

Association of Condominium,
Townhouse, and
Homeowners Associations



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July / August 2013

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UPCOMING ACTHA EVENTS

ACTHA'S SOUTH EXPO SEPT. 28

ACTHA'S NORTH EXPO OCT. 12

WEBINARS EVERY MONTH!

Untranquil Brook Association

Does This Sound Familiar?

What is Your Problem?

Untranquil Brook is a subdivision in an urban setting with a mix of property types. It is managed by an unknown company whose specialty is being absent. The individual buildings and the master association are constantly at odds. Governing documents are ignored, since the perception is that they are out of date. Owners are frustrated as the buck is constantly being passed.

Is this your association's story? Do you have challenging issues to resolve? Let us know and maybe ACTHA can help to untangle your mess. In the meantime.....

By: Scott Rosenlund of Fullett Rosenlund Anderson PC

The Untranquil Brook development is comprised of three townhome associations, one condominium association and a master association. The townhome associations tell their owners to direct their questions and comments to the master association, while the master association tells owners to take up any complaints with their own townhome or condominium association. The master association is responsible for common facilities, including the clubhouse, pool and common driveways. The condominium association essentially controls the master association because the condominium has the most units. The condominium association therefore ensures that work which benefits the condominium unit owners, such as the maintenance of selected driveways serving the condominium property, is paid for by the master association.

1. How are each of the entities governed in terms of who is responsible for what?
2. How should the relationship between the five boards work?
3. What happens when one of the boards is in essence a non-functioning board?
4. How do the weaker associations deal with "unfair" decisions by a master association (i.e., make sure the master association does not overstep its authority)?

Continued on page 4

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TIP OF THE MONTH

Financing Options for Capital Projects

In a perfect world there would be no special assessments. Every Association would adequately fund for the future and the upcoming major projects would be paid for out of the investments accumulated in the Replacement Reserve Fund. Some associations have done a very good job and rarely if ever see the likes of a Special Assessment.

Below are listed various ways to finance a capital project. For your association you may find the best solution is a combination of the following:

1. Increase the Reserve Assessments in the coming year;
2. Increase the Reserve Assessments and at the same time have the Association take out a bank loan which is reduced by the extra Reserve Assessments;
3. Pass a Special Assessment which is due in a lump sum or in 2 or 3 payments with all paid during or before the project begins;
4. Pass a Special Assessment and obtain a corresponding bank loan, charging interest and completing the special assessment charges on the same term as the loan. Consider charging a higher rate of interest on the Special Assessment payments to offset the additional administrative costs and risk of non-payment with payments over the loan term. If a unit goes into foreclosure, the Association may only receive the 6 months of past due assessments;
5. Increase the Regular Assessments enough to offset the corresponding bank loan payments that will be due on a bank loan that pays for the capital project. After the loan is paid off, consider reducing the Regular Assessments or increasing the Replacement Assessments. The advantage here is if an owner goes into foreclosure or goes into bankruptcy, the increase will continue to the new owner on a monthly basis.
6. Consider repairing capital components to defer the replacement or major repair for a specific time period.
7. Consider grouping repairs from the same type of contractor to reduce the per unit costs (example: sidewalk and driveway replacements at the same time);
8. Unit owner home lines of credit can be more advantageous to the unit owner since the interest will be deductible on their income taxes within certain parameters.

Brad Schneider, CPA

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Are there limitations on a master association? Is Section 18.5 of the Illinois Condominium Property Act the only state statute that covers master associations, and does that in turn make other sections of the ICPA irrelevant? How are master association board members elected?

5. What strategies can be employed to make the master association a more effective voice for all owners?

Answer:

The questions presented are multifaceted and raise both legal and practical community association governance issues, which are discussed below.

Overview of Multi-Association Governance Framework

The relationship between the master association and the four underlying associations (i.e., the three townhome associations and the condominium association) should be described in the governing documents for the five associations. Each underlying association is responsible for the administration and operation of the real property submitted to its own declaration. In a typical scenario, the master association is established for the purpose of the administration and operation of the facilities which are shared by all of the development's residents (e.g., the clubhouse, swimming pool and common driveways). Often, the master association is only responsible for the maintenance and repair of the shared facilities. However, in certain cases, specified maintenance and repair responsibilities relative to the underlying properties may be delegated to the master association. Again, the delineation of these maintenance and repair responsibilities is largely a function of the framework collectively established by the five separate sets of association governing documents.

Illinois Statutes Applicable to Master Associations

Section 18.5 of the Illinois Condominium Property Act is the primary statute which applies to Illinois master associations. With some very limited exceptions, the remainder of the Condominium Property Act does not apply to master associations. Assuming the master association is incorporated as a not-for-profit corporation, the Illinois General Not For Profit Corporation Act of 1986 also applies to the master association. In addition, the master associa-

tion will be subject to other generally applicable federal and state laws and municipal ordinances.

Election of Master Association Board Members

The bylaws of the master association and/or other governing documents should describe how master association board members are elected. The bylaws may provide that the master association board members are elected at large, which in this case would mean that all master association board members are elected by the master association membership as a whole, from throughout the four underlying properties. In other cases, the composition of a master association board must include a designated number of representatives from each underlying association, ensuring that each underlying property will have a certain degree of representation on the master association board. While the Condominium Property Act requires that condominium associations elect board members at large, there is no such statutory requirement applicable to master associations.

Master Association Board Decisions

Master association board members have a duty to make decisions that are in the best interests of the master association as a whole and should not make decisions which solely benefit the underlying property in which they live. Unless the governing documents or some other binding agreement provides for the master association's maintenance and repair of specified facilities located on the condominium property, the use of master association funds and resources for this purpose is improper.

Under egregious circumstances, the underlying associations and/or individual homeowners may be in a position to pursue the removal of master association board members or take legal action against a master association and/or master association board members who engage in self-dealing or otherwise make irresponsible decisions. However, a member's most practical method of counteracting imprudent board decisions usually is to simply run for election to the board and/or support the election of like-minded board candidates who wish to serve the entire community.

Continued from page 4

Underlying Association Board Participation

Any of the underlying association boards which are "non-functioning" are not fulfilling their fiduciary obligations to conduct association business in a reasonable and professional fashion. Simply put, some of the conscientious members of such an association must volunteer for board service and perform their duties in a meaningful, businesslike fashion. If no members are willing to make this commitment, the consequences can include the property falling into disrepair, failure by residents to comply with association covenants and rules, decreased property values, increased insurance costs, and possible legal consequences, such as lawsuits. In the most extreme case of a truly distressed association, a court could order the sale of the entire underlying property at issue.

Establishing Effective Operations

As for an overall strategy of moving forward, the optimal course of action for the associations would be to retain qualified professionals to assist with correcting the ineffective operations practices.

Choosing a professional community management firm typically would be of primary importance. While each of the associations likely would be required to separately contract with management on an individual basis, all five associations may wish to hire the same management firm. The associations also can proceed with engaging other community association industry professionals on an as-needed basis, including attorneys, CPAs, bankers and insurance professionals.

The foregoing having been said, even the best team of community association professionals cannot solve the problems of a seriously dysfunctional development if the members of the associations fail to elect responsible board members. These board members must be fully committed to compliance with the law and implementing solid business practices. In other words, future outcomes for the development ultimately lie in the hands of its membership.

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ACTHA's Fall Expos

- Sept. 28: Tinley Park Convention Center / Oct. 12: Westin Chicago North Shore
Both Expos feature a trade show and Exhibitor Showcase Presentations
Registration form for Educational Seminars is on page 7 or one may register online at www.actha.org

South Expo Educational Programs

8:30 - 9:30 a.m. Choose from one of two seminars

Foreclosures: Still Beating This Dead Horse

This issue is still causing many associations anxiety due to a lack of understanding of the process. Learn the time line and steps involved from the first notice of a pending foreclosure to the process end.

Presenters: Martin Stone of HSR Property Services and Doug Sury of Keay & Costello

Being a Good Board Member

Our presenters will share their experiences and tips for being good board members. Board members who know their legal and fiduciary duties, will more often than not translate into a well-run association with satisfied owners.

Presenters: Gabriella Comstock of Keough & Moody and John Santoro of Lieberman Management

11:30 - 1:00 p.m. Choose from one of two seminars

Development and Enforcement of Rules

The best rules fit the community and make sense. Make sure they are reasonable and enforceable. Are they applied consistently? Is there a difference in enforcing rules for condos vs non-condos? What are the steps to consider in designing rules that benefit the association and encourage good behavior.

Presenters: Attorney Barry Kreisler and Dale Nusbaum of Hillcrest Management

Not a Condo?

There are differences between non-condos and condos. The Common Interest Community Association Act (CICAA) governs non-condo along with the association's governing documents. A panel will review the requirements.

Presenters: Lara Anderson of Fullett Rosenlund Anderson, Karyl Foray of Rosenthal Bros. and Randy Rosen of Rosen Management Services

North Expo Educational Programs

8:30 - 9:30 a.m. Choose from one of two seminars

Liability: Save Money/Reduce Problems

Discovering potential liability is key to controlling it. This session will present mechanisms to minimize or remove risk including avoidance by transferring it through insurance coverage, implementation of maintenance programs and more.

Presenters: Kara Cermk of Rowell and Ken Sampson of Dasco Insurance

Legal Developments and Update

Learn the latest that may have a serious affect on your association. What our legislators in Springfield do is often reviewed by the courts and the court's interpretation may change what everyone thought the law was.

Presenters: State Rep. Elaine Nekritz, Attorney Michael Kim and John Carr, ACTHA's Lobbyist

11:30 - 1:00 p.m. Choose from one of two seminars

Collections: If at First You Don't Collect

Boards have an obligation to collect assessments. This session will outline the duty, procedures and methods from the time an assessment is due, follow-up procedures and methods to produce compliance.

Presenters: David Hartwell of Penland and Hartwell and Keith Hales of Hales Property Management

Elections: Statute and Style

First is what the statute requires in the election process. Then we get down to the business of how to put it into practice. Style is not a matter of one size fits all, so you will be offered various methods which are in use by different associations to make the process transparent, efficient and fair.

Presenters: Kerry Bartell of Kovitz Shifrin Nesbit, Nancy D'Andrea of Premier Community Management, and Sarah Gullett-Johnson of SGJ Property Management

Fall Expo Registration Form

Free Parking! Free Breakfast!

Trade Show and Exhibitor Showcase Presentations from 8:00 - 11:30 a.m.
There is no charge to attend the Expos or Showcase Presentations
however pre-registration will assist with planning

THE FEE TO ATTEND ANY OF THE EDUCATIONAL PROGRAMS is:

ACTHA Member rate: \$ 30 or \$ 25 (if using the promo code available from presenters and exhibitors)

Register by September 16 and pay only \$ 25!

Register for both and SAVE 33%: \$ 40

Non-member rate: \$ 45 per person

Late Fee: Add \$10 if registering after Sept. 26 for the South Expo and after Oct. 10 for the North Expo

YES! I want to register for

South Expo: Sept. 28, Tinley Park Convention Center

North Expo: Oct. 12, Westin North Shore in Wheeling

Both the South Expo and the North Expo

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Question of the Month

By: Robert Prince of Keough & Moody

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Q. We are conducting our annual meeting of owners. May we immediately hold a board meeting? Do we close the owners' meeting and then convene as a board meeting?

A. After an annual meeting of the members, one of the first orders of business is the selection of officers. While the membership elected the directors that will serve on the board, the members of the board select the officers of the association. The board generally selects its officers at its next meeting. Many times, an association will hold a board meeting immediately following its annual meeting. Often, the association's governing documents will refer to the meeting as the annual meeting of the board. Some governing documents may even state that the board meeting can be held without further notice. However, Sections 18(a)(9) and 18.5(c) of the Condominium Property Act, Section 1-40(b)(4) of the Common Interest Community Association Act and Section 108.21 of the Not-For-Profit Corporation Act all require boards to provide a notice of meeting in advance of a board meeting. Therefore, it is the best practice to provide an actual notice of meeting for the board meeting.

The association's notice must be provided at least 48 hours in advance of the board meeting. To save money on mailing, boards often send the board meeting notice well in advance of the 48 hour minimum by sending it in conjunction with the annual meeting notice, which must be sent or delivered at least 10 days in advance of the meeting. To do so, they either enclose it with the annual meeting notice or have both notices on the same sheet of paper clearly designating the date, time, place and purpose of the meeting. Under the law, the association may also have to post the notice at common entranceways or other designated areas.

After the business that is before the members at the annual meeting has been completed, the meeting should be adjourned. If a notice of board meeting has been provided in advance, the new board can call the meeting of the board to order. It can then conduct any business that is before it.