



# OLDER CONDOS

Q&A with Industry Experts

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# INTRODUCTION

The collapse of Champlain Towers South, a 12-story condominium association in Surfside, FL, captured the nation's attention because it was so unexpected and so deadly.

In the midst of so many unanswered questions about what led to this tragedy, Association Reserves' goal is to help associations respond effectively, and rise to meet the specific challenges of maintaining properties as they age.

On July 28, 2021, a panel of four industry experts were brought together to address key issues and best practices so managers, board members, and homeowners can respond appropriately, making the present less stressful and the future more secure for their associations.

The content of this eBook consists of questions asked by the webinar attendees and answers provided by our expert panel.

Click [here](#) to view the webinar.



# CONTRIBUTORS



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# LIABILITY INSURANCE

*While this document addresses general insurance issues, it provides only a general description of coverage and is not a statement of contract. For a more detailed description of the policy limitations and exclusions, please consult the insurance policy itself.*

**Q:** What is the real liability a volunteer board members face since they are insured for a very limited \$?

**A:** (Adrian) Normally, anything over insurance limits is covered by the association, i.e., self-insurance.

**Q:** Can associations require the individual homeowner to obtain insurance?

**A:** (Adrian) Yes. You would do so by amending your CC&Rs.

**Q:** What liability do non-board members (owners) have?

**A:** (Adrian) They could be subject to large special assessments.

**Q:** If you are a unit owner/landlord, what Liability do you have to your tenant if a building collapse were to happen? If the tenant gets hurt?

**A:** (Adrian) You could be liable if you knew about the dangerous condition and failed to disclose this to the renter.

# LIABILITY INSURANCE

**Q:** The board voted to increase dues and the homeowners complained and basically voted no on increasing dues. Homeowners even had a recall on the board. What is the liability of each homeowner that voted against the due increase?

**A:** (Adrian) If the association is found liable and a large judgment is imposed, the membership could be liable for any special assessments needed to pay the judgment.

**Q:** Do committee members, e.g., budget or architecture, have exposure in addition to directors?

**A:** (Adrian) It's unlikely, but boards should make sure their D&O insurance covers all committee members.

**Q:** If the Board is planning for a capital improvement, i.e. replacing heavy old garage doors that are difficult to lift in the next 2 or 3 years, and an individual homeowner feels they should be replaced now due to safety because she can't lift it - is the Board liable for not doing her individual door if there is an issue?

**A:** (Adrian) If the person has a medical condition and asks for reasonable accommodation and the association refuses, there could be liability.

# LIABILITY INSURANCE

**Q:** Should the Board supply liability insurance for their Directors?

**A:** (Kevin) Yes. The governing documents require you to indemnify and hold the Directors harmless. D&O insurance simply is a vehicle to help 'fund' that obligation.

**Q:** If a D&O policy says they have "unlimited defense", then when a policy tenders their limits, do they still have a defense obligation?

**A:** (Kevin) No. Once the indemnity payments reach the policy limits, coverage for defense ceases.

**Q:** We are in a part of California where the past Board did not carry Earthquake insurance and they show that we are in a very low risk of earthquakes. I have been told that if you elect not to activate a policy as a Board member, that you are at risk of a personal lawsuit if you do have an earthquake with damage. What is the decision tree that you do not need to obtain the insurance?

**A:** (Adrian) Directors are always at risk of being sued. It does not mean the lawsuit has any true basis and could be dismissed. Unless your governing documents require earthquake insurance, directors are not liable for failing to carry it.



# LIABILITY INSURANCE

**Q:** What type of insurance is available and will cover the various claims?

**A:** (Kevin) The Association will likely rely on: Property, Liability, Director's & Officers and Commercial Umbrella coverage. The unit owner would tender their individual policies (called an "HO6" and "special assessment" insurance) as well as their Personal Liability Umbrella. The architect and structural engineer would submit to their Errors and Omissions coverage (Professional Liability).

**Q:** Can you go into coverage for property damage versus liability?

**A:** (Kevin) Association-purchased property coverage is called 1st Party coverage because it insures the Association's Common Area and repair obligations (as defined by the CC&Rs). Liability policies are called 3rd Party policies because they are designed to protect the Association, the Board, Committees, and, if written correctly, the community manager against sums the Association becomes legally obligated to pay as a result of damage to property of others.

# LIABILITY INSURANCE

**Q:** Will an owner's HO6 policy defend an Owner Board Member who is named in a lawsuit even if the CC&R's hold Board Members harmless?

**A:** (Kevin) If there is not coverage for this type of loss under the HOA's D&O policy, the HO6 would not be relieved of their obligation to pay a claim or provide a defense simply because another contract (the CC&Rs – to which the insurance carrier is not a party) indicated the board member must be "held harmless" by the Association. At the conclusion of the claim however, the HO6 carrier may attempt to subrogate to seek recovery.

**Q:** Is there such an insurance policy managers should be considering for ourselves?

**A:** (Kevin) As a manager, you'll want to be named as an "additional insured" on the Association's GL and D&O coverage immediately after taking over management responsibilities. Your firm should also maintain your own General Liability and Errors & Omissions policy as a back-up. Note: A traditional "Office Policy" may be limited to the office premises only and not address the significant "off premises" exposure. A knowledgeable agent/broker familiar with CID management liability issues should assist you.

# PROPERTY/ CASUALTY INSURANCE

*While this document addresses general insurance issues, it provides only a general description of coverage and is not a statement of contract. For a more detailed description of the policy limitations and exclusions, please consult the insurance policy itself.*

**Q:** What is HO6 insurance?

**A:** (Tim) The commonly used acronym for the “Condominium Unit Owner Policy.”

**Q:** Don't lenders require HO6 insurance?

**A:** (Tim) Some do. If the Master Policy building definition is broad enough (full Betterments and Improvements form), the lender will rely on the Master Policy solely.

**Q:** Even though Bodily Injury & Property Damage is not covered under a D&O policy, doesn't the carrier have the duty to defend? The Surfside carrier may have paid policy limit due to the magnitude of the tragedy, but how about other associations?

**A:** (Tim) There's no “duty to defend” once the D&O carrier determines the claim is for bodily Injury or property damage, as it falls outside the scope of coverage.



# PROPERTY/ CASUALTY INSURANCE

**Q:** How can one estimate your building replacement cost for insurance reasons? Our agent said we could lower our cost if we thought ours was too high. How could we possibly check this ourselves?

**A:** (Tim) The best results occur when the Board hires a commercial real estate appraiser to prepare their own independent “replacement cost” evaluation. With escalating construction material prices (plywood, re-bar, concrete) and the potential of “demand surge” (defined as the artificial higher prices caused purely by the impact of “limited supply and high demand” after a major catastrophe) one should be wary of any agent who wants to sell you less in an attempt to “save” you money.

**Q:** What ramifications do you see coming from GAIC paying property limits when it is questionable as to whether the loss is caused by a covered peril? It seems like it was the right thing to do, but it will be interesting to see if it is a precedent.

**A:** (Tim) No precedent has been set here. The property carrier simply made a decision based on very specific set of circumstances. The message from this tragedy is clear: Deferred maintenance kills.

# PROPERTY/ CASUALTY INSURANCE

**Q:** In Canada our condo insurance now is 45% of our annual budget. They say this is because we are a large property with only 24 owners to distribute the cash over. Is there a customized insurance option that will free us from the standard assessment?

**A:** (Tim) No. The “standard assessment” I assume you are referring to, is the insurance premium your Association (and by extension, you) are incurring on an annual basis. Insuring the homes individually may provide you with a more “customized” approach but wouldn’t be possible unless the governing document (and the lenders) allowed it.

**Q:** How do you feel about associations carrying coinsurance that aren't for full replacement costs? Are they a cheaper policy? Is that why they are so popular?

**A:** (Tim) Most lenders (and many governing documents) require you to purchase a policy that contains an “Agreed Amount,” “Stipulated Amount,” or “Waiver of the Coinsurance Penalty” provision. All three endorsements effectively do the same thing – they waive the coinsurance penalty so the Association will never be a “coinsurer” at the time of loss.

# PROPERTY/ CASUALTY INSURANCE

**Q:** If an association suffers water damage from a catastrophic leak, and the repair cost is just barely over the association's deductible of \$25,000, is it advisable to file a claim anyway, or not file to avoid a premium increase?

**A:** (Tim) Depending on the HO6 carrier(s) involved (assuming the affected owners are individually insured) and the governing documents, the HO6 policy may not be able to offer any real property indemnity until the HOA master policy has first determined its coverage obligation. For that reason, it will likely be best to submit the claim to prevent unnecessary delays in the HO6 carrier's response.

**Q:** How stringent will insurance underwriters be with respect to inspections and updates going forward? How hard of a market will this become in your opinion?

**A:** (Tim) That's impossible to tell at this juncture. We were already in a hard market prior to the loss. It's also unknown if certain regions will be subject to underwriting changes as each part of the country has unique Catastrophic Exposures. The East Coast has a wind (Hurricane) exposure; The West coast has earthquake (seismic events) and wildfires, the Midwest is prone to tornadoes and ice and flooding.



# PROPERTY/ CASUALTY INSURANCE

**Q:** How much do you expect HOA policy rates to increase for upcoming renewal periods?

**A:** (Tim) The current hard market is unusual because it's already impacted nearly every line of coverage (property, liability, D&O, excess liability). Only workers' compensation coverage has modestly been impacted. Although scientists are predicting a heavier than usual hurricane season and the wildfire threat continues to grow, it's difficult to predict exactly how that translates to premiums. Also, many reinsurance treaties were renewed on July 1, 2021, so it is possible we may not see any real impact on the reinsurance marketplace on January 1, 2022 renewals.

**Q:** How much insurance did Chaplain Towers have? Property, liability, excess, D&O, HO6?

**A:** (Tim) According to news reports, a judge has identified the following limits: Property \$30 Million; General Liability \$1 million; D&O \$1 Million; Commercial Umbrella \$15 Million. The amount of HO6 coverage each individual unit owners maintained has not been reported.

# PROPERTY/ CASUALTY INSURANCE

**Q:** We live on the ocean in a 4-story condo. We asked two insurance companies to bid on our master policy. We have had no claims in 10 years, all steel building, not in a flood zone. Companies refused to give us a quote due to salt environment near ocean. Was this a fallout from Surfside?

**A:** (Tim) Potentially. That's the first we've heard of a "salt environment" declination. We have had carriers refuse to write coverage because there was salt-water (sea water) in the fire sprinkler systems and stand pipes and the carrier was concerned that post-event corrosion from the salt water would drive up the claims costs.

**Q:** Is there a difference in coverage between the tower that fell down and the tower that was brought down?

**A:** (Tim) The carrier has already paid policy limits. They aren't going to pay a cent more.

# PROPERTY/ CASUALTY INSURANCE

**Q:** Can insurance carriers require structural engineering studies?

**A:** (Tim) Yes, if there is a question regarding the structural integrity of some building element (such as a balcony or seismic retrofitting) it would be understandable for the underwriter to want documentation from the structural engineer.

**Q:** Our HOA funded our reserves with borrowed money. Will insurance companies look at not just how much money is in our reserves, but how much debt the HOA has?

**A:** (Tim) Yes, depending on the D&O carrier, its likely they are already requesting copies of your financial statements. The Balance Sheet will reflect your Association's indebtedness – and current Reserve balance.



# LEGAL

**Q:** If the CCRs language requires homeowners to obtain insurance and the board doesn't have to enforce it, will that keep the board members free of liability?

**A:** (Adrian) If you mean nonliability for not enforcing the provision, yes.

**Q:** Why don't States have an agency to oversee compliance with their own condo-law mandates?

**A:** (Adrian) Normally because other mechanisms are available.

**Q:** In CA, under the Davis Stirling Act, can homeowners ask for copies of reports prepared by structural engineers hired by the HOA?

**A:** (Adrian) If the association is in the middle of litigation, no. After the litigation, yes (unless there is a settlement agreement that includes a confidentiality provision covering the report).

**Q:** What recourse does our current Board have to former Board members who neglected to properly maintain our building?

**A:** (Adrian) Usually, none. You should have your association's legal counsel prepare an opinion for your specific situation.

# LEGAL

**Q:** Is there a legal requirement (in CA) to do not just a reserve study, but an engineering study/inspection of a building maintained by an HOA also, and if so, how often should one be done?

**A:** (Adrian) In California, no (except for the “exterior elevated elements” inspection required by §5551 every nine years).

**Q:** When owners vote down an assessment for critical infrastructure maintenance, what are other options? Mandatory assessment, litigation, bankruptcy....?

**A:** (Adrian) In California, a board could petition the court for approval of the assessment under Corporations Code 7515.

**Q:** We are a 30-unit townhouse complex in Colorado. Some units are attached to each other. We have one unit that has had water intrusion. Our legal advisor said the HOA is not responsible for the repair of the foundation wall or the basement. Does this sound right to you?

**A:** (Adrian) No, it does not sound right. Your board should get a second legal opinion.

# LEGAL

**Q:** One former Board member is threatening legal action against the current Board due to the large Special Assessment needed to fix the building. Can the current Board countersue for their negligence?

**A:** (Adrian) You could but he would make a claim on your association's insurance for a defense, which they would be obligated to provide. You would be fighting your own insurance carrier. The better course of action is not a cross-complaint but to use the prior board's negligence as one of your defenses.

**Q:** In a small association, how do we force recalcitrant members to pay their share of needed repairs?

**A:** (Adrian) Hire a collections company.

**Q:** Is it irresponsible for Boards to spend money on cosmetic issues when there are numerous structural issues to repair? Is that covered under Business Judgment Rule?

**A:** (Adrian) I think it's irresponsible. The BJR will likely not protect directors who knowingly ignore safety issues in favor of aesthetics.

# LEGAL

**Q:** I am a homeowner in a 340-unit association. The HOA is dragging their feet on a small painting job maintenance ---- so if I personally hire a painter can I be reimbursed from the HOA? I put them on notice by letter. How many days do I have to wait?

**A:** (Adrian) No.

**Q:** For properties near large bodies of water (on the Bay for example) or built on landfill, does any state to your knowledge (or the Davis Stirling Act in CA) provide for a soil analysis of the condo campus every 10 or 15 years? What is the soil has eroded or compacted from (for example) the pull of the tide?

**A:** (Adrian) I am not aware of any.

**Q:** Can you expand on where legislation stands at the CA state level on making HOA's fund Replacement Reserves to a certain minimum Level?

**A:** (Adrian) Right now, there is no legislation pending. I hope to see something submitted in our next legislative session.



# LEGAL

**Q:** Our CA building has elevated exterior elements, all made from steel. As I understand CA law (Civil Code 5551), we are not required to perform an elevated element inspection. Is this correct? But is it a good idea anyway?

**A:** (Adrian) You are not required to inspect if there are no wood products involved. Even so, it is always good to have thorough inspection of all structural elements. Water invading a concrete structure can have disastrous results as evidenced by the collapse of Champlain Towers.

**Q:** How will California HOAs learn about new legislation/regulation increasing board responsibilities?

**A:** (Adrian) By subscribing to our newsletter:  
<https://www.davis-stirling.com/Newsletters>

**Q:** Can a HOA become an LLC, and does that provide for an extra layer of coverage for Board member liability?

**A:** (Adrian) Becoming a corporation is the better route. Most associations are already corporations.

# LEGAL

**Q:** Our HOA has stopped recording minutes and providing detailed minutes. Does CA's Davis Stirling Act prohibit recording meetings and providing detailed minutes and if not, how can an owner get better information? This is horrible for owners who want to remain informed.

**A:** (Adrian) Information about minutes can be found here:  
<https://www.davis-stirling.com/HOME/HOA-Minutes-Menu>

**Q:** Please go over the 5% special assessment ability in CA? 5% of what? 5% of the cost of the needed repair, or of what?

**A:** (Adrian) This is covered here.

# RESERVE STUDIES

**Q:** Why is the national and CAI conversation mostly about reserve studies and structural inspections (like CA's §5551) and not preventive maintenance programs? Or are we going to begin discussing how preventive maintenance could be one answer to this situation?

**A:** (Robert) Maintenance is the first step. Timely maintenance maximizes the life of Reserve projects, minimizing overall cost. Why is it overlooked in legislation? Perhaps because it is too difficult to define and measure compliance.

**Q:** Can the cost of an inspection by a structural engineer or architect be funded through reserves?

**A:** (Robert) Absolutely!

**Q:** How is the cost for a reserve study charged? Per building? Per Unit?

**A:** (Robert) Per association, based on # of units, type of association, amount and types of amenities, Fiscal Year End (affecting if the report will be done during our "busy season" or "off-season", and physical distance from one of our offices (affecting travel time).

# RESERVE STUDIES

**Q:** Our Association deferred maintenance for many years. The current Board has moved forward with capital improvements resulting in hefty special assessments. How can we afford to move forward with a reserve study that would most likely recommend assessment increases that will impact already overburdened unit owners?

**A:** (Robert) Tighten your belts. Living in a nice (improved) property costs money. You are only being asked to pay your fair share of ongoing deterioration. There is nothing burdensome about that.

**Q:** Doesn't FL Statutes Chapter 718 restrict how much a Board can "charge" the owners for reserve?

**A:** (Robert) To my knowledge, no. The Reserve needs are the Reserve needs. They are a bill like any other at the association. But please contact your FL legal counsel for a legal interpretation.

**Q:** Do PUD townhomes need same type of inspections?

**A:** (Robert) The condition of the common areas that the association is responsible to maintain need regular inspections for Reserve Study preparation purposes, no matter the legal form of ownership.

# RESERVE STUDIES

**Q:** California reserve studies, at least that I have seen required, state the Useful Life cycle and Remaining Useful Life of each component. But they do not display due dates for starting a project, or explanations of delays. For instance, our waterproofing was to start 2 years ago and was delayed. No explanation for delay due date given to owners. Shouldn't the start date for a zero life component be required to be clearly told to owners with reasons for delays if delays happen and new dates?

**A:** (Robert) The timing tools for a Reserve Study are Useful Life and Remaining Useful Life, combined with the applicable year of the Reserve Study (2021). We do not get so granular as to dictate a start date (June 1 vs July 1, for instance). Beyond that, it is up to the Board to communicate project status to the homeowners.

**Q:** Does Los Angeles County mandate Reserve Studies to HOA?

**A:** (Robert) No – that is covered by CA State Law.

**Q:** Are we required to perform 40 yr inspections in Los Angeles?

**A:** (Robert) Not at this time.

# RESERVE STUDIES

**Q:** Do you recommend the “pooled” method for calculating Reserve contributions?

**A:** (Robert) We recommend the Cash Flow Method (also called “pooled”), since it offers more flexibility to the analyst, and is able to more effectively achieve the National Reserve Study Standard four Funding Principles than the Component Method (also called “straight line”).

**Q:** Does the state regulate the reserve increases?

**A:** (Robert) To my knowledge, only in FL, where Reserve Funding plans are (unfairly and inappropriately, in my opinion) restricted to being “flat” or “constant”. Note that from one year to the next, from one Reserve Study update to the next, increases to recommended Reserve contributions are in some states only limited by an association’s ability to make significant increases to their overall assessments.

**Q:** What is the best source to determine the present replacement cost of major common items, e.g. elevators, HVAC systems?

**A:** (Robert) A credentialed Reserve Specialist (RS), as part of your regular Reserve Study update.



# RESERVE STUDIES

**Q:** Is there also a concern about this deferred maintenance issue getting worse in light of the increased cost of construction materials?

**A:** (Robert) Deferred maintenance only gets worse when it is not resolved. Maintenance is expensive. You have to let go of an intangible and arbitrary measure of what you feel is “affordable”.

**Q:** How does a board get their Reserve Funds to the acceptable level when our CC&R's require a vote on increase dues from the owners and they continue to vote the increase down?

**A:** (Robert) The board needs to do a better job of communicating how Reserve contributions offset the ongoing cost of deterioration, winning the support of the homeowners. Reserve deterioration is part of the ongoing cost of ownership. Reserves are not an “optional” expense.

**Q:** Has anyone ever seen a set of governing docs that required a board to maintain "x" percentage of reserve funding? Do you recommend that approach as a response?

**A:** (Robert) I haven't seen that. I believe that is overly restrictive, and I don't recommend that requirement be stated in Governing Documents. I've seen such a requirement or goal in Reserve Funding Policy documents, but not in Governing Documents.

# RESERVE STUDIES

**Q:** I am a volunteer board member for the past three years of a 67-condo, 55+ HOA. Following up last year's reserve analysis determination that our HOA is only 28% funded, we have opted to raise monthly dues and seek approval for a \$1.3M loan, which is in the application process. Our Reserve Study recommended a large, nearly \$20,000 assessment, and 20% increases annually for about four years. My question is why did the Reserve Analysis not recommend a loan, which is an association obligation in lieu of a large assessment which immediately impacts our 55+ community?

**A:** (Robert) Loans are very expensive, and they push out the repayment further into the future (away from the owners who enjoyed the use of those failing assets).

**Q:** Doesn't reserve study fully funded status in California only apply to the components that need to be done the following year and not for components that need to be completed in other years, even 30 years out?

**A:** (Robert) No. "Fully Funded" represents the dollar value of the deteriorated fraction of all Reserve components, whether new or old. See more [here](#).

# RESERVE STUDIES

**Q:** Should an HOA's Bylaws or CC&Rs provide for annual mandatory contributions to the reserve funds and if so, should it be a percentage of the "fully funded" number in the Reserve Study, e.g., in the 40-70% fair range, or should it just be expressed in words such as "adequate" or "sufficient" to properly maintain, repair, replace, restore major components of a development?

**A:** (Robert) Many Governing Documents currently empower the board to collect "sufficient" Reserves to maintain the common areas. Many associations further have enacted their own Reserve policy guidance to document more specific information, like funding goals.

**Q:** In the Champlain case, we now know the reserve fund was under funded. Supposing the Board years ago properly assessed. What happens when the assessment is a financial burden to some or all of the unit owners?

**A:** (Robert) They have to dig deep to pay to offset the ongoing deterioration they are enjoying while living in their home, take out a Home Equity Line of Credit, or sell. They may have just found out they've been living beyond their means.

# RESERVE STUDIES

**Q:** Please discuss the difference between increasing monthly assessments verses special assessments.

**A:** (Robert) Monthly assessments are a fair way to distribute costs over the homeowners. Special assessments are unfair, unwelcome, unsettling, unsure, and untimely. In addition, associations with special assessments regularly have lower home values.

**Q:** How does a Board determine the prudent percentage of reserves? 30%-70% is a wide range, and our HOA falls in the low end of this range.

**A:** (Robert) Look at this chart, and do your own risk management. At Association Reserves, we're always going to recommend pursuing a goal to be Fully Funded, the bulls-eye.

**Q:** Do you see pressure from state governments regulation reserve funding at higher levels? I'm in California and we're currently at 38% and will be fully funded in 8 years. Should we increase annually through special assessments?

**A:** (Robert) Work your plan. You should be fine.

# RESERVE STUDIES

**Q:** Components were not put in original reserve study because of over 30 year life (by reserve specialist). How do boards learn of and add those components to the reserve study? i.e sewer pipes, concrete walkways.

**A:** (Robert) There is no maximum Useful Life limiting components from appearing in your Reserve Study. It is common that long-life components (over 30 yrs) appear in a Reserve Study. Distant projects (over 30-yr into the future) should be added as soon as that project becomes “reasonably predictable”. If it was not previously listed (because it was still indeterminate), they should be added in the next Reserve Study update.

**Q:** Can you confirm the reserve studies you perform do not include/are not the same as the HOA obtaining a Replacement Cost Appraisal, which is used to help determine adequate Property insurance valuations?

**A:** (Robert) Correct. Those are different. A Replacement Cost Appraisal is a property-wide rebuild cost estimate, which is very different from the repeatable and predictable individual repair and replacement projects listed in a Reserve Study.

# RESERVE STUDIES

**Q:** What is the recommended % of funding for reserve? What % of funded reserves should be raising a red flag?

**A:** (Robert) See [here](#). 0-30% is the “weak” range, where special assessments and deferred maintenance are common. The 30-70% range is fair, where special assessments are infrequent. Above 70% is strong, where special assessments are rare.

**Q:** In California you must fund your reserves annually at 10% of your total budget. This is required by the mortgage brokers... Am I correct?

**A:** (Robert) Kind of. The FHA, Fannie Mae, and Freddie Mac like to see Reserve contributions that are at minimum 10% of annual budget to either become “FHA Certified” or for prospective buyers to obtain favorable mortgage terms. These are national standards, so they are not unique to CA. And that 10% minimum contribution rate should not be confused with “adequacy”, since most associations need to be contributing 15-40% of their total budget.



# RESERVE STUDIES

**Q:** Can you fully fund a future concrete restoration project when you haven't had a structural engineering study completed? Can the 4-part NRSS test be revised so that Reserve Specialists can fund more than a "partial allowance" for a concrete restoration. Concrete restoration is very costly!

**A:** (Robert) A Reserve Study is a budget planning document. When a cost is yet unknown, it can't be budgeted. As soon as a cost becomes "reasonably predictable" (with early estimates for cost and timing) it can and should be budgeted through Reserves. You don't have to wait until you have an official engineering study, or a firm cost proposal.

**Q:** What % of US states have required reserve funding? Waiving provisions?

**A:** (Robert) Approximately half have some form of statutory guidance for Reserves. See more [here](#). In FL, State Law has given owners line-item-veto power over Reserve contributions. In other areas of the country, some associations have given overall budget veto power or Reserve line item veto power to their homeowners through their Governing Documents. These provisions allow homeowners to unfairly push known Reserve costs onto future owners.

# RESERVE STUDIES

**Q:** What are the obligations of the reserve study analyst to keep the board in line and stop them from going off plan?

**A:** (Robert) The Reserve Study is wise counsel provided to the board. The board is free to ignore, consider partially, or embrace fully that wise counsel. Reserve Study professionals have no enforcement power.

**Q:** Builders sometimes underestimate reserve needs to reduce the monthly assessment. How do you tell the owners they were cheated?

**A:** (Robert) Reserve Study professionals are in the business of telling the truth of the situation to the association board. You need to discuss this situation with an attorney to determine if there is a case for the association feeling like they were misled.

**Q:** Why aren't reserve studies required? Will they now be?

**A:** (Robert) Reserve Studies are required through the Business Judgment Rule, which requires boards to make prudent inquiries when they do not know an answer. Reserve Studies are the answer to every board's annual question: "What should we do about Reserves this year". Something so obvious does not need to be required by law for it to be done.

# RESERVE STUDIES

**Q:** We are not a condo community, but are on the West Coast and have, I believe, a similar issue but with dry brush and hillsides—obviously of great fire danger. I have two questions: (1) We own the hillside property as an Association and have irrigation infrastructure on most of it. We are also responsible to the City and Fire Department to clear the brush and follow fire mitigation guidelines. We have been cited for not doing proper clearance to date. So, with all that, is our hillside property subject to the same oversight as the other infrastructure and should it be part of the Reserve study to remove and replace the landscaping as well as irrigation as both are ‘beyond their useful life’? If the answer is “yes”, the hillside landscape should be included in Reserves for proper maintenance over time, then (2), are we in a position of liability if we do not have this expensive repair in our Reserves? (We did, but our recent majority removed it from Reserves last year—because they wanted to keep the % rating high.)

**A:** (Robert) Whether a high-rise condo or a spacious association with perimeter hillsides, the board is responsible for the care of association assets. The periodic large maintenance projects related to hillside care can and likely should be Reserve projects. Just like any other major property care responsibility that is ignored, doing so invites board liability.

# RESERVE STUDIES

**Q:** We have members in our association who feel that funding our reserves over 70% is a disservice to the community because they feel that money pushing the reserves over 70% can be better used for current projects (such as aesthetics or more stuff for the building). How do you answer feelings such as these?

**A:** (Robert) Members don't run the association. The board runs the association. Just like a pension fund, Reserves are designed to offset deterioration. Those big Reserve costs never go away, they are big and predictable and they just continue to accumulate. They need to be funded either with ongoing monthly contributions or special assessments. So "pay the bill" of ongoing deterioration. Don't lose track of becoming prepared for your major bills by chasing "shiny objects". Note however, that many aesthetic issues like new lobby furniture, new carpet or paint in the hallways, etc., can and likely should be handled through Reserves.

**Q:** How do you keep the Percent Funded up to a good level when you are spending a lot to make needed repairs? We find it takes a while to build it back up.

**A:** (Robert) Raise your monthly assessments. That allows you to raise your Reserve contributions to a level where they have the desired effect, offsetting the costs of deterioration.

# RESERVE STUDIES

- Q:** As a reserve analyst inspector, what should we do if the balconies have two side supporting walls but dry rot, termite, warping, and sinking are evident?
- A:** (Robert) Your Reserve Study professional should recommend an inspection by a qualified structural engineer or architect. That's like your General Practitioner Doctor hearing your heart murmur during your annual physical, and recommending you go see a cardiologist.
- Q:** Knowing an item is in need of repair and addressing it is important and goes without saying fix it...what if an item is not known to be in need of repair but a vendor recommends to the property manager to address it now to avoid costly repairs in the future? I hear of vendors now using this to get work done.
- A:** (Robert) As Adrian stated when discussing the Business Judgment Rule, when you are unsure, seek wise counsel. Get a second (or third!) opinion, and find out if this is a legitimate need or just a vendor soliciting new business.