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"Navigating Assessment Increases for Aging Properties," authors A. Jeanne Grove & Marrianne Taleghani, published in California Association of Community Managers, Summer Law Issue 2023

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Assessment increases are an unfortunate reality for aging communities. In the wake of the Surfside tragedy in Florida, association boards face even more pressure to stay on top of maintenance-and-repair cycles, particularly if the structural strength of the building is in question. Meanwhile, homeowners never like to hear that dues (assessments) are going up, sometimes substantially, in order to address deferred maintenance issues. Due to this inherent tension, it is critical that all parties understand the rules around assessment increases and implement best practices to minimize disputes down the road.

The Law on Assessments

A board of directors has a legal duty to manage the association's budget and fund common area maintenance, repair, and replacement. Civil Code §5600(a) explicitly requires boards to raise all regular and special assessments that are necessary to do so. For this reason, boards sometimes must levy assessments, even if they would rather not.

The association's governing documents will describe how assessments are allocated to owners, either as uniform, variable, or blended rates. The two most common types of assessments that an association may raise are regular assessments and special assessments. Regular assessments are determined by the board during the annual budgeting process (Civil Code §5300(b)) and are usually paid by members on a monthly or quarterly basis. They cover day-to-day operations of the association, such as insurance, security, management fees, and maintenance, as well as contributing to a reserve fund.

In contrast, special assessments are for unexpected, underfunded expenses, or capital improvements. For example, boards may levy a special assessment if there has been flooding and the association's insurance cannot cover the cost of repairs, or if some homeowners have defaulted and there are insufficient funds remaining. Regardless of the type and amount of the assessment, Civil Code §5615 states that the association must provide 30-days' notice of the increase before it is due.

Common Myths About Assessment Increases

Membership approval is ALWAYS required to levy assessments. In reality, it depends on the amount and type of the assessment. So long as boards comply with annual budget report requirements, they can unilaterally increase regular assessments by up to 20% of the annual budget; anything more requires approval of a majority of a quorum of members. On the other hand, special assessments can be approved by the board alone if the increase is less than 5% of the budgeted gross expenses for that fiscal year. Always check the governing documents for assessment procedures, but note that this authority of the board is statutory and therefore overrides any restrictions in an association's governing documents per Civil Code §§5605, 4205(a). For example, a provision in the CC&Rs that requires a super-majority or a 2/3 quorum for assessment approval would be invalid, as it is superseded by the Davis-Stirling Act.

Other measures are NOT available if the membership votes down an underfunded project. According to Corporations Code §7515(a), the association can petition a court to approve an assessment if necessary. If a property is in dire need of an assessment increase due to a necessary maintenance/repair project, even after a failed assessment vote, the association could petition the court to compel the imposition of an assessment. This assessment could then serve as collateral for a bank loan, thereby providing immediate funds for maintenance.

Special assessments are ALL the same as emergency assessments. In contrast to special assessments, emergency assessments have no monetary cap and never need membership approval. However, according to Civil Code §5610, they must meet the statutory requirements of an "emergency," i.e. an "extraordinary expense" that is either necessary to defray threats to personal safety on association property or that could not have been reasonably foreseen by the board when preparing the annual budget.

The Pitfalls of Inadequate Reserves

1. Unanticipated assessments will upset owners. 2. The association's inability to plan for future maintenance/repair needs. 3. Project delays because the association cannot agree on the scope of the maintenance/repairs.

All of these factors are a recipe for litigation. The Surfside, Florida building collapse was an extreme, tragic example of that, but one that hopefully serves as a wake-up call to associations to re-examine their own maintenance/repair schedules and related budgeting processes.

There is a reason the Department of Real Estate issued a warning regarding the growing number of underfunded associations in California. With over 52,000 CIDs in California and over 11 million people living in CIDs, underfunded associations are a statewide problem. Failing to utilize assessments and implement assessment increases will result in protracted litigation, significant delays of maintenance/repair projects, and reduction of property values. While assessment increases are never welcome, incremental increases spread out over a longer period of time are less likely to draw the ire of homeowners. Similarly, associations are less likely to incur collection costs, chasing after delinquent homeowners who are unable to keep up with substantial assessment increases.

Best Practices for Aging Communities

1. **BUDGET: Assess the association's budget and determine if the association is collecting sufficient assessments to defray maintenance/repair costs, both short-term and long-term. If not, implement all necessary assessment increases as allowed by law.**

2. **HIRE PROFESSIONALS:** Retain licensed professionals to advise on various aspects of association management–e.g. legal, bookkeeping, property management, construction/maintenance.

3. **INSPECT:** Conduct regular inspections of the conditions of the property, as often as the applicable licensed professional recommends, and obtain written reports of such inspections.

4. **DOCUMENT:** Every inspection, every report from third-party professionals, every meeting of the board, and every decision by the board should be documented in writing and promptly communicated to the owners.

Suffice to say, assessments are central to an association's overall health and function. Avoid the common pitfalls and engage in regular discussions regarding assessments. Failure to do so can have drastic and very costly consequences.

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