

BEVEN & BROCK NEWS AND VIEWS

DAVID BROCK, PCAM



ASSOCIATION COLLECTION APPROACHES

Associations that are faced with delinquent assessment issues are generally faced with three choices: judicial, non-judicial and small claims. The best approach to take depends on information that up until now has not been readily available early enough in the process to make an informed decision.

1) The non-judicial path has been selected by many associations as it provides a comparatively quick and cost effective method to get to a result. Sometimes the result is the owner paying in full, but in many cases, there is no equity in the unit, and the result is a foreclosure of the unit in which the association becomes the owner. While the legal costs up to this point have

See "Boards" on Page Four

Master Policy Generally Covers the Outside

Some Inside Information on Insurance

By Steven G. Segal

When the board of directors purchases a Master Policy, they are doing so for a single purpose: to meet the fiduciary obligation to protect and maintain the "common area" as defined in the association's condominium plan and governing documents (CC&Rs). In a traditional condominium project, the "common area" may include the exterior walls, foundations and roofs (and associated building components) but the definition may abruptly stop at the unfinished floors, walls and ceilings of the unit. Despite the board's best efforts, there will be many items within the interior of the unit that are not covered by the Master Policy. These items must be addressed by the individual unit owner by purchasing an individual unit owner policy (often referred to as an HO6 policy).

A well-written HO6 policy will provide five types of protection for the individual unit owner: Dwelling Property (also referred to as "Real Property"), Personal Property ("Contents"), Additional Living Expense (sometimes called "Loss of Use"), Loss Assessment, and Premises Liability.

When you consider the cost of repairing the interior built-in cabinets, wall treatments, floor treatments, electrical and plumbing fixtures if there were to be a disaster, the Dwelling Property section of the HO6 would potentially come into play. Furthermore, the Dwelling Property section of the better HO6 policies cover the assessment of the association's insurance policy deductible (when it is levied

solely against owners as a result of a direct loss caused by a covered peril). For instance, if a loss is sustained in a unit due to accidental discharge of water from a neighboring unit, one might assume the neighbor should be held responsible for the damage to your home. However, if there was no negligence on the neighbor's part, his or her insurance company may be unwilling to cover the resulting damages to your home – allowing the full repair costs to fall on your shoulders.

The contents inside your home are not covered under the Master policy. If there is damage by a covered loss to possessions inside the unit such as clothing, furniture, appliances, TVs, stereo equipment – it would be the Personal Property portion of your insurance that responds to the resulting claim.

The damage from a fire may be so severe in your home that you're forced to move out temporarily. A properly written HO6 policy would address reasonable relocation, housing and eating expenses when such costs were incurred because of a covered loss.

If a fire or other covered loss starts in your unit and migrates to neighboring units and if there is resulting bodily injury or property damage, the Premises Liability coverage on a HO6 policy could become invaluable. Premises Liability will provide protection against sums that the unit owner may be legally obligated to pay as a result of bodily injury and property

See "Owners" on Page Two

Check Out This Check List

State Law Requires Several Annual Disclosures

California state law requires specific annual disclosures to be distributed to all owners between 30 and 90 days prior to the start of the fiscal year. Generally, all the disclosure documents need to be distributed in paper form, not email, and distributed by first-class mail. The following are the primary items that are required to be distributed:

1. Assessments - Not less than 30 nor more than 60 days prior to any increases in regular assessments.
2. Budget - Publish a budget or summary of the budget.

3. Collection policy - A general description of the collection and lien enforcement procedures of the association. There are also some very specific requirements pertaining to the collection policy which is contained in Civil Code §1367.1.

4. Dispute resolution - An association shall annually provide its members a summary of the provisions of this article that specifically references the alternative dispute resolution and internal dispute resolution practices of the association.

5. Insurance - Distribute a summary of the association's insurance.

6. Minutes - Notify members of their right to receive board minutes.

7. Reserves - Provide a summary of the reserves and a reserve funding plan. Provide responses to the seven-question Assessment and Reserve Funding Disclosure summary.

8. Architectural procedures - Disclose those items that require architectural approval and the procedure used for reviewing architectural applications.

9. Hazardous Materials - Notify members of any known hazardous materials that exist on the property.

Owners Should Consider Earthquake Loss Insurance

Continued from Page One

damage. Premises Liability coverage can help cover legal expenses such as court costs, attorney fees, investigator fees and expense of witness should a suit be brought against you.

Whether or not your association maintains earthquake coverage, you'll want to protect yourself by obtaining earthquake coverage. In a condominium setting, one particular coverage is especially important, earthquake loss assessment coverage. This coverage is designed to protect you against a special assessment the board

may levy to address earthquake damage to the association's premises and/or the association's earthquake deductible. If your HO6 carrier is one of the 19 insurance carriers that utilize the state-run California Earthquake Authority (CEA), earthquake loss assessment coverage will be one of four important earthquake coverages offered to you. Such an offer is not automatic, however. The CEA protection will only be offered if you purchase an HO6 with a participating company.

Purchasing an HO6 is often called "supplementing" or "dovetailing" the Mas-

ter Policy. An HO6 is an absolutely crucial purchase to protect you and the equity you've built in your home. Every owner should be encouraged to obtain a HO6 policy as the premiums are reasonable considering the benefits provided.

Steven G. Segal is President of the Steven G. Segal Insurance Agency, Inc. His office can be reached at 800-345-8866.

New Laws to Be Reviewed in January NEWS & VIEWS

The next issue of NEWS & VIEWS will include an update of new laws that take effect on January 1, 2012. New laws are being enacted that affect the following: vehicle charging stations, renting of units, meeting notice requirements, meetings by email and disclosure requirements involving the sale of a unit. Look for this issue to arrive around January 1, 2012.



Of Arcadia and Pasadena North
Office: (626) 447-4111 Toll: (888) 600-4411
Fire & Water – Cleanup & Restoration
Mold Remediation
Soot and Smoke Removal
Packout & Storage
Repairs after Damage
24 Hour Emergency Live Response
WE SERVICE ALL OF L.A. COUNTY



GARDEN VIEW INC.
High Quality Gardening Services
'Specializing in HOA Landscape Maintenance'
(626) 303-4043
www.garden-view.com
email: Blake@garden-view.com



FERRIS PAINTING
Commercial & Residential Painting
Specializing in HOA's
Greg Lewis (818) 951-3207
www.ferrispainting.com
License #872494

Distribution Must Occur No Less than 30 Days Before Fiscal Year

Year End Budget Considerations Require Study, Planning

November is the month in which most associations that operate on a calendar year finalize and distribute their budgets for the next year. Ideally, the process for your association began several months ago so that the reserve study or update can be completed at the lowest possible cost. Board members can take varied approaches to the budget process. Some boards approach this process with a firm commitment to not increase assessments, and some take the position of first studying the expenses for the prior 12 months and then determining an amount the assessments should be, based on historical trends.

This task may be one of the most challenging for board members as their personal desires may be in conflict with the interests of the association. As board members are responsible for maintaining financial stability for the association, it may be necessary to actually consider an increase in assessments. There is a common reluctance to increase assessments, since some board members feel that their dues will be too high when compared to other associations in the area, thus making their units more difficult to sell.

However, if this decision means that maintenance or repairs are reduced or eliminated in an effort to reduce costs, then the property will be less appealing to future buyers as well, since the property's appearance will suffer.

Another important consideration in this process is how to fund reserves. It is very tempting to defer or reduce payments to the reserve fund, however, this decision may have a negative effect on property values as well. A trend that has developed this year has been lenders rejecting loan applications for associations that do not allocate at least 10 percent of their budget to fund the reserves account. This is a requirement of both FHA and Fannie Mae who are behind almost all, if not all, loans used to finance condominiums. There are also reports of lenders requiring associations to fund their reserves as recommended by the reserve study preparer. If owners in your association are not able to refinance or sell, then property values will be adversely affected.

The budget must be distributed not less

than 30 days nor more than 90 days prior to the beginning of the association's fiscal year. There are penalties for distributing a late budget.

Although boards are allowed to raise dues by up to 20 percent without membership approval the authority is conditional on timely distribution of a pro forma operating budget as described in Civil Code §1365, i.e., not less than 30 days nor more than 90 days prior to the beginning of the association's fiscal year.

Failure to meet the required time frame nullifies any increase levied by the board. The proposed increase must then be approved by the membership, constituting a quorum, casting a majority of the votes.

Free Class Offered on Association Law, Operations

Association board members who better understand their duties as board members operate with greater confidence in their role and find greater satisfaction in their service. Most importantly, their associations operate more smoothly. Since 2005 Beven & Brock has been offering topically based seminars to boards of any homeowner association. Now a three-hour course is being offered for board members which provides basic knowledge regarding homeowner association laws

and board operations. The course is taught by an association attorney and is offered in conjunction with the Community Associations Institute. Beven & Brock is paying the cost for board members of their associations to attend. The course will be offered throughout the year, and there may be some seats still available for the November, 2011 course. If you are a board member of a Beven & Brock-managed association, contact us at 626-795-3282, ext. 889.



MERRY PLUMBING HEATING & AIR

(626) 796-4307
www.merryplumbing.com
License # 860445

TO ADVERTISE HERE

Contact Roman Esparza at
Beven & Brock
(626) 243-4158
email: roman@bevenandbrock.com



NICK GERIS & SONS PAINTING, INC.

Association Painting Specialists
Dial (714) 639-1510 Cell (714) 325-1511
www.nickgerisandsonspainting.com
Lic. #836127



JOHN R. SINNER INSURANCE AGENCY INC.

1230 E. Main St. Alhambra, CA 91801
Toll Free (800) 516-1078
Fax (626) 576-8049

www.johnsinner.com License # 0589670



FARMERS

STEVEN G. SEGAL INSURANCE AGENCY, INC.

Over 30 Years experience specializing in:

- Condominium Associations
- Planned Unit Developments
- Earthquake Coverage
- Workers Compensation

Toll Free: 800-345-8866 Fax: 800-262-0973
Email: steve@segalins.com
Web: www.farmersagent.com/ssegal
CA License # OE24660

Boards Have Three Collection Options to Choose From

Continued from Page One

been added to the amount due, the association will then be billed and become the owner of the unit, with the only possible recourse being to rent the unit and collect money until the bank forecloses, which is an unknown period of time. The association may also be required to spend additional money to evict the resident (former owner or tenant), repair the unit so it can be re-rented, and then rent it to a new tenant. The association would need to disclose the nature of how they acquired title and that the rental period may be very short. Some associations have collected at least some of the money due them by this means.

2) The judicial route may take a longer period of time and may likely be more costly, however, the ultimate outcome may be more beneficial. There is greater latitude in the options available to the association, depending on the equity in the unit. The association could get a money judgment which is valid for up to 20 years, or pursue a foreclosure action against the unit, providing there is sufficient equity. While this option is more lengthy and costly, the ultimate benefit for the association (pay off) may take years to realize.

3) Small Claims: This is a choice made by some associations, however, the maximum

amount that can be claimed is \$5,000 and an association board member or an appointed representative (not an attorney) must appear to present the case to the court. After obtaining a judgment, the effort will be on how to collect it.

Unfortunately, the law firms that handle association collection work either offer the non-judicial or the judicial path, but not both. So an informed decision must be made prior to engaging the services of a collection law firm.

It is readily apparent that if the association board knew in advance what the equity is in a unit it may make an importance difference in the path that is selected. In other words, if the loans are less than 80 percent to 85 percent of the current value, then proceeding with a non-judicial foreclosure may make more sense than pursuing a judicial foreclosure. However, if there is less than 15 percent equity, (including situations where the loans are more than the unit is worth) it would make better sense to pursue a judicial action, or small claims.

There is a way that boards can have better information earlier in the process so that a better decision can be made. The following information can be obtained:

a) Number of loans on the property

b) Original loan balances

c) Amount of current delinquency

d) The existence of a Notice of Default or Notice of Trustee Sale by a lender, and the date of that notice. This can be obtained at a relatively low cost to the association. The cost can be added to the account of the owner and collected later if the owner does finally pay. It will need to be paid up front by the association.

For further information or help on this issue, contact David Brock at 626-243-4142, or dave@bevenandbrock.com.

NEWS & VIEWS

This Newsletter is circulated for general informational purposes as a public service and promotion by the Beven & Brock Property Management Company. The contents are opinions of the firm, not intended to constitute legal advice, and should not be relied upon for that purpose. If you have a legal issue related to a subject of this newsletter, you should consult the California Civil Code and your attorney. Editing & Layout by PM Enterprises, 626-441-2736

The paid advertising in this newsletter is provided as a courtesy to our readers and does not constitute any endorsement by Beven & Brock. The advertisers do work with HOAs and have provided services to Beven & Brock's HOA clients in the past.