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Ratification of a Condominium Association's Annual Budget by Unit Owners

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In today's economy there are few easy ways to increase the Association's bottom line. Associations in particular may struggle because of limitations on the ability to increase assessments. The planned community statutes, for instance, require a membership vote to raise the regular assessment more than 20% over the previous year's assessment. Many sets of CC&Rs have their own specific limitations. While it is often difficult to get owners to vote on amendments or on assessment increases, there is one CC&R amendment that is rarely objectionable and that can have a positive impact on Association finances. The amendment is to provide for what we call a "resale assessment".

The basic concept of the resale assessment is that upon the voluntary transfer of a lot or unit (can also be drafted to include involuntary transfers such as trustee's sales), the buyer/transferee or both buyer/transferee and seller/transferor become liable for a resale assessment to be paid within 30 days, and that assessment, like other assessments, also becomes a lien on the property. Typically this would be paid at closing in voluntary sales.

The amount of the assessment can be set in the amendment. Although an amount that is tied to actual assessments (e.g. an amount equal to two or three months' regular assessments) is logical because it will grow over time without further action and is related to expenses, there are other alternatives. Associations have set fixed amounts subject to change by boards, or amounts equal to a percentage of the selling price (not very workable for involuntary transfers which are rampant in this market) or other amounts. The amendment can specify the assessment/fee can only be used for reserves or capital projects, or it can be drafted to allow for any use by the board.

As indicated, most owners have no problem voting for such an amendment. Although it is uniform, because it applies to every owner/lot/unit, it does not arise until a "resale" event, and the amendment language can make the assessment only the buyer's responsibility. Moreover, the name "resale assessment" is not critical. Associations have called these assessments "capital improvement fees" or "community enhancement fees" or "community and resident enhancement fees" among others.

Please contact any Carpenter, Hazlewood, Delgado & Wood attorney if your Association is interested in this amendment process. Please ask about special pricing for this resale assessment amendment.

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