



NEWS AND VIEWS

for Homeowners Associations

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2014 BUDGET PLANNING STARTS NOW!

July is the month to begin thinking about the 2014 budget for your Association if your association operates, as many do, on a calendar year. Why would starting now be important? The answer lies with the Reserve Study. The best pricing for a Reserve Study is available if you allow eight weeks for the study to be completed. If this process begins in August, you may not have a Reserve Study completed until October, which is when the Board should be finalizing the budget numbers for the next year.

Some board members may not understand what a Reserve Study is and its importance in the life of your association. According to Robert Nordlund of Association Reserves, "A Reserve Study is the art and science of anticipating and preparing for major common area repair and replacement expenses. A Reserve Study allows the Board and Management of Association-governed communities to offset the ongoing deterioration of the common area components with Reserve Funds to ensure their timely repair or replacement.

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SEMINAR ON NEW LAW CHANGES IN OCTOBER!

The next Beven & Brock Seminar will be held this October. This free event for volunteer Board members is invaluable since the information presented is always timely and helpful. The sponsoring vendors will provide information about services associations utilize and they will also provide an item for the door prize drawings.

The seminar will be held on October 15 in Pasadena and will feature two prominent HOA lawyers, Sandra Gottlieb, of Swedelson Gottlieb, and Brian Moreno, of Richardson Harmon Ober. They will address the upcoming changes to the Davis Stirling Act that take effect on January 1, 2014.

The law changes are the culmination of a four-year process. While none of the issues to be addressed are considered controversial, the changes will be important to comprehend as they affect every association.

Assembly Bill 805 reorganizes and renumbers the Act to make it more user-friendly. In addition, it groups provisions by subject matter in a logical order and divides longer sections into shorter, simpler sections. The new Act also clarifies the meaning of some provisions, standardizes terminology, and replaces outdated references to the Corporations Code.

One section of the new law identifies and addresses "conflicts of interest" issues for Board members

It states that a director or member of a committee shall not vote on any of the following matters: 1) discipline of the director or committee member, 2) an assessment against the director or committee member for damage to the common area or facilities, 3) a request as to the director or committee member for a payment plan for overdue assessments, 4) a decision whether to foreclose on a lien on the separate interest of the director or committee member, 5) review of a proposed physical change to the separate interest of the director or committee member, and 6) a grant of exclusive use of a common area to the director or a committee member.

Another significant area of change in the new law involves the annual disclosure package that owners are required to receive. The annual disclosures will now be divided into two parts: 1) The "Annual Budget Report" and 2) the "Annual Policy Statement". Each of these disclosures contains approximately ten separate items that are to be included. The seminar will explain these changes.

We encourage you to attend the seminar in October to learn more about the important law changes taking effect in January, 2014. The seminar is free, however registration is required. You can register by calling (626) 795-3282, ext. 886, or by email at:

HOASeminars@bevenandbrock.com.

2014 BUDGET PLANNING STARTS NOW!, continued...

A well-crafted Reserve Funding plan will ensure that irregular Reserve expenses are offset by ongoing, regular Reserve contributions, thus avoiding the need for Special Assessments.”

The process of complying with this law contains multiple aspects, all of which are important. First, understanding what a study is and how it can actually benefit you is foundational. Secondly, determining who will complete the study is important and then finally, there is the implementation and disclosure phase.

The Reserve Study contains two parts: the physical aspect, and the financial aspect. The law mandates that, at a minimum of every three years, the Board of Directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore, or maintain. The result is a list of the major common area components with an estimate of their remaining useful life and a current repair or replacement cost estimate.

The financial analysis aspect is where the Reserve Fund Strength and Recommended Reserve Contributions are calculated. Reserve Fund Strength is typically calculated and reported in terms of percent funded. For example 100% Funded means the Reserve Fund Balance is equal to the value of deterioration experienced by

the Reserve Components. This information provides the Board and owners an update, with each year's Reserve Fund status, specifically on how well prepared their Reserve Fund is for upcoming Reserve projects. The Recommended Reserve Contributions for the year are calculated based on an analysis of at least the next 20 years of reserve expenses at the association.

While the law only requires an “inspection” of the common area every three years, the study must be updated every year. In addition, the Annual Disclosure required to be sent to owners must be distributed every year. Since the Reserve Study is a projection of the future, it is NOT perfect in its ability to predict certain things. You may discover through the course of the year that the remaining life on your roof is less than previously projected. Or you may have an emergency replacement of a component during the year, and the remaining life would need to be adjusted.

Beyond the legal requirements of performing a Reserve Study, there are other reasons why a Reserve Study is important. A Reserve Study whose recommendations are followed each year will likely eliminate Special Assessments in the future. By following the recommendations of the Reserve Study provider, you can avoid the element of surprise when components fail.

Another benefit of a Reserve Study

that is funded each year per the recommendations is that it is the fairest way for all owners to pay for their share of building deterioration that occurs during their ownership. Properly funded reserves helps to maintain the value of the units in several ways. The Department of Real Estate recently issued a Consumer Warning on the issue of “Underfunded Homeowners Associations” related to this issue. As more buyers become aware of this warning, the buyers will begin to negotiate their purchase price based on the inadequacy of the reserve fund. Also, lenders are making loans based on the premise that 10% or more of the budget is going to reserves. The ability to obtain financing is critical for value to be maintained.

The law requires an annual disclosure to the members each year, requiring very specific information about the health of your reserve fund. Given the importance of a Reserve Study, and the technical requirements, it is strongly advised that the Board utilize the services of a qualified Reserve Study provider. Volunteer Board members should not assume any liability given the important nature of the Reserve Study and the annual disclosure requirement. For a copy of these disclosure questions, or referrals to Reserve Study providers, please write us at:

HOANewsletters@bevenandbrock.com

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SPECIAL ASSESSMENTS - Part 2

In the last issue we began a two part series of articles addressing the issue of Special Assessments and how Boards can address the need to raise a significant amount of money for deferred maintenance when combined with the issue of inadequate reserve funds available to fund the repairs. For a copy of Part 1 of this article which was published in May of this year, contact us at:

HOANewsletters@bevenandbrock.com.

Once the preparatory research has been completed of the necessary repairs and a budget is prepared, the next steps involve raising the funds required to complete the work. Without question, this aspect of the process is the most contentious for owners as the potential of each owner having to pay thousands of dollars is involved. This underscores the importance of having owners involved in the discussions prior to this phase.

The sources of possible funding for major repairs comes from three sources: 1) existing reserve funds, 2) a Special Assessment, or 3) a bank loan. Since the premise of this article is addressing the inadequacy of existing reserve funds, we will focus on Special Assessments and bank loans.

The first and best advice is to be sensitive and flexible. Every owner has different financial capabilities. There is not a "one size fits all" to this process. Some owners will be in a position to write a check for their share of the special assessment, while other owners will need to spread their payments out over

several years. It is possible to accommodate both scenarios. If the Special Assessment is of an amount that is sizable, and the board projects that many owners will need to make payments over time, it would be best to meet with a banker that specializes in HOA loans prior to putting this to a vote of the owners. The market for HOA Bank loans is limited, so approaching the Bank where you do your personal banking may be futile. Understanding the options for payments will allow for greater success when the ballot is provided to the owners.

The Special Assessment will require a vote of the owners and the voting must be conducted in compliance with the election requirements, which requires an Inspector of Elections. The ballot should clearly indicate that if the Assessment vote passes, there will be payment options made available. Providing as much detail as possible on these payment options will help to gain the votes of owners who have concerns about paying a large amount at one time. Remember, the goal is to get it passed, so if you can offer specific payment options as a part of the ballot this will help the Board both in their planning and the owners in understanding they have options.

Technical compliance on the Special Assessment ballot is absolutely critical, since it may be very easy for an owner who is unhappy with the outcome to challenge the election and have it overturned. Cutting corners, such as not complying with the election law, is not advised.

Some associations have an attorney or the Election Inspector prepare the ballot.

The ballot should NOT be the first time owners have heard of the need for a Special Assessment. If it is, the vote will likely not go in favor of the assessment. There are multiple ways to communicate and they should all be employed. Posting the Agenda, as required, is one important way for owners to know that the Board is considering this action. The Board should have multiple open meetings where the preparatory issues are addressed that were identified in the last newsletter. Owners who live off-site should be mailed copies of minutes when this important topic is being considered. We have seen several situations where owners who were in the process of selling were not aware of a pending Special Assessment and failed to notify their buyer. Sometimes, owners fail to open their mail and read it, however, they will ultimately be held responsible, as long as the Association was diligent to notify the owners.

The process of having a successful Special Assessment is not easy and will take time to properly complete. However the results will help to offset the tremendous amount of work that goes into the process. You can be assured that the condition of your buildings will not be a deterrent to maintaining good property values in the near future.

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SMOKING: TOTAL BAN NOW IN EFFECT!

Pasadena's "No Smoking Ordinance" is about to enter the final stage of implementation. This law, which passed in July of 2011, enacted a phased implementation which began with smoking being banned in common areas of multi-unit housing in August of 2011. Effective in 2011, the City required the posting of "no smoking signs" based on specific language required by the code. The sign requirements can be found at www.cityofpasadena.net/publichealth. The only aspect of this law that obligates the Association is that of posting signs. Beven & Brock has a limited quantity of signs available for purchase, which come in two formats, either adhesive or plastic. The signs are to be placed at first floor entrances, exits, lobbies, restrooms and elevators.

If a property doesn't have these locations, the signs can be placed in

the outdoor common areas or areas leading to the outdoor common areas. The cost of a plastic sign is \$10.00, and the signs with adhesive backing are \$5.00 apiece. For information on how to obtain the signs, you may contact:

elizabeth@bevenandbrock.com

Effective July 1, 2013, the final aspect of this law will be implemented, which bans smoking inside all living units. Enforcement is the responsibility of the City of Pasadena, not the Association. The law contains a provision that will assess fines in increasing amounts for successive violations over a twelve-month period. Violators will be subject to a \$100.00 ticket citation for the first violation, \$200.00 for the second violation, and \$500.00 for the third violation occurring within a 12-month period.

While the enforcement of this law is

being handled by the Pasadena Public Health Department, the City staff has indicated that they would appreciate help from Homeowner Association Boards with informing owners. Boards should remind owners of the "No Smoking" law by whatever means of communication it normally utilizes, such as minutes, newsletters, bulletin boards and annual meetings.

To report complaints or for more information, please contact the Pasadena Tobacco Control Program at (626) 744-6014. For additional information on this law, contact Stacie Wilmore, Tobacco Control Program at (626) 744-6051. Two neighboring cities, Glendale and South Pasadena, have smoking bans in place. For information on these cities, you may access that information on their City web sites.

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