BUDGETING
FOR
COLORADO OWNER ASSOCIATIONS
PRE AND POST CCIOA

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1. **<u>Initial Budgeting Considerations</u>**

Prior to actual budget approval, consider the following:

<u>Set goals</u>. Review, revise and update goals each year. Involve the community and owners through meetings, opportunities to serve on committees and questionnaires.

<u>The Process</u>. Establish a planning process for each service offered to assist with the budgeting process. The planning process can be used for existing as well as new proposed services.

<u>Phases of Services</u>. Services provided by the association have five phases:

(1) Establishment
(2) Maintenance
(3) Restoration
(4) Improvement
(5) Cancellation

<u>Budgeting Components of Each Phase of Service</u>. Each phase has four "budget planning" parts:

(1) Planning – Does the association need it, want it? How much will it cost?
(2) Implementation – Contracts, Financing, Construction
(3) Evaluation – How is it working? Is it meeting the association's goals? Is the association getting its money's worth?
(4) Community Feedback – does the community like it, use it, want it? Are they satisfied with the cost?

<u>Service Plans</u>. Use Service Plans to develop the annual budget and a 3-5 year budget.

<u>Owner Input</u>. Provide opportunities for owner comment and involvement at all phases of the budgeting process.

<u>Professional Assistance</u>. Utilize the services of an independent or professional community association manager to prepare the budget or, as a minimum, to review and offer recommendations.

Once in Place, Change the Budget When Necessary. The budget and resultant assessment fee levels should be subsequently adjusted or amended when necessary to cover unanticipated expenses. The budget is an estimate, not a limitation on how funds are to be expended.

Complete Budgeting and Reserves

(1) The budget should cover all the costs for services to be performed and overhead or operating costs of the association.
(2) 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 association.
(3) The budget should be sufficient.
(4) Do not under budget or over budget.

2. Budgeting in Communities Created Before July 1, 1992 or Those Exempt From CCIOA

The following is for communities created before CCIOA became effective and for communities exempt from the budgeting provisions of CCIOA.

Document Specific Budgeting. Assessments and budgeting are documented for these communities.

To determine how to budget and what the documents provide regarding budgeting, review the declaration's assessment provisions first. Many declarations have provisions that require assessments to be based on an annual budget of the estimated expenses of the association for the upcoming year.

Review declaration provisions on:

- Assessment provisions
- Powers and duties of the association
- Powers and duties of the board of directors
- General provisions

The bylaws or articles of incorporation of the association may have further details on the budget process and may delegate the duty to prepare an initial budget to an officer. In many associations, the treasurer is given this responsibility. Many communities delegate this responsibility to their management company, bookkeeper or accounting firm.

Review articles of incorporation and bylaw provisions on:

- The board of directors' authority to "adopt and amend budgets for revenues, expenditures and reserves" without the vote, approval or input of owners
- Powers and duties of the board of directors
- Duties of officers
- Power to delegate to agents

Budget Authority/Typically in the Board. In these communities, the board of directors is usually provided with the sole and exclusive authority to approve and implement the budget. Yet, check the documents carefully for limitations.

Document "Caps" and Other Limitations on the Board. The Power of the Board of Directors 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 without consent. 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.

When 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 meetings and receive comments from the community
- While the board may be under no obligation to present a budget to the members, other than political accountability (and potential removal of board members), inclusion of the members in the budget process is recommended

Budget Caps and Budgeting Reality. The reality of the member consent provisions contained in many declarations is that the board of directors is limited in pursuing increased assessments without the approval or consent of the owners. These declarations also frequently contain procedural barriers that must be overcome, such as quorum requirements and/or high approval requirements (by vote) from owners.

Comparison to CCIOA, The Colorado Common Interest Ownership Act (CCIOA) has specified a required budgeting process which eliminates some budget inflexibility caused by member approval, while retaining member participation in the budget process and permitting members to reject a budget. (See discussion below.)

Practical and Political Limitations on the Board. Whether or not the documents have budget limitations, the owners have limits to the assessments they are willing to pay.

Assessment increases should be preceded with outreach to and involvement of the owners and the community, so that adverse reactions and political upheaval may best be avoided.

When the Documents Are Silent on Budgeting and the Establishment of Assessments

To the extent that the documents do not specify a budgeting process or establish budget authority for assessments, the board of directors may then select the method of approval, taking 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.

Budgeting Tips for Communities Exempt from CCIOA Requirements

- Review declaration assessment authority
- Review bylaw and articles of incorporation provisions regarding budgeting authority and preparation
- Understand what the board can and cannot do on its own
- Establish and maintain community involvement
- Comply with applicable owner approval requirements
- Be conscious of any procedural requirements for owner approval
- Consult with the Association's attorneys

3. **CCIOA's Annual Budget and Budget Process**

The following is for communities subject to the CCIOA budgeting process:

Application of the Budgeting Provisions of CCIOA

In communities created after July 1, 1992 that are not exempt from the budgeting provisions of CCIOA (i.e. communities that have elected to be treated as if they were formed under CCIOA or those that have added CCIOA's budgeting process by amendment to their governing documents) CCIOA has specific requirements.

The Specific Budgeting Requirements of CCIOA

- Assessments must be based on a budget
- A budget must be adopted at least annually

These 2 requirements may also extend to pre-CCIOA communities (those created before July 1, 1992, if the Association desires to take advantage of the super lien in CCIOA.

CCIOA's provision is as follows:

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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 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 benefiting 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.

Allocations of Assessments under CCIOA. 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 "an equal amount for all 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.

The CCIOA Budget Process. CCIOA empowers and changes the executive board with the duty and authority to act on behalf of the association to create a proposed budget.

(1) A proposed budget must be prepared and approved (after withstanding a potential veto by the owners) at least annually.

(2) 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.

(3) 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.

(4) Notice for the meeting at which the proposed budget will be considered by owners must be provided as allowed by state law.

(5) 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.

(6) 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.

(7) 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.

(8) For the members to be able to veto a budget proposed by the board, the minimum number of owners must be present (in person or by proxy) at the

member meeting at which the proposed budget is considered. The minimum number of owners (in a community subject to all of CCIOA) is a majority of all owners or a higher percentage of owners (as specified in the declaration). If that minimum number of owners are present, then, they may vote on whether to veto the proposed budget, without the minimum number of owners present (as set in the declaration), there is not a 'special quorum' present sufficient to vote on a veto motion.

(9) In addition to the above requirements, of CCIOA, check the governing documents for any affirmative voting requirements of owners on the board' proposed budget. Some declarations add a vote requirement of the owners (i.e., for increases over and above a CPI index or a given percentage (i.e., 10%).

(10) Consult with the association's attorney on any questions on the above, whether as a part of CCIOA budget process or the requirements of the declaration.

Comply with Requirements of the Governing Documents. The Association must also comply with any requirements of the declaration and for bylaws on budgeting.

The statute provides as follows:

38-33.3-303. Executive Board Members and Officers

(1)(a) 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.

(b) Notwithstanding any provision of the declaration or bylaws to the contrary, all members of the executive board shall have available to them all information related to the responsibilities and operation of the association obtained by any other member of the executive board. This information shall include, but is not necessarily limited to, reports of detailed monthly expenditures, contracts to which the association is a party, and copies of communications, reports, and opinions to and from any member of the executive board or any managing agent, attorney, or accountant employed by or engaged by the executive board to whom the executive board delegates responsibilities under this article.

(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.

(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.

<u>How CCIOA Budgets Are Started</u>. Generally, the proposed budget is prepared by the association's community manager in coordination with the treasurer or a budget committee led by the treasurer or President. 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 by the board.

<u>Typical CCIOA Community Bylaw Provision</u>. A typical provision contained in the bylaws of post-CCIOA communities might provide as follows:

<u>Budget Meetings</u>. 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 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.

<u>Budgeting Into the Future</u>. CCIOA provides an excellent means for owner input on budgets.

CCIOA allows a veto right to a percentage of owners.

In the presentation of the budget required to the owners, owners will be more aware of budget/fiscal/financial issues in a community, and so will be better informed, able to make informed decisions when voting and otherwise participate in the governance of the association.

- Because of CCIOA's budget process, association leaders will receive input from interested owners on proposed budgets

- With input from interested owners, better budgets result and this aids to better association governance and operations

The CCIOA budget process also encourages boards to increase assessments to meet needs versus deferral.

The CCIOA budget process aids association's in achieving long term goals.

Providing for adequate maintenance, repair, replacement and improvement with association funds.

Better governance of the community.

Owners understand dollars and the CCIOA budget process respects owners, acts in their awareness of financial issues and acts in the governance and operation of the community.

Communities that are not required to follow the CCIOA budget process should consider it, after review of that process.