

Association of Condominium,  
Townhouse, and  
Homeowners Associations



11 E. Adams, Ste. 1107 • Chicago, IL 60603 • 312-987-1906 • actha@actha.org • www.actha.org

**October 2013**

## Inside this issue:

Certification information	2
Tip of the Month	3
“Loan” continued	4
“Loans” continued	5
Question of the Month	6

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**WEBINARS EVERY MONTH!**

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See page 2

## Qualifying for a Community Association Loan Frank Coleman, CMCA, RPA and Peter Santangelo, CMCA

According to the recent IBOPE Zogby International 2012 survey on Community Associations:

- 62 million Americans live in an estimated 315,000 association governed communities
- 7 out of 10 residents are satisfied with their association living experience
- Residents rated their community experience as positive where they believed:

*Association board members strive to serve the best interest of their communities*

*The association rules protect property values and they value the return received on their association assessment payments*

Elected association board members have the fiduciary responsibility to protect and enhance the association common elements and unit owner’s investments, by maintaining and preserving the property values of the community. In order for the Board to maintain the Association’s property value, they may contract to have a Reserve/Engineering Study completed to define to the Board/Unit Owners the nature, timing, and cost of future capital replacement projects and assessment dollars needed for each project.

In current difficult economic times, boards and unit owners are reluctant to raise assessments for future replacement projects and frequently delay projects in order to raise the necessary funds. This increases the probability that repair costs for the later “fix” will be greater due to the problem becoming broader and deeper.

In a capital replacement project, boards and unit owners have the following options:

- *Pay for the project from the accumulated reserve dollars*
- *Implement a special assessment*
- *Obtain a commercial bank loan*
- *Or a combination of any of the above options*

Paying for the capital replacement project from accumulated reserves dollars based on the reserve study is the best option, as

*Continued on page 4*

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**LEARN & LEAD:** ACTHA's certification program for owners is now available online. This six course program in the fundamentals of community association living focuses on "need to know" learning in the areas of governance, administration, meeting/elections, physical aspects, finance and insurance.

While ACTHA encourages students to take the program in the classroom setting, we understand that this may not be the most convenient for everyone.

If taking Learn and Lead for certification purposes, the cost is \$100 for ACTHA members; \$150 for non-members. Once you begin the program you will have two years to complete the course. A short multiple choice and T/F test is offered after each course and requires a pass rate of 70%.

*Register Today!!! [www.actha.org/Certification](http://www.actha.org/Certification) for Board Members and Owners*

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# TIP OF THE MONTH

## Unpaid Assessments: Talk is Cheap and Potentially Valuable

Is mediation possible with unpaid assessments? Yes!

When a neighbor—or how about a board member!—is not making payments on time and even when they are behind on their assessments, there is room for discussion. The mediation approach (the let's-talk-and-figure-out-what-to-do approach) is possible and can be valuable in cases of unpaid assessments. This is true because many boards, particularly small, self-managed associations, do not have the inclination or the finances to file a suit to evict non-paying neighbors.

The truth is that there are more than just the two options of “send them to collections” or “wait and hope they'll eventually pay”.

In most cases you will not need to hire a professional mediator to get people looking for solutions. Board members can approach an owner by email, phone or knocking on the door. To reduce defensiveness, engage an owner immediately with an attitude of genuine interest in whatever they may be experiencing, no less than the Board's concern for the well being of the whole community, respect for the association, and so on.

Yes but doesn't the law say associations may not forbear collecting payment in full of assessments? That is what the law says, the attorneys tell us. Indeed, “waiving” the payment of any part of the unpaid assessment fees is not an option. The board member's task is not to negotiate a deal, but to inquire as to the possible reasons the owner has fallen behind, and to explore options that work for both parties. Obviously, forbearing some or all of the owed payments does not meet the association's need for fairness, stability, safety, and survival!

The dialogue can start with: “Hi Sam, this is Mary up in 3C. How are you? The reason I'm calling is, we haven't received your assessment payments and the board asked me to contact you because we want everything to run well in our association. We also want to understand what's going on and find out if you're OK. Do you have a minute to talk?”

Does this work? Often it does. People are programmed to work things out.

Does it work in an association? When people talk without attack and counter-attack, creative solutions that honor the board's fiduciary duty can often be found. In a recent example, a 20-unit self-managed condo had a non-paying resident owner who'd gotten behind for over a year. A newly-elected board president contacted him and he immediately made a \$4,000 payment. Of course it's rarely this easy but when you talk there's no telling what can be resolved.

You want to create written policies in your association's rules and regulations so you can have uniformity in the way you do this, year in/year out, from one board to the next, and everyone is treated the same. The association needs a written protocol, which can be referenced in your rules and regulations, which spells out the process when somebody doesn't pay their assessments. That protocol can include: 1) the board will attempt to talk with non-paying owners to find solutions, 2) if no communication can be established after a certain period and solutions cannot be found that respect everybody's needs, the board will pursue collection of the debt using the protections available under the law.

Several attorneys have told me that once they send a letter to an owner demanding payment, the matter becomes a litigated dispute, and there should be no further contact with the non-compliant neighbor. There are good reasons for this, but it's still regrettable. In associations, no less than in relations between countries, what we need in these dangerous times is more frank and direct conversation, not less.

*John Cabral*

*Oak Park Mediation and Non-violent Communication*

*110 E. Avenue, #28, Oak Park 60302, 708-524-1230, cabral@oakparkmediation.com, www.condoconflicts.com*

*Continued from page 1*

dollars are set aside over time. The yearly reserve assessment increases are smaller and less of a burden on the unit owners to pay for the replacement projects.

Special Assessments are usually implemented, when there is a shortage of reserve dollars to pay for a capital replacement project and unit owners are given a limited period of time to pay their portion of the project cost. If the Special Assessment is large, this may place a burden on unit owners that are unable to pay the onetime assessment charge and default on their payments, which places additional stress on the Association in trying to complete and pay for the project.

With a commercial bank loan, the capital replacement project is completed in a short period of time and the unit owners are not burdened with a one-time large assessment payment and are able to spread their portion of the project cost over time. There will be an increase cost to the project due to interest payments; however this still may be more palatable to the unit owners than a one time large Special Assessment payment.

If the board decides to borrow dollars to complete a capital replacement project, a Community Association Lender will look most favorably (the best loan terms) to boards and unit owners that are proactive, well prepared and meet all the bank guidelines. Community Association Lenders may require the following information:

- *Average unit market value*
- *Number of units*
- *Delinquent payment of assessments*
- *Contingencies for bad debt*
- *Assessment levels*
- *Owner occupancy ratio*
- *Insurance*
- *Present and pending lawsuits*
- *Repayment plan*
- *Reserve funding*

An Association should surround itself with qualified professionals to ensure the project goes smoothly and is completed correctly.

The lender will need to understand how the scope of work was identified, the duration of the planned repairs, and the process for selecting the professionals to complete the projects. Prior to loan approval, the lender will require copies of the executed contracts for the work to be performed.

Depending on the size of the project, an independent engineer or architect may be required to supervise the project and approve all advances on the loan and payouts to contractors.

Average unit value and number of units is taken into consideration to determine if the size of the loan requested, meets the bank's guidelines. For example:

- *A 50 unit building requests a \$1,000,000 loan*
- *The units are valued at \$100,000 each*
- *The assessment per unit would be \$20,000 (20% of its value), which the bank might consider high.*

Assuming a 5 year repayment, the monthly amount due per unit would be about \$333 per month, which does not include interest, regular assessment or mortgage payments. Such an expense has the potential to monetarily stress unit owners, which may increase delinquencies and cause the association to default on the association loan. To prevent this, it is imperative that associations reserve funds for future capital expenses to reduce or eliminate the need for a loan. If an association has reserves and is able to fund 50% of the project, this reduces the financial impact to owners and increases the probabilities of acquiring a loan.

Collateral for a community association loan is the assignment of future assessments of the association. Most lenders have internal guidelines regarding delinquent assessments that Associations must meet, to both qualify for a loan and maintain, while the loan is in place. Typically no more than:

- *5% - 10% of the total number of units can be delinquent on assessment payments*
- *5% - 10% of the annual assessment income*

Prior to obtaining a loan an association should establish a delinquency collection policy and adhere to it. The Association's assessment income is the Bank's source of repayment so the Association must be diligent about collecting all assessments. Delinquent accounts should be turned over to the Association's attorney as the Association's delinquency collection policy allows. Associations with high delinquencies may not be able to secure a loan.

Associations considering whether or not to take out a loan should incorporate a reserve for bad debt into their operating budgets. In the event of non-payment or late assessment payments, this reserve

*Continued on page 5*

Continued from page 4

will help to ensure the association has sufficient cash flow to meet debt and operation obligations.

The Board should determine the number of non-owner occupied units and what is currently allowed by Association policy. The lender's guidelines for non-owner occupied units range from 20% to 30% of the total number of units.

Community associations are also required to carry adequate insurance per the State of Illinois Statutes governing Association Law. The lender will require proof of adequate insurance as a condition of the loan. Insurance will be required to be maintained while the loan is in place and the lender will require that they are added to the policy as additional insured or loss payee. Boards should review their insurance levels annually with a qualified association insurance professional.

Litigation against the association is also reviewed by the bank. As plaintiff or defendant, an association that is a party to a lawsuit complicates matters for owners trying to buy or sell units and can inhibit an association's ability to obtain a loan. Lawsuits against the association may impact the ability to repay its loan due to increased or unbud-

geted legal fees and the potential for a monetary settlement payout not covered by insurance or reserves. Association boards should act to resolve lawsuits in order to focus on day to day operations of the association.

Community Association Lenders vary in documentation they require, their evaluation processes, and loan terms. Lenders with dedicated association staff, broad experiences, and strong portfolios are generally the easiest to work with and can guide you through the process. Associations considering a capital replacement project should contact a Community Association Lender early in the process, to acquire guidance and options in financing. This will aid in ensuring the loan is acquired in an expedient manner.

Community Association Lenders know that Association Boards with strong leadership, that are well managed and proactively plan, demonstrate to the unit owners that the Board members are exercising their fiduciary duty to ensure the financial integrity of the Association and property values.

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## Question of the Month

*By: Bill Lapelle, Attorney*

*1 Northfield Plaza, Northfield 60093, 847-441-0002, wlapelle@lapellelaw.com, www.lapellelaw.com*

**Q.** Do owners have a right to an owner's contact information? If so, what information are they entitled to? If not, what can an owner do to communicate with other owners on issues in the associations that some owners feel are not being adequately addressed and want to more significantly influence board actions? I want to talk with owners on various issues.

**A.** This is a question I often receive when a dispute arises between unit owners. The simple answer is yes, an owner has the right to other owners' contact information. Regarding condominiums, the Illinois Condominium Property Act (Sec. 19) lists the documents required to be maintained and provided to owners by the Association, which in part includes "a current listing of the names, addresses, and weighted vote of all members entitled to vote". For community associations other than condos, a similar provision is contained in the Illinois Common Interest Community Association Act (by reference to the Illinois General Not For Profit Corporation Act).

Before receiving the owner contact information, the unit owner requesting the information must provide a written request and state a "proper purpose" for the use of the information. A unit owner's proper purpose can be to contact owners about an upcoming election or to otherwise pursue the association's business. Wanting the contact information for private purposes or to share gossip would not be a proper purpose.

Also note that the contact information required to be provided includes a current listing of the names and addresses. It does not include telephone numbers or email addresses. Unless a unit owner has specifically allowed that information to be made public or a declaration allows it, that information should not be released.