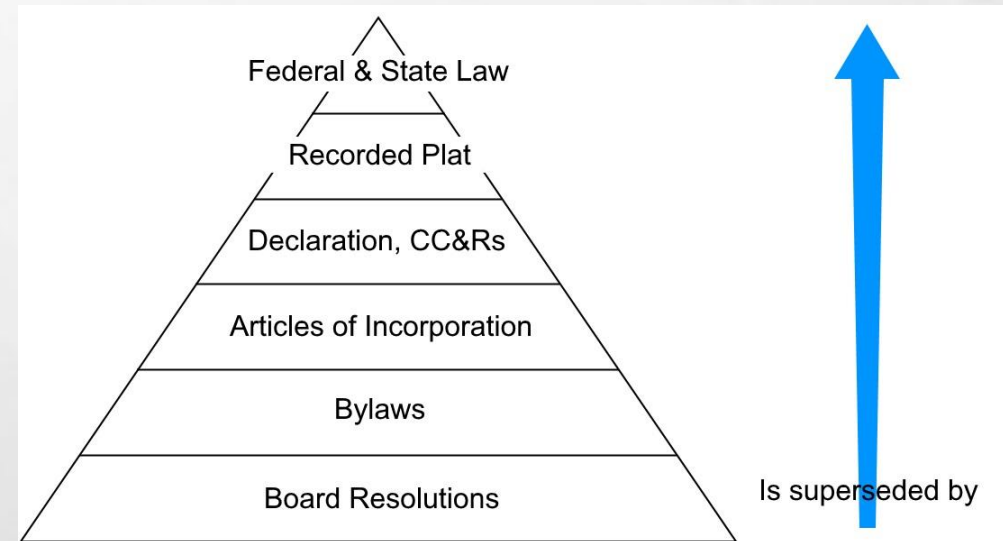
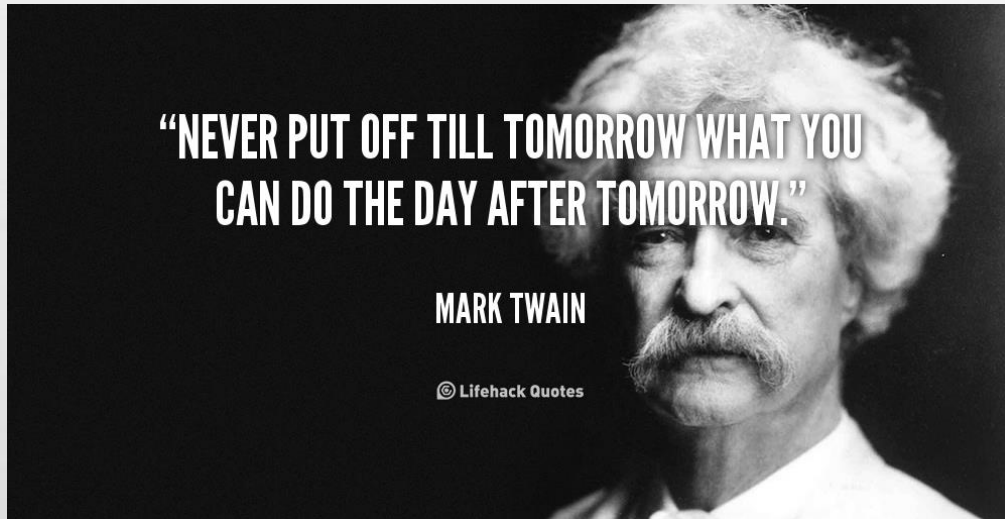
# FIRST, WHAT IS 5,000 TO 6,000?



# WHAT IS THE LCD FOR THE 5,000 TO 6,000 D&O CLAIMS?

Lowest  $\left\{ \frac{\text{Common}}{\text{Denominator}} \right\}$

# FAILURE OF UNIT OWNERS TO READ THE GOVERNING DOCUMENTS BEFORE PURCHASE





# BOARD MEMBERS NOT UNDERSTANDING THEIR DUTIES AND OBLIGATIONS



**DON'T MAKE THE  
PROCESS HARDER  
THAN IT IS**

JACK WELCH

PICTUREQUOTES.COM

PICTUREQUOTES

# HOW DO CAMS HELP COMMUNITY ASSOCIATION VOLUNTEER BOARDS AVOID DIRECTOR & OFFICER CLAIMS?



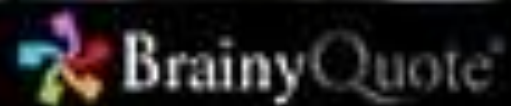
# DOES THIS REMIND YOU OF YOUR BOARD?





**Tell me and I forget.  
Teach me and I  
remember. Involve  
me and I learn.**

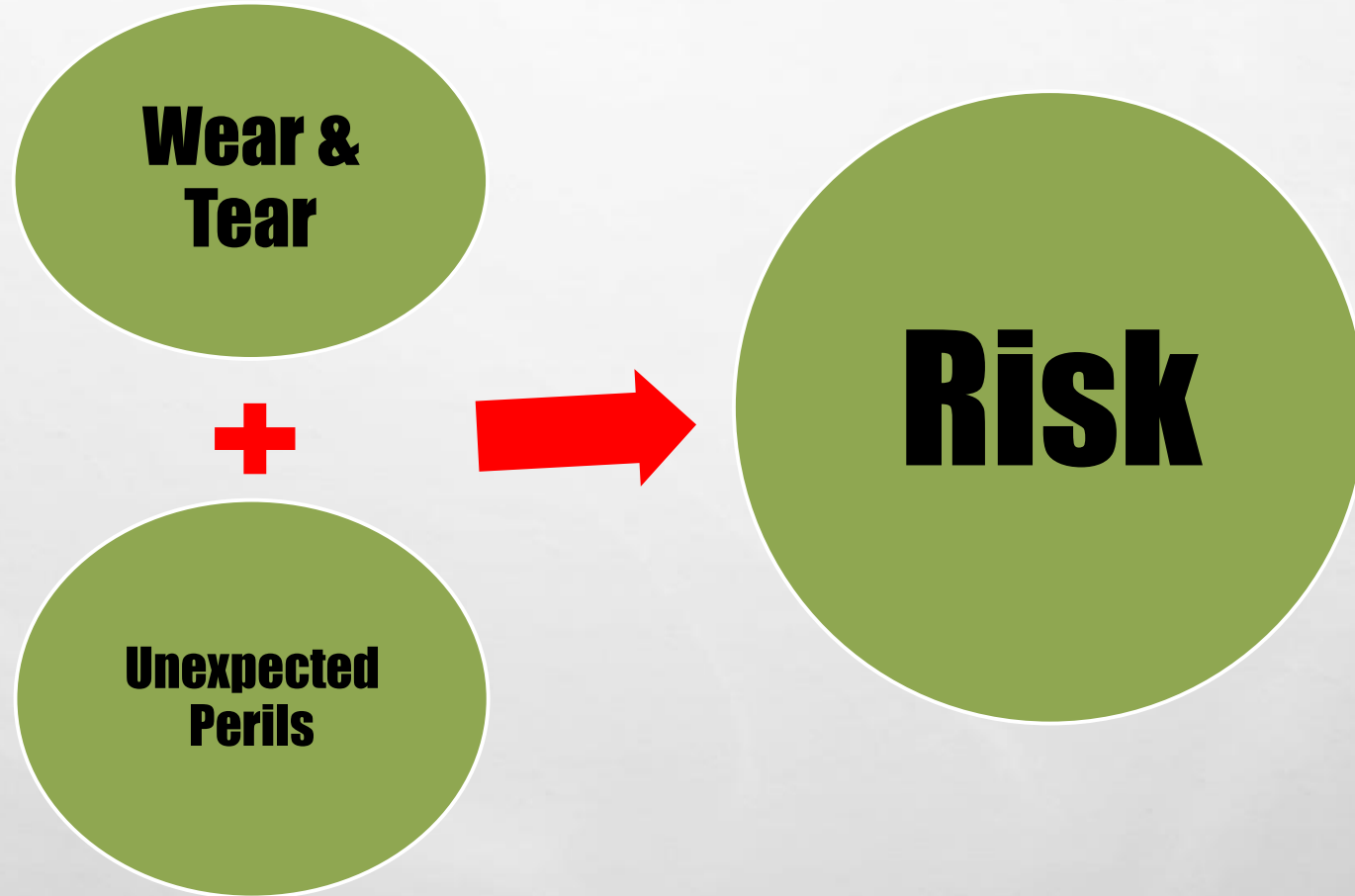
*Benjamin Franklin*



# CLAIM PREVENTION

- RESERVE STUDY
- GOVERNING DOCUMENT REVIEWS AND UPDATES
- BOARD EDUCATION AND TRAINING
- ROBERTS RULES OF ORDER
- PROFESSIONALS
- TECHNOLOGY RESTRICTIONS
- EARLY INTERVENTION AND ADR

# COMMUNITY ASSOCIATION RISK





**Common  
Elements**

**Lifestyle**

**What is  
at Risk?**

**Unit Owner  
Property  
Value**

**Association  
Value**

# Who is the Community Association Risk Manager?



# The Board!!!!

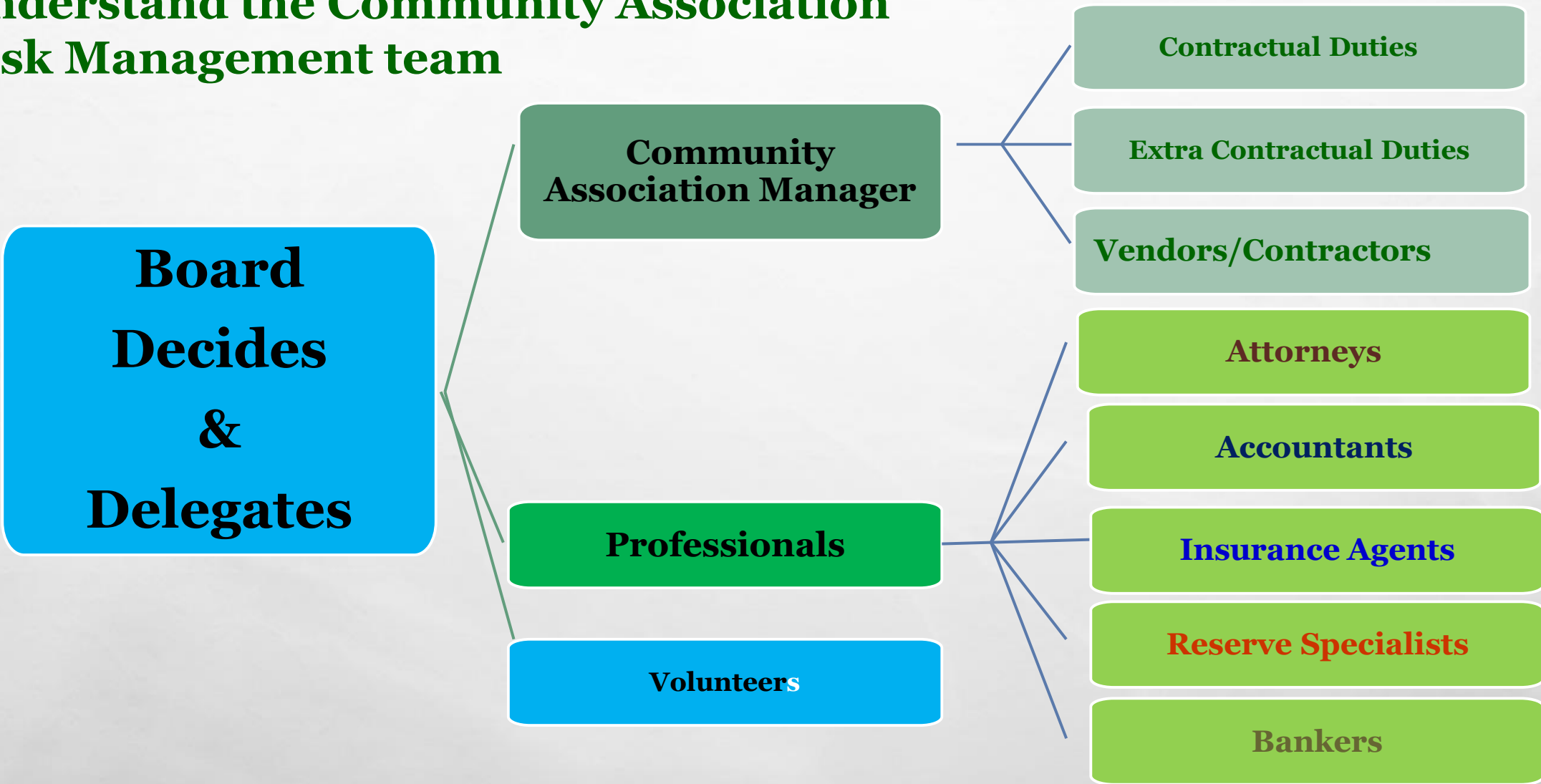


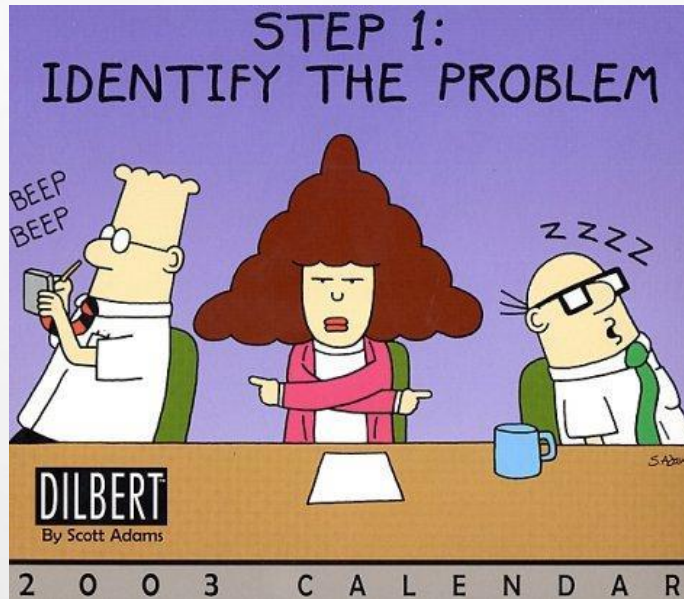


**WHERE DO WE START?**  
**NOT EVERYTHING IS INSURABLE OR INSURED!**



# Understand the Community Association Risk Management team





# Board of Directors Audit

## Quality of Management Worksheet

(see accompanying form)





## Insurance ALONE Does Not Protect Community Association Assets

### A Not Insurable:

1. Wear & Tear
2. Normal Business Transactions
3. Against Public Policy/Moral Hazard

### B. Not Insured:

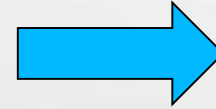
1. Price over Coverage – economic decision
2. Coverage you do not know exists – failure to use a qualified community association insurance professional

# IF A CLAIM IS NOT INSURABLE OR NOT INSURED, HOW IS THE COST TO PROTECT THE ASSETS COVERED?

**Community  
Association  
Assets**



**Special  
Assessments**



**Board Member  
Personal Assets**



# RESERVE STUDY = THE KEY TO RISK MANAGEMENT

**Public Service  
Announcement:**

**A Reserve Study is  
worth its weight in  
gold !!!!!**





# WHY A RESERVE STUDY?

- COMMUNITY ASSOCIATION BLUEPRINT
- INSURANCE FOR – WEAR & TEAR
  - PROPERLY FUNDING A RESERVE STUDY =  
INSURING THE UNINSURABLE
  - CHOOSING NOT TO FUND MAY IN FACT =  
POSSIBLE BREACH OF FIDUCIARY OBLIGATION

# GOVERNING DOCUMENTS

## THE FOUNDATION OF THE COMMUNITY ASSOCIATION

- **Are the Governing Documents Relevant?**

- Originally prepared by developer?
- Does association demographic reflect the original vision?
- Do they require updating or restatement?

- **Are the Governing Documents Current?**

- Do they reflect current law?
- What about issues never contemplated?
  - medical marijuana
  - drones
  - emotional support animals

- **Have Governing Document Changes been Properly Memorialized?**



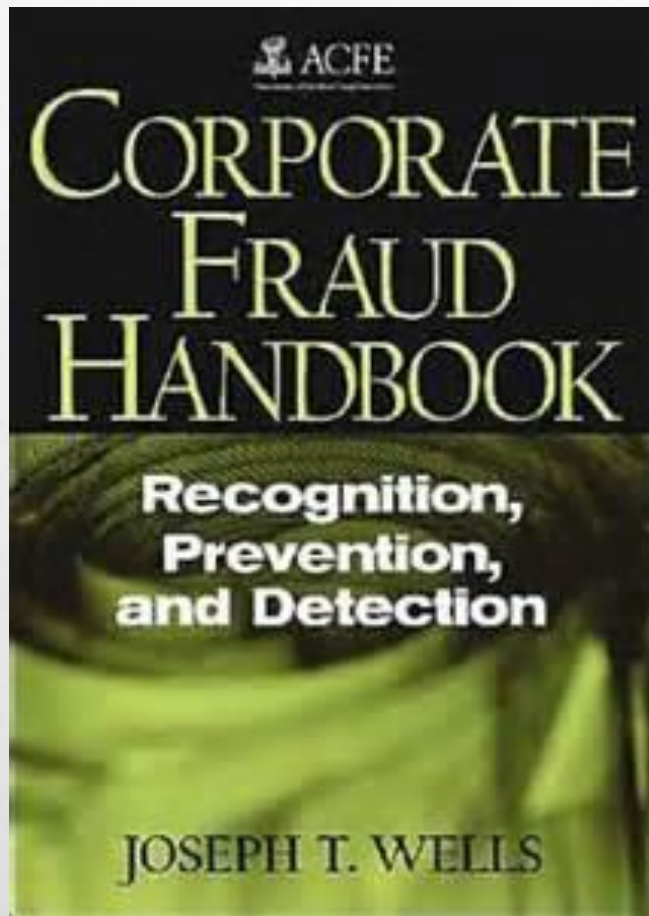
# BOARD TRAINING [ANNUAL]

- **THIS SHOULD BE AN ANNUAL REQUIREMENT FOR ALL BOARD MEMBERS**
  - UNDERSTAND OBLIGATION – PUT INTEREST ASSOCIATION ABOVE THEIR OWN
  - UNDERSTAND THE LIMITATIONS ON THEIR BOARD POSITION – I.E. ROLE OUTSIDE THE BOARD ROOM. [JUST SAY NO TO E-MAILS]
  - UNDERSTAND CHANGES IN THE LAW
- **BOARD MEMBERS SHOULD BE REQUIRED TO READ THE GOVERNING DOCUMENTS BEFORE RUNNING**
- **NEWLY DRAFTED DOCUMENTS SHOULD INCLUDE THE REQUIREMENTS**

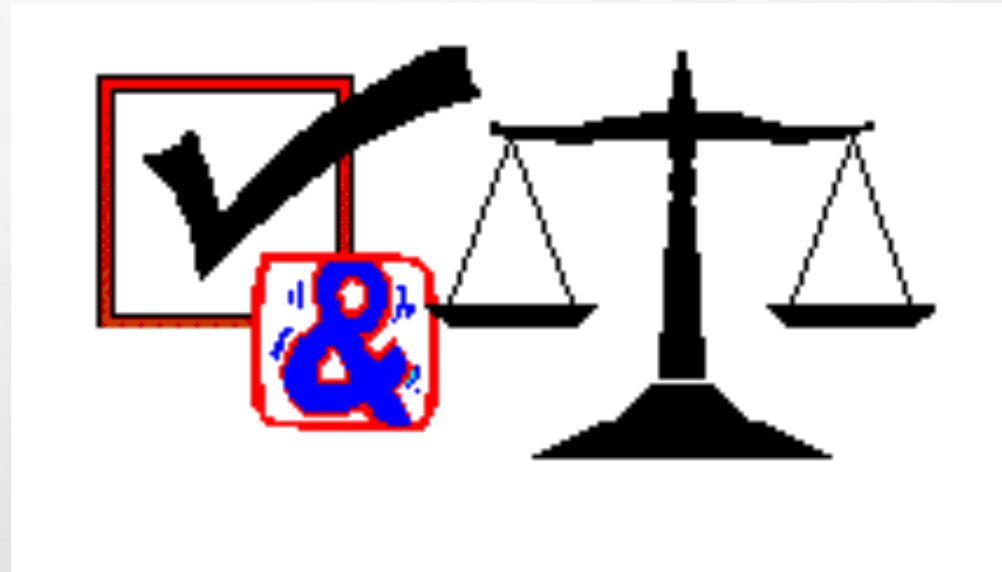


# CONTRACTS

- When should an attorney **REVIEW** a community association's contract? [financial threshold; type of service; length of contract]
- **Indemnification** [unilateral; mutual; defense]
- **Insurance requirements**
  - **Certificates of Insurance**
  - **Additional Insured Endorsements**
  - **Not an end in and of itself**
    - **is the insurance valid**
    - **is the insurance still in force**



## Fraud Prevention Checklist



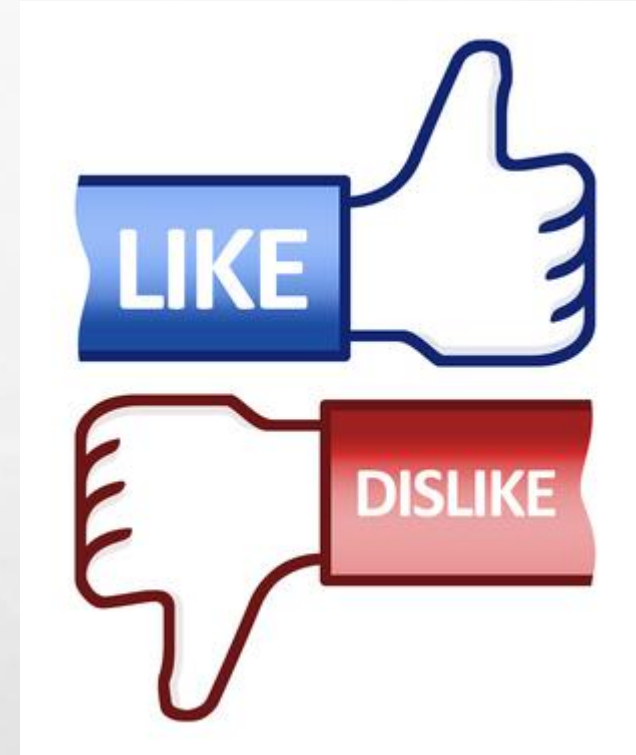
# **THE BLESSING AND CURSE OF TECHNOLOGY: THE IMPACT OF CYBER LIABILITY, DATA BREACH, SOCIAL MEDIA AND SOCIAL ENGINEERING ON COMMUNITY ASSOCIATIONS**





# WHAT TECHNOLOGY DOES YOUR ASSOCIATION USE?

- ☐ ON LINE BANKING
- ☐ UNIT OWNER ON LINE PAYMENTS
- ☐ VIRTUAL BOARD MEETINGS
- ☐ VOTING ON LINE OR BY E-MAIL
- ☐ BOARD MEMBER EMAIL COMMUNICATIONS
- ☐ COMMUNITY ASSOCIATION WEBSITE
- ☐ ASSOCIATION BULLETIN BOARD
- ☐ ASSOCIATION FACEBOOK PAGE
- ☐ ASSOCIATION COMPUTER SYSTEMS
- ☐ DRONES
- ☐ BOARD MEMBER GOOGLE RESEARCH
- ☐ SECURITY CAMERAS
- ☐ MANAGEMENT COMPANY CONTROL OF TECHNOLOGY
- ☐ AUDIO OR VIDEO RECORDING OF BOARD MEETINGS



# **SHOPPING INSURANCE MEANS: SHOP FOR THE COMMUNITY ASSOCIATION INSURANCE PROFESSIONAL, NOT THE PRODUCT!**

- The Board must protect the association assets not save money
- What is the professionals Community Association Experience
- Interview insurance professionals – Do not delegate
- Get references
- What do they need to analyze the community association's insurance needs?
  - Governing Documents
  - Existing Insurance Program
  - Reserve Study
  - Financial Statements
  - Walk the property
  - Minutes
  - Website

**See Insurance for Mandatory  
HOAs and Condos Handout**

# COMMON MISTAKES WHEN SUBMITTING OR HANDLING A CLAIM

- NOTICE FAILURES
- POOR COMMUNICATION
- WEAK DOCUMENTATION
- FAILURE TO UNDERSTAND CHOICE OF COUNSEL
- FAILURE TO PROTECT PRIVILEGE
- FAILURE TO PROPERLY USE CONTRACTORS AND DEAL WITH REPAIRS
- FAILURE TO UNDERSTAND COVERAGE

# **EFFECTIVE SUBMISSION AND HANDLING OF A CLAIM**

- **CONTACT YOUR INSURANCE PROFESSIONAL**
- **GIVE PROPER NOTICE**
- **DOCUMENT – PICTURES, PICTURES AND PICTURES**
- **MITIGATE AS NECESSARY**
- **CONTACT YOUR COMMUNITY ASSOCIATION ATTORNEY IF THE ASSOCIATION HAS ONE**





# CHEER UP

If all else fails, you can set the building on fire