

Association of Condominium,
Townhouse, and
Homeowners Associations



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February 2014

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ACTHA's SPRING CONFERENCE & TRADE SHOW

Sat., April 12 - Oakbrook Terrace
See pages 6-7 for details

BEST PRACTICES:

CAPITAL PLANNING GUIDE

Sal Sciacca of Chicago Property Services

Now more than ever, associations must spend money wisely and plan ahead to ensure that their reserves are properly funded. Proper reserve funding will allow the board of directors to properly maintain the association and maximize the real estate values of the owners.

Duties and obligations of board members

One of the fundamental obligations of board members is to maintain the common elements. In fact it is their fiduciary duty to maintain the common elements as stated in the law. The common elements consist of physical characteristics that involve regular maintenance as well as capital replacement. The focus of this white paper is on capital items. Which capital items should be replaced and when should they be replaced are the most important questions to ask. It is not a question of whether the items should be replaced. All capital items have a finite life expectancy.

Reserve studies are recommended

One of the questions that board members should ask is who determines what are the capital items, how long will they last and how much will it cost to replace the times. To answer those questions, associations should ideally hire a company that specializes in reserve studies. The reserve study is a document generated by experts that incorporates the life expectancy of all capital items over the span of 30 years into a detailed report. The report will indicate what items need to be replaced, when they need to be replaced, and how much it will cost to replace them. It will also detail how much the association will need to save to fund the capital item replacements on an annual basis.

In principle, this sounds like a very sound idea. A reserve study is generally at least \$3,000 for a 30 unit community association to over \$10,000 for a larger community. replacement.

Reserve studies are recommended

Practically speaking, many associations cannot afford to pay for a

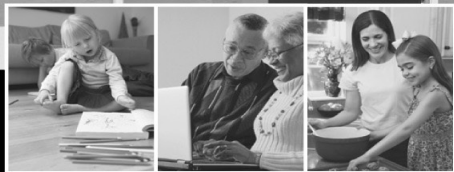
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It is also necessary to review your by-laws to determine the use of proxies. It is important to note that an election is a different process from voting for a petition. Most by-laws allow for the use of proxies at owner meetings, other than elections if a secret ballot has been adopted. The meeting regarding the petition to remove directors is a unit owner meeting and proxies are allowed to be used, if so provided by the by-laws. Unless the secret ballot rule adopted by your association specifically prohibits the use of proxies at any owner meeting, which is unlikely, you can use a proxy at the owner meeting to remove the directors.

Depending upon the outcome of the removal process, a new election may not be necessary. The Act at Section 18(a)(13) allows 2/3rd of the sitting directors to appoint new directors to serve until the next election or until unit owners petition for a special election.

I addressed these issues for condominiums. The answers would be the same if they were coming from a common interest community association (townhome or HOA). In that case, the references would be to the Illinois Common Interest Community Association Act, which also allows for secret ballots to be adopted. Additionally, the homeowner's declaration would still need to be reviewed.

LEGISLATIVE CORNER

The Illinois General Assembly is in session and bills have already been introduced affecting community associations. Because action on bills happens on a weekly basis, we urge you to visit ACTHA's website—www.actha.org—and click on "Illinois Laws and Legislation." There you will find a link for bills which have been introduced and their status.

You may view the full text of any bill by going to www.ilga.gov and typing in the bill number.

TIP OF THE MONTH

Fencing Considerations

Are fences an integral part of your community? Are they as beautiful and easy to care for as they are functional? Fences are often necessary but few people relish painting or staining them regularly. There are now new products on the market that can offer a realistic wood grain texture and rich, authentic shades that replicate the look of natural wood without the maintenance. Whether it's for privacy, complying with pool regulations, beautifying or creating a safe place for children to play, you want a fence that's also easy to maintain.

Out of all types of fence materials, wood fences demand the most maintenance and can end up being the most costly. Wood fences must be treated, painted or stained on a regular basis; in fact, the average wood fence owner can expect to spend time and money painting or staining every few years to maintain the fence's appearance and to protect the wood from weathering. Wood that is exposed to the elements will eventually rot over time, resulting in a less stable fence with a shorter life span.

Take a closer look at why a vinyl fence is a smarter investment than a wood fence.

- **Virtually maintenance free** - *A vinyl fence requires far less maintenance than a wood fence. Vinyl won't warp, rot, splinter, peel or blister like wood. Vinyl fence never needs sanding, staining or painting. All it needs is an occasional washing with a garden hose to keep it looking its best.*
- **Innovative styles, colors and textures** - *Vinyl fence does not have to be smooth or white. The vinyl fence industry offers a wide array of styles, colors and textures to recreate the look of a natural wood fence.*
- **Consistent color and fade protection** - *Stained and painted wood fences will peel and chip, and the color will fade over time. With vinyl fencing, the color is engineered to last. When purchasing vinyl fencing ensure that the manufacturer offers protections, such as color fade protection, an acrylic formulation that provides superior protection from the harsh rays of the sun.*
- **Greater strength and flexibility** - *In most instances, vinyl fence can be up to five times stronger and four times more flexible than wood fence, allowing it to absorb the impact from everyday run-ins with lawn mowers and tree limbs.*
- **Concealed fasteners** - *Wood fences are installed with unsightly nails, which, when exposed to the elements, will weather, come loose and cause the fence to deteriorate over time. Loose nails are also a safety issue.*
- **Exceptional warranty protection** - *Wood fences generally carry no warranty. Many vinyl fence products are backed by lifetime limited transferable warranty, warranted repair and replacement costs – including labor – for a stated period after installation.*
- **A better value over time** - *While a vinyl fence may cost slightly more initially, vinyl will end up costing less than wood over the life of the fence.*

Curtis Stewart of CertainTeed Bufftech Fence

4455 N. Kilbourn Ave., Chicago 60630 ^ 630-532-9351 ^ Curtis.stewart@saaint-gobain.com ^ www.certainteed.com

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reserve study. In Illinois, there are over 40,000 communities and about 30,000 are under 25 units. Most of the associations under 25 units probably don't have the funding to afford a reserve study. In addition, there are associations that have paid for reserve studies and have not followed the recommended plans. Certainly, this is not recommended but it is the reality for many associations based on their financial constraints.

5 Year Capital Plans are Essential

Regardless of whether an association has a current reserve study or not, it makes the most financial sense that ALL associations large or small, well funded or underfunded, have a 5 year capital plan. The capital plan needs to incorporate the reserve study data if available and create a roadmap of exactly what capital items will be addressed during which calendar year.

Capital Planning Saves Money

Planning ahead and proactively addressing capital projects actually saves money. This is especially applicable to exterior façade, masonry and tuck pointing issues. Simple masonry issues can easily escalate into major expenditures. Costs associated with exterior masonry issues typically raise exponentially and not linearly. This means that the longer associations hold off with repairs, the more costly the repairs become. It is cheaper to make the capital improvements sooner than later.

Given this fact, the best approach for a board is to have a capital plan and to plan ahead. It is always best to plan long term and to keep the homeowners informed of expenditures especially larger ones. As a result, it is quite important for the board of directors to create and maintain a 5 year capital plan.

Capital planning cycle

The capital plan is a guide and a roadmap detailing exactly what capital items will be addressed over the next 5 years. The capital planning process should start in the spring and finish up with the plan that the board will present to the homeowners at the budget approval meeting which is typically held in October or November of each year. Ideally there is a capital committee that reviews the capital plan every year and submits the recommendation to the board each year in September. This allows the board to incorporate the capital planning process into the operational budget

planning process that typically starts in September. Once the operating budget and capital plan is approved, the cycle starts all over again in the spring. It is an ongoing process that continues on through the life of the association.

Proactive Planning or Deferred Planning



It is best when associations plan ahead and prefund the reserves for capital projects. But what happens when associations don't plan ahead? The answer is simple. It costs MORE money. The project costs are higher and the board is often forced to pass special assessments and raise

more through bank loans. In addition, there is typically more frustration among the homeowners as the amount the homeowners are asked to pay is often larger than the regular monthly assessment amount. It is much cheaper to raise regular assessments and save over time and have the funds necessary for capital projects versus raising funds for capital projects as necessary. The following sections discuss the most common capital funding scenarios.

Funding Options – Reserves Only

In this best case scenario, the association has planned ahead and has built up the reserves sufficiently over the years and has enough to pay for the capital projects as necessary per the capital plan. This is the ideal situation.

This means that the assessment levels are sufficient to build long term reserves. The association can move forward with the capital project at any time in this scenario and does not have to wait to collect additional funds. This scenario is the least stressful to the association and to the homeowners.

Funding Options – Reserves and Special Assessments

In this scenario, the association can only partially fund the capital project from reserves and it is necessary to raise additional funds through a special assessment to fully fund the capital project. In this scenario, the association will need to wait until the special assessment funds are collected before proceeding with the project. This scenario would only apply in cases where

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there is low urgency in the project completion timeline.

Funding Options - Special Assessments Only

In this scenario, the association is severely underfunded and must raise funds completely through a special assessment. This is a viable option only if the project is not urgent in nature and can wait until the special assessment funds are collected. This scenario is the least common and would only apply in cases where there is low urgency in the project completion timeline.

**Funding Options –
Special Assessments & Bank Loans**

In this scenario, which is the least desirable scenario, the association is seriously underfunded and urgently needs funds to complete a capital project. This can be attributed to an unexpected event that has created the need to complete a capital project. Other scenarios include poor planning, deferment of capital projects, and/or underfunding of the reserves.

There are banks that do lend to community associations which allow associations to access the capital necessary to complete the capital projects in this scenario. In this case, the association applies for a bank loan and at the same time will need to pass a special assessment to cover the cost of the project. The bank loan will allow the association to take on the project fairly quickly as a loan approval usually takes about 6 weeks to complete. Once the loan is approved, the association has the funding available to take on the project. The payback period of the loan is usually over 3 to 5 years. The special assessment is also usually drawn out over the same period of time. This is the most expensive scenario due to borrowing

money and it creates the most stress on the association and homeowners.

Communication is key

In the end, the best approach is to communicate information to owners on a regular basis. By communicating the information, they will know the issues and not be surprised to hear about upcoming capital improvement projects. In addition, if additional funds are needed, the owners will not be surprised by the need to pass a special assessment or obtain a bank loan. The way to do this is by holding regular quarterly board meetings that are officially noticed and distributing meeting minutes to all the homeowners so that information is shared to those who were not able to attend the board meetings.

Summary

In summary, associations are encouraged to plan ahead especially regarding capital expenditures. These are the greatest expenditures that associations will undertake. As a result, it is advised that an association obtain a reserve study if financially affordable and to incorporate this information into a 5 year capital plan. Each year, the association should revise the 5 year plan and every 3-5 years the association should get an update to their reserve study. This proactive approach will result in the lowest amount of operating costs for the association. Conversely, associations that wait until the last minute to make capital repairs will often times need to pass special assessments, obtain bank loans, spend greater amounts of money to complete the projects and create the greatest stress and strain on the association and homeowners.

Chicago Property Services
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ssciacca@chicagopropertyservices.com
www.chicagopropertyservices.com

Interested in running for ACTHA's Board?

The election of Directors will take place at the Spring Conference and Trade Show on April 12. If you are interested in running, complete this application* and return to: ACTHA, 11 E. Adams, #1107, Chicago 60603. All candidates must be an owner of a property which is their primary residence in an association which is a member of ACTHA.

NAME: _____

ASSOCIATION: _____

ADDRESS: _____

CITY: _____ ZIP: _____ PHONE: _____

EMAIL: _____

* Once application is initially verified, you will be asked to complete a slightly more detailed application.

ACTHA's Spring Conference Program

For more detailed information, including speakers and exhibitors, visit ACTHA's website: www.actha.org & click on "Spring Conference & Trade Show"

Your choice! Pick one program from each of the time slots offered!

8:30 a.m.—9:30 a.m.

1) It's All About the Board: What's Your Association

Zen? Tired of boards sparring off against managers, owners and each other? Learn how to achieve harmony and unity, improve your board dynamics, cope with difficult people and defuse heated situations. Find ways to motivate owners to serve and to identify those with self-serving agendas. Cooperate like a team without decisions being unanimous.

2) How to Get it Done: The Work Plan

Your association is a business and you need to run it like one. Every successful business develops a plan to achieve both short and long term goals. Take that long wish list and define your priorities, establish a time table, and set reasonable expectations. Your updated reserve study and vision for your association are tools you will use. This plan will help focus on maximizing accomplishments according to your financial and time resources.

3) Avoiding Pitfalls: Many homeowner requests may put your association at risk if you aren't knowledgeable in matters of Fair Housing, FHA compliance, right of first refusal and more. Examples discussed in this session will include requests for accommodation, reasonable modifications, service animals, owner and tenant screening. Ignorance or not knowing how to respond to these and similar requests could lead to finding out how deep your association pockets are.

11:30 a.m.— 12:30 a.m.

1) It's All About the Board—the Role of the Board:

Every Director and Officer should be aware of their duties. Reading your association documents is the starting point. What is the chain of command? Is it effective for every board member to contact the manager? Is such duplication of effort wasting time and micro-managing? Examine the relationship between each board member to each other, to the manager, to the owners and to the community. When decisions are made, show a unified front.

2) How to Get it Done—

Working the Plan Here you will learn the process by developing a Maintenance Plan. Items covered will be why have a plan, investigating the construction of the community, local codes, inspection, needs assessment, exterior and interior components, and implementation. Updating your reserve study as you go along will also be covered.

3) Selecting a Manager:

Possibly the biggest challenge is figuring out how to choose a manager whether you are considering a change or converting from self-management to professional management. Your needs assessment is the critical first step to help determine if you need a full menu or ala carte services. Your next step is to develop your specifications so your Request for Proposal will produce proposals matching your specific requirements. After narrowing the field to the top choices, you can schedule interviews. The last step is to negotiate the contract and plan the transition.

1:30 p.m.— 2:30 p.m.

1) It's All About the Board—Communication and Transparency

Besides the required forms of communication, there is more you can do to create a sense of community. One size doesn't fit all, so recognize the nature and character of your association to see which method serves the association best. Consider the use of email, phone calls, newsletters, a website, social events, homeowner forums, orientation and who will deliver the method and message.

2) How to Get it Done—Doing it Right with Contracts

This session will include the necessary steps for considering and approving contracts. You will begin with developing specifications, preparing an RFP (don't know what this is, then you must attend!), reviewing and comparing bids, approving, and then administering the contract. An important consideration is when to use an engineer or other professional rather than going it alone.

3) Elections Without the

Politics: Electing board members to administer your association is serious. Your association is a business with a budget and property to maintain. It's important to identify and encourage candidates who are willing to learn and exercise good and fair judgment. This should not be a popularity contest. Topics covered include legal requirements, notice, candidate eligibility, proxies, mail-in voting, the balloting process and more. An alternative election model where direct secret voting (mail-in and/or delivered to the annual meeting and no proxies allowed) will be discussed and contrasted. An open and transparent election instills confidence.

ASK AN ATTORNEY

Concludes the Day

Question of the Month

By: William Lapelle, Attorney

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wlapelle@lapellelaw.com ^ www.lapellelaw.com



Q. I received a petition for an election recall from our homeowners. The Board president feels the association may not have to go through the election process again. The reason is that there are four spots up for election and only four people running. Does the association need to go through all the formal steps of the election again to honor the petition request? Our elections are by secret ballot. The way I interpret the statutes, a proxy can not be used for a secret ballot - it would not be a secret. Is that correct? Can a Proxy be used to vote for the removal of a Board member? Does a reason for removal need to be cited on a petition for removal of a Board member?

A. To start, we need to separate apples from oranges regarding these issues. A petition to remove directors is separate and distinct from an election of new directors. Both occur during meetings of unit owners, but they are governed by different sections of your by-laws.

You need to review your by-laws to determine the process for removal. The Illinois Condominium Property Act (the "Act") at Section 18(a)(4) requires that the by-laws of the association contain a provision for "the removal from office of members of the board." Most by-laws I have reviewed require a petition signed by 20% of the unit owners to call for a meeting to vote for the removal of a board member. This is a process separate from an election. The petition presented for the removal of directors need not cite a reason for the removal, unless the association's by-laws specifically require it.

I understand that your association has adopted a rule regarding secret ballot for elections. Normally, the secret ballot rules only apply to elections for directors. If a secret ballot for elections has been adopted, proxies are not used. When using a secret ballot, the board issues ballots directly to unit owners. The owners then vote the ballot. They vote the ballot by sending it back, prior to the meeting or by attending the meeting for the election.