

HOA Special Assessment: a \$22,500 surprise for one community

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HOAs collect monthly dues to maintain the community. You know all about these dues prior to your moving into the community. You can expect over time the dues to increase with the cost of living and/or with added maintenance responsibilities in your community.

Now what would happen if you were assessed \$22,500 without any homeowner input or vote? And if you don't pay the assessment you will further be assessed interest, administrative, and collection fees. If you don't pay the assessment the HOA can foreclose on your home. All is legal and an HOA is empowered to make such an assessment.

This unexpected homeowner financial burden came about through the wonders of the "HOA special assessment" authority. In one case, an HOA Board voted to replace all roofs in the community. With no discussion with homeowners and no vote of approval, the HOA Board contracted for the services, and the work went forward. In such a case, unless your HOA Declaration/governing documents require a vote of homeowners to limit the authority of the board to make special assessments, you are stuck with what they decide.

How about a situation where the Board approved a \$2,500 assessment to replenish the community reserve fund? The reserve fund is used to pay for planned capital improvements and maintenance work. A portion of homeowner HOA dues is normally used to fund the reserves to ensure proper upkeep of the community. This is a good thing when an HOA is managed in a financially responsible manner and practices open governance. However, in the case of one dysfunctional HOA, the Board voted to enter into a lawsuit on behalf of but a few of the nearly 100 homeowners.

Of course the HOA lawyers, with input from the management company (and in some cases there is linkage between the two), persuaded the Board that a court case could be won and justice served. Well, the easy-to-win court case went on for nearly a year, in and out of court and costing \$135,000 in legal fees. The case ended with no settlement for the HOA, the HOA dropping the endless case, the homeowners were left with their original problems, and the only winners were the lawyers.

In such a case, no law was broken as the HOA governing documents and state law empowered the Board to proceed as it did. In a particular case, the Board utilized the HOA's reserve funds and stopped current funding of the reserves to pay for legal expenses. To replenish the reserve funds to a proper level, the HOA completed the special assessment.

More than likely if you lived in one of these HOAs you would be very upset and shocked at the unexpected billing.

Several things can be done to prevent financial surprises:

1) Homeowner involvement in the workings of the community/Board serve as a watchdog. This may not stop a dysfunctional Board from conducting secret and unauthorized meetings (not sanctioned under State HOA law or your by-laws) and making the above or other decisions that result in a special assessment but it will open up governance.

Note, if you know Board member meetings are being conducted that are supposed to be open to homeowners but either are not advertised or otherwise prevent homeowners' attendance, your only recourse is to challenge the legality locally with the Board or take them to court. This generally doesn't work for homeowners as it matches the limited resources of the homeowner against the unlimited financial and legal resources of the HOA. Also, by the time the court case takes places all the damage will have been done.

2) Home owners might consider changing their governing documents to indicate that special assessments or entering into legal cases can only be authorized by way of a majority vote of home owners.

3) If actions by the Board are similar to the above, consider recalling the Board or

4) The best solution and one that covers all 8,000+ HOAs in the state is to modify State HOA law to require homeowner vote of approval on such items. (But don't hold your breath, as all were asked to support legislative reform and not one will sponsor legislation to protect homeowners).