



SPECIAL ASSESSMENT TIPS & STRATEGIES

Dana S. Marron, Esq.

The number of associations facing unexpected expenses has risen dramatically due to skyrocketing insurance premiums, unanticipated repair costs resulting from record rainfalls, increased labor costs, and more. Financial strain has forced many boards to consider the prospect of levying a special assessment, many for the first time in the history of their communities.

Boards can levy special assessments up to 5% of the budgeted gross expenses for the current fiscal year without a vote of the membership; however, in general, **special assessments greater than 5% of the budgeted gross expenses require membership approval**. For those communities facing special assessment membership votes, here are some tips and strategies to keep in mind to maximize the chances of membership approval.

Comply with Election Laws. Special assessment votes are subject to the same secret ballot procedure used in director elections (but with fewer pre-election requirements) and also require boards to appoint an inspector of elections. Boards should make sure their election rules are current (circa 2020). Appoint the inspector of elections early to avoid scheduling problems down the road. Consult with legal counsel early in the process to review statutory timing requirements, approval requirements, and more.

Don't Underbudget. The one thing that members dislike more than being asked to approve a special assessment is being asked to approve multiple special assessments. Boards should plan carefully to avoid having to go back to the members to ask for more money because the first special assessment was insufficient. In the case of a construction project, we recommend that boards obtain bids for the required work, add any costs that might be excluded from the proposed contract price, including, for example, permit fees and construction manager fees. In addition, be sure to add any applicable extra management fees, inspector of elections fees, mailing fees, and legal fees, and consider adding a contingency fee to cover unforeseen costs.

Installment Plans. Depending on the amount of the special assessment, the urgency of the expenses, and applicable payment schedules, boards may wish to consult with legal counsel to see if the association can offer members the option of paying the special assessment in installments and how to offset the increased risk of nonpayment in the event that members move away before payment is made in full. For very large expenses, some boards might consider seeking a bank loan, which is typically secured by a special assessment. The advantage of a bank loan is it gives the association the money it needs right away, while allowing the members to pay the

special assessment in installments over an extended period of time (the term of the loan). Boards should check with legal counsel to see if the governing documents require membership approval of bank loans.

Hold a Town Hall Meeting. While not required, town hall meetings can be a critical step on the road to special assessment approval. Note that a town hall meeting is neither a board meeting nor a membership meeting. No business is conducted at the town hall meeting. Rather, the town hall meeting is a presentation by the board and the experts who can explain the need for the special assessment and an opportunity for the members to ask questions. Depending on the reason for the special assessment, the experts who present at the town hall meeting might include an architect, a banker, and an insurance professional. In addition, one of the directors or the community manager should be prepared to discuss the budget for calculating the special assessment. Ideally, the association's legal counsel should also be present to address legal questions.

Role of Legal Counsel. Special assessment votes are something most communities only have to deal with once in a while. Moreover, they are controversial by nature and subject to numerous legal requirements. Your association's legal counsel can be an effective partner in helping the board and the management team strategize from start to finish for an effective special assessment vote and avoid the many pitfalls on the way, whether it is compliance with balloting requirements, election timelines, approval requirements, or understanding the risks associated with installment plans. Legal counsel can also be instrumental in reviewing and negotiating construction contracts and loan documents.

Remember, that the best way to avoid special assessments is to plan carefully for the fiscal year ahead.