



Condominium Law Q&A

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Recently, there was a story in the press of a unit owner who was distressed over special assessments levied by his condominium association. He took hostages at the association office and was ultimately killed by the police. The story is tragic and highlights the economic stress many associations and unit owners are under, due to both the need to fund special assessments to cover uninsured hurricane losses, as well as cover assessments for non-paying unit owners whose units are being foreclosed. Banner headlines from the *Wall Street Journal* to the *New York Times* proclaim the plight of unit owners impacted by the current downturn in the economy. Fox, ABC, and other networks have run special reports on the subject. In light of this, I would be remiss if I failed to discuss the subject with my readers and make several observations. First, a recent survey of unit owners and community associations showed that rising mortgage foreclosures are causing revenue shortfalls which pose significant threats to operation and maintenance budgets, and to the health and security of many communities. The survey, conducted by CALL (Community Association Leadership Lobby), reported that 60% of the communities surveyed said that banks and mortgage lenders now holding title to the foreclosed units are not meeting their legal obligations to pay regular fees or other assessments to the association. In addition, more than 40% reported that mortgagee-foreclosed units have been vacant for more than six months. What can be done? First, and perhaps most importantly, those

who own units in common interest ownership housing communities (condominiums, cooperatives and homes in planned unit developments operated by homeowners associations) need to appreciate the fact that, as co-owners, they will be responsible for paying their share of the common expenses, regardless of how high those expenses might be. In addition, when there is an economic downturn, such as what currently exists, all owners may have to share the burden of covering for non-assessment paying owners to ensure that essential services, such as, security, pool and lawn maintenance, as well as routine repairs and maintenance, are done in order to maintain the property values in the community. Unlike a traditional, single family, detached home, which is not part of a mandatory membership association, in which the homeowner is free to pick and choose whether or not to perform necessary repairs, the board of an association is not given that luxury. As a fiduciary of the unit owners, the board of directors is obligated to do what is necessary to maintain and restore the common property and to preserve property values. Bottom line, when one buys into a common interest ownership housing community, they need to do so with their eyes wide open, and fully understand and plan for the likelihood that they may need to cover assessments above and beyond what is expected.

Question: I am on the board of a 190 unit condominium. We are having economic problems with most of our more important reserves that are

almost depleted. Other reserves, less used and needed, have an over abundance of funds available. This came about due to former boards maintaining low fees, thus keeping reserves extremely low, and the prior board, while again keeping reserves low, spent much of what was available in a less than wise manner. I know Chapter 718, Florida Statutes, for practical purposes, will not permit the use of allocated funds to another reserve fund. Is it permitted, in developing the next fiscal year budget, to move monies from other reserves (where not needed) to more needed reserves? Are reserves, once established, established in perpetuity? J.L., Stuart

Answer: I am writing a response to your questions on a flight back from a National Conference of Community Association attorneys, where more than one speaker spoke of the decaying infrastructure of

the Nation's common interest ownership housing communities, which require large special assessments to restore their infrastructures, and, in some cases, the termination of the community, because the cost of restoration exceeds the unit values. For the most part, this is caused by imprudent boards, which fail to levy assessments at levels necessary to maintain and restore the improvements, and by unit owners unwilling to fund the necessary expenses and reserves. While the Condominium Act does mandate that the annual budget contain full funding of reserves for capital improvements and deferred maintenance, most associations waive full funding of reserves. Once established, defined reserves cannot be moved from one account to another without the prior approval of a majority of the unit owners voting at a duly called and noticed meeting at which a quorum is present.

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