



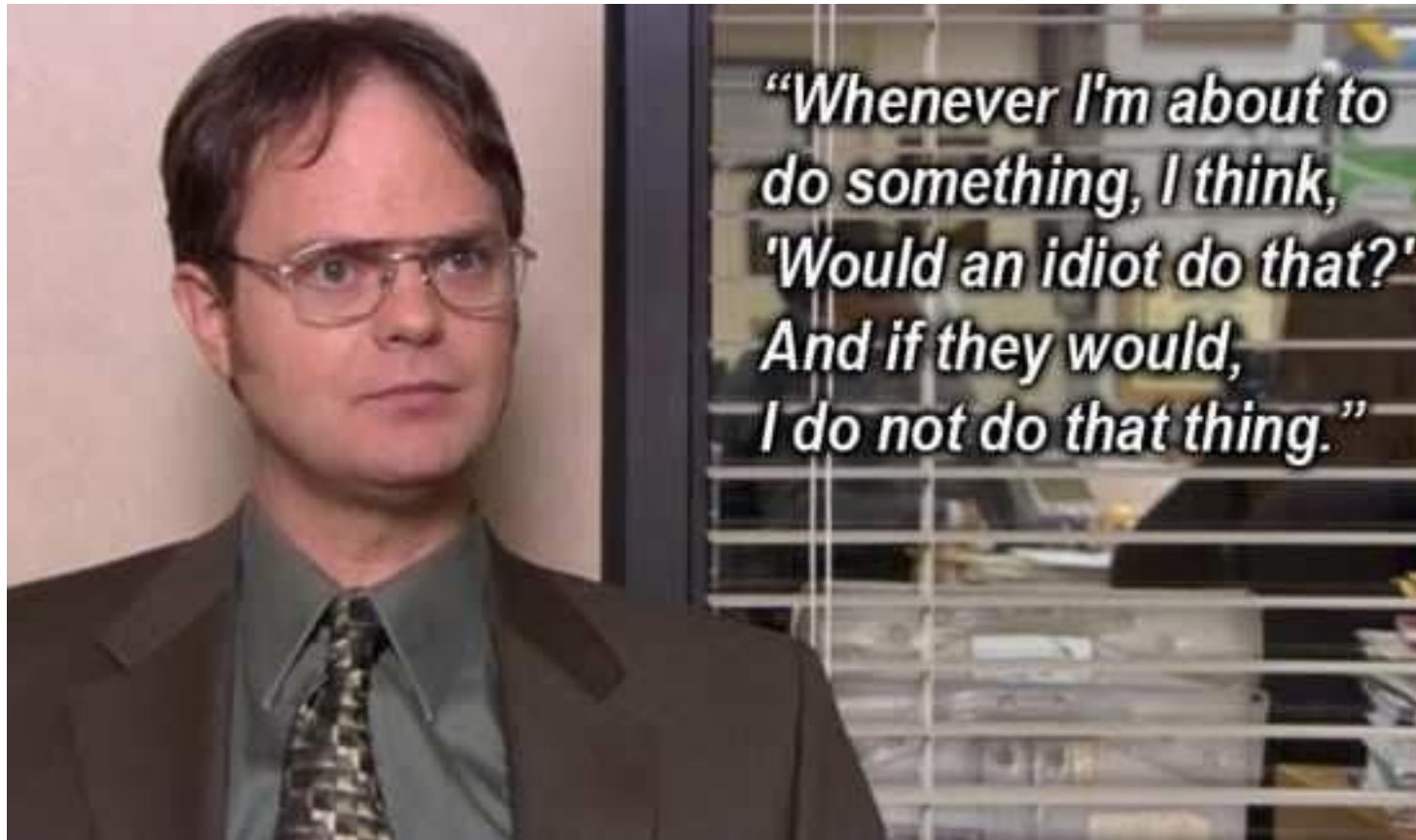
Risk, Reasonableness, and Readiness

Presented by:
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- What are the top 3 RISKS your Association faces?
- How can you make your Association **READY** to address those risk?



Risk and Readiness



FINANCIAL RISK

RISK

- Embezzlement/Fraud

READINESS

- Two check signers
- Separation of auditing and operation (Person reconciling check book does not have check writing authority/Person who has credit card does not receive statements)
- Regular third party compilation/review/audit



FINANCIAL RISK

RISK

- Insufficient Funds

READINESS

- Engage in yearly budgeting process
- Raise dues if necessary
- Maintain adequate “rainy day” day fund
- If you own significant real property, reserve study and reserve contributions



FINANCIAL RISK - Collections

RISK

- Lack of Dues Paying Culture
- Bankruptcy

READINESS

- Develop written collection policy and enforce
- Persistence
- Stop Collections



FINANCIAL RISK - Insurance

RISK

- Significant Financial Liability

READINESS

- Casualty Insurance
- General Liability
- Directors and Officers



REGULATORY/LEGAL RISK

RISK

- ADA Compliance
- Fair Housing Act (FHA) Compliance
- Bankruptcy

READINESS

- Public Accommodations
- Reasonably Accommodate
- Stop Collections



Administrative Risk - Poor Recordkeeping

RISK

- Incomplete/incorrect Financial Records
- No record of Board action at meetings
- No record of Member action at annual meetings
- No record of changes to policies, enforcement, etc.

READINESS

- Treasurer should have experience or hire third party
- Minutes Record Action (not a transcript)
- Tabulate, document, and record all Member voting
- Document everything and appoint an Officer to ensure retention



GOVERNANCE RISK

RISK

- Poor Board Relations
- Lack of Productivity

READINESS

- Strong Leadership
- Majority Rules
- Upside Down Agenda
- Control Member Participation
- Assign action items, tasks, and accountability



ENFORCEMENT RISKS

RISK

- Waiver
- Overstep Authority
- Selective Enforcement

READINESS

- Change the Character of the Neighborhood
- Understand your Governing Documents
- Adopt Written Enforcement Policy and Communicate
- Document Violations



LEASING RISKS

RISK

- Don't violation your own Restrictions
- Renters don't honor restrictions/regulations/policies
- Don't know who the renters are
- Leasing owners are absentees
- Difficult to Enforce

Readiness

- Cannot Ban Renters unless Restrictions Allow
- May Regulate – Adopt Leasing Policy
- Require leases to incorporate restrictions
- Require landlords to identify lessors
- Copy lessors and tenants on all enforcement issues
- Landlords are business people and respond to fines



YOUR RISKS

RISK

READINESS



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**“I think the seller will accept your offer,
but the Homeowners Association will
never approve that shirt.”**



*“Hey, don’t blame me. I don’t make the laws
—I just circumvent them.”*

Perspectives from the Bench

Judge John Reynolds



Judge Rob Johnson



Updates to the Kentucky Nonprofit Corporation Act

■ Major Changes:

- Number and election or appointment of directors (KRS 273.211)
- Committees of the board – Advisory committees (KRS 273.221)
- Books and records (KRS 273.233)



Number and election or appointment of directors (KRS 273.211)

- OLD:

- “In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the article of incorporation.”
- Required amendment of Articles of Incorporation or Bylaws to change number of directors

- NEW:

- Minimum number of directors: THREE (3) – KRS 273.211(1)(a)
 - Number may be stated in Articles of Incorporation or Bylaws
- Variable range (minimum/maximum) for directorships allowed – KRS 273.211(1)(b)
 - Number within the range may be “fixed or changed by the board of directors”
- Directors may be removed from office by the procedure provided in the Articles or Bylaws



Committees of the board – Advisory committees (KRS 273.221)

- Board can establish committees
 - Each committee shall have two (2) or more directors
 - Committee members who are not directors may serve, but may not vote on any matter that binds the corporation
- Committees can exercise powers of the Board as provided by the Articles or Bylaws, except committees cannot:
 - Authorize distributions
 - Fill Board vacancies
 - Adopt, amend, or repeal Bylaws
 - Elect, appoint, or remove officers
 - Establish its own committees or appointment procedures
 - Amend or restate the corporation's Articles
 - Adopt a merger or consolidation plan
 - Authorize the sale, lease, exchange, or mortgage of all or substantially all of the corporations' property and assets
 - Authorize the voluntary dissolution of the corporation
 - Amend, alter, or repeal any resolution of the Board



Committees of the board – Advisory committees (KRS 273.221)

- Board may establish advisory committees
 - No directors required on an advisory committee
 - Advisory committee may not act on behalf of the corporation or bind the corporation
- Board’s creation of and reliance on committees does not absolve directors of standards and duties
 - KRS 273.215: good faith; informed basis; best interests of the corporation; “prudent person” standard, etc.
- TAKEAWAY: If the Board uses a committee, develop a plan and stick to it
 - *Before* establishing a committee, make sure the Board and committee have proper authority
 - Use of advisory committees to make recommendations to the Board is easiest
 - Use of voting committees requires director participation, and non-directors may not vote



Books and records (KRS 273.233)

- OLD: “the member’s right of inspection **may not** be abolished or limited”
- NEW: “the member’s right of inspection **may be** abolished or limited by the corporation’s articles of incorporation or bylaws”
 - Corporation still has a duty to “keep correct and complete books and records”
 - Default rule: “All books and records...may be inspected and copied by any member”
 - Unstated requirement: any abolition/restriction of access should apply equally to all members; do not single out difficult members
 - Practical Consideration: will it look bad to your members if you restrict their access to records?



TEN MINUTES LEFT -
LET'S DO THE STRATEGY





THANKS FOR COMING!



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