

JUST DO IT. right

SPECIAL ASSESSMENTS:

Do It Right, Or Pay The Price

By Jay Roberts, Attorney at Law

Special assessments happen. The unfortunate reality is that during the life of a condominium building, some unexpected expenses are going to arise and the association will have to take steps to fulfill its obligations to the membership. If the operating budget cannot handle these expenses, and there is not a funded reserve account that can defray the cost, then it is likely that a special assessment will need to be levied.

In Florida, there is a right way and a wrong way, to levy special assessments. Levying a special assessment without fol-

lowing the proper procedures could end up costing the association unneeded legal expenses and heartburn; so do it right the first time!

Levying a special assessment in Florida requires knowledge of certain provisions of the Condominium Act (Chapter 718, Florida Statutes) and your association's governing documents. Section 718.112(2)(c)1, Florida Statutes, provides (in material part)

...written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit

use, will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association... Notice of any meeting in which regular or special assessments against unit owners are to be considered for any reason must specifically state that assessments will be considered and

provide the nature, estimated cost, and description of the purposes for such assessments.

Breaking down that statutory language amounts to the association having to take the following actions to properly notice a meeting where special assessments will be considered (1) notice of the proposed meeting must be sent to all owners not less than 14 days prior to the meeting; (2) the notice must also be posted in a conspicuous place on the condominium property not less than 14 days prior to the meeting; (3) the notice must explain what the special assessment will be used for and the amount of the expected special assessment; and (4) the person who mailed or delivered the notice to the owners must execute an affidavit that attests to the fact that the notices were mailed or delivered to all owners and the date that the notices were sent.

It is very likely that your association's governing documents also address special assessments. It is important to know whether the board of directors has the sole authority to levy special assessments or whether the membership has to approve special assessments. Regardless of whether the board or the membership approves the levying of special assessments, the notice procedure stated above must be met. The board of directors needs to be sure that there are no additional procedural measures that must be followed when special assessments are being considered. Usually, but not always, any additional measures will be located within the association's bylaws.

A critically vital, yet often overlooked, aspect of the special assessment levying process is making sure the special assessment purpose is a proper common expense. Proper common expenses are defined in Section 718.115, Florida Statutes, but can, and usually are, defined within the association's governing documents. It is important to review the governing documents prior to ➤



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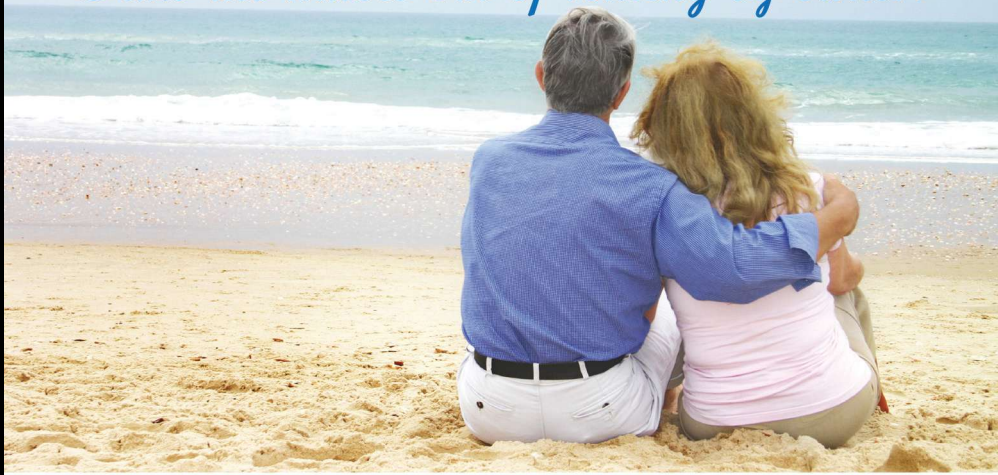
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association matters

embarking on the special assessment path to ensure that what the association would like to raise the funds for is appropriate (if it is not, an amendment to the governing documents may be required prior to levying the special assessment).

If attention is not properly given to the issues discussed in this article, negative consequences may occur. These consequences may include unit owners refusing to pay the special assessment because they claim that the association did not follow the proper procedure for levying the special assessment or that the special assessment was not levied for a proper common purpose. Either argument could lead to costly litigation. Also, many associations use special assessments as collateral for loans taken from institutional lenders. Those lenders will very likely require the association's attorney to verify in writing that the special assessment was properly levied, which he or she will refuse to do unless/until the special assessment is properly adopted.

Hopefully special assessments are rare due to prudent financial planning by the association during the budget process. Ensuring that the association takes the proper steps to levy a special assessment the first time will ease the headache, stress, and cost associated with having to deal with those owners who refuse to pay or lending institutions that require the special assessment lien rights as collateral for a loan to the association. ■

Jay Roberts is an attorney with Becker & Poliakoff's Community Association Law Practice Group in Fort Walton Beach, Fla. In addition to his community association practice, Mr. Roberts has experience in the realms of lender liability law and commercial landlord/tenant relations. Mr. Roberts studied international criminal law at the International Criminal Tribunal for the former Yugoslavia and the European Court of Human Rights. He also studied international trade law at the International Court of Justice and Oxford Law.



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