

apm NEWS

A Publication of Associated Property Management - Summer 2005

RAISING ADDITIONAL FUNDS FOR COMMUNITY ASSOCIATIONS

By John R. Math, LCAM

Many associations have had to resort to raising additional monies to fund repairs, capital improvements and reserve items. This shortfall in funds has been due mainly to inadequate operating budgets, under-funded reserves for repairs and unforeseen or unanticipated expenses from the hurricanes that we experienced last year. Most associations have no budgets or savings that are designated for insurance deductibles.

Associations can raise additional funds through borrowing from financial institutions, increasing assessments by recalculating budgets or by having special assessments to pay for repairs or improvements. Unless the documents provide otherwise, these decisions are made by the Board of Directors.

Some documents require that the membership be allowed to make the decision to special assess on amounts over a certain amount. In those cases, there may be different notice requirements, certain quorum requirements and the

documents may require something other than a simple majority for the passage of this assessment. Please check your documents and consult with the associations' attorney prior to sending out your notices. However, the Board must make sure that notices for these meetings be sent to all members or the Board's actions could be rendered invalid. In this article we will address the proper way for an association to inform, notice and conduct a meeting whereby additional funds will be solicited from the membership.

Homeowners' associations which are governed by F.S. Chapter 720 now require all members to be notified of the meeting at which a special assessment is to be considered, not less than 14 days in advance by mail, hand delivery or by electronic transmission of the meeting notice. Your documents may require additional time for the notice. The notice must state that the Board of Directors will be considering a special assessment, and the notice must also state the exact nature of the special assessment. In addition to the above, the notice

of meeting must also be posted on the property and, if available, may be broadcast on a community closed circuit cable television channel.

A homeowners' association Board of Directors meeting must be open to all members of the association and the members will be allowed to speak on any item that is placed on the agenda by petition of the voting interests for at least 3 minutes. The Board of Directors is also allowed to make reasonable rules and regulations regarding owner participation at Board of Directors meetings. Though it is not specifically mentioned in the statutes, it would be wise for a homeowners association to follow the same rules if they are considering borrowing the funds from a bank. The repayment of the loan will impact the owners as well, therefore, the owners should be informed and involved as the statute dictates.

If there is any meeting whereby the Association will be considering a budget, or reconsidering a budget, the same 14-day notice rule is to be followed. In the past, the statute was unclear and many

associations simply posted their meeting notice when considering a budget or a special assessment and they failed to mail the notice of meeting to the members. This caused many problems whereby the owners were surprised when they were told, after the fact, that there was a new budget or a special assessment. We also suggest that all agendas of any Board of Directors meetings be as specific and detailed as possible, and whenever possible, through newsletters and flyers, inform the membership leading up to the meeting what the Board is thinking. Any type of research that is being conducted by the Board of Directors, bids or quotes should be available to the members and why a special assessment or new budget is being considered and how the process may affect the members. Disseminating information to the members is a key component for the Board of any association in helping to raise new or additional revenues.

Chapter 718 and 719 Associations generally follow the same notice requirements and unit owner participation, unless their documents require more stringent notice requirements. Review your documents and consult with your Associations' attorney prior to noticing your meeting.

Today, all associations are under increasing pressure to fund shortages that may be a result of poor budgeting or for unexpected expenses. Budget shortfalls require raising revenues through assessments and/ or borrowing. In the future, inform your members in a timely and proper manner of revenue raising measures being considered. Follow these suggestions in order to minimize any misunderstanding with your members when raising revenues.

Ask The Attorney

By Edward Dicker, Esq.

Q. Our association is in a lawsuit with an owner that could result in damages of several hundreds of thousands of dollars. Do we have to disclose this suit to any prospective buyers of our community?

A. The Condominium Act requires a Question and Answer Sheet which specifically asks whether there are any such pending lawsuits. Consequently, a prospective purchaser should be advised of such a lawsuit upon reviewing the Question and Answer Sheet. There is no similar Question and Answer Sheet required under the Homeowners Association Act. If a prospective purchaser in a homeowners association or condominium association specifically inquires whether or not a lawsuit is pending, the prospective purchaser should be advised. However, in the absence of being asked, there is no affirmative obligation on the part of the Board of Directors to advise a prospective purchaser of a pending lawsuit.

Q. Our landscape company and pool maintenance company has just charged us for a fuel surcharge. They claim that the recent rise in gasoline prices has impacted their businesses and that they need the extra money to survive. This is not addressed in their contracts. What should we do?

A. If the contract with the landscaping company and/or the pool maintenance company does not provide authority to charge a fuel surcharge, then the company has no authority to do so. If the company has such authority, then the Board may decide to obtain competitive bids, and consider contracting with another company, providing the Association has the authority to terminate the existing contract.

Q. We have an owner who insists on seeing every scrap of paper

that is generated. He says that it is part of the records of the association. Every month he wants to see all of the records. Can he do this? He wastes hours of our management company's time. What can we do about this?

A. Both the Condominium Act and the Homeowners Association Act provide extremely broad rights on the part of an owner to have access to the "official records" of the Association. There are only a few categories of records which an owner does not have the right to review. These records include medical records, records obtained pursuant to the approval of a prospective tenant or buyer, and confidential communications with the Association attorney.

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REMINDERS!

In anticipation of the hurricane season which began on June 1, review all insurance policies to make sure they are in order. Make copies of all contracts, warranties and unit owner roster sheets for storage in a safe deposit box or other safe place.

Make sure all of your Board of Directors and Members Meeting agenda, minutes and notices are up-to-date and in order, stored properly with separate copies.

Review your association's emergency evacuation procedures with all committee persons, residents and selected professionals.

HOW TO CHOOSE AN ASSOCIATION MANAGEMENT COMPANY

By John R. Math, LCAM

Prior to choosing a professional association management company it is wise to have a committee formed just for that purpose. In the absence of a committee, Board members can provide this function as well.

First, the committee should adopt management specifications, which are reviewed by the Board of Directors and agreed to. These specifications will then be used for bidding purposes. The committee should identify potential management firms by prequalifying these companies prior to asking them to bid. Some examples of prequalifying questions would be:

1. Where is the company located?
2. How long has the business been operating?
3. How many employees in the company?
4. What is the experience of the principals?
5. What kind of insurance do they have?
6. Do they have bonding?
7. What type of services can they provide?
8. List of association references
9. List of professional references
10. What makes their company unique?

After compiling this information, the committee would then determine who would be allowed to bid on the management of the community. Prior to putting the management out to bid, the Board will take the committee's recommendations and finalize them in written form. These specifications will then be used for bidding purposes. By having written specifications it ensures that there will be "apples to apples" bidding, as all management companies do not offer the same services. Most importantly, the Board needs to decide what services will be handled by on-site personnel, membership volunteers and outside contractors before the final determination is made on what the specifications will be.

The following is a list of items that may be included in the specifications: Liaison with the Board, bidding, responding to resident inquiries, site visits, enforcement of rules and regulations, attendance at meetings, emergency service, mail-out procedures, newsletter responsibilities, collection of assessments, bookkeeping and financial reporting, budgeting, rental and resale approvals, architectural approvals, correspondence and minutes, costs of administrative extras and any other service that would be incidental to your association.

After selecting the items and services that you require the management companies to bid on, an invitation to bid should be made with a copy of the specifications, copy of the association's documents, site map and any other items that are relevant to the bidders. In this bid package there should be a timetable to respond to the invitation to bid, a deadline for submitting bids, the prescribed bid form and arrangements for the management company to visit the community and an opportunity to have any questions answered prior to submitting their bids.

When receiving and evaluating bids it is best to have a prescribed list of questions that will be asked of all bidders in a final interview. Each bidder should be evaluated or graded based on their answers. We suggest having this set up on a matrix form to help grade each company fairly. An association should never hire a management company based on cost alone. Other factors when choosing a management company would be years in business, years of experience, staff experience, location of company, office equipment, backup staff, training of staff, administrative system, bookkeeping staff and system and checking of references. Also, check their insurance and bonding coverage and make sure it is compati-

Mailing Label

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ble with coverage that your insurance agent states that you would need.

Always ask for at least three references for associations that are similar to your association. See who the manager will be on your site and try to meet with them as well in order to see if the Board of Directors will be compatible with this person.

Get samples of their violation and late letters. Copies of their financial statements, delinquent lists. How and when do they pay your association accounts payables?

Overall, make up your own list of problems and concerns for the following areas: administrative, bookkeeping, maintenance, management, operations and community relations. Rate each company based on this list and then choose the company confidently.

Associated Property Management of the Palm Beaches, Inc., is a seventeen-year-old full-service association management firm. APM serves more than 125 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

USEFUL WEBSITES FOR YOUR ASSOCIATION

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

Florida Department of State
904-487-6000 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