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Surfside shortcomings—more common than you think - by David Prager and Jack Rose

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In light of the recent tragedy in Surfside, Florida, no shortage of attention has been focused on the structural integrity failure. Numerous blue-ribbon commissions will undoubtedly investigate this “perfect storm” of factors resulting in a colossal failure that resulted in the tragic loss of nearly 100 lives. Surfside represents the second largest loss of life from an unintentional structural failure in U.S. history. Scores of technical recommendations will be made and enforcement will be heightened for some time to come.

But beyond the “Black Swan” technical failures, a more common factor is at play—lack of governance and insufficient assessment of risk. These same factors have led to numerous corporate failures. Of course, in the corporate world, losses are only financial; with infrastructure and real property assets, the stakes are much higher—measured in the lives lost. The risk of future disasters could be mitigated by incorporating a few changes:

Diversify the board and management;

Utilize professional experts;

Identify prior warning signs; and

Invest with courage and integrity.

Diversify the board and management

The benefits of demographically diverse corporate boards and executive teams have been well-documented. But a well-balanced board requires a diversity of professional skills, especially within a volunteer condo board that might not have the same breadth of knowledge as boards in large corporations. Even the most sophisticated accountant cannot be expected to comprehend the strengths of a structural design any more than an engineer can be expected to dissect a financial statement. When assembling a board or management team, it is important to have subject matter experts who can understand the facts when presented.

Utilize your professional experts

Often, outside professional review is perceived as a burden to be commenced only after a decision has been made; after all, who knows the business better than the people running it? High-quality professionals can identify problems and issues that may seem of little immediate concern to the less-trained eye. Just as a trained financial analyst can identify weaknesses on financial statements and assess the risks they pose, so too an experienced engineer can review a structural survey and understand the risks it presents. As we have all too painfully learned, few technical reports will read WARNING—IMMINENT RISK TO LIFE, but to the trained eye “abundant cracking and spalling” in concrete columns and “major error” in the design of using a flat concrete surface may have a very different meaning than it does to a lay person.

Identify prior warning signs

When investigators pour over documents, damning evidence often comes to light. The warning language in the now-infamous 2018 engineer’s report on Champlain Towers South was buried toward the end of the report and might easily have been missed by the casual reader. Only trained experts truly understand the significance of what they are reading, but such language now stands to have starkly place the board on notice of the risks. In constructive fraud cases, we delve into the questions of what was known or knowable at the time. The aforementioned languages obviates any defense that the structural weaknesses were not “known or knowable.”

Invest with courage and integrity

Deferred maintenance should be perceived as a bad word. Not every building needs to be class A, but core issues must be addressed, even if it means making choices unpopular with other owners. Recent reports from Surfside outline years of board members unable to endure pressure from condo owners. One board presentation reportedly stated that Champlain Towers South “should have started saving at least five years ago.” Even in its deteriorating state, frothy markets drove prices in Champlain Towers South up some 30% in the last two years.

A recent New York Times report outlined the tremendous pressure placed on the Champlain Towers South board members in opposition to special assessments, leading many of the members to resign. Corporate governance is a representative democracy; board members must be the most informed stakeholders and must act on information, not popular opinion. Even where decisions rest with the ultimate owners, the board is responsible for informing and leading those owners to the correct decision.

Buyers will eventually take note of lacking infrastructure and values will suffer. Boards and owners that willfully look the other way and fail to disclose shortcomings could face accusations from buyers who, with subsequent knowledge, realize that they overpaid for their properties.

Buildings that are suffering from deferred maintenance can blunt the impact of assessments by financing their restoration over a number of years, either using traditional financing or more innovative structures that can capture and monetize traditionally non-financeable revenue streams and/or association-level assets to fund a portion of the capital outlay.

If you see something, say something

For the last two decades, we have lived with the motto “if you see something, say something.” The same goes for board members and all fiduciaries. Serving on a condo board might be a thankless job, but it comes with great responsibility to those in the building. And after Surfside, the level of duty has become more starkly obvious. Board members must approach their jobs with the same vigor as they would protect their own families.

The board culture must be one that embeds care and constant diligence to protect the building, its finances and the lives of its residents.

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