

MEETING AN AGING ASSOCIATION'S FINANCIAL NEEDS

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Like any other type of housing, condominium homes require short term and long term maintenance and repair. Most associations do a reasonably good job of adequately budgeting to cover the short-term maintenance expenses. However, long term capital replacements like new roofs or street paving are difficult to handle for most associations because no one wants to see the assessments set at a level high enough to fund reserves for such long term items. This is because many people do not plan to keep their condominium for such long periods of time and hope to move before these major expenses arise. Also, many people still comparison shop for condominiums by looking at monthly assessments without considering the existence or size of the reserve fund or the particular needs of a given condominium project. Additionally, many co-owners have an unrealistic set of expectations, often fostered by a developer's sale pitch. Adding to the problem is the fact that most condominiums have private streets to be plowed and repaved at the co-owner's expense despite their payment of full real estate taxes.

THREE ALTERNATIVES

Over time, these circumstances will tend to generate a series of crises in which the Board of Directors must raise funds to cover the increasing financial burdens. One solution that works in some instances is an increase in the basic monthly assessment that will defer the crisis or resolve it. Secondly, and more commonly, the board will resort to additional assessments to address each spending need since that allows the basic assessment to remain "competitive". However, many boards will consider a third approach which is to revise the condominium documents to shift certain responsibilities to the co-owners so that these expenses can be removed from the budget process altogether. The following discussion will focus on this third approach.

AMENDING RESPONSIBILITY CLAUSES AS A SOLUTION

Co-owners need to understand the monetary needs of their association and that the association has but one source of income to meet those needs; assessment of its members. The co-owners always pay for repairs, one way or the other. The real issue is whether they should pay directly or via the association. Once this reality is made known to them, it becomes possible to address the problem creatively by amending the Master Deed to reallocate repair responsibilities. Furthermore, the developer's attorney may not have done a good job of allocating responsibilities between the association and the co-owners when he or she drafted the Master Deed. Many times circumstances have changed making the original documents outmoded. Thus, there are often several reasons to consider amendments to revise responsibility allocations.

The Condominium Act was deliberately written so as to permit developers maximum flexibility. For the most part, this also applies to the delegation of duties between the association and the co-owners. Thus, if an association has arrived at the point where the monthly assessments cannot reasonably be further increased and additional assessments are not viewed as desirable or practical, the problem can sometimes be addressed by revising the Master Deed to reduce financial pressures on the association. The question then becomes which responsibilities should be shifted to the co-owners.

Amending the documents is not easy nor can it be done fast. Each document will have its own amendment requirements to be met. Due to a change in the Condominium Act several years ago, you may disregard any unanimity requirements as they are replaced by law with the requirement that 66 2/3rds percent of the co-owners and the mortgagees consent to the amendment. Depending on the

particulars, it may be necessary to hire an engineer or surveyor to redraw some of the site plans before the amendment can be recorded. Obtaining co-owner and mortgagee consent is a time consuming process but one that can usually be accomplished with good communication of the problem situation motivating the amendment effort.

HOW REPAIR RESPONSIBILITIES SHOULD BE REALLOCATED

Reallocation choices are unique to each development to some degree but there are some general facts to use in evaluating the changes that will best suit your needs:

Impossibility

Safety/Structural Hazards

Insurance

Spillover/Nuisance

Economics of Scale

Expectations

IMPOSSIBILITY

As a practical matter, it would be impossible for individual co-owners to be responsible for plowing the streets or any other maintenance or repair item that directly involves the other co-owners.

SAFETY/STRUCTURAL HAZARDS

Some items involve major liability exposures and cannot be left to the co-owners. Street paving, pool maintenance, sewer and other utility services fall into this category. Also, failure to maintain or repair on time can cause losses or damage to other units or the common elements. If the item could readily be handled by the co-owners, the duty can be shifted to them, but the association needs to reserve the right to step in and perform if the work is not done right or on time. The resulting expenses would then be specially assessed to the co-owner who failed to act.

SPILLOVER/NUISANCE

Some types of repairs do not really involve a safety issue and failure to perform them would not directly injure the common elements or another co-owner's unit. However, if they are not properly and timely taken care of, they may create a nuisance situation. Many potential eyesores fall into this category. Again, the responsibility can be shifted to the co-owner as long as the association has the ability to step in and resolve it if the co-owner does not act responsibly.

INSURANCE

Insurance issues further complicate these responsibility allocation decisions. The documents need to be clearly written so that the co-owner, mortgage lender and association will recognize who is responsible for procuring insurance coverage for a particular item. Also, we need to be sure that the condominium documents are coordinated with the three types of master association policies that are currently available. It is generally advisable to have the condominium documents specify that co-owners are

responsible for insuring all betterments and improvements. Some companies will insist on selling a deluxe and very expansive coverage to the association even though the association's documents do not require such coverage. While this is often a big benefit to the membership, I believe the documents should track with the coverage purchased by the association so that there will be continuity and certainty. Buying coverage more expansive than the documents require may not always happen from year to year and it is too difficult to keep the co-owners abreast of the changes in these master policies.

ECONOMIES OF SCALE

Obviously there are some types of repairs that can be done much more cheaply if done all at once by the association. Exterior painting, roofing and the like are so much cheaper if done on a large scale that it makes no sense (in most cases) to assign the responsibility to the co-owners. Also, these particular items have a major bearing on the appearance of the association and should not be left up to the co-owners for the typical condominium layout. Many older documents were written so as to make the association responsible for window replacements. While it was cheaper for the developer to buy windows on a bulk basis, most associations do not find themselves replacing windows all at once and thus, there is usually no economy of scale involved.

EXPECTATIONS

A large number of condominium owners bought their homes because they accepted the myth of condominiums as a "carefree luxury lifestyle". Thus, they mistakenly believe that the association will take care of everything for them, for free. While these are unrealistic expectations, there are many items in a typical condominium that the association ought to take care of simply because the co-owners will expect that the Association will handle the item. Since the cost to the association is fairly nominal, there may be little to gain by shifting them to the co-owners.

WHERE DO WE GO FROM HERE?

The Board of Directors needs to carefully evaluate the historical spending patterns of the association, past repair projects, size of the association's budget, size of the existing reserves and the current and future repair and replacement needs based on the current set of condominium documents. A thorough review of the current documents is very important so that there will be a clearer understanding of how responsibilities are currently allocated.

Once these steps have been taken, you can begin to identify items for reallocation and marshal your arguments in support of each reallocation. The next step is to educate the co-owners on the current situation and the direction the board views as appropriate based on all of these factors and considerations. It is important to remind the co-owners that the directors are also co-owners and will share the same financial burdens carried by the other co-owners. Once the co-owners accept the fact that they always pay for all repairs and replacements and that there are sound arguments to support the proposed reallocation, the amendment proposal will likely be accepted albeit after much debate and effort.

You can raise assessments, you can levy additional assessments, you can reallocate responsibilities or you can use some combination of these three alternatives to address your problems. For a growing number of associations, the reallocation of responsibilities has proven to be an attractive and effective solution to the issue of covering repair and replacement costs.