

# HOA Reserve Accounts: What Are You Missing?

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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 HOA. Until somewhat recently, the Florida HOA Act did not address reserve accounts. However, in 2007, Section 720.303(6) of the Florida Statutes was added, establishing a number of procedures and rules related to reserves if a) they were originally established by the developer prior to turnover; or b) a majority of the

homeowners vote to establish specific reserves.

Local governments have also gotten involved, and are now requiring reserves for gated communities. Orange County, as well as municipalities such as Winter Garden and the City of Ocoee, have begun requiring that developers establish and fund reserve accounts for the gated communities they develop and build within their jurisdiction. This is because gated communities have private roads and sidewalks, which are the maintenance responsibility of the HOA, and not the local government. 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.

These locally-required reserve funds include funds for roads, sidewalks, drainage areas, storm-debris cleanup, and similar anticipated expenses. They vary as to the amount that must be funded for each component, but for roads, typically the largest reserve fund by far, 1/12 of the total amount needed to resurface the community must be put into reserves every year.

The per-year deposits into the reserve funds must begin upon receipt of the “certificate of completion” for the community’s infrastructure, which is very early in the development of a community. Further, at least one locality, Orange County, requires that developers “superfund” the reserve accounts by placing a

full extra year of funds into the association's reserves prior to turnover.

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. However, an Orange County Circuit Court Judge has recently ruled that a developer may not "waive" the funding of these mandatory reserve accounts.

Luckily, the local ordinances do have an attorneys' fees clause. As such, a shortchanged HOA is able to recoup the attorneys' fees and costs expended, should they prevail in an action against a developer.

An HOA that believes it has been shortchanged should immediately contact its community association law firm.

*This Blog was prepared by **Patrick Howell, Esq.** of **Becker**. The information contained herein should not be acted upon without professional legal advice. The opinions expressed herein are as of the date hereof, and this law firm undertakes no obligation to advise of subsequent changes in the law.*

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