

HOAMCO



HOMEOWNERS ASSOCIATION MANAGEMENT COMPANY

From the President:

HOAMCO is committed to improving service for the homeowners associations we serve in Arizona and New Mexico. Our offices in Prescott, Sedona, and Albuquerque are open Monday thru Friday from 9:00 a.m. to 4:00 p.m. in order to accommodate the homeowners we serve..

Communications within a community can sometimes be difficult. One way to remedy this situation is to maintain a community web site that will serve to keep association members in touch with one another and to provide easy access to board members and association managers at HOAMCO. I strongly recommend that board members take a look at www.hoamco.com and, in particular, its demo community website contained there. Consider using it as a tool for effective communication. To get more information about web sites and newsletters, contact Connie Koran (928-776-4479, extension 38; conniek@hoamco.com).

As always, I am personally available to homeowners associations and their members. I am happy to visit associations in Arizona and New Mexico and to meet with you as the need arises. Please contact me for an appointment (928-776-4479, extension 28; justin@hoamco.com).

The future promises to be both exciting and challenging. I hope you will allow HOAMCO and the technologies available to us all serve to improve and enhance the community living experience.

Respectfully yours,

Justin Scott, CMCA, AMS
President

OVERCOMING MEETING “MYTH-UNDERSTANDINGS” FOR MORE EFFECTIVE MEETINGS

Myth #1: Our board doesn't need to use parliamentary procedure.

Truth: The courts have ruled that *all* organizations must follow procedural rules of common parliamentary procedure.

Myth #2: Roberts Rules of Order is the only parliamentary procedure resource.

Truth: There are many procedural references available. “Roberts” simply is the most popular and easiest to obtain. Another popular option is The Standard Code of Parliamentary Procedure, by Alice Sturgis. Whichever resource your board chooses to follow, be sure everyone understands proper procedure. Failure to do so can lead to confusion, embarrassment, and even lawsuits.

Myth #3: Meeting rules must *always* be the same.

Truth: The size of the meeting dictates the level of formal procedure. Large meetings require a higher level of formality for things to flow smoothly. But small meetings can be much more informal. For example, some differences that smaller assemblies can take advantage of include: motions need not be seconded; no limit to the number of times a member can speak; the chair can make motions and vote; no motion is needed to close discussion or call for a vote, etc.

CAPITAL IMPROVEMENTS FUNDING

Myth #4: It's OK if a quorum isn't present if no one notices.

Truth: Absolutely not true! Any decisions made without a quorum present are automatically null and void.

Myth #5: Motions *follow* discussion.

Truth: No discussion should take place if there isn't a motion on the floor.

Myth #6: Motions and seconds are *always* needed.

Truth: In smaller assemblies, seconds are not needed at all, and even in larger ones a second is only a signal that an issue should move into discussion. In addition, non-controversial issues often can be resolved without a motion. The presiding officer simply may ask "Is there any objection to ..." and then proceed.

Myth #7: All reports require a vote.

Truth: Not so, if a report is provided for informational purposes only. A vote is required only if a report makes a specific recommendation for action or is to be published in the board's name.

Myth #8: Anyone can speak.

Truth: An assembly can *allow* anyone to speak, but at a board meeting, only members of the board have the *right* to do so.

Myth #9: "Friendly" amendments are OK.

Truth: Once a motion has been made it belongs to the whole assembly rather than to any one individual. Either unanimous consent or a formal motion can be used to amend any motion.

Myth #10: Meetings can take up "old business."

Truth: "Old business" actually is "unfinished business" and should be referred to as such. Unfinished business includes any matter still pending or left over from the prior meeting, or any matter postponed to the present meeting.

Myth #11: Calling the question automatically ends the discussion.

Truth: Ending discussion or debate requires a motion and 2/3 approval of members of the assembly (i.e., board members at a board meeting).

Myth #12: "Tabling" a motion gets rid of sticky issues.

Truth: "Tabling" is shorthand for "lay on the table" and is done only if an urgent matter that requires instant action suddenly arises. Once the urgent matter is completed the "tabled" item should be picked up again.

Myth #13: The chair runs the meeting.

Truth: The chair is the servant of the assembly, not its master. Any member can interrupt with a point of order, which must be addressed, at any point in the proceedings.

The question of how to pay for capital improvements is one every association must answer at some point in time. There are 3 options for financing capital improvements: reserve funds, special assessments, and loans. However, the first step in determining which option is most appropriate for your association may be to consult a "reserve specialist." This is an expert who can help you analyze the physical and financial aspects of community properties. Physical evaluation includes condition, estimated life, and valuation. Financial analysis will assess your reserve fund, review your funding plan, and indicate if an increase in reserve contributions or a special assessment is needed. With this information in hand you are ready to explore your funding options.

Reserve Funds: Use of reserve funds allows you to make improvements without adding to assessments or incurring additional debt. However, there is a risk that if you use this fund for capital improvements that were not part of your reserve fund planning, you may not have enough in the fund to cover emergencies that arise.

Special Assessments: This option also allows you to avoid incurring additional debt and may be a good option for financially unstable associations. However, this option is liable to be the least popular with association members. It may even represent an unbearable financial burden for some homeowners.

Loans: There are several lending choices available for associations. The first is a line of credit that allows you to borrow money as you need it and repay only the amount actually borrowed. The second is a term loan that provides all the funds you need in one lump sum with repayment spread over a number of years. The third is a combination of credit lines and term loans to create your own flexible funding program. Advantages of using loans to fund capital improvements include the following: you can avoid a special assessment that may cause significant political fallout and/or financial hardship for association members; you can increase general assessments very slightly to cover the cost of the debt because repayment is spread over several years; funds are available immediately, which allows you to obtain competitive bids for the entire project and complete all of the work at one time; you can retain your reserve funding for true emergencies.

In any case, it is important to be realistic and remain flexible so that you can develop the very best funding program for your capital improvement needs.

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MANAGEMENT: COLLECTION OPTIONS & PROCEDURES

There are two main “tracks” for collecting delinquent accounts; they are the Foreclosure Track and Non-Foreclosure Track. The *foreclosure track* seeks court authority to foreclose the assessment lien on the owner’s property. This allows the property to be sold at a Sheriff’s sale. The only liens superior to the Association’s lien are the first mortgage lien and county property tax liens. The Association’s lien will be satisfied through a Sheriff’s sale, if there is enough equity in the owner’s property. This is the “heavy hammer”, and may result in payment by the owner where other collection has failed, e.g., where owners do not have readily apparent employment or bank accounts to garnish. Some association boards wish to utilize foreclosure even if the cost is higher and the likelihood of full recovery is not assured. They reason that getting a new owner is better than having a non-paying owner. Please be aware that there are nuances to foreclosure, including the ability of the first mortgage to foreclose in 90 days by a trustee’s sale, much quicker than the Association can foreclose.

The *non-foreclosure track* seeks a judgment against the owner personally. This means that the judgment appears on the owner’s credit report and the owner must personally pay the required amount to remove the judgment. It also permits the Association, with a judgment, to garnish wages, garnish bank accounts if they can be located, and require the judgment debtor to appear for a deposition concerning assets. This track, through Justice Court, is generally less expensive than foreclosure. With both foreclosure and personal judgments, the association can enter into payment agreements at any time with an owner if it is in the best interests of the Association. The goal is to get paid. The lien on the property still remains on the property until the full account is satisfied.

The initial steps for both non-foreclosure and foreclosure are the same. They are: (1) Demand Letter #1 which gives delinquent owners 35 days to pay account in full or set up an agreement. The 35-day period is based on Federal Fair Debt Collection Practices Act restrictions; (2) Demand Letter #2 (optional); (3) Payment Agreement Letter which is sent if the owner agrees to make payments at any time during the process, to confirm agreement that is then monitored by the firm.

Non-foreclosure tracks subsequent steps: (1) Lawsuit for Personal Judgment filed after the demand letter(s), and allows the defendant has 20 days (30 if served out of state) in which to answer or set up a payment arrangement. (2) Default is filed if no response to lawsuit after 20 days. (3) Judgment is rendered after 10 days, plus 5 days for mailing from the date the default was entered. If the defendant files an answer, more time and expense to obtain judgment is involved, because of pretrial conferences, and possibly a trial or motion practice. Judgments may be recorded if they do not appear to be collectable quickly. (4) Post Judgment/ Pre-Garnishment Letter, which is a post-judgment letter that explains we will proceed with a debtor’s examination, garnishment or possibly a sheriff’s execution sale of their property, unless paid within a short time period (typically ten days). (5) 15 to 25% of a judgment debtor’s wages can be garnished if you have been able to obtain employment information and have mailed a pre-garnishment letter; (6) Debtor’s Examination may be scheduled requiring the judgment debtors to appear at a certain date and time and provide required financial documentation. If they do not appear, the court will issue a civil arrest warrant. (7) Investigative Report may be obtained by employing a private investigator instead of convening a debtor’s examination. (8) Notice of Dismissal is filed if lawsuit is dismissed before judgment obtained, if the owner has paid. (9) Satisfaction of Judgment is filed if judgment was obtained and the owner subsequently paid. It must also be recorded if the judgment was recorded. **APPROXIMATE GRAND TOTAL \$590.00 to \$1,600.00**

Foreclosure tract subsequent steps: (1) Order litigation guaranty report to identify lien holders and interests and parties subject to foreclosure, and prepare explanatory memorandum. (2) Prepare foreclosure complaint, summons, notice of lis pendens, and certificate, naming any parties having a lien subordinate to the association’s lien as defendants. If defendants cannot be located, or there are deceased defendants with unknown heirs, we must publish the summons in a newspaper for four weeks, with some additional time and expense. (3) Once defendants are served and the answer period has ended, the association files and serves an application for default if a defendant has not answered. (4) If the defendant defaults, a default hearing is scheduled before a Court Commissioner and a judgment or order (if less than all of the defendants) is signed and recorded if it is the final judgment and order of sale. Obtaining the final judgment may be lengthened/complicated if any one of the defendants files an answer, which may require a stipulation for judgment, a motion for summary judgment, or in rare instances a trial. (5) The recorded judgment is submitted to the County Sheriff with a Writ of Special Execution and a letter explaining the location of the property and the parties entitled to notice of the sale/auction of the property. Sales are published and posted by the Sheriff. The sale is held at the County Courthouse downtown. (6) Once the sale is held, if the Association is the high bidder (usually by “credit bid” in the amount of its judgment, interest and costs), the Sheriff is paid an additional amount if the costs, including Sheriff’s statutory commission of 5%, go over the \$250.00 deposit. The attorney attends the sale. If another party bids over the Association, that party must pay cash within 5 days, and the Association would get paid. (7) According to statute, the owner generally has 6 months from the date of sale to redeem the property and pay the total sale price back to the bidder, unless the property was abandoned at the time of judgment (then the redemption period is 30 days). Until that time period expires, the Association or highest bidder cannot obtain legal title to the property by Sheriff’s Deed. (8) During the redemption period, the owner can legally continue to reside in the property. If the property is vacant, the high bidder could rent it out. If rented, rent can be collected by the purchaser pursuant to statute, and applied to the debt (redemption amount). (9) Any party, including the Association, that takes title to the property, takes it subject to any first mortgage and property taxes, and any other liens that could not be foreclosed. (10) This type of suit is only filed in Superior Court. (11) The attorneys’ fees incurred depend greatly on whether or not the owner or any of the defendants defend against the lawsuit. Most are uncontested. **APPROXIMATE GRAND TOTAL \$1,450.00 to \$3,000.00**

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