

# **D & O Nightmares**

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# Why--Protection from liability

- Volunteers
- Tort and contract liability – RCW 64.34.344
- Indemnification & hold harmless provisions in governing documents and many contracts
  - Funded by special assessment or D&O insurance

## Context

- “Not for Profit Management Liability Wrongful Acts”
- One of several pieces of the insurance puzzle
- “First-party” vs. “Third-party”
- Stand-alone or endorsement

# Most Common D&O Claims

- Failure to adhere to bylaws
- Challenges to elections
- Challenges to board authority
- Challenges to assessments
- Breach of third-party contracts
- Challenges to ARC decisions
- Board's failure to preserve common elements
- Defamation
- Selective enforcement
- Employment discrimination
- Violation of privacy laws

# Common Denominator

- Non Monetary Claims—most D&O claims do not involve request for money damages

## Key Exclusions

- Bodily injury, property damage and emotional distress
- Personal injury & advertising injury
- Breach of contract
- Failure to maintain or obtain insurance
- Fraud
- Insured v. insured

## Claims Made (not occurrence)

# Suggested Steps to Minimize D&O Claims

- Communication
- Transparency
- Inclusiveness
- Flexibility and adaptability
- Seriousness
- Collaboration