

## CONDOMINIUMS

# In city, developer must disclose intention on reserves

By Mark Pearlstein

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**Q** I just moved into a building that was rehabbed. During the sales process, I asked the developer for financial statements, including the amount of the reserve account, but did not get any information. I bought anyway, because this condo was a better deal than other places I looked at.

I am a little concerned that there is nothing in reserves. We just agreed to increase our assessments to fund reserves. I am not too happy, because the low assessment was one of the reasons I bought this unit.

Should the developer have put money into reserves and turned over the association to unit owner control with something in the bank?

**A** Under the Chicago Condominium Ordinance, a developer may elect not to fund reserves for an association. The developer can opt out of this obligation by properly disclosing in bold print his election not to make a reserve contribution.

It is not unusual for a developer to limit the reserves at turnover to the amounts collected at closing from each owner. For this reason, prospective buyers must carefully review a property report, sales contract and condominium declaration to determine the exact scope of the de-

veloper's reserve obligation.

Given the need for associations to maintain reserves, the low assessments you saw during the sales period gave you a false sense of security. While it is not unusual for assessments for most new associations to increase in the first year by a greater amount than subsequent years, a careful review of association documents should have indicated the likelihood of assessment increases in the near future.

**Q** Our association board of directors recently proposed an amendment to the declaration to restrict leasing of properties. Many owners spoke out against this proposed amendment. So, the board modified the amendment to create an exception for hardship situations. This exception apparently was sufficient to persuade most owners to approve the amendment.

Several of us have discovered that the actual amendment recorded on this matter allows board members to acquire a unit and lease it themselves. I suspect that most owners were not aware of this provision.

Are we entitled to audit the ballot results, since they appear to conflict with the general feelings of a number of residents?

Does the board have the right to record an amendment in which the language differs from the subject of the vote?

**A** Under Section 19 of the Illinois Condominium Property Act, an owner can make a written request to review ballots and proxies on any issue that was the subject of an owner vote. Your group may submit a written request to review the voting documents for the leasing issue.

The proper method to propose an amendment is to submit the actual text of the change to the owners before the vote takes place. I question whether the provision regarding board leasing of a unit is valid. Except for assessment collection cases, under Section 10(b)(13) of the Condominium Act, two-thirds of the unit owners must approve the lease of property by the association. To collect a judgment for assessments, the board may obtain possession of a unit and lease the unit for a period of 13 months to recover the unpaid assessments. The board should clarify the exact nature of this leasing provision.

**Q** We live in a suburban Chicago condominium association that was formed about 25 years ago. Our association has slightly fewer than 100 units. A recent financial report indicated the association has a reserve balance of just under \$100,000.

At the last board meeting, the directors approved an extensive cosmetic landscaping program that is not funded in the current budget. When questioned about the source of the funds, the directors said that the expense would be paid by reserve funds.

Because this landscaping program will reduce our reserve fund by 50 percent, is this project and expense a proper legal use of reserve funds under the Condominium Act?

**A** The expense is proper, but owners have a right within 14 days of the board meeting, to present a petition to contest the expense.

Under Section 9(c)(2) of the Condominium Act, the main purpose for reserves is for capital expenditures and deferred maintenance for repair or replacement of the common elements. The cosmetic landscaping program you describe is a capital expenditure.

Under Section 10.4(a) of the act, any expense that exceeds 5 percent of the budget is subject to challenge by the unit ownership. Owners must raise this challenge in the form of a petition signed by 20 percent of the membership and presented to the board within 14 days after the meeting to adopt the expense. If the required number of owners submits a timely petition, the board must hold an election and the majority of the total ownership must vote against the program to defeat the expense.

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