

apm NEWS

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Line of Credit for Associations

By John R. Math, LCAM

It is often said, "The hardest time to get credit is when it is needed most". This is true of households, businesses and Associations. One only has to go back to 2004 and 2005 when we were hit with a series of hurricanes that devastated our area when Associations learned that their operating budgets and reserves did not take into account the possibility of these events.

Hurricanes, natural disasters, and emergencies always come at a high cost. Years ago we could rely on our insurance coverages to take over and the Association would only be out \$1,000.00 for the deductible. The rest being covered by the insurance policy. Today, we have 5% to 10% deductibles, exclusions and overall less coverage (for much higher costs). The Association (its owners/members) are to make up for the rest of these costs. How can an Association pay for

these costs when they happen? There are several ways and I will explain each.

The Operating Budget of the Association can budget for these expenses each year and fund a reserve for emergencies, costs or insurance deductibles. If this was accomplished, then the funds would be immediately available in an operating account, savings account or money market account. If the funds were invested into a C.D. and the C.D. terms had to broken, there would then be an interest penalty. This method requires a higher maintenance fee.

At the time that the money is required, the Association can have a special assessment meeting. The notice takes time to compose, mail out, and if proxies are required, time to come back from out-of-state owners. Most meeting notices of this type require at least 30 days and some documents require more. There is

still the possibility of not getting enough responses for a quorum or not having the assessment vote pass. In addition to the above, it takes additional time to bill, mail out, receive, and then deposit into the Association's account.

The Association can at the time of need make application to area financial institutions for the funds. This can be a long and drawn out process depending on the bank, their requirements and their loan parameters. Needless to say, in today's financial climate, it could take a while with the stricter loan requirements that are currently in place.

The final way that an Association can fund these needs quickly is to have a Line of Credit in place. A line of credit allows the Association quick access to their funds at time of need. A line of credit is different than a loan in that the funds will be discretionary. A loan would have a specific

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use, and if judged by the bank, possibly the amount of funds that were needed would not be given. A line of credit allows for flexibility of the borrower.

Let's recap the advantages and disadvantages of each funding method. Funding through regular assessments requires higher assessments but the additional funds are accumulating by being invested. These funds would be accessible, depending on how they were invested. Special assessments are time-consuming and a poor way to fund for an emergency due to the time constraints. Also, with unpaid assessments and collections being a problem, the Association would have to assess more for these members who will not pay. A bank loan is time-consuming and the moment that the loan is closed the interest clock starts ticking. Finally, a Line-of-Credit is a broad loan that allows the borrower discretion to spend the way they want. Interest is only calculated when the funds are drawn and the funds are readily available to the Association at their discretion.

In addition to having adequate reserves and a sound operating budget, an Association should also have a Line of Credit in place in case of emergencies. In this manner the Association is able to provide the necessary services without disruption to the owners/members.

Ask The Attorney

By Cari A. Podesta, Esq.

Q. *We have a member of our Board who is disrupting our meetings, refusing to vote on matters and not exercising their fiduciary responsibility. Can we remove the person from the Board? Our documents do not address this situation.*

A. Yes, you can remove this Board member. Both the Florida Condominium Act (Chapter 718, Florida Statutes), and the Florida Homeowners Act (Chapter 720, Florida Statutes) provide statutory recall procedures that supplement your Association's governing documents, even if those documents do not provide a recall/removal mechanism. Both of these recall statutes allow the majority of the voting interests of the Association to remove a Board member with or without cause.

In the case of a homeowners Association, this vote may be by written agreement and/or written ballot (or at a special meeting if already provided in the Association's governing documents but in this case your documents do not provide a recall procedure), and in the case of a condominium Association this vote may be by written agreement or at special meeting of the membership noticed and held for the express purpose of recalling a Board member.

Q. *We have an owner who wants to inspect all of our records going back 5 years. We have asked the person to be more specific and they refuse. They now are seeking monetary damages. We have no problem giving the records, we are just asking as to which ones. What are our rights?*

A. You do have rights; however, you need to establish rules and regulations for the copying and inspection of these documents first. Both the Condominium Act (Chapter 718, Florida Statutes) and the Homeowners Act (Chapter 720, Florida Statutes) provide a definition of what documents are the "official records" of the Association, which MUST be made available for inspection and copying by its members upon request, which documents ARE NOT to be accessible to the general membership, and for HOW long these records must be maintained by the Association. While the laundry list of what constitutes "official records" of the Association is quite extensive, the statutes do provide the Association with authority to adopt reasonable written rules governing the frequency, time, location,

notice, and manner of inspections of these records. Accordingly, the Association should adopt rules for records inspection, which comply with requirements of the applicable statute. In the case of a homeowners Association, be mindful that these rules may not require that the owner give any reason for the inspection, or demonstrate a proper purpose for the inspection, or limit the owner's right to inspect records to less than one 8-hour business day per month.

You should work with your official records-keeper, such as your management company, and come up with a set of rules that establish a procedure for owners who desire to make requests of your official requests. These rules should include a form for submitting written records requests, and a reasonable charge for the copying of records as permitted under the applicable statute. To avoid unnecessary litigation in this area, the form should mimic the list of documents set forth in the applicable statute, and the number of years the records have to be maintained (if applicable). The form should also contain a statement as to which records are excluded and not accessible to members (such as attorney-client communications and work product, medical records of owners, etc.).

Cari A. Podesta, Esquire started Cari A. Podesta, P.A. in 1992. The firm is located in Palm Beach Gardens, Florida, and specializes in the areas of community Association, real estate, land use and zoning law, and related litigation. Ms. Podesta can be reached at (561) 627-0469 or by e-mail at cari_pa1@yahoo.com.

REMINDERS!

1. Remember, there are financial reporting requirements now for HOA's. Make provisions in your 2009 Budget for this cost.
2. Any waiver of reserves for Chapter 718, 719 and 720 Association members must be voted on and waived prior to the beginning of the new fiscal year.
3. Chapter 718 now states that the Association shall require each owner to show evidence of insurance for their unit. Provisions should be made for this census.
4. Any proposed amendments must be drafted, reviewed and proposed by the Board of Directors, prior to the Members Meeting or Annual Meeting.

STAY INVOLVED WITH YOUR COMMUNITY ASSOCIATION

BY JOHN R. MATH, LCAM

(Reprinted from Spring 2004 Issue)

Living in a Community Association can be the most rewarding or the most frustrating experience of your life! But the main reason for Unit Owners being unhappy and frustrated is due to not being involved and informed of the workings and operations of the Community Association.

In any form of Community Association, you, the owner, must stay involved in the workings of the Association. The Association always needs owner volunteers for the Board of Directors and Committees. In a diverse group of people, there are many people with many talents who should be willing to participate for the greater good of the community. In addition, the Board of Directors needs unit owner participation at meetings for input and guidance and to help in the overall decision-making process. The Association does not operate on its own without the owners' involvement. Even if there is a management company or management staff handling the day-to-day operations and problems, it is the Board of Directors (the owners) who has the ultimate responsibility to manage and operate the Association. It does not happen by itself. Otherwise, if there is no participation, involvement or direction from the owners, the Association will be aimless and not forward thinking. Problems will arise that could have been or should have been anticipated by an active community. To fully protect your investment and your lifestyle, an owner needs to be involved in the Association and its operations. If this is not possible, you must at least go to Board of Directors, Committee, Workshop and/or Membership Meetings in order to stay informed and be able to benefit from the Community Association experience and lifestyle. A person's home is usually the single most important and costly investment that they will ever make. To leave major operations and maintenance decisions to others, without your input and participation, just does not make very good business sense.

The major cause of unhappiness and misunderstanding for an owner in a Community Association is usually the result of a belief that the Association takes care of all maintenance, repair and replacement problems. This is a misconception that occurs daily in most communities. This misunderstanding is usually a result of a lack of a working knowledge of the documents and the

state statutes that govern your Association. In many cases, the owner believes that because they are paying maintenance fees, everything that ever needs maintenance, repairs or replacements should automatically be handled by the Association. In most cases, the documents will provide the guidelines for any repairs and replacements and will define who is responsible. If the documents are silent or are in conflict with state statutes, the state statutes may prevail.

It is the responsibility of the owner of the unit to read and understand the details of the documents and their ultimate ramifications upon the unit owner's lifestyle and budget. It may be assumed that since it is a condominium unit, everything should be maintained by the Association; however, it is not uncommon to have doors, frames, garage doors and windows, etc., excluded from documents, as these elements may be the owner's responsibility and not the Association's. Therefore, it is incumbent for the buyer to read the documents or have the help of an expert (usually an attorney who specializes in real estate law) to interpret the documents for a buyer.

In addition to being knowledgeable about the documents and the Association's maintenance responsibilities, an owner should be able to read and interpret the Association's budgets, balance sheets and income statements for the last few years. If there is a problem with any of these categories, there may be possible future increases in maintenance assessments in order to make up for past deficits.

As an owner, if you are unable to read and understand the Association's budgets and balance sheets, have someone who is knowledgeable assist you in reading and interpreting them. In the long run, it could save you a lot of heartache and money. As a seller, you'll be able to promote the financial well-being of your community when marketing your unit.

In a well managed Association you can expect to live in a community where you are respected as an individual, are well informed about the workings and operations of the community and are encouraged to be involved with your Association, either actively or as a member participant. A well run Association will have an adequate budget to operate the Association. It will

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Mailing Label

C/O ASSOCIATED PROPERTY MANAGEMENT
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have adequate funds for emergencies, long-term projects and funds set aside for reserves for major repairs and replacements. There will be adequate insurance to protect the Association from casualty and liability losses. Professionals are used throughout the year by the Association to help in the operations and management of the Association. The records of the Association are well maintained and readily available for unit owner inspections. A well run Community Association, is not only a place where you want to live but is also a place where you will be able to maximize your initial purchase, in the form of a higher resale value.

Most Associations are not perfect but are a work in progress as events, conditions and membership in the Association are constantly changing. No matter what is happening, the Association should have the wherewithal to deal with most situations and circumstances for the benefit of the Association, either in its operations, its talent pool of members, or from its professional ranks. Either way, stay actively involved with your Association or participate and attend Board of Directors, Members and Committee Meetings.

Associated Property Management of the Palm Beaches, Inc., is a twenty-year-old full-service association management firm. APM serves more than 130 Associations in Palm Beach County. If you have any questions or comments, you may contact us at 1928 Lake Worth Road, Lake Worth, Florida 33461. Please call us at 561-588-7210, or you may email us at assocpropmgt@bellsouth.net at any time.

USEFUL WEBSITES FOR YOUR ASSOCIATION

Associated Property Management
561-588-7210 or www.assocpropmgt.com

Florida Department of State
850-245-6052 or www.sunbiz.org

South Florida Water Management District
561-686-8800 or www.sfwmd.gov/index

Palm Beach County Property Appraiser
561-355-3230 or www.pbcgov.com/papa/

Florida Division of Emergency Management
850-413-9900 or www.floridadisaster.org

Palm Beach County Div. of Emergency Mgt.
561-712-6400 or www.co.palm-beach.fl.us/eoc