



## Newsletter

### **LHR Newsletter Vol. 2, No. 6**

#### **Reserve Studies - 2009 will usher in serious changes**

Contact us Toll-Free: 1-866-474-5529 ext. 251  
([info@lhrlaw.net](mailto:info@lhrlaw.net))

By David A. Loewenthal, Esq.  
Loewenthal, Hillshafer & Rosen, LLP

As of January 1, 2009, the calculation and disclosure requirements for reserve funding plans are changing greatly. However, the implications of some of these changes are not entirely clear. What is clear is that Directors and others responsible for establishing and maintaining association reserve funding plans should familiarize themselves with the upcoming changes and give serious thought to what the rule changes and related economic elements and impacts mean to their specific association's reserve and operations planning.

This article will provide an overview of the upcoming changes and address some of the key implications and considerations they pose to associations, boards and homeowners.

#### **30 Year Projection**

Beginning in 2009, reserve funding plans will need to address a projected period of 30 years, versus the previous requirement. This is not the only significant upcoming change. Civil Code Section 1365-1365.5 also indicates that "The summary (of the reserve funding plan) shall include notice to members that the full reserve study is available upon request, and the association shall provide the full reserve plan to any member upon request."

While the annual budget of an association is distinct from a reserve funding plan; the new 30 year requirement indicates that the board of directors in preparing the study will need to be very thoughtful and diligent as they prepare both the plan and

summary. For instance, the economic indicators which were adequate for use in preparing reserve studies in the past may not be long term enough for a 30 year study.

Throwing a wrinkle in what is an already arduous process are the non-payment of assessments and foreclosure situations that are on the rise throughout our region, state and the nation. This trend is likely to continue, placing increasing pressure on association budgets. The new reserve plan rules include a worksheet, the footnotes to which pose a "Yes or No" question:

"(3) Based upon the most recent reserve study and other information available to the board of directors, will currently projected reserve account balances be sufficient at the end of each year to meet the association's obligation for repair and/or replacement of major components during the next 30 years."

The next footnote goes on to state: "(4) If the answer to (3) is no, what additional assessments or other contributions to reserves would be necessary to ensure that sufficient reserve funds will be available each year during the next 30 years that have not yet been approved by the board or the members."

Thus, as one carefully considers the implications of these new reserve plan guidelines; it becomes clear that "additional assessments or other contributions" may become necessary and may even fuel what we see as an increased inclination on the part of homeowners to litigate assessment and other monetary issues.

#### **Reserve Funding Plans: Thoughtful, Precise, Accurate**

The duties surrounding a reserve funding plan will most definitely increase as a result not only of these new rules but also due to economic circumstances. Homeowners who feel that increases in dues or assessments are unfair to them individually may choose to litigate. If so, they may well point to reserve

studies (or the lack thereof) as evidence for their alleged grievance(s); all this in an economic environment in which pressure on association budgets is increasing at historic rates.

As it should be with all business conduct and analyses, association directors and committees need to be thoughtful, precise and accurate in preparing reserve funding plans and studies under the upcoming new rules. Each association is different, as are its financial footings, membership and the economic dynamic in which it must operate. Thus, thinking and planning in association specific terms will be key as it has been in the past.

Clearly none of us can predict the future. Yet in preparing reserve funding plans, associations can include those specific and general considerations such as the association's long-term history of expenses and income dynamics, anticipated repairs to infrastructure and common areas, basic economic indicators and forecasted elements like foreclosure and non-payment statistics in the area and within the association itself. For foreclosure historical statistics, an often cited source is: DQ News – a service of Dataquick ( <http://www.dqnews.com> ).

## Conclusion

Both in preparing reserve funding plans and in disseminating them as the civil code outlines, associations will be well-served to be thorough. Make sure that all board members, homeowners and other stake holders know and understand the methodology. Dialog up front can prevent misunderstandings over the long-term. Also, be sure to seek and document an outside review or reviews of the plan and its development.

Related code text can be found at:

<http://www.lhrlaw.net/assessment-reserve-code.pdf>

## Rise in Foreclosure Rates Continues - HOA budgets still under seige

County/Region	2007Q2	2008Q2	Yr/Yr%
Los Angeles	10,393	21,632	108.1%
Orange	2,984	7,348	146.2%
San Diego	4,383	9,519	117.2%
Riverside	6,648	14,974	125.2%
San Bernardino	5,141	11,817	129.9%
Ventura	1,059	2,303	117.5%
Imperial	220	635	188.6%
<b>SoCal</b>	<b>30,828</b>	<b>68,228</b>	<b>121.3%</b>

SOURCE: DQNews - <http://www.dqnews.com/>

These data should serve as a serious warning to Associations and their managers that delinquent assessments and related collection problems will continue and probably worsen, and that aggressive and proactive steps will need to be taken to mitigate unnecessary losses of Association revenues. In the current real estate market, the “one size fits all” approach of non-judicial or judicial foreclosure does not work.

One of the aggressive and proactive steps which Board's can take is to conduct an analysis of each delinquent account to pick the best remedy for the factual situation and to undertake this analysis sooner than ever before. LHR has developed and has used for years a straightforward analytical approach to assist Boards in choosing the remedy most likely to get results in a cost effective way. Please contact us if you have any questions concerning the proper analysis to use to maximize recovery and minimize expenditures for that recovery.

© 2008 by Loewenthal, Hillshafer & Rosen LLP. All rights reserved. Permission is granted to reproduce or transmit in any form any part of this newsletter as long as proper attribution to Loewenthal, Hillshafer & Rosen LLP is given. Due to the rapidly changing nature of the law, information contained in this publication may become outdated. As a result, lawyers and all others using this material must research original sources of authority.