

Making and Funding Long-Term Maintenance and Repairs

1 But, We Don't Have The Money!

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About 20 to 25 years after construction, associations often find the need for major repairs to roofs, paving and other exterior building components. In a perfect world, associations would have adequate reserves to make these repairs. However, in most cases this is the exception to the rule. Many associations will face the need for major repairs to protect

performing the reserve study to assure the accurate reflection of the project's conditions and the building component's anticipated life. Annual disclosures to the members are required as to the current annual replacement costs and estimated life of each major component [Civil Code § 1365(a)(2)(A)].

Keeping regular assessments artificially low, although politically expedient, will not

One option of funding repairs over and above the available reserves is to impose a special assessment. Special assessments are normally limited to 5% of the budgeted gross expenses of the association per year, without owner approval [Civil Code § 1366(b)]. A one-time assessment of owners for \$5,000, \$10,000 or \$20,000 may not stand much chance of being passed by the members if good

required by an order of a court." [Civil Code §

1366(b)] An association could potentially be sued by owners for failing to make needed repairs. The association's D & O insurance may or may not provide a defense, depending upon the policy and the lawsuit's allegations. (Managers have also been sued in these situations.

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the investments of the members, but be without the funds to do so. Neglecting ongoing maintenance and necessary major repairs can lead to dilapidated structures, leaks, mold infestation, reduced property values, insurance claims, insurance cancellation and general blight.

Failing to deal with these situations is not the answer. In fact, it may be a breach of the board's fiduciary duty and of the manager's standard of care by failing to take adequate steps to maintain the property.

A reserve study may or may not accurately reflect the actual condition of the buildings. Managers and board members should participate in reserve studies, along with service providers who regularly service the property. Their input needs to be provided to the company

provide for the repair or reserve needs of the community.

Adequate funding is important. Boards must review their reserve revenues and expenses compared to the current year's budget on a quarterly basis [Civil Code § 1365.5(a)(3)]. Regular assessments can be raised up to 20% per year without member approval [Civil Code § 1366(b)]. Assessment increases can be used for reserves.

Be proactive. Invest in a construction professional, such as an experienced general contractor or construction manager who deals with aging properties. Have him or her review the construction conditions and make recommendations as to which ones should be dealt with in the near future. Prioritize what repairs need to be made within the next five years.

communication and education of the membership is absent. Assessments phased over time may stand a better chance of member approval.

Another option is to obtain a bank loan to make the needed repairs. Sophisticated banks that make these loans generally require an evaluation of the membership as security. Loans are typically repaid over five to 10 years. However, devoid of an emergency situation or court order, loans with assessments as security must be approved by the members.

The board's failure to make needed repairs can leave owners stranded with unsellable homes that cannot be refinanced and can lead the association into receivership. One of the exceptions to the requirement of owner approval of assessments is "an extraordinary expense

Having an indemnity provision in the management agreement is critical for reasons like this.) A court judgment can order the repairs to be made and appoint a receiver. The receiver then takes over the operation of the association, assesses the members, takes out a loan, and makes the repairs as part of the court order, all without member approval.

Careful planning and evaluation are crucial in preventing this possibility and enhancing property values, the key responsibility of all boards and managers.

ABOUT THE AUTHOR



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