Legal Responsibility of HOA Boards Regarding Reserves

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The Responsibility:

This is bigger than State Laws. This topic goes to the fundamental idea that the board is responsible to maintain the common areas. They are "fiduciaries"… responsible for the care of assets belonging to other people. Every association has Governing Documents that address the definition of common areas and budgeting.

And now we have national forces like Fannie Mae and Freddie Mac raising the Reserve Funding standards (yet still well below what would truly be considered "adequate"), and insurance companies using their economic power to encourage associations to maintain their property or risk higher premiums or non-renewal. And finally we face the truth that Mother Nature and Father Time are undefeated. They make owning and maintaining Real Estate expensive!

The Boardmember:

Oh for the "good old days" when I was just a homeowner, and was free to complain! Boardmembers are corporate officers, responsible for the sustainability of a multi-million dollar not-for profit real estate corporation. As a "fiduciary" (one who is responsible for managing the assets of someone else), boards don't have a choice. They are responsible for the sustainability of the common areas, for the benefit of all the home owners. If they slack off on their responsibility to provide the necessary cash to sustain the association, expenses only pile up (they don't go away). If they slack off on their responsibility, they can be sued. So boardmembers need to care, be curious, have courage, and communicate effectively, acting as a body to do what needs to be done for the association. No excuses!

The Response:

How does a board fulfill their responsibility to provide financially for the care of the association? They need to be curious, asking their independent, credentialed Reserve Study provider what they should do. And typically the answer is to fund Reserves somewhere between 15% and 45% of the association's total budget. That's expensive, but Mother Nature and Father Time see to it that owning and maintaining Real Estate is expensive, with common area assets continually needing to be repaired or replaced.

Update that Reserve Study (Best Practice is a with-site-visit Reserve Study update at least every third year), because each year the **costs** of your Reserve projects change, the **condition** of your Reserve projects change, and each year the **cash** in Reserves changes.

Conclusion:

Mother Nature and Father Time are the ultimate authority, and they don't negotiate. To sustain your common areas, you need to put up a good defense against the ravages of time with timely repair and replacement projects. State laws are important. Fannie and Freddie compliance is important, and insurance companies care how well you're maintaining the property they are sticking their neck out to insure. Keeping assessments too low by underfunding and underestimating Reserve obligations only creates problems. It doesn't make the costs go away. Those costs just back up and get stronger, like water behind a dam.

Other Links:

See the Adams|Stirling law firm's website here, and their very popular website on CA Law pertaining to community associations here

Association Reserves FAQ (including Fannie/Freddie information). More here.

Learn more about the "uPlanIt" online Reserve calculator (included free with every completed Reserve Study by Association Reserves) here.

Link to the weekly 30-minute national "HOA Insights" podcast for board members here

Want an experienced professional to help with your Reserve Study update, ensuring appropriate component selection, life estimates, pricing, and development of an appropriate Funding Plan? Launch a free online proposal request by clicking here.

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