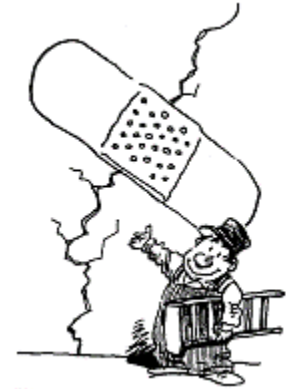


DEFERRED MAINTENANCE

QUESTION: The board claims our reserves are badly underfunded and raised our dues by 20%. They plan to raise them again next year because our manager said we have too much deferred maintenance. I disagree. When I was on the board we always minimized repairs because we have older people who can't afford high dues. Don't you agree that boards have to take into consideration people who can't afford their assessments? Can't we wait until something breaks and let insurance pay to replace it?

ANSWER: Wow. Where do I start? The fundamental duty of boards is to properly maintain the common areas. Collecting sufficient assessments to carry out that duty is required by statute. [Civil Code §1366\(a\)](#) Deferring maintenance for the wrong reasons can be a serious breach of the board's [fiduciary duties](#).



Improper Deferrals. Deferring maintenance to avoid spending money or raising dues is harmful to the membership because it (i) exposes the association to litigation and potential liability for damage caused by the deferrals, (ii) lowers property values, and (iii) increases the cost of the eventual repairs (which can result in huge special assessments). In addition, it may expose directors to claims of gross negligence, breach of CC&Rs, breach of statute ([Civil Code §1364\(a\)](#)), and breach of fiduciary duties. Under those conditions, the [business judgment rule](#) will not protect the directors from personal liability.

Proper Deferrals. Planned short deferrals (i) to raise funds for making repairs or (ii) to stagger repairs for scheduling purposes are considered acceptable business practices. Even so, boards must take care to protect members from any damage that might be caused by the delays.

Insurance. Boards who ignore their duties hoping to shift repair costs to the association's insurance company are in serious breach of their duties. Insurance companies will not pay for deferred maintenance. The purpose of insurance is to pay for unexpected catastrophic losses, such as fires, storms, floods, etc. By floods, I do not mean plumbing failures due to negligent maintenance practices. Boards who think they can get a free ride by dumping it on the insurance carrier are incredibly misguided.