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We Can't Raise Assessments Because (Fill In The Blank)!

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Admittedly, we sometimes see the world differently because we're lawyers and not board members or managers. But, we all operate within the community association industry. We all want the best for our clients, or neighbors, our communities. A legitimate question that has been raised is why don't boards raise assessments when they should?

Recently, my partner, Scott Carpenter, reminded directors and managers in a seminar that directors operate in three spheres: legal, business and political. It is our observation that directors do not raise assessments when they should because of political reasons most often, not legal or business reasons.

In the legal sphere (where lawyers are most comfortable), raising assessments is fairly black and white. The CC&Rs that govern condominiums and planned communities explain how to raise assessments. The board may have no limitations whatsoever, or it may be limited in a variety of ways that require a vote of the membership. For instance, CC&Rs may have a "maximum annual assessment" concept. In effect, it is a ceiling above which the actual annual assessment cannot be raised without a vote. The problem is many boards and managers either fail to understand the concept or they fail to consistently raise the ceiling so that assessments can be raised when needed. Those maximum annual assessment concepts are often tied to the Consumer Price Index for a reason, recognizing that the cost of goods and services goes up, as should the assessment that pays for those goods and service. Boards may fail to raise the maximum annual assessment for political reasons also, believing it will look bad if there is such a high ceiling.

Likewise, Boards often have total discretion to raise assessments in condominiums, with no limit in the governing documents, and no limit currently in the Condominium Act. Yet, condominium associations have historically been some of the worst examples of "living by the special assessment" because boards believed it was best to hold the line on assessment increases. A few condominium owners complain that assessments are already too high and boards succumb to the pressure – real or imagined.

The planned community statutes have a relatively high legal threshold, requiring a member vote if a regular assessment is to be raised more than 20% over the previous year's assessment, no matter what the documents say. However, it clearly appears that boards would rarely ever need to approach 20% if they

would raise assessments routinely to account for inflation.

As you can see, it is usually not because of the statutes, or the CC&Rs, that boards cannot raise assessments, unless they have pushed themselves to the point where a large increase is needed.

Boards also have to operate in the business sphere. Associations have a tremendous amount of assets, individually and in the aggregate. Board members have a duty to preserve and protect those assets owned or managed by the association. Some would argue that they also have a duty to protect overall residential property values in the community. While that argument may be a stretch, the business side of the equation should be easy to follow for board. Budget for what needs to be done, and assess to meet the budget. Water, electricity, landscaping, insurance, management, mailing, personnel, and all other costs generally increase every year. Yet, invariably, in good times boards believe that because things are good they can “hold the line” on assessment increases for vague political reasons and look like heroes. That results in the inevitable special assessments when communities are finally pushed to the wall.

Even worse, now that we are in a truly bad economy, boards are even more willing to justify holding the line on assessment increases because “times are tough”. They can say “we haven’t raised assessments in three years”. The rationale appears to be that homeowners are struggling, so the corporate association should struggle alongside them. That becomes the political reason during these times, based on apparent sensitivity for the human condition. They are ignoring the business reality of having foreclosures and bad debt than needs to be offset. The result will be the same – special assessments a few years later.

As can be seen, boards can’t or won’t raise assessments when times are good because it seems unfair, and they can’t or won’t raise assessments when times are bad because it seems unfair. They may find a lot of reasons to “fill in the blank” as to why, to make it appear objective. They may not even be conscious of the process. The net result is that the board almost NEVER increases assessments.

Perhaps “political” is not the right word for the third sphere. Perhaps it is “community minded”. Or, perhaps it is “short-sighted”. It is the same view that some legislators have about raising taxes even though it is necessary. They cannot do it because of fear they will look bad to the voters. However, directors have the luxury of being unpaid volunteers. They do not have to campaign or have funds to run for office. Assessment raises should always be fair game for boards, even in this economic environment, or even particularly in this environment. Boards can raise assessments if they think long-term rather than short-term.