



Community Newsletter

The Voice of Condominium, Civic, & Homeowner Associations of Pasco County

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Council of Neighborhood Associations, Inc. since 1985

May 2006



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Government Committee

C.O.N.A. MEETING **Wednesday,** **May 17, 2006**

New Port Richey
City Hall,
in Chambers, at
5919 Main Street
meeting begins at 9:30 a.m.

C.O.N.A. has invited Pasco
School Board Candidates to speak at
this meeting.

They are

Allen Altman

Willie B. Broner, Jr.

Michele Chamberlin

Cathi Compton

Renee Jonas

Cathi Martin

Deborah McDowell

Tami Paxton

Frank Parker

Lance Shortt, and

Michael Siemion

Editor's Note:

I've arranged with AAA Auto
Club South to furnish their
Hurricane Packet of informa-
tion to hand out at this meet-
ing. I only have 50, so get there
early.

State Farm has generously
provided us with 50 Hurricane
home inventory pamphlets to
hand out at this meeting.

Don't forget!

**There are no meetings in
June, July, or August.**

Volunteering Is In his Blood!

Past President of C.O.N.A.,

Mel Phillips, has
another award to
add to his collection.



This time it is the President's

"Call to Service Award Life Time
Achievement Award" for serving
more than 4,000 hours as a
volunteer. The award was

presented at a luncheon honoring
volunteers on Monday April 24.

Mel started volunteering for the
sheriff's office March of 1992. At
the present time he is a Field
Training Officer, training other
volunteers for the Citizen Service
Unit.

Congratulations Mel!

"Tax Bite Too Big?"

Wait! until May 21, 06.

A bill to be entitled

An act relating to hurricane pre-
paredness; providing an exemp-
tion from the sales and use tax

See Taxes page 2

Taxes from page 1
for sales of certain tangible personal property for a certain period; providing an exception for sales within certain facilities; authorizing the Department of Revenue to adopt certain rules; providing an appropriation; providing for reversion and reappropriation of a certain unexpended balance; providing an effective date.

Sign by Governor Jeb Bush on April 27, 2006

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) Effective **May 21, 2006, through June 1, 2006**, no tax levied under the provisions of chapter 212, Florida Statutes, shall be collected on the sale of:

- (a) Any portable self-powered light source selling for \$20 or less.
- (b) Any portable self-powered radio, two-way radio, or weather-band radio selling for \$50 or less.
- (c) Any tarpaulin or other flexible waterproof sheeting selling for \$50 or less.
- (d) Any ground anchor system or tie-down kit selling for \$50 or less.
- (e) Any gas or diesel fuel tank selling for \$25 or less.
- (f) Any package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less.
- (g) Any cell phone battery selling for \$60 or less and any cell phone charger selling for \$40 or less.
- (h) Any nonelectric food storage cooler selling for \$30 or less.
- (i) Any portable generator used to provide light or communications or preserve food in the event of a power outage selling for \$1,000 or less.

(j) Any storm shutter device selling for \$200 or less. As used in this paragraph, the term "storm shutter device" means materials and products manufactured, rated, and marketed specifically for the purpose of preventing window damage from storms.

(k) Any carbon monoxide detector selling for \$75 or less.

(l) Any blue ice selling for \$10 or less.

(m) Any single product consisting of two or more of the items listed in paragraphs (a) - (l), or other tax exempt items, selling for \$75 or less.

(2) This section does not apply to sales within an airport as defined in s. 330.27, Florida Statutes, within a public lodging establishment as defined in s. 509.013, Florida Statutes, or within a theme park or entertainment complex as defined in s. 509.013, Florida Statutes.

(3) The Department of Revenue may adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to carry out this section.

Section 2. For the 2005-2006 fiscal year, the sum of \$277,540 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the sales tax exemption authorized by section 1 during the 2006 calendar year. On June 30, 2006, the unexpended balance of this appropriation shall revert to the General Revenue Fund and shall be reappropriated to the Department of Revenue for the 2006-2007 fiscal year for the purpose of the original appropriation.

Section 3. This act shall take effect upon becoming a law.

It became a law on April 27, 2006 by the signature of Governor Jeb Bush. □



LET'S GO FISHING



Have a great summer!

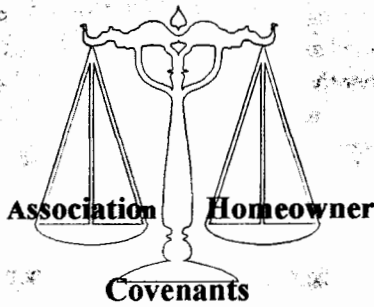
See you in September



ASK THE HOA EXPERT - reprinted with permission from Richard Thompson of Regenesi.net

Q When is a resolution required and should they be included in the homeowners' handbook?

A. Resolutions are never required but are a desirable policy format for defining complicated issues like collections, architectural control, parking and others. (See Resolution Process at Regenesi.net for details and samples.) Handbooks should always contain the full text of all rules and resolutions. These should also be posted on an HOA website for the benefit of prospective purchasers, real estate agents and others that have an interest.



ENFORCEMENT OF COVENANTS

ATTORNEYS' FEES VS COSTS:

As a beginning point, it is important to understand that "attorneys' fees" and "costs" are not the same. Attorneys' fees are those monies paid for the legal services performed by attorneys and their staff (e.g. paralegals.) Costs, on the other hand, are the funds paid for such things as HOA mediation fees, filing fees, service of process fees, deposition charges paid to a court reporter and sometimes, but not always, telephone and copy charges. According to Florida law, prevailing parties are always entitled to recover their "Costs." Therefore, this article will only discuss attorney's fees.

REALISTIC EXPECTATIONS MUST BE ESTABLISHED:

Many community association board members vote to take actions against a violator only because they believe that the association will be reimbursed for all of the attorneys fees expended in that effort. As will be addressed below, this isn't always possible, thereby leaving these persons disillusioned and discouraged.

One of the purposes of this article is to assist board members and managers in establishing realistic expectations concerning this issue.

WHAT IS THE BASIS FOR THE ENTITLEMENT TO PREVAILING PARTY

ATTORNEYS' FEES:

See Covenants page 4

ASSOCIATION PRESIDENTS

Re-cap 2006 Season 12/05 to 4/31/06

NEW MEMBERS

Briarwoods HOA, Inc.
President -Tom Larke
Village Woods Condo Assoc.
President, Robert Lehmann
Palm Breeze Vlg of Heritage Springs
William Hellmers
Signal Cove HOA
Stan Shepherd
Spring Crest Vlg 11 of Heritage Spgs.
Leo Figliuolos
Veterans Village II
Tom Kehoe

NEW PRESIDENTS

Beacon Wood Civic Assoc.
Ann Bunting
Gulf Harbors Civic Assoc.
Pat Pfaff
Gulf Harbors Woodlands
Sharon O'Donnell
Gulf Landings HOA
Rich Boucher
Hunter's Ridge HOA
Hugh Townsend
Magnolia Valley Civic Assoc.
Roger Borgers
Millwood Vlg at Beacon Wds East
Tom Tyska
Orchid Lake Vlg Civic Association
Laura Grady
Regency Park Civic Assoc.
Dorothy Hinnant
Southern Oaks of Pasco HOA
Gus Sylva
SummerTree Villa HOA
Lance Longborg
Timber Oaks Comm.Serv.Assoc.
Bob Myers
Trinity Oaks Prop.Owners Assoc.
Michael McMullan

RE-ELECTED

Aristida Homeowners Assoc., Inc.
President, John Moore
Autumn Oaks
John Tallarine
Bellerive at Fox Hollow HOA
John Fernandez
Crestridge Gardens
President Jean Cason

RE=ELECTED cont'd

Embassy Hills Civic Assoc.
Charlotte Healy
Fox Wood at Trinity Comm.Assoc.
William Humphrey
Gulf Trace HOA
Charles Tuider
Heritage Lake Comm. Assoc.
Richard Norton
Oak at River Ridge
Sherri Novick
Orchid Lake Vlg HOA 10
Mario Bartoletti
Ponderosa Pines
Marion Retino
Riverside Village Estates
Doug Bacon
Sea Pines Civic Assoc.
Ernie Reed
Sea Ranch Civic Assoc.
Jim Craun
Shadow Oaks II HOA
Dorothy Truscott
Shadow Ridge HOA
Don Paepiou
Timber Greens Comm. Assoc.
Bill Schommer
Veterans Villa III
Fred Williams

Corporation Renewal News from Tallahassee.

Renewing your corporate name will cost \$61.25 if done before the first of May deadline of each year. This reserves your name so no one else can use it.

To reinstate your corporate name, if you don't renew by the due date, will cost you \$236.25.

If you let your corporate renewal lapse, you take a chance that your association name may not be available. If you choose to start over as a new corporation with a new name, or if your old name is still available, the fee is \$61.25

DISCLAIMER: UNDER NO CIRCUMSTANCES WILL LIABILITY OCCUR IN THE EVENT OF, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, OR ARISING OUT OF, THE PROVIDING OF INFORMATION HEREIN, REFERENCE TO ANY SPECIFIC COMMERCIAL PRODUCTS, PROCESS, OR SERVICE OR TRADE NAME, TRADEMARK, MANUFACTURER, OR OTHERWISE, DOES NOT NECESSARILY CONSTITUTE OR IMPLY ITS ENDORSEMENT, RECOMMENDATION, OR FAVORING BY COUNCIL OF NEIGHBORHOOD ASSOCIATIONS, INC. OR ANY ENTITY THAT SUPPLIES INFORMATION IN THIS AND SUBSEQUENT "NEWSLETTERS." THE INFORMATION SET FORTH IN THIS NEWSLETTER IS GENERAL AND SUMMARY IN NATURE AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE APPLICABLE TO YOUR ASSOCIATION. IF YOU HAVE QUESTIONS REGARDING THE CONTENTS OF THIS NEWSLETTER AS IT APPLIES TO YOUR SITUATION, PLEASE CONTACT THE ASSOCIATION ATTORNEY RESPONSIBLE FOR YOUR ASSOCIATION. IN ADDITION, WE WISH TO REAFFIRM THE FACT THAT THE PRINCIPLES OF LAW CITED HEREIN ARE SUBJECT TO CHANGE FROM TIME TO TIME. ■

Covenants from page 3

It is critical to understand that a prevailing litigant is not entitled to recover its attorneys' fees from the losing party unless entitled to do so by contract or law. Thankfully, Community Associations can claim this right based on both contract and law:

Contract: Because written and recorded deed restrictions (i.e. Declarations) are considered "contracts," and because the vast majority of Declarations provide for prevailing party attorney's fees, Community Associations almost always can claim contractual attorney's fees.

Law: Even if a Declaration does not provide for prevailing party attorney's fees, the following Florida Statutes do:

- a. Section 718.1255 for condominium arbitrations
- b. Section 718.303 for condominium litigation
- c. Section 720.305 for homeowners association litigation

NOTE 1: It must be remembered that if the violators prevail, they will likewise be entitled to these fees from the Association.

NOTE 2: 718.116 provides for fees relating to the collection of assessments, however, that section will not be addressed in this article.

MUST YOU FILE SUIT TO BE ENTITLED TO PREVAILING PARTY ATTORNEY'S FEES:

A question that is often asked is whether a Community Association is entitled to prevailing party attorney's fees if no lawsuit is ever filed. The answer to this question will depend on the language in your Declaration.

All the above cited statutes, and the vast majority of Declarations, require that a lawsuit be filed and that a party actually prevail to be entitled to attorney's fees. In those cases, a claim made for pre-litigation fees may violate the Fair Debt Collection Practices Act.

However, some Declarations do provide for "pre-litigation" attorney's fees and some of those documents permit a lien to be filed against the property of the violator for such pre-suit fees. These provisions, while valid, can result in serious repercussions, therefore, caution must always be used

caution must always be used when exercising this right.

ARE YOU ENTITLED TO ATTORNEY'S FEES IF A CASE IS SETTLED AT THE MANDATED HOA MEDIATION PROCESS:

Most HOA disputes must proceed through a mediation process before litigation can be filed. The law that requires such mediation, however, is silent as to the recovery of attorney's fees for such mediation process. Accordingly, whether the HOA will be entitled to attorney's fees as part of the mediation process will be based on the same standards addressed in the immediately preceding section of this article.

If the matter is not settled at mediation and litigation is then filed, the attorney's fees incurred during mediation may be included in the claim made by the prevailing party at the end of the case.

WHAT DOES IT MEAN TO "PREVAIL:"

The word "prevail" is defined in Webster's Dictionary as follows: "To gain victory by virtue of strength or superiority... Triumph"

However, sometimes there are complicating factors that make it difficult to determine who actually prevailed in a lawsuit. The following are the typical circumstances where this question must be addressed by a Judge or Arbitrator:

a. Single-issue Lawsuits:

If a violation lawsuit involves only one issue (e.g. failure to maintain the yard," it is typically a single matter to determine who prevailed.

b. Multi-Violation Lawsuits:

Sometimes a lawsuit is filed concerning several violations (e.g. failure to maintain the yard and having a commercial vehicle.) In these cases, it sometimes happens that each party will prevail on some, but not all, of the claims. When this occurs, the Judge or Arbitrator must decide who prevailed based on the following two concepts:

i. First, the Judge or Arbitrator must decide which party prevailed as to the most significant issue raised in the case. For instance, if the Association filed a two count action based on the complete failure to maintain the home and on the fact

that a car had no tag, and then only prevailed as to the home issue, it seems clear that the Association prevailed as to the more significant issue and should be awarded its fees.

ii. If, however, a Judge or Arbitrator is unable to decide if either party prevailed as to the most significant issue, then they have the discretion to decide that neither party prevailed or that one party should be awarded its fees based on other factors.

These complexities can result in some unexpected decisions.

c. Counterclaims Against the Association

Sometimes when a suit is filed, the homeowner will file a counterclaim back against the Association (e.g. in response to an action concerning a commercial vehicle, the owner sues for damages resulting from a roof leak,) in these cases,

the question of attorney's fees is decided in the same fashion as addressed above for Multi-Violation lawsuits.

d. The Violation is Cured After the Suit is Filed:

Sometimes a violation is cured after the suit is filed but before a judgment can be obtained. When this occurs, the Association may still be entitled to recover its fees, but only if it can prove that the violator cured the violation as a direct result of the lawsuit being filed and not as a result of some completely independent event. While generally the Association can prove that the lawsuit resulted in the cure, the following will serve as an example of a circumstance where this may not occur.

Mr. & Mrs. Jones live in a community for older persons but they allow their young grandchild to move in with them. Suit is filed. The owners file an answer alleging that the community did not qualify for such Fair Housing treatment. The child is then removed from the community because the child's parents, who had been involved in a contentious divorce, have reconciled and are now in a position to again take care of him.

In this circumstance, the Association may or may not be entitled to recover their



their fees because there is a real question as to whether the child was removed as a result of the lawsuit or because of the reconciliation of the parents.

e. The Violator Sells and Moves

After the Suit is Filed:

Sometimes, but not often, a violator sells and moves after a suit is filed but before judgment is obtained. In these circumstances, it is many times impossible to recover fees from the former owners.

In those instances, however, when the violation continues, the Association can, after proper notice, substitute the new owner for the old owner in the lawsuit and continue forward with the suit if the violation is not cured. The new owner would then be responsible for the fees incurred after they became the owner if the Association ultimately prevails in the suit.

MUST THE COURTS GRANT THE FEES TO THE PREVAILING PARTY:

According to Florida law, a Judge or Arbitrator must award attorneys' fees to the prevailing party, but see the next section for a better understanding of this obligation.

WHAT AMOUNT OF FEES WILL BE ASSESSED AGAINST THE LOSING PARTY:

Unlike assessments and other damage claims that can easily be determined from a written instrument (e.g. unpaid promissory note.) attorneys' fees are classified by Florida law as "unliquidated damages." In practice, this means that, if the losing party objects to the amount of the fees, a Judge or Arbitrator must ultimately establish the exact amount of fees that must be paid.

While Judges and Arbitrators must award some attorneys' fees to the prevailing party, they are only legally required to award "REASONABLE" attorney's fees that were incurred in the case, instead they are only required to award the amount of fees that they believe to be "reasonable" for that case. As to this question, Judges and Arbitrators have great latitude as to the exact amount of fees that they will award.

For this reason, in nonassessment cases, the amount claimed and the amount awarded is almost never the same, especially in protracted, complicated cases.

NOTE 1. Arbitrators typically are less likely to award the full amount of fees requested by an Association based on a public policy position that Associations have more assets than do unit owners.

NOTE 2. No fees incurred after the determination of the prevailing party is made may be charged back against the losing party. Accordingly, attorney's fees incurred proving the amount of fees cannot be recovered by the prevailing party.

HOW DO YOU COLLECT THE AWARDED FEES:

Except in those rare cases where the Declaration allows attorney's fees to be converted to an assessment, Associations must collect attorney's fees using the same process utilized to collect personal judgments. In addition, in Florida, a person's homestead is protected against such claims. Accordingly, while in the majority of cases the losing party voluntarily pays the fees, sometimes the collection process can be very difficult, if no impossible:

Article by the firm of Taylor & Carls, P.A., with offices located in Maitland, Melbourne, Tampa and Palm Coast, Florida, was founded in 1981 and has practiced in the area of community association law since that date. This edition was prepared by Robert L. Taylor, Esq. of Taylor & Carls, P.A.

The information contained in The Association e-Lawyer should not be acted upon without professional legal advice. □

**SEWAGE BACK UP ALERT
STORMS/HURRICANES!**



When communities flood or the electric is turned off by your electric company during a storm, be aware of sewage backing up into your home.

There are over 500 "lift stations" aka "pump stations" installed all over Pasco County, whether you are in an incorporated or unincorporated community. When the electric is turned off, and remains off, over 24 hours, it is recommended by Pasco County Utilities Department that you do not flush your toilet or run any water in your drains. If you must wash dishes put the water in a container so you can dump it outside.

A call to the Pasco County Utilities Department revealed that the collection of waste is a gravity system that pumps waste to a continuing higher level along the path to the sewage plant. Lift stations are the only vehicle that delivers the sewage to the sewage plant for processing. Lift stations have extremely loud sirens to alert residents that there is a problem. The sirens are battery powered and will sound for two minutes before stopping. If the siren sounds in your area, please call the Pasco Utilities Department at (727) 847-8144, available 24/7. There are usually more than one lift-station in each subdivision.

If the electric is off for 24 hours, it is recommended that you take the cap off of your sewer pipe in your yard. There are usually two caps...one close to the house and one between homes leading to the street. It is prudent for you to find this cap now and not wait until disaster strikes. If you need to do this, the sewage will drain into your yard and not in your home. Sewage has backed up into homes and it can be rather expensive to clean up the mess.

CAUTION: DO NOT FLUSH OR RUN WATER INTO YOUR DRAINS.

Be sure to turn off your water heater and your water softener at the breaker box if the electric is off for at least 24 hours or more.

PROGRESS ENERGY recommends unplugging any large appliances. Plug them back in once the electric is returned to normal. The surge when the electric is turned on could damage your large items e.g. computer, heat pump, etc. if left plugged in. □



**THE FLORIDA SENATE BILLS
sent to Governor Jeb Bush for his
signature (or veto)**

S1556 - Relating to Condominiums

An act relating to condominiums; amending s.718.117,F.S.; substantially revising provisions relating to the termination of the condominium form of ownership of a property; providing legislative findings; providing grounds for termination; providing powers and duties of the board of administration of the association; waiving certain notice requirements; waiving certain notice requirements following natural disasters; providing requirements for a plan of termination; providing for the allocation of proceeds from the sale of condominium property; providing powers and duties of a termination trustee; providing notice requirements; providing a procedure for contesting a plan of termination; providing rules for the distribution of property and sale proceeds; providing for the association's status following termination; allowing the creation of another condominium by the trustee; specifying an exclusion; providing an effective date.EFFECTIVE DATE: 07/01/2006 (if signed by Governor Jeb Bush.)

Editor's Note:: This can be downloaded from the Senate Website at FSenate.gov. It is 16 pages in length. Click on Bills. On the left type in the bill number 1556 "bill search text" hit enter.Next page, on the right, click on bills 1000-1998 where bills will be listed. Scroll down to 1556 and click on this number. Scroll down to bills category. Under bills click on the bill number with **ER** after it. On the right see Webpage and PDF. Click on either one to print.

SENATE BILL 692

An act relating to tax on sales, use, and other transactions; specifying a period during which the sale of books, clothing, and school supplies is exempt from such tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt rules; providing an appropriations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1.. (1) The tax levied under chapter 212, Florida Statutes, may not be collected on the sale of:

(a)1. : Books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags,

but excluding briefcases, suitcases, and other garment bags, having a sales price of \$50 or less per item during the period from 12:01 a.m., July 22, 2006, through midnight, July 30, 2006.

2. As used in this paragraph, the term:

a. "Book" means a set of printed sheets bound together and published in a volume. For purposes of this paragraph, the term "book" does not include newspapers, magazines, or other periodicals.

b. "Clothing" means any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body. For purposes of this paragraph, the term "clothing" does not include watches, watchbands, jewelry, umbrellas, or handkerchiefs.

(b) 1. School supplies having a sales price of \$10 or less per item during the period from 12:01 a.m., July 22, 2006, through midnight, July 30, 2006.

2. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(2) This section does not apply to sales within a theme park or entertainment complex as defined in s.509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s.330.27(2), Florida Statutes.

(3) Notwithstanding the provisions of chapter 120, Florida Statutes, to the contrary, the Department of Revenue may adopt rules to carry out this section.

Section 2. The sum of \$206,000 is appropriated from the General Revenue Fund to the Department of Revenue for purposes of administering section 1.

Section 4. This act shall take effect July 1, 2006



**More to be signed
by Governor Jeb Bush (or vetoed)**

SB 264 - words underlined are additions

An Act relating to homestead assessments amending s. 193.155, F.S.; providing an additional criterion for determining no change in ownership of homestead property for homestead assessment purposes; specifying a condition for a change in ownership; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 193.155, Florida Statutes, to be amended to read:

193.155 Homestead assessments - Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption.

(3) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (1) and (2). For the purpose of this section, a change in ownership means any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person, except as provided in this subsection.

There is no change of ownership if:
(a) Subsequent to the change or transfer the same person is entitled to the homestead exemption as was previously entitled and:

1. The transfer of title is to correct an error, or
2. The transfer is between legal and equitable title:

or
3. The change or transfer is by means of an instrument in which the owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee. However, if any individual who is additionally named as a grantee applies for a homestead exemption on the property, the application shall be considered a change of ownership.

(b) The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage;

(c) The transfer occurs by operation of law under s. 732.4015 or

(d) Upon the death of the owner, the transfer is between the owner and another who is a permanent resident and is legally or naturally dependent upon the owner.

Section 2. This act shall take effect July 1, 2006.

Cost of HOA Complacency

by Richard Thompson of Regenesi.net

Homeowner associations are responsible to plan for future repair and replacement events to common element. The "reserve study," as it is called, is a comprehensive analysis that provides a schedule and funding recommendation to keep building and grounds components like painting, fencing and paving in good repair. Unfortunately, even HOAs that have a reserve study too often ignore them or only partially implement the recommendations. As HOAs reach 20 years old or so, many of the most expensive repairs come due, like roofing, fencing, docks and equipment replacement.

Without proper reserve planning and accumulation of reserve funds, HOA Boards that are not prepared face unpopular and unfair special assessments. As the unavoidable looms, most boards to dodge and weave, defer and delay. What's a year or two more going to matter? And, by next year, the directors might be able to sell their units and avoid the unpleasantness altogether. Meanwhile, Rome burns.

One oft overlooked advantage of effective reserve planning is strategic investing of the funds. The study reveals when funds will be needed and thus allows available funds to be invested for longer terms and higher yields. An increase of only 1-2 percent in investment yield can often lead to hundreds of thousands of dollars in additional interest earnings over the projection period. Every dollar of interest earned is one dollar less of owner contribution. It's like having someone else pay the freight.

One option that HOAs consider to finance urgent repairs is bank loans. When HOAs borrow money, it's considered a commercial loan and both the rate and loan fees are considerably higher than home loans. These loans are typically short term (five to ten years) and HOA loans require monthly payments just like any other. The lenders require much hoop jumping to get them. There are only a few lenders that will do them at all. There are situations when borrowing money is called for (like unanticipated and hugely expensive urgent repairs) but there's simply no free lunch and this one comes at a premium price. If certain owners lack the cash to fund an urgent special assessment, it's much cheaper to get a home equity loan or even draw on a credit card. Home equity loan interest is deductible for this purpose.

For a variety of reasons including disability, divorce, retirement and long term unemployment, some HOA members may not be able to fulfill their financial obligations to the HOA. But consider this: Shelter is only trumped by food as a life priority. If a member is unable to afford HOA expenses, it may be time for a lifestyle adjustment. The HOA simply cannot fulfill its financial obligations when it plans around or concedes to the weakest link. While this sounds cruel, remember that there is no government bail-out for HOAs. If some don't pay, the rest must. If the Board can convince all the members to subsidize someone down on their luck, well and good. Otherwise, the Board should press for collection just like the IRS, and the sooner the better. Most members can come up with their share of cash when pressed. For the rest, it may be time for a heart to heart about downsizing.

A Professional Reserve Analyst can recommend material and design upgrades to reduce repair and replacement costs plus interval maintenance that will significantly extend the useful lives of some components. With longer lives, comes reduced owner contributions.

All things wear out sooner or later. A reserve study analyzes those assets that the HOA is responsible for, projects future costs, current funding needs and a schedule for keeping the assets in good repair. The approach is fair to all owners, now and in the future, and ensures repairs are done when needed. Result: happy members with sustainable home values.

Complacency has obvious pitfalls. Sooner or later, the inevitable becomes unavoidable. As the saying goes,

"If you find yourself in a hole, stop digging." □

HOA Manager Screening

Always consult an attorney before making any decisions.

When going through the process of hiring a professional homeowner association manager, it's necessary to know what services you are interested in receiving.

While each company offers a set of core services, the set varies from company to company. It's up to the client to define the scope of work so that proposals received can be compared and contrasted.

Administrative

- Relates with Owners: Responds to owner information, maintenance or service requests and records action taken.
- Sale Documentation: Provides sale disclosure information as requested by seller for a cost of \$_____.
- Owner Directory: Maintains current directory of owners/residents, addresses and phone numbers.
- Files & Records: Maintains current financial, maintenance and administrative in an orderly fashion and readily accessible by authorized association representatives.

Financial

- Collects, records and deposits assessments to Association's bank account in a timely manner.
- Pay Association bills as authorized by the Board in a timely fashion.
- Prepares monthly Income & Expense Statements, Balance Sheet and Delinquency Report in a format usable by the Board and auditors.
- Arranges for CPA services.
- Maintains Association bank accounts and provides regular financial statements
- Processes collections in accordance with the HOA's policy.
- Operating Budget: Prepares draft for Board review.

Insurance

- Processes HOA insurance claims for: 'no extra charge'
- For an extra fee Insurance: Arranges insurance as indicated by the governing documents or as directed by the Board.

Meetings

- Attends _____ Board Meetings per year plus one Annual Homeowner Meeting 'Included in the basic management fee.' For additional meetings carry a charge of \$_____
- Meeting Notices: Prepares and distributes.
- Assists with procedure at meetings.
- Takes meeting minutes.

Maintenance

- Property Inspections: Performs general grounds and buildings inspection and follows up on any needed maintenance or problems at least Weekly, Monthly, or Quarterly
- Schedules maintenance according to standard practice or as directed by the Board President and follows up to ensure completion.
- Provides handyman services at \$_____/hr during business hours, \$_____/or after hours, \$_____/hr on holidays.
- Performs larger renovation projects like painting, siding and dock repair, etc. on 'bid/proposal basis' time and material basis.
- Major Repair Projects: Assists in the specifications, bid proposals and project oversight of major repairs 'Included in the basic management fee, or ' For an extra charge of \$_____.
- Emergency Response: Maintains a 24 hour emergency response service to protect the property and safety of the residents.
- Purchases: Negotiates contracts for services, equipment, materials and supplies for the maintenance of the Association's property.
- Employees: Assists in the selection, training and the supervision of any Association maintenance staff.

Rules Enforcement

- Inspects property for rule violations: Weekly, Monthly, or Quarterly.
- Sends notices of rules violation.

Monthly Management Fee: \$_____

Overall Impression: Excellent -- Average -- Poor

Reprinted 9/14/05 printing, with permission by - Richard Thompson, owner of Regenis. a management consulting company that specializes in condominium and homeowner associations. He is a nationally recognized expert in HOA management issues.

The Regenis Report, a monthly newsletter for HOA boards, developers and managers.

Cona Editor's Note ...this is only a guide. □