



CONSIDERING RESERVE POOLING?

In December of 2002 the Florida administration code was amended to allow Associations to “pool” reserves if determined by the Association. This is in lieu or in addition to specific reserve components.

The concept is basic but as it is said “The devil is in the detail.” This is an overview into the pooling process and a sample of the concept. The following points should be addressed before jumping into pooling.

1. How are your reserves reported currently?
2. If using specific reserve components you need to consider what level of association approval is need to eliminate, consolidate or revise these amounts.
3. Recognize that these funds are still restricted for their designated use. This is not a general defined or capital expenditures account.
4. The foundation of a successful pooling is a detailed scheduling of future major expenditures events.

Therefore, the more comprehensive and complete the schedule, the more successful and useful will be the pooled reserve (i.e. factoring in earnings). Florida statues for condominiums require the following items to be reserved unless waived at an appropriate meeting by unit owners.

The ruling prohibits using any type of balloon funding! This method also requires associations to identify each item to be included in the pool, along with estimated cost of replacement of deferred maintenance, and the remaining lives of each of the items within the pool. I have attached an example pooling method schedule:

Replacement Item	Cost	Total Estimated Lives	Remaining Lives
1) Roof Replacement	\$95,000	12	1
2) Pavement Resurface	\$55,000	18	7
3) Building Painting	\$92,000	5	4
4) Elevator Repair	\$20,000	25	14
5) Clubhouse Roof	\$60,000	12	1
6) Walkway Improvements	\$30,000	10	9

The schedule of deferred maintenance and capital expenditures’ reserve items for the pooling method includes the same items that are required for the segregated method as follows:

- 1) All required deferred maintenance and capital expenditures reserve items.
- 2) Estimated Total Useful Life of each of the required items.
- 3) Estimated Remaining Useful Life of each the required items.
- 4) Estimated Deferred Maintenance of Cost of Capital Expenditures of each required items.
- 5) Estimated Total Fund Balance for the pooled reserves as of the beginning of the proposed budgeted year (end of current year).
- 6) The required funding for proposed budgeted period for the pooled reserves.

The required funding for proposed budget period for the pooled reserves is the annual deposit that will be required, based on the current reserve analysis, in order to ensure that sufficient funds will be available when the anticipated expenditures take place.

Regards, Charles Hafer, CPA

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ARCHITECTURAL LAW CHANGES FOR HOA'S



Effective July 1, 2007, the law with respect to architectural modifications changed with the enactment of Florida Statute 720.3035. The authority of a homeowners association to review applications for architectural plans and approve those plans is limited in scope to:

1. Those matters specifically stated in the Declaration of Covenants (or published guidelines)
2. Matters that can be reasonably inferred in the Declaration of Covenants or published guidelines and standards authorized by the governing documents.

If the authority to approve architectural and aesthetic changes (i.e. paint colors, patio/porch modifications, or fences) is not specifically provided in the Declaration of Covenants, reasonably inferred therefrom (“reasonably inferred” has yet to be interpreted by a court of law) or contained in published rules and regulations authorized by the Declaration of Covenants, then the Board of Directors and/or the Architectural Review Committee does not have the authority to review or approve changes to the parcel. Without the proper authority as set forth above, the Declaration may need to be amended to provide for the above authority or the proper rules and regulations should be duly enacted to give the Board of Director’s/Architectural Review Committee the proper authority. Note, the authority of the Board of Directors to publish guidelines and standards should be located in the Declaration of Covenants and Restrictions. It is insufficient if the published guidelines and standards are located in the Bylaws or Articles of Incorporation.

Restrictions that are solely based on broad concepts as to aesthetic matters are not permitted (i.e. modifications to a parcel shall be approved, in advance, by the Board of Directors/Architectural Review Committee, in its sole discretion...). The restrictions placed on architectural modifications should be based on language from the Association’s Declaration or duly published guidelines. For example, the Board of Directors or Architectural Review Committee may not restrict the color of a home if there is no mention of same in either the Declaration of Covenants or published rules and regulations/written guidelines set forth by the Board of Directors as authorized to do so. Accordingly, the decisions made by the Board of Directors/Architectural Review Committee and the promulgation of rules and regulations stemming from it must be derived from the authority given to it by the Declaration of Covenants and/or contained in the rules and regulations or published guidelines, and cannot be arbitrary. However, as long as the restrictions meet the standards as set forth above, the Board of Directors and/or Architectural Review Committee shall be empowered to have those structures/modifications removed/denied if it violates the Association’s restrictions.

You are strongly encouraged to seek legal advice from your association attorney to discuss any details with respect to the above provisions and any legal matters related to same. This article is solely intended as a summary and is for reference purposes only.

David L. Brough, is a Partner in the Law Firm of Brough, Chadrow & Levine, P.A., located at 1900 North Commerce Parkway, Weston, Florida 33326. Brough, Chadrow & Levine, P.A., concentrates its practice in Community Association Law and currently represents over 350 associations and can be reached at 954-384-0732.



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President's Message

As President of Banyan Property Management, Inc., I would like to introduce the second edition of our newsletter, *The Banyan News Leaf*. We will continue to publish articles of interest specific to Homeowner and Condominium Owner Associations each quarter. I would like to thank Mr. David Brough and Mr. Charles Hafer for providing articles for this edition.

Please do not hesitate to contact me if you have any suggestions for future articles or if you have any questions about our complete line of property management services. My number is (561) 649-8585 Ext. 337 or alternatively my email is mark.quinn@banyanproperty.com.
Cordially,

Mark J. Quinn
President

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