

2009 DISCLOSURE OF RESERVE FUNDING PLAN SUMMARY

Many community managers and Board members have expressed concern over the impact of Civil Code section 1365(b) regarding association disclosure requirements, which reads:

Commencing January 1, 2009, a summary of the reserve funding plan adopted by the board of directors of the association, as specified in paragraph (4) of subdivision (e) of Section 1365.5. The summary shall include notice to members that the full reserve study plan is available upon request, and the association shall provide the full reserve plan to any members upon request.

A reserve funding plan has been a required part of the reserve study since 2007. As of January 1, 2009, an association is merely required to provide the members with a summary of the reserve funding plan as part of the end-of-fiscal-year disclosures.

What is the "Reserve Funding Plan"?

A "reserve funding plan" should be part of any reserve study prepared after January 1, 2007, when Civil Code section 1365.5(e)(5) became effective (and possibly even before in anticipation of the requirement). Section 1365.5(e)(5) provides that the reserve study include a reserve funding plan that indicates how the association plans to fund the contribution necessary to repair and/or replace all major components with an expected remaining life of 30 years or less, except those components that the board has determined will not be replaced or repaired. The reserve funding plan is to include a schedule of the date and amount of any change in assessments (regular or special) that would be needed to sufficiently fund the reserve funding plan. The reserve funding plan must be adopted by the Board at an open meeting.

Thus, if an association has had a reserve study prepared since January 1, 2007, the reserve study should include a reserve funding plan. Given the three year life of reserve studies, no association should have to have a reserve funding plan specially prepared in order to comply with the new disclosure requirement. Beginning on January 1, 2009, associations are simply required to include a summary of the reserve funding plan in the end-of-fiscal-year disclosures. We anticipate reserve study preparers will have "forms" for the summary.

If an Association's Fiscal Year Begins in January, is the Association Required to Make a Disclosure in January?

Most of the questions we have received are about the timing of the disclosure. For many associations, the fiscal year is the same as the calendar year, so the end-of-fiscal-year disclosures are made by the beginning of December. Many of our clients in this position have asked whether they need to then disclose of the summary of the reserve funding plan on January 1, 2009.

While the most conservative approach would be to disclose the summary of the reserve funding plan on January 1, 2009, we do not believe this is required by Civil Code section 1365(b). Rather, we believe associations will comply with the statute if they include a summary of the reserve funding plan in their 2009 end-of-fiscal-year disclosures.

Please contact us with any questions about your association, including its disclosure obligations.