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Budgeting For Owner Associations: Pre and Post CCIOA

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A. Budgeting in General

Prior to actual budget approval, consider the following:

Set goals. Review, revise and update goals each year. Involve the community and Owners through meetings, opportunities to serve on committees and questionnaires.

Establish a planning process for each service offered to community to assist with budgeting process.

Each service provided by the Association has five phases:

- establishment
- maintenance
- restoration
- improvement
- cancellation

Each phase has four "budget planning" parts:

Planning - Does the Association need it, want it? How much will it cost?

Implementation- Contracts, Financing, Construction

Evaluation- How is it working? Is it meeting the Association's goals? Is the Association getting its money's worth?

Community Feedback- Does the community like it, use it, want it? Are they satisfied with the cost?

- Use this planning process for old, as well as new, services.
- Use Service Plans to develop the annual budget and a 3-5 year budget.
- Provide opportunities for owner comment and involvement at all phases of the process.
- Utilize the services of an independent or professional community association manager to prepare the budget or, as a minimum, to review and offer recommendations.
- The budget and resultant assessment fee levels should not be subsequently adjusted or amended except when absolutely necessary to cover unanticipated expenses.

- The budget should cover all the costs for services to be performed and overhead or operating costs.
- The budget should reflect annual operating considerations and funding of reserves for future repair and replacement of such facilities and equipment that are the responsibility of the owner association.
- The budget should be sufficient. Don't underbudget or overbudget.

B. Sources of Authority for Budgeting

- Declaration
 - Assessment provisions
 - Powers and Duties of the Association
 - Powers and Duties of the Board of Directors
 - General provisions
- Bylaws/Articles of Incorporation
 - Powers and Duties of Board of Directors
 - For example, bylaws or articles of incorporation sometimes provide the Board of Directors with the authority to "adopt and amend budgets for revenues, expenditures and reserves."
 - Duties of Officers
 - Power to delegate to agents

C. The Annual Budget and the Budget Process in Communities Created before July 1, 1992 or Exempt from CCIOA

Assessments and budgeting are document-specific for owner associations with communities created before July 1, 1992 and those exempt from CCIOA. The first place to start is to review the Declaration's assessment provisions. A large number of declaration provisions require that assessments be based on an annual budget of the estimated expenses of the Association for the upcoming year.

The Bylaws or Articles of Incorporation of Pre-CCIOA communities may further detail the budget process and may delegate the duty to prepare an initial budget to an officer. In most Associations, the Treasurer is given this responsibility. Many communities delegate this responsibility to their management company, bookkeeper or accounting firm.

After a budget is created, the Board of Directors is usually provided with the sole and exclusive authority to approve and implement the budget. This power can be "checked" or "limited" by caps on the increase in assessments permitted each year without owner consent. Not all assessment provisions "cap" or limit the amount assessments may be increased. Associations must be familiar with the assessments provisions to make sure they comply with all requirements in creating and implementing an annual budget and the resulting assessments.

If the proposed budget does not exceed the "cap" for increases, the Board of Directors may approve and implement the budget without obtaining owner consent. The Board may choose to present the budget at the annual meeting, a board meeting or informal member meeting and receive comments from the community. However, the Board is typically under no obligation, other than political accountability (and removability), from revising the budget pursuant to the member comments.

If the proposed the budget exceeds the "cap" for an assessment increase, the Board of Directors then must obtain member approval. The process for obtaining owner approval is document-specific. Some declarations require approval of a majority of the members, others require 2/3's approval or higher. Approval may be written or by a vote at a meeting. The assessment provision may require that the meeting be a special meeting. Approval may be by the required percentage vote of a quorum of members or by the required percentage vote of all members.

To the extent that the declaration does not specify each of these items, the Association may look to its bylaws and articles of incorporation for further guidance. Without guidance in the governing legal documents, the Board of Directors may then select the method of approval, taking either a conservative, liberal or other approach to the approval process. Generally, the more controversial the budget, the more conservative the approval process should be to protect the Board and budget from challenges by Owners.

The reality of the member-consent provisions contained in many declarations is that the Board of Directors' hands are often tied and much needed repairs and improvements may fail to be approved because the Association must obtain the consent of the Owners to raise assessments above a certain level. The Colorado Common Interest Ownership Act (CCIOA) has specified a required budgeting process which eliminates some of the inflexibility caused by member approval, while retaining member participation in the budget process and permitting members to reject a budget.

Some tips for budgeting with Pre-CCIOA Declarations:

- Review Declaration assessment authority and understand what the Board can and cannot do on its own.
- Review Bylaw and Articles of Incorporation provisions regarding budgeting authority and preparation.
- Establish community involvement.
- Comply with Owner approval requirements, if necessary.
- Be conscious of procedural requirements for Owner approval, if required.

D. CCIOA's Annual Budget and Budget Process

In communities created after July 1, 1992, that are not exempt from CCIOA, or communities that have elected to be treated as if they were formed under CCIOA, assessments must be based on a budget, adopted at least annually.

CCIOA requires:

38-33.3-315. Assessments for common expenses.

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the association.

(2) Except for assessments under subsections (3) and (4) of this section and section 38-33.3-207(4)(a)(iv), all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to section 38-33.3-207 (1) and (2). Any past-due common expense assessment or

installment thereof shall bear interest at the rate established by the association not exceeding twenty-one percent per year.

- (3) To the extent required by the declaration:
 - (a) any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;
 - (b) any common expense or portion thereof benefitting fewer than all of the units shall be assessed exclusively against the units benefited; and
 - (c) the costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage.
- (4) If any common expense is caused by the misconduct of any unit owner, the Association may assess that expense exclusively against such owner's unit.
- (5) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.
- (6) Each unit owner is liable for assessments made against such owner's unit during the period of ownership of such unit. No unit owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made.

The allocation of each Unit's responsibility for common expense assessments is based on the allocated interests (the formula set forth in the Declaration, usually "equally among units" or by percentage of total square footage or some other formula). By applying each unit's allocated interest percentage of expense liability to the budget, the annual assessment for each unit is obtained.

CCIOA empowers the Executive Board to act on behalf of the Association to create a proposed budget.

38-33.3-303 Executive Board members and officers.

- (1) Except as provided in the declaration, the bylaws, or subsection (3) of this section or any other provisions of this article, the executive board may act in all instances on behalf of the association.
- (2)
 - (a) If appointed by the declarant, in the performance of their duties, the officers and members of the executive board are required to exercise the care required of fiduciaries of the unit owners.
 - (b) If not appointed by the declarant, no member of the executive board and no officer shall be liable for actions taken or omissions

made in the performance of such member's duties except for wanton and willful acts or omissions.

- (3) The executive board may not act on behalf of the association to amend the declaration, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

Generally, the proposed budget is prepared by the Treasurer or a budget committee led by the Treasurer, all under the coordination of or by the Association's community manager. The Association's Bylaws will allocate this duty in the description of the officers' responsibilities. The budget is then reviewed by the Executive Board and then the proposed budget is finalized.

CCIOA then requires the following:

38-33.3-303 Executive Board members and officers . . . (4) Within ninety days after adoption of any proposed budget for the common interest community, the executive board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the bylaws. The executive board shall give notice to the unit owners of the meeting as allowed for in the bylaws. Unless the declaration requires otherwise, the budget proposed by the executive board does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by a majority of all unit owners, or if permitted in the declaration, a majority of a class of unit owners, or any larger percentage specified in the declaration, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.

CCIOA requires budgets to be approved in a very specific manner. A common provision contained in the bylaws of post-CCIOA communities is as follows:

Budget Meetings. Meetings of Owners to consider proposed budgets shall be called in accordance with the Colorado Common Interest Ownership Act ("CCIOA"). The "CCIOA budget" process allows a majority of the Owners (or a higher percentage, if set in the Declaration) to veto a budget proposed by the Executive Board. CCIOA's budget process to be followed is as follows: The Executive Board of the Association is to prepare and approve a proposed budget. Then, within ninety (90) days after the Executive Board's adoption of the proposed budget, the Executive Board must mail or deliver a summary of the proposed budget to all Owners and set a date for a special or annual meeting of the Owners to consider ratification of the proposed budget. Typically, the budget meeting should be combined with the annual meeting. Notice for the meeting at which the proposed budget will be considered by Owners must be provided in a reasonable time and manner, as allowed by state law. At the meeting, unless a majority of the Owners veto the proposed budget, the proposed budget becomes the budget of the association. CCIOA does not require that a quorum of Owners be present at the meeting, if the meeting is just a budget meeting, but does require a quorum if the meeting is also an annual meeting. In the event a proposed budget is rejected by a majority of Owners, the budget last approved is continued until such time as the

Owners approve a subsequent budget proposed by the Executive Board. In all events, a budget is to be prepared at least annually.

The CCIOA budget process for communities subject to CCIOA is summarized as follows:

- A budget must be prepared and approved at least annually.
- The Executive Board of the association is to first prepare and approve a proposed budget. For example, for a calendar year based association, the budget could be prepared and approved by the Executive Board in early Fall of each year.
- Within 90 days after the Board's adoption of the proposed budget the Board is required to mail or deliver a summary of the budget to all Owners and set a date for a special meeting of the Owners to consider ratification of the budget. This budget meeting is sometimes combined with the annual meeting, and in the example given, would be held before the end of the year. The association is not required to send the budget, just a summary. However, if the proposed budget is particularly controversial, we recommend sending a summary and the actual budget.
- Notice for the meeting at which the proposed budget will be considered by Owners must be provided as allowed by state law.
- At the meeting, unless a majority of the Owners veto the proposed budget (or such higher percentage as established in the Declaration), the proposed budget becomes the approved budget of the association. CCIOA does not require that a quorum of Owners be present at the meeting, if it is just a budget meeting, but does require a quorum if the meeting is also an annual meeting.

In the event the proposed budget is vetoed by a majority (or higher percentage) of your Owners, the budget last approved is continued until such time as the Owners approve a subsequent budget proposed by the Executive Board.

At the budget meeting, consider asking for a vote. While a vote is not required, it is recommended. Even though a member vote may not be required by statute, a member vote may be inferred by a court.