

... A NEWSLETTER FOR ASSOCIATION OFFICERS AND DIRECTORS ...

COURTESY OF

HOMEOWNERS ASSOCIATION MANAGEMENT COMPANY

222 WEST GURLEY STREET . PRESCOTT ARIZONA . (602) 776-4479

CONTINUITY IN THE OFFICE OF PRESIDENT

We have just reviewed a sample set of By-Laws sent to us by Community Association Institute. They provide for a new officers position. Normally, most Associations have a President, Vice President, Secretary and Treasurer elected by the Board annually.

This can mean that the new officers must start cold without the benefit of knowing what the board has done or what activities are in the process of being done. This can cause confusion and frustration on the part of the new officers and membership in general.

The new By-Laws provide for the additional position of President Elect. Under these By-Laws the Board elects a President Elect, a Vice President, a Secretary and a Treasurer. However the person who served as President elect the previous year automatically becomes President for this year. This will only work when Board Members are elected for multiple years. Some of the advantages are no person serves for more than one year as President, the President Elect has one year of training before they have to assume the duties of President and current President Elect is prepared to step into the position should the current President resign or be unable to serve.

All members of a Homeowners Association should be willing to contribute some of their time, knowledge and expertise to the operation of their Association. This revision will allow for more of the membership to take part in governing their Association.

In this type of structure the President Elect is second in line to the President and the Vice-President becomes third in line.

This will not work for all Associations. It will be

of most beneficial to the larger Associations who want to maintain continuity. Is it right for you? We will be happy to review for our clients their current By-Laws and make the appropriate recommendations and explain how you must initiate the required changes to your By-Laws.

COMPROMISE VS LITIGATION



Many times we hear that an Association wants to spend thousands of dollars in legal expenses just to prove a minor point or win an argument. This is a waste of money and a ques-

tion may arise as to whether this is an impartial discharge of your fiduciary duty. The last step in any proceeding with respect to a homeowner should be litigation all though there will be the occasional case that no other solution is possible. Your first step should always be communication and where possible compromise. As a board member or officer you must think about the needs of the Association first and in some cases you may have to swallow your pride to reach a fair and equitable solution. Use caution when dealing directly with a homeowner and be careful that you don't say something that will make it impossible to seek a compromise to the problem. Remember always think about what you are trying to accomplish as an end result before you speak.

A compromise is the art of dividing a cake in such a way that everyone believes that he has got the biggest piece.



HOW ARE ASSOCIATIONS TAXED ON THEIR COMMON AREA REAL ESTATE?

Associations are generally taxed in one of two ways depending on how the common area real estate is owned.

1. In some Associations the Real Estate is owned in common by all the owners within an Association with the Board of Directors administering these assets for the benefit of all members. In this case the corporation (Association) does not hold title to these lands and the real estate taxes are divided between all the owners and they are assessed by the county on their personal real estate assessments. Example an Association has 50 members/units/lots. On the individual real estate bills they will be taxed for the value of their personal unit/lot plus 1/50th of the common areas.

2. In some Associations the common areas are deeded directly to the Association. In this case the owners of the individual units/lots are only taxed on their individual units/lots and the corporation (Association) is taxed for the value of the common areas.

In example #1 the total association dues may be less because the association does not have to budget for a large tax bill. In some cases members in an Association like example #2 may feel that their Association is not as well operated because a like Association may not pay as much in assessments. Use caution in addressing these issues and make sure that you are comparing apples to apples and oranges to oranges.

Usually, the method that common area real estate is taxed is provided for in the Covenants, Conditions and Restrictions. In some cases it may be possible for an Association taxed as in example #2 to change their taxing structure to that in example #1. Please consult a qualified legal assistance if you wish to make a change.

Sometimes an Association can avoid having a dues increase or in some cases may be able to reduce their assessments by switching from example #2 to example #1. The homeowner still pays the tax bill for the common area but they perceive this to be less objectionable than a dues increase.

YOUR ASSOCIATION AND INCOME TAXES

Occasionally we hear that an Association has not filed taxes for several years because they were under the impression that if they spent all the assessment money they had - 0 - income and were not required to file. Please do not confuse the rules with respect to personal income with that of a corporation.

Taxation requirements for non-profit Homeowners Associations is both complicated and extensive. We are not tax consultants but we will give you some general advice to follow when the issue of Associations income taxes come up.

1. If your Homeowners Association is a corporation you are required to file both federal and state returns even if you believe you had - 0 - income. The state of Arizona requires a minimum tax of \$50.00 on all corporations.

2. You must also file and pay the required fees to the Corporation Commission to renew your corporate charter annually.

3. You should also have a Taxpayers I.D. number. This is basically a Social Security number for corporations. If one of your officers or directors is using or has used their personal Social Security Number when opening bank accounts interest reported on that account is charged directly to the individual whose number was used. They are responsible for reporting the income on their own personal returns and paying the tax on this interest.

4. Currently, Homeowners Associations may elect to report their income on form 1120 or 1120-H. We will explain the differences below.

Form 1120. This is the normal corporate return. You must show all your income including assessments, interest, rentals, fines, etc. and you may deduct all your expenses. You then pay taxes at the usual corporate rate for that income bracket.

Form 1120-H. This is a special form for use by Homeowners Associations. All assessment income is exempt and no expenses may be deducted. You pay a flat 30% on all non-assessment income such as interest, fines, pool charges or other income or fees that is not in the form of an assessment that is applied to all the members. Each association makes the election annually which form to use. Most qualified taxpreparers who are familiar with association tax requirements and will usually file the form that results in the least amount of tax for an Association. In closing a word of caution. Preparing income tax returns for an Association requires a great deal of skill and knowledge. It is not a do-it-yourself project. Seek the assistance of a qualified professional.

Additionally, you are required to prepare 1099-Misc forms and the accompanying returns for any contractor or person that your Association paid more than \$600.00 during your tax year and is not incorporated. Stiff fines may be levied by the I.R.S. for failure to comply. Again this is not a do - it - yourself project. We do this for all Associations we do accounting for.

QUESTIONS & ANSWERS

In reviewing our Associations insurance needs with our agent he recommended that we add D&O coverage and a fidelity bond. Can you explain these coverages?

Every Association should have these coverages in addition to any other insurance they maintain. We will briefly explain them below. For more in depth advice please contact your insurance professional.

D&O Insurance. This coverage is more commonly known as Officers and Directors Liability or Errors and Omissions coverage. This protects the individual officers, directors and employees against making a decision that is not in the best interest of the Association or acting in good faith but still losing a judgement in a legal decision that awards financial compensation to the plaintiff.

Fidelity Bond. This coverage protects the cash assets of the Association. It is usually only carried on the Officers, Directors or Employees of the Association who have access to the bank accounts belonging to the Association. It requires a personal application by each Officer, Director or Employee to be covered and the Insurance Company does a back ground check on these individuals before such coverage is issued.

Sometimes this coverage is required by the governing documents of the Association. Please check your Covenants, Conditions and Restrictions.

If you have a question of general interest to Homeowners Associations with respect to budgets, assessments, board organization, state laws, C.C.R & rule enforcement, assessment collections or any of the many other topics write us a letter and we will answer it in our next issue. Sorry, we can not give legal advice. If your question deals with a legal matter better to consult a professional.

Homeowners Association Management C/O Leadership Quarterly 222 West Gurley Street Prescott, Arizona 86301

OFFICE HOURS

We want to remind all Officers and Directors of our office hours policy.

1. We ask that all Officers and Directors make an appointment with the appropriate person. We want to make sure that we set an adequate amount of time aside to address your problems or concerns in an equable, professional manner.
2. We normally provide personnel coverage in the office until 1:00 P.M. Monday thru Friday. In the afternoon we make property inspections, attend Board Meetings, meet with contractors and the many other things that require us to be out of the office.

GET READY FOR NEXT YEAR

It's that time of year when things begin to slow down and all the maintenance and repairs have been done for this year. But alas, no rest for the weary. Boards and Officers should start reviewing your reserve study (you do have one, don't you?) and plan your repair and replacement work for 1995. Then in January and February you can write the contract specifications and be ready to submit them for bids. Why so early you may ask? Remember the early bird catches the worm. By submitting your work for bids early in 1995 you will be assured of being first on their schedule and when things are a little lean they are apt to quote you a lower price than if you wait till they have all the work they can handle. Remember - Plan Your Work - Work Your Plan!

HOLIDAY SCHEDULE

To allow our employees to spend time with their families during the holidays we will observe the following schedule.

THANKSGIVING

Wednesday - 11/23 - Office Closes At 1:00 P.M.
Monday - 11/28 - Office Reopens At 9:00 A.M.

CHRISTMAS

Friday - 12/23 - Office Closes At 1:00 P.M.
Tuesday - 12/27 - Office Reopens At 9:00 A.M.

NEW YEARS

Regular Office Hours Maintained.

There will be an employee on call during these times to handle emergencies.

Please advise your membership of these closings.

MEMO:

Please do not change your Board meeting dates and times without coordinating with the office. We attend several meetings a month and must coordinate these times so we can give all Associations equal time. Your cooperation will be much appreciated.



NATIONAL
REAL ESTATE SERVICE

You're going to love our service

NATIONAL REAL ESTATE SERVICE, North America's Finest Real Estate Marketing System is here and you are going to love it. In addition to the local MLS system, The Real Estate Guide, The Prescott Courier, NATIONAL provides:

Computerized Listings. When your home is listed with NATIONAL ALL AMERICAN, we enter its size, price and particulars into our local terminal. Instantaneously, ever office in the network receives the information on your listing. That means country wide exposure for your home and now the Far East too.

NATIONAL has taken a bite out of listing technology with HOUSE by

MOUSE.

HOUSE by MOUSE allows anyone, anywhere and at any time to use his or her own computer to access and save current NATIONAL listings. With just the stroke of a key, you can view thousands of intentional listings and color pictures.

NATIONAL's Gallery of Homes Catalog features photographs and detailed descriptions of all our listings from homes and condominiums to acreage's and investment properties.

So if you are thinking about selling, think about NATIONAL ALL AMERICAN, we offer more ways to market your home.

Find out about National exposure. You are personally invited to call us or drop by our office for a chat. You'll be glad you did.

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222 W. GURLEY ST., PRESCOTT

ADVERTISEMENT

**Homeowner's Association
Management**

222 West Gurley Street
Prescott, Arizona 86301

ADDRESS CORRECTION AND
FORWARDING REQUESTED

