

It's the board's job to set budget and assessments

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Q. Our builder transferred control of the association to the homeowners earlier this year. Several months later, the newly elected board adopted an annual assessment based on what they thought was necessary, but never obtained approval of the proposed budget as required by our bylaws. The board also set a payment date and imposed late charges.

What recourse do we have as homeowners to deal with a board that I think is operating on its own agenda? Is an attorney necessary?

A. The board of directors has the sole authority to adopt the annual budget without the approval of the owners. Section 18.4 of the Illinois Condominium Property Act states that the board shall adopt a budget. Owners have certain rights to advance notice of the proposed budget. The directors must provide owners with a copy of the budget 30 days before the board adopts it. The directors must also give the owners 10 to 30 days' notice of the board meeting at which the directors will adopt the budget.

If the board fulfills these notice requirements, the directors must levy assessments. If owners do not pay assessments in a timely manner, the board may impose late charges.

The directors must collect the necessary funds to operate the association. In your case, the board does not appear to be operating on their own agenda, but simply trying to raise the necessary funds required by law.

Q. I live in a 24-unit association in the suburbs. Over the years, one particular owner has been consistently late in paying assessments. Two years ago, we had to obtain access to her unit to replace the bell system and discovered that the apartment looked like a pigsty. The association paid a considerable amount to clear most of the debris, and also paying her back real estate taxes to avoid a sale.

A relative of this owner has now obtained a power of attorney, but he has not been cooperative in making sure that the unit is in better condition and assessments are becoming delinquent again.

What is our next move? We would like to buy the unit or have the family pay what is owed.

A. The major concerns of your association are the collection of assessments and the condition of the unit. Paying the owner's real estate taxes is the least important concern.

Charge the cost of cleaning the unit to the owner and pursue the collection of assessments aggressively, including the cleaning charges. When the account is more than 60 days past due, initiate the collection process by sending a demand for possession, followed by an eviction lawsuit.

The only alternative for the board is to file an injunction suit to prevent the owner from failing to maintain her unit or, in the most extreme circumstance, terminate her right to ownership and force a judicial sale. However, these steps are expensive legal proceedings that your 24-unit association may not have the funds to sustain.

Q. I have a question regarding liability for water damage in our condominium unit.

Is the association responsible for compensating a unit owner for in-unit damage caused by a problem located within the common elements of the building?

My wife and I own a unit in a 70-unit high-rise building. Recently, our kitchen was flooded by water overflowing from our sink caused by a blockage in the main drain pipe serving our tier of units. The water caused warping and splitting of wood cabinets, buckling of hardwood floors and damage to the seal between the sink and our countertop.

The managing agent, acting for the board, as well as the plumbing contractor, confirmed that the blockage was in the common elements. However, we were told by management that damage inside our unit would not be covered by the association and we would have to file a claim with our own insurance carrier.

A. The board of directors and management are correct. As most condominium declarations confirm, owners are responsible for maintenance and insurance for the furnishings and decorating within their unit.

The association is responsible to maintain the common elements, including the building plumbing system. While the board should vote to pay the deductible of your homeowners insurance policy, the damage within your unit is your responsibility.

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