

LEGAL ALERT

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COMMUNITY ASSOCIATIONS MUST FACE A FINANCIAL RECKONING IN THE WAKE OF CHAMPLAIN TOWERS TRAGEDY

AMANDA A. BARRETO

Hahn Loeser & Parks LLP

Ohio has approximately 8,500 community associations, all of which are managed by volunteer board members who, typically, are owners and residents of their condominium or homeowner's association.

Boards are obligated to act and make decisions based on the best interest of their associations. Community association board members are not necessarily experts in accounting, engineering, construction, maintenance, or the law. They are usually enthusiastic community members that accept a leadership role to keep their association's standards and each unit's property value high.

Boards have a tough job—to act in their membership's best interest, even if that means making decisions that are unpopular. The most unpopular decision a Board must make is to increase regular assessments or impose special assessments when necessary to fund ordinary maintenance and repairs or to build or replenish reserve accounts.

The horrific collapse of the Champlain Towers South in Surfside, Florida has got many talking about the Board's role in assessing the need for repairs at the 136-unit, 40-year-old condominium building.

In Ohio, condominium associations are required to, unless otherwise dictated by the association's governing documents, "adopt and amend budgets for revenues, expenditures, and reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, provided that the amount set aside annually for reserves shall not be less than 10 percent of the budget for the year...unless waived annually by the unit owners." R.C. 5311.081(A)(1).

The statute requires a condominium association to include in its annual budget an adequate amount for reserves—at least 10% of the total operating budget—to ensure that major capital items can be repaired and replaced without the need of special assessments.

The statute is a baseline standard, but if an association's governing documents provide provisions concerning the establishment or maintenance of a reserve fund, that contractual language shall apply.

The reserve requirement statute is a great gap-filling provision to require Ohio condominium associations to build up a reserve account for unexpected, long-term expenses. Boards can use this provision, or the specific requirements of their governing documents, to ensure that owners are being assessed an adequate amount to not only pay their ongoing expenses, but to also save for future repairs.

Unfortunately, what happens in real life does not always follow this intent. The statute, and some reserve provisions in governing documents, permit this required savings procedure to be waived if a majority of the owners vote to forgo building up reserves.

Many Ohio condominium associations, even old buildings in dire need of repairs, use this practice every year to forgo saving for future expenses. When given a choice between higher or lower monthly assessments, owners may feel tempted to approve a waiver and cross their fingers for no major future issues. When feeling the pressure of being ousted from the positions by pushing for an unpopular assessment increase, Boards may feel tempted to keep fees low and not allocate reserves properly.

What Boards and owners must understand is that failing to build up reserves will result in owners facing huge special assessments to deal with emergency costs likely after a major failure has occurred.

An example of this financial mismanagement has been the subject of a 5-year legal battle here in Ohio. Imagine an entire HVAC system in a 50-year-old, 150-unit high-rise failing in the middle of winter—leaving residents old and young to deal with multiples nights without heat, and then for multiple months with temporary heaters. Had that HVAC system been repaired before it failed, the association would have paid \$1.5 million, which could have been saved over months and years of saving. By waiting for the failure, the price tag increased to \$4 million and required a huge special assessment because there were no funds set aside. Is saving money in the best interest of the association? Or is being fiscally responsible and saving for future repairs—regardless of popularity—what is right?

If there is any good that comes out of the devastation at Champlain Towers, I hope that Ohio condominium Boards and owners will realize the absolute necessity in understanding future expenditures and saving for them now.

AUTHOR:



AMANDA B. BARRETO, OF
COUNSEL

abarreto@hahnlaw.com

216.276.2441

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