



Hawaii Condominium Bulletin

“Excuses, Excuses”

By Robert M. Nordlund, PE, RS,
CEO/Founder, Association Reserves, Inc.

contents

“Excuses, Excuses”
pages 1, 3

Message from the Chair
page 2

Senior Condominium
Specialist Retires
page 2

Answers to Board Members
Top 10 Budget Questions
page 3, 4

Ask the
Condominium Specialist
page 5

Mediation Case Summaries
page 6

2016 Real Estate Commission
Meeting Schedule
page 7



An excuse has been defined as “the skin of a reason stuffed with a lie”. In the process of preparing over 30,000 Reserve Studies for Associations across the country over a period of 28 years, there are two board member sentiments we hear most frequently expressed: “We can’t afford the Reserve Funding Plan” and “We’ll worry about that next year”. But no matter how many times a Boardmember may repeat these sentences, it doesn’t mean they’re true and it doesn’t mean they’re wise.

“We can’t afford the Reserve Funding Plan.”

Most of us are accustomed to living within our own financial constraints, where there are some things we can afford and some things (like that red Ferrari!) that we can’t. So we are regularly making choices about where we spend our limited cash. But there are two logical flaws to this concept of “afford-
ing” when it’s applied to reserve contributions. First, common area repair and replacement expenses don’t disappear if the Reserves are underfunded. The claim that you can’t afford the Reserve Funding Plan this year only creates



more Reserve obligations in the future. In addition, delayed contributions generally result in delayed Reserve projects, creating deferred maintenance. Many of those deferred Reserve projects actually get more expensive when delayed. Delaying doesn’t usually save you any money.

The second flaw is that Boards don’t really have a choice in the matter. Board members are both empowered and obligated to operate the Association according to state law and their own Governing Documents. Throughout the United States, Boards are empowered to set a budget to collect “adequate” funds from the owners to maintain the physical assets of the Association. Making a decision to not budget for the needs of the Association exposes board members to personal liability. Owners or future owners might be inclined to file a lawsuit against the Board because the Special Assessment that was levied against them is actually a deficit catch-up strategy for all the years the Reserve contributions were artificially low.

The reality is that underfunding reserves is nationwide problem. More and more prospective buyers are becoming aware of this issue. In the State of California, the Department of Real Estate took the unprecedented step in September 2012 of issuing a Consumer Warning of the special assessments and declining home values due to underfunding Reserves. Read it yourself by Googling “California DRE underfunded homeowners associations”. “We’ll deal with that next year.”

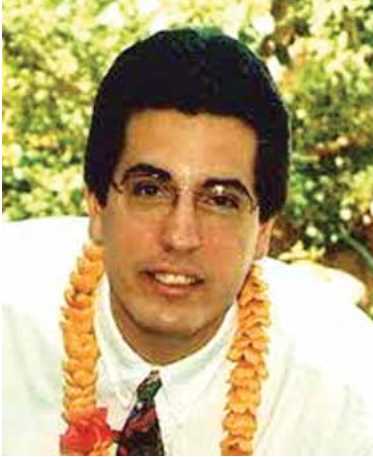
The problem with this next excuse is that Reserve obligations are not future events. Reserve obligations arise from very predictable, ongoing deterioration that occurs every day, every week, and every month. The cost

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This material can be made available for individuals with special needs. Please call the Senior Condominium Specialist at (808) 586-2643 to submit your request.

(continued page 3)

Message from the Chair



Aloha,

Welcome to the Ides of March and the beginning of spring.

In this issue of the Bulletin we have numerous articles of interest regarding Budgeting, Reserves, Mediation and more. The first few months of a new year are generally “Annual Meeting” time for many Associations around the State. I encourage all of you to participate in the life of your association by attending your annual association meeting.

There is also a heartfelt article on the recent retirement of Cynthia Yee, who after 23 years with the Real Estate Branch has retired. I have been fortunate enough to have worked with Cynthia even before I was on the Real Estate Commission. And in the last couple of years we have been extremely busy with the Condominium Blue Ribbon Committee, the Condominium Review Committee, Condominium Consultants Meetings and much more. It is hard for me to imagine after all this time to not have Cynthia sitting right next to me in meetings helping with the Condominium Committee and other condominium related meetings. I commend Cynthia for all her years of work at the Real Estate Branch and hope she enjoys many years of fun in her retirement.

Aloha Cynthia.

Scott A. Sherley

Senior Condominium Specialist Retires

Cynthia Yee has retired after 23 years of service to the Department of Commerce and Consumer Affairs, Real Estate Branch. Cynthia began with the REB in 1984; she spent five years with the Real Estate Center at the University of Hawaii before returning to the REB where she has remained since.

Cynthia worked on all aspects of condominium development and governance, eventually developing a focus on the project development aspect of condominiums. Over the years she has worked with many condominium consultants and condominium developers and their attorneys to assure that sufficient and appropriate disclosure was made to prospective purchasers of condominium units. With an early career in the field of education in Baltimore, Maryland, the education of consumers remained a primary focus for her.

Cynthia’s contributions to the daily life of the REB will be missed. She has earned her retirement and looks forward to spending more time with her family, especially her grandson, while still keeping a finger on the pulse of the condominium community.

We all wish her well and ho`omaika`i!



“Excuses, Excuses” (cont. from page 1)

of that ongoing deterioration can be easily calculated, which forms the basis for an association's Reserve contributions. Those repair & replacement costs are as real as any other “bill” the association faces. Cultivating a culture of not paying your own bills is not only fiscally irresponsible, but inherently unfair.

Let me explain: Is it fair to be forced to pay for a new roof to replace one that someone else “used up”? The unwitting victims of Special Assessments or bank loans likely are paying far more than their fair share of that component's cost. Those current owners are being forced to “pay the bills” of prior owners who underpaid their fair share of the Association's ongoing cost of deterioration.

So what to do?

“It is the greatest of all mistakes to do nothing because you can only do a little. Do what you can.” Sydney Smith



It may be a hard pill to swallow, but Boards need to stop making excuses or kicking the problem down the road. You can do the wise thing. You can address your current situation by following the Funding Plan- it's one of the key results of a Reserve Study. Then begin to make steps of progress. Not only will you then fulfill your role and responsibility as a board member and protect yourself from liability, but being able to afford timely repairs and replacements will maximize property values and go a long way to help overall homeowner satisfaction.

Bio

Robert Nordlund is Founder and CEO of Association Reserves, a national Reserve Study company. Robert Nordlund started Association Reserves in 1986. As a registered professional engineer and Reserve Study pioneer, Robert was involved in creating the 1998 National Reserve Study Standards and has greatly influenced the community association industry. His insights and views have translated into remarkable value for Associations of all shapes and sizes. Under Robert's leadership, Association Reserves has grown to include 12 regional offices scattered throughout California and the United States.

Prior to forming Association Reserves, Robert was a “rocket scientist” at Rockwell International, serving as the Lead Engineer on the Space Shuttle Main Engine Program. He was awarded a BS degree in Mechanical Engineering from the University of Washington. For more information, visit www.reservestudy.com

Answers to Board Members Top 10 Budget Questions

By Gene Peles

1. What are some of the most common misconceptions about budgeting?

Some people are under the misconception that 1) delaying capital improvement projects a couple of years is no big deal and 2) that price quotes for capitol replacement items which are received today will be honored by vendors in the future.

2. What are three top tips which Associations can implement to keep maintenance fees reasonable?

FIRST: Start a comprehensive preventive maintenance program. This will identify any issues arising before they become an emergency repair item, which can double the cost of a planned replacement cost. Changing out old water pumps, AC filters, change to low flush toilets are all good ways to reduce the high cost of utilities.

SECOND: Find green solutions to lower the cost of day-to-day operations such as electricity, gas and water.

THIRD: Implement a high risk component resolution. This will help keep the insurance claims down from those costly water intrusions.

3. How can Boards prevent special assessments?

Boards need to understand that Maintenance Fees are part of living in a condo. Associations which implement modest increases of 1 to 3% annually set themselves up for success, and actually add value to the property in the coming years by ensuring that there are adequate reserves, and reducing the risk for large maintenance fee increases and special assessments.

Answers to Board Members

Top 10 Budget Questions (cont. from page 3)

4. Why do some Associations have to get bank loans?

Usually for unforeseen issues, such as plumbing pipe and electrical component replacements. Sometimes neglecting to paint the building at appropriately scheduled intervals will cause highly expensive spalling repairs when the project is finally executed.

5. How can two identical buildings can have totally different maintenance fees?

Preventive maintenance is a key factor in maintenance fee increase. For example, if two identical buildings were built with the old five-gallon flush toilets, and one changes their toilets to the new low flush (1.5 gallon) toilets, this building would have a significantly lower water and sewer bill.

6. Is it fair to compare maintenance fees with another similar building?

It is difficult to compare two similar buildings. Density, unit size, equipment such as chillers and cooling towers, and even occupancy levels of the property all are factors in the cost to run the building.

7. How can boards make the budget and reserve study process go smoother?

Form a budget committee. Start early in the budget process. Does the AOA have a current reserve study (less than 7 years old)? Actually walk the entire complex with your manager. If components appear to be worn or in questionable condition, get a professional opinion of someone who can accurately assess the component's remaining life, and provide a quote on the repair or replacement, if needed.

8. Which is better? Cash Flow or Percent Funded?

In my opinion, Cash Flow is best. 514B-148 (h) "Cash flow plan" means a minimum twenty-year projection of an association's future income and expense requirements, to fund fully its replacement reserves requirements for each year during that twenty-year period, except in an emergency; provided that it does not include a projection of special assessments or loans during that twenty-year period, except in an emergency."

Under Percentage Funded, the AOA only needs to collect 50% of the replacement/repair cost in the year the component is due. This can lead to extremely erratic maintenance fee fluctuations, and the Board of Directors can assess the other 50% or request from the owners to acquire a loan for the remaining cost.

9. What are some of the big ticket items which 30-40 year old buildings need to watch out for and include in their reserve study?

Plumbing pipes and electrical equipment.

10. How about new buildings? Any special pitfalls that they need to watch for?

The only pitfalls I see are having boards fail to get a professional reserve plan after the first year of operation. As the budget and reserve plans progress through the years, the board should, at minimum, increase their maintenance fees at the current inflation rate.

About the Author: Gene Peles, Director at Hawaiiana Management Company, Ltd. is in charge of Hawaiiana's Budget and Reserve Study Program, which is used by Hawaiiana's 80 property managers to prepare some 600 budgets annually. Peles joined Hawaiiana in 2008 after a 24-year career in the U.S. Army, where he retired as Master Sergeant. Peles earned a Bachelor's Degree in Business Management from Trinity University and serves as management executive for eight luxury high-rise, lowrise, mixed-use and townhouse properties, ranging in size from 48 to 331 units.

Ask the Condominium Specialist

Q: My washing machine had to be removed and mold was discovered along the walls where it had been. My condominium board is refusing to assist me in cleaning out the mold; I was told by an environmental company that the mold is a very bad type of mold and should be removed. My landlord, the owner of the unit, is very ill and cannot assist me. What can I do?

A: Contact the Department of Health, Air Quality Section at 586-5800 for information on mold. While they are unable to provide dispute resolution as to the cause or source of the mold or who should assume the costs for clean-up, they can offer insight into the potential cause of the mold, e.g., pipe leak; make recommendations for clean-up by providing owners with a list of consultants or contractors; and will write letters to owners in the association including recommendations for those with compromised immune systems.

Q: My condominium board is refusing me permission to install solar panels. My understanding was that there is a law that allows me to install a solar device. If this is so, I would like to point this out to the board members.

A: You are correct. HRS § 514B-140, in conjunction with HRS § 196-7 allows a board to adopt rules within the association to facilitate the placement of solar energy devices, but a board **may not prohibit** the placement of solar energy devices even if the association's governing documents contain restrictions on such devices. If the board continues to withhold approval, you may attempt mediation with one of the mediation providers at this link http://cca.hawaii.gov/reb/condo_ed/

The information provided herein is informal and intended for general informational purposes only. Consult with an attorney familiar with the Hawaii condominium law for specific legal advice regarding a particular situation.



Mediation Case Summaries

From December 2015 through February 2016, the following condominium mediations were conducted pursuant to Hawai'i Revised Statutes § 514B-161, and subsidized by the Real Estate Commission. The mediation providers also conducted additional condominium mediations in their respective District Courts and community outreach in their respective communities.

Mediation Center of the Pacific

Through Skype video conferencing capabilities, MCP has been conducting additional mediations with condominium owners who live part-time in Hawaii and are currently residing out of the state; MCP continues to mediate condominium disputes referred from the Honolulu District Court.

Owner vs. Board	Dispute over maintenance of the common area.	Party declined mediation.
Owner vs. Board	Alleged unequal reimbursement for common area repairs.	Owner w/drew complaint.
Owner vs. Board	Contesting fines for house rule violations.	Mediated; no agreement.
Board vs. Owner	Enforcement of house rules.	Owner w/drew complaint.
Owner vs. Board	Access to board documents.	Owner w/drew complaint.
Owner vs. Board	Alleged unequal application of board policy for assessing plumbing repairs.	No follow-up by owner; case closed.
Owner vs. Board	Alleged board did not follow procedure for collecting delinquent maintenance fees.	Board declined mediation.
Board vs. Owner	Dispute over cause of clogged pipes.	Mediated to agreement.
Owner vs. Board	Alleged lack of enforcement of noise house rules.	Owner w/drew complaint.

Maui Mediation Services

Owner vs. Board	Owner alleges damage to her unit as a result of repair work by association.	Mediated to agreement.
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Dispute Prevention & Resolution, Inc.

Owner vs. Board	Alleged violation of house rules.	Mediated to agreement.
Owner vs. Board	Assessment of fees for alleged violation of project documents.	Mediated; no agreement.

2016 Real Estate Commission Meeting Schedule

Laws & Rules Review Committee – 9:00 a.m.

**Condominium Review Committee – Upon adjournment of
the Laws & Rules Review Committee Meeting**

**Education Review Committee – Upon adjournment of the
Condominium Review Committee Meeting**

Wednesday, March 09, 2016
Wednesday, April 06, 2016
Wednesday, May 11, 2016
Wednesday, June 08, 2016
Wednesday, July 13, 2016
Wednesday, August 10, 2016
Wednesday, September 14, 2016
Wednesday, October 12, 2016
Wednesday, November 09, 2016
Wednesday, December 07, 2016

Real Estate Commission – 9:00 a.m.

Thursday, March 24, 2016
Friday, April 29, 2016
Friday, May 27, 2016
Friday, June 24, 2016
Friday, July 29, 2016
Friday, August 26, 2016
Friday, September 30, 2016
Friday, October 28, 2016
Wednesday, November 23, 2016
Friday, December 16, 2016

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.

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