



HOA RESERVE ACCOUNTS

What Are You Missing?

Maintenance, repair, and replacement of the common areas of a community can be quite costly, and reserve accounts can be a great planning tool for the forward-thinking homeowners association. Until 2007, the law governing homeowners' associations did not address reserve accounts. However, in 2007, Florida Statutes Section 720.303(6), governing homeowners' associations, was added, establishing a number of procedures and rules related to reserves a) if the reserves were originally established by the developer prior to turnover; or b) if a majority of the homeowners vote to establish specific reserves.

If reserve accounts, for capital expenditures and deferred maintenance, were established pursuant to Section 720.303(6), by the developer or by a majority of homeowners, then the reserves must be fully funded annually and must remain in the reserve account unless waived by the non-developer homeowners or unless the funds are used for their intended purpose.

In addition to these statutory reserves, some local governments are now requiring reserves for gated communities, which have private roads and sidewalks. For example, Orange County, the City of Winter Garden, and the City of Ocoee, require developers to establish and fund reserve accounts for the gated communities built within their city or county.

These locally-required reserve funds include funds for roads, sidewalks, drainage areas,

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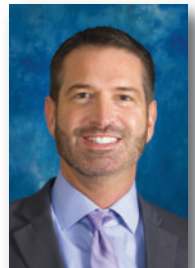
storm-debris cleanup, and similar anticipated expenses. Repairing or replacing this infrastructure can be extraordinarily expensive, and a community that has failed to plan for these costs could otherwise find itself in a predicament that only a huge special assessment could rectify.

Since these local government reserves would be initially established by the developer prior to turnover, they would fall under Section 720.303(6), and would have to be fully funded annually, and could not be waived by the developer prior to turnover. This position was confirmed in a recent decision by Florida's Fifth District Court of Appeals.

Many communities that have turned over in the last few years have realized that, in fact, the developer did not adequately fund the association's reserve accounts, either by paying too little into the reserve accounts, or by attempting to "waive" the funding of reserves prior to turnover. Pursuant to Section 720.303(6) and the local government ordinance, homeowners associations would potentially now have recourse against the developer for failing to fully fund the reserves. Furthermore, some of the local ordinances contain a provision that allows an association to recover attorneys' fees and costs if they should prevail in an action against a developer.

So if you are an association that has recently transitioned from developer to owner control, you should review your reserve requirements and contact an attorney to determine if the association may be missing any required reserve accounts.

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Now What???

The Association's Bank Account Was Garnished

I previously wrote articles about garnishments and its effect on an Association but those articles assumed the Association was asked to sequester funds because an employee or vendor had a judgment against them. This article is different because it presumes the Association has a judgment against it and the beneficiary of that judgment has obtained a garnishment against the Association and served it on the bank(s) used by the Association for its operating, reserves, savings, etc. In this scenario, the Association will be unable to use the account to pay its bills. Also, depending on the amount of the judgment any deposits that get made (think of the lock-box scenario) after the garnishment is in effect, means that all those additional funds will also be frozen and not available to the Association.

Sadly, given the provisions of Florida's garnishment statute, the Association may not know for a week that a garnishment has been issued. During that time, outstanding checks could be dishonored resulting in a domino effect of problems for the Association unless it has enough money in the accounts to cover the judgement twice and to cover its bills. The dominos would continue to fall in the weeks/months it takes to have the garnishment process work through the courts.

The key for an Association is that it immediately reach out to its Attorneys and discuss repayment options on the judgment (special assessment, borrowing funds, etc.). This gives the Attorneys the ability to call the judgment holder and negotiate a settlement which may include a discounted lump sum payment or an installment payment plan which would require release of the garnished funds and may even lower the post-judgment interest or stop it all together.



During that negotiation window, the Association should reach out to its vendors and any lenders to let them know of the issues to avoid interruption in necessary services (e.g., utilities,

insurance, etc.). Additionally, the Association should consider letting the membership know to tender payments directly to the Association and not through a lock-box. It is important in speaking to owners to make sure they understand they must continue to make assessment payments or foreclosure of their property could result.

You may wonder why I said the Association would need to have twice the amount of the judgment to be able to use any money in its garnished bank account. The reason is provided by the garnishment statute which says that upon receipt of a garnishment, the bank can retain no more than double the amount of the writ (which usually includes the amount of the judgment, interest, and legal fees/costs).

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certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider, such as our Firm, within 1 year before or 90 days after the date of election or appointment.

If you fail to timely file the written certification or educational certificate, you will be suspended from service on the board until you comply. So what happens to your board seat/vacancy? The board may temporarily fill the vacancy during the period of suspension.

How often must you get certified? So long as there is no interruption in service (i.e. the time you sit on the Board), the certification is good.



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Online voting could spell the end to association election fraud in Florida!

On July 1, 2015, the law changed in Florida to allow the use of electronic voting for condominiums, cooperatives and homeowners' associations. The process must start with a board adopting a resolution advising members that online voting will be available and that the online voting system will comply with all statutory requirements as well as the Division Rules. Members must consent to use an online voting system and they do have the option to vote the old-fashioned way with paper proxies and ballots.

While online voting in community associations has been used in other states for some time, this new-found tool could represent a sea change for communities throughout Florida who have struggled for years or decades to encourage member participation in votes to elect directors, amend the governing documents, waive reserves, approve material alterations, etc.

For communities with significant out of state (and out of the country) owners, online voting will allow those members to be more engaged with their communities. Other benefits include fraud prevention, cost effectiveness and the ability to cut down significantly on the time it takes managers and boards to handle membership votes.

The Miami Herald recently ran an investigative series on association voter fraud uncovered in two Miami-Dade communities. In one condominium they had 115% voter turnout and in the other they uncovered more than 80 forged signatures on ballots. The reality is that if you do not have paper ballots, you do not have the ability to forge a signature or tamper with a ballot box. While online voting will not appeal to everyone it does represent the ability to use technology to overcome some of the problems which have plagued associations in Florida for far too many years.



BPBALLOT
SECURE E-VOTING SOLUTION

Secure. Simple. Stress-Free.

Developed and supported by the most trusted name in community association law, Becker & Poliakoff is pleased to announce the launch of BPBALLOT, our custom-built, secure, online voting system for communities of all sizes and types.

- Complies with Florida's online voting laws and division rules!
- Handles all community voting needs including election of directors, amending governing documents, approving material alterations, waiving reserves and more.
- Increases member participation and reduces the potential for fraud.
- A flat fee for each voting event with Becker & Poliakoff retainer clients receiving a discount of almost 50%!

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I am pleased to announce the launch of my Firm's proprietary online voting system,

BPBALLOT (www.BPBALLOT.com).



Did you know?

Every year the Florida Legislature meets to discuss changes to Florida Statutes. At B&P we take this time very seriously and work through our Community Association Leadership Lobby (CALL) to preserve and/or make changes to the statutes which guide our communities whether they be Condominiums, Homeowners' Associations, Mobile Homes, etc. CALL's Executive Director, Yeline Goin, puts out regular CALL alerts letting everyone know what is being discussed and which Bills are being considered. Take a moment to visit our CALL website (www.callbp.com) to learn more about CALL and the happenings in Tallahassee. Yeline and CALL can also be found on various social media platforms:

Twitter: @YelineGoin CALL

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Are you a newly elected or appointed board member of a Condominium?



Be aware that your powers, duties, and obligations are delineated in Chapter 718, Florida Statutes. However, before you embark on the many issues that face a board member on a daily basis, you must comply with Section 718.112(2)(d)(4)(b) which provides that within 90 days after being newly elected or appointed (1) you must certify in writing to the secretary of the association that you have read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; (2) that you will work to uphold such documents and policies to the best of your ability; and (3) that you will faithfully discharge your fiduciary responsibility to the association's members.

The statute provides alternatives for the certification, such as, submitting a

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