

# “BUT... YOU CAN’T DO THAT!”



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I had a phone call earlier this week from a new Boardmember client, thanking me for their recently completed Reserve Study. This older Association had never commissioned a Reserve Study, so the current Board was feeling uncertain about the Association’s physical and financial health. Our Reserve Study brought all the physical and financial information together for them, and gave them a framework for making decisions about caring for the Association’s needs. The client wanted to chat about our recommended Special Assessment, which they needed to pass in order to do some much-needed repair work on their balconies. The Board wanted to divide the cost over just the owners with balconies, and not levy the Special Assessment against all homeowners. I was speechless, because balconies were common area according to their Governing Documents. Even though not all units had balconies, they were as much common area as any other “common area” element of the association. The Board had no authority to ask only balcony owners to pay for balcony repairs. I explained as much, but the client said they were going to move forward and do it their way, because “it made sense”.

That conversation reminded me of a few other things I’ve recently been told by clients. All of these are actions that, according to their Governing Documents, they can’t do. Here are a few tales from the “wild west” of unbridled Board behavior!

- The Boardmembers of a two-story Florida condominium decided to put to vote the motion that only second story owners contribute to “elevator” reserves. Do you have a guess as to which floor the majority of the Board lives on? What’s next at that Association, the first floor owners voting that only the second floor owners contribute to “roof” repairs & replacements?
- The Board of a condominium in Hawaii, where (by state law) Reserve Funding Plans cannot rely on future Special Assessments, asking us to design a Funding Plan that calls for “temporarily higher Reserve contributions” (by a factor of 10!) for one year, about 8 years into the future. I don’t know about you, but one year of 10x higher Reserve contributions sounds a lot like a Special Assessment to me!

- Boardmembers of a Los Angeles mid-rise asked us to extract hallway renovation from the Reserve Study, so it could be funded separately by owners in proportion to the number of bedrooms in each unit. That was the Board's attempt to push the cost of wear and tear of the carpet onto the people who used it most... those with more bedrooms, and likely more occupants, and likely more foot-traffic! However, the Governing Documents dictated that all owners share equally in all operating and Reserve expenses, according to the # of units in the association (not the # of bedrooms).
- Managers and Boardmembers ask our Project Managers on a regular basis to remove a significant reserve component from the Reserve Study. By significant, I mean one of the Big Three: Asphalt, Painting, and Roofing. The request to remove a component is, of course, motivated by a desire to reduce the Funding Plan and improve the financial strength (% Funded) of the Reserve Fund. It is usually justified by one of two reasons. The first reason relies on the Boardmember or Manager's opinion that the component "will last a very long time" and, as such, does not require reserve funding now. I continue to be amazed, but am no longer surprised, to see Boardmember and Managers stray outside their area of expertise by inserting their "personal opinions" into the Reserve Study process in this way.
- The second reason we are asked to remove a reserve component is based on a Board decision to transfer repair & replacement responsibility for a particular component over to the individual owners. The problem with this decision is, of course, that the Association's Maintenance responsibilities are typically well-defined in the Governing Documents and Boards can't just redefine what constitutes "common area". Boardmembers have a responsibility to care for all the assets of the corporation. They can't choose to push those predictable expenses onto the shoulders of individual homeowners.

Boardmembers are both empowered and obligated by state law and the Governing Documents of their Association. Unless your actions are within the authority of your Governing Documents, you should not move forward with that great idea of yours, regardless of how much it "makes sense" to you!