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Finding the Money Funding Major Projects





Speakers:



Michael T. Kennedy, Jr.
Berding | Weil, LLP



ShawnMarie Ward
CMCA, AMS
Vintage Group

Common Scenarios

- Association's reserves are inadequate to pay for repairs
- SB326/CC 5551 "Surprises"
- Some are safety related: decayed balcony railings
- Some are hidden damage behind siding
- Some are "useful life" repairs
- Insurance renewal?

Determining the Scope of Work

- Hire the right consultants – construction manager, architect
- Gather information – SB326 report, resident surveys, destructive testing, plan review
- Prioritize “needs” and “wants” – safety, waterproofing, curb appeal, resident enjoyment

Determining the Scope of Work

- Consider “beta testing” of selected locations
- Obtain courtesy bids
- Prepare information for membership review
- Roles of the director(s), manager, counsel and construction manager
- ROM

Funding Sources

- Reserves-funded and on component list
- Reserves-Borrowing from reserves
- Bank Loan
- Special Assessment
- SB800 Claim

Funding From Reserves-Borrowing

Civil Code § 5515

- Fully funded and on component list? Great!
- Loan from reserves
 - Not on component list? Why not?
 - Notice of Intent in Board meeting agenda
 - Include reasons transfer is needed, options for repayment, whether special assessment may be considered

Funding From Reserves-Borrowing

Civil Code § 5515

- If Board approves the transfer:
- Writing finding listing:
 - Reasons transfer is needed
 - Options for Repayment
 - Describing when and how repayment will be made
 - Findings listed in minutes
- Must repay the loan within 1 year
 - Board may extend that but with the same requirements as the initial loan
 - The Board “shall” levy a special assessment to repay the loan if necessary
- Transferring from one reserve line item to another is not a loan

Bank Loans

- May require membership approval
 - Have counsel check the CC&Rs!
 - Bank may require opinion letter
 - All the formalities-inspector of elections, etc.
- Collateral is assessments
 - Repair with % of regular assessments
 - May decrease reserve contributions
 - Special assessment to cover loan payment?
- Qualifying for the loan
 - Association must be in good standing with Sec of State
 - Delinquencies-clean them up!
 - Reserve funding percentage

Special Assessments

- Requires a vote if more than 5% of budgeted gross expenses
 - Majority of a quorum-even if governing documents are more restrictive
- Less than 5% of budged gross expenditures? Board discretion
 - Even if gov docs are more restrictive
- Funds must be spent on the items approved in the vote
 - Have the scope and budget ahead of time!

Emergency Special Assessments

- No membership vote required
 - But the members will freak out
- What is an emergency?
 - Court order
 - Life safety
 - Unforeseen repairs
- If “unforeseen repairs” need to explain why the expense could not have been foreseen in the budgeting

SB800 Claim

- The only source of funds that isn't the homeowners
- Builder's insurance pays for builder related issues
- Reserves are not intended to fund repairs for defects
- Only available for projects under 10 years old

Best Practices

- **Manager:**
 - Recommend the correct business partners to the Board
 - Make sure the Board knows where the boundaries are
 - Don't be the lawyer
 - Don't be the construction manager
 - Don't the Board ignore their responsibilities

Best Practices

- Board:
 - Follow manager, attorney recommendations
 - Be transparent with membership
 - Do all the required things
 - Resolutions, documentation, member votes
 - Know the limits of your authority/discretion
 - Don't be the lawyer
 - Don't be the construction manager
 - Don't ignore responsibilities

Best Practices

- Managing the Contractor:
 - Get scope and cost of work before securing funding
 - Know how long their price is valid
 - Make them help with member communications, votes, etc.
 - Have oversight in place early (construction manager? Board subcommittee?)

Best Practices

- Membership:
 - Town Hall meeting before the anything starts
 - Town Hall meetings during the project
 - Be transparent!
- Do not:
 - Argue with them in Board meeting
 - Argue with them in Facebook group/Nextdoor etc
 - Let them derail the project
 - Let them dictate Board decisions

Best Practices

- Lender:
 - Use one familiar with CIDs!
 - Make sure they work with you through approval/vote process
 - Make sure they work with you through member communication/Town Halls
 - Make sure they walk you through the approval process *before* you apply

Best Practices

- Lawyer:
 - Helps with communications with the membership
 - Helps the Board do all the things (the correct resolutions, etc.)
 - Takes the heat in the Town Hall meetings
 - Get opinion letters about vote process, emergency Special Assessment requirements, etc.
 - Have construction knowledge
 - Review contracts, contractor insurance, etc.

War Stories



Takeaways

- Funding major projects is a serious challenge in today's market, but there are numerous options.
- Changes in the law and market conditions makes choosing the right option a constantly shifting challenge
- Where is this money we're funding? Homeowner-paid sources vs external-paid sources
- Best practices for homeowner communication and buy-in; how to avoid creating an angry mob

Q&A



THANK YOU