

Subject: RE: PHOA special assessment

Date: Tuesday, November 17, 2015 at 2:59:43 PM Pacific Standard Time

From: Jennifer Martin <jmartin@wrslawyers.com>

To: 'Francine Kirkpatrick' <DrFKirk@verizon.net>

Dear Francine:

As we discussed today, the Civil Code supersedes anything that might be in your CC&Rs with regard to levying and increasing assessments (regular and special).

Pursuant to statute, the Board may increase regular assessments by up to 20% each year without a vote of the homeowners. Similarly, without a vote of the homeowners, the Board may levy one special assessment per year in an amount not to exceed 5% of the Association's gross annual budgeted expenditures. Based on your 2016 budget, the gross annual expenditures will be \$56,041, therefore, the Board may levy a special assessment of \$2,802.05 in 2016. Divided by 140 units, that is about \$20 per unit for 2016.

Alternatively, with a vote of the owners, the Association may increase regular assessments and/or levy a special assessment in any amount. The required approval is that at least a quorum of owners must vote (at least 71 votes), and a majority of the total number of votes cast (whatever that number ends up being) must approve the increase in regular assessments and/or special assessment. A special assessment is a one-time occurrence, but an increase in regular assessments is permanent. For example, if the owners vote to approve making regular assessments \$400 per year in 2016, they would remain at \$400 per year in future years unless that amount was decreased by the Board, increased by the Board by up to 20% without a vote of the members, or increased again by any amount with the approval of the members.

As far as your question about what is customary for associations with regard to their reserves, I would say there is no homogeneity amongst associations in that regard. Some associations never contribute to their reserves and have to levy special assessments every time an unexpected expense arises and some are over-funded to the point they are trying to come up with ways to spend their excess funds. There is no legal requirement about how well funded reserves must be, although some lenders require a certain percentage of regular assessment income be contributed to reserves annually in order to issue loans on individual units or lots.

I hope this information is helpful. Please let me know if you have any other questions.

Regards,
Jennifer

Jennifer L. Martin, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
11400 W. Olympic Blvd.
9th Floor
Los Angeles, California 90064
PH: 310-478-4100 ext. 6612
FAX: 310-478-6363
E-Mail: jmartin@wrslawyers.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive e-mails for the addressee), you may not use, copy or disclose to anyone this message or any information contained in this message. If you have received this message in

error, please advise the sender by reply e-mail to jmartin@wrslawyers.com, and delete the message. Thank you.

From: Francine Kirkpatrick [mailto:DrFKirk@verizon.net]

Sent: Tuesday, November 17, 2015 2:13 PM

To: Jennifer Martin

Subject: PHOA special assessment

Hello Jennifer,

We are preparing our 2016 Budget and completing the Budget Report outline you provided and we need your help in understanding the language in our CC&Rs, Art VII, Sec 4 as we consider a special assessment in 2016. That section reads:

"In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of paying any increased cost of insurance premiums, unanticipated legal costs, or maintenance of the common area lots, or otherwise, provided that any such assessment which total more than **five percent (5%) of the budgeted gross expenses** of the Association for that fiscal year shall have the vote or written assent of a majority of the Landowners constituting a quorum."

Attached you will find our 2016 draft budget. Our financial picture became quite dire this year and is anticipated to remain similarly bad in 2016. In 2015 we have had unexpected legal costs (law suit \$10,000 deductible and Rohatiner to mediate two disputes) and a new D&O insurance premium that doubled to \$15,200. Even though we took out a loan to pay the insurance premium we still have had to tap our Reserves for \$17,500 to make ends meet. In 2016 we will have a second claim \$10,000 deductible, and D&O premium will continue probably at \$15,200 per year, and we have to have money to continue to pay you for the CC&R rewrite. At best in 2016 our expenses will again outstrip our anticipated income by \$16,121. We're ending this year with our reserve 65% funded (minimum set several years ago at \$50,000) and if we do not do a special homeowner assessment Reserve will drop again a comparable amount by this time next year.

Our questions are:

1. Is the CC&R 5% of budgeted gross expenses (2016 is \$56,041) figured from the individual assessment amount (say, \$125 per homeowner) or the total we want to collect from homeowners which is \$17,500? What is the minimum therefore that we can assess per homeowner without calling for a membership vote?

2. Is it customary in other associations to let Reserve to drop much lower before a special assessment?

We are completely inexperienced in these matters and hope you have knowledge that can be of help.

Let me know if you want to speak to me on the phone (310-454-3478) or just respond to my email.

Thank you so much,

Francine Kirkpatrick, President
Palisair Home Owners Association
310-454-3478