

# **WHY HOMEOWNERS CAN FACE FINANCIAL HARM IF HOAS LET THEIR CORPORATE STATUS LAPSE**

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If the association (board of directors and community managers) have let their corporate status lapse, the board has failed in one of its fundamental obligations, namely to maintain the corporate status of the association. As fiduciaries, there are some duties that are nondelegable, and maintaining the corporate status is one of those duties that the board cannot palm off to a management company. Assuming that the board did think the management company was taking care of maintaining the corporate records, the board still had a duty to supervise management's actions and to verify that the records were kept current.

Titleholders (the owners) also are entitled to know if the corporate status has changed and the board should respond to all correspondence it receives should someone notice this status. One of the primary duties of the association's board is to disclose and disseminate information. Failure to respond to member inquiries can result in litigation to compel communication. Certain requests from members also come with statutory deadlines for response. A failure to adhere to these timelines can result in monetary penalties, even if an inquiry is ultimately satisfied.

The board's current obligation is to immediately remedy its corporate status. The corporate suspension may have happened for any number of reasons, including not paying due taxes, not filing the State of Nevada Ombudsman's form or not filing its annual list of Officer's Form, a form that lists basic information such as the corporation's address, directors and resident agent. You can go to the Secretary of State's website, which has a search function that can provide the status of a corporation. The website shows details that go back to the date of incorporation. <http://nvsos.gov/sosentitysearch/>

If the suspension remains uncorrected, the corporation may not conduct any business using its corporate name. For example, if the association was a party to any lawsuits, it could no longer prosecute any claims it was making against others or defend itself against claims made against it. It would be unable to enforce its right to collect assessments or sue to collect them, though homeowners would still be obligated to pay them.

Lacking the proper corporate status also could jeopardize the association's insurance as well as individual titleholders' insurance – and possibly individual mortgages with insurance requirements.

Ultimately, lacking the proper corporate status potentially puts the board at risk for a variety of liabilities and may make individual titleholders liable for debts or judgments imposed on the association. A corporate status insulates individual directors and owners from direct liability. If someone were to slip and fall and sue the association while the status was suspended, association members would be personally liable for any judgment, which would have to be divided among them.

Maintaining the association's legal status is one of the first items on any board's due diligence list and should be a recurring item on the meeting agenda checklist. There is no excuse for the board's failure to keep the association's corporate status current and its name in good standing. It is also one of the first assignments students are given in the CAM pre-licensing classes to show them where to look and what to look for in this area.