

## **RELY ON A MAINTENANCE TABLE TO MAKE EXPENSES AND BUDGETING MORE PREDICTABLE**

You, the other Board members and your manager are working hard to prepare next year's budget. You take your responsibility to provide accurate and realistic figures seriously, so you look carefully at your reserve study and at the maintenance and repair needs of non-reserve items. Your condominium's windows are failing and will need to be replaced soon. Will your budget need to include a line item for window replacement, or do owners pay for them directly? Your condominium declaration says that the association has the responsibility to *maintain, repair, repaint and redecorate* the limited common elements (LCEs) described in Section 7, but it doesn't say whether the association or the unit owner is supposed to *replace* them. Worse yet, Section 7 doesn't say that windows are LCEs, but Section 4 does. Are LCEs in Section 4 supposed to be treated the same as LCEs in Section 7? How do you budget for the window replacement project when you can't figure out who is supposed to pay for it? Then you remember that your neighbor already replaced her windows three years ago at her own cost. Was that right? What a headache!

Determining whether the condominium association or the unit owner is responsible for maintenance, repair or replacement of a particular item or feature of the condominium property can be confusing. Certain items, such as windows, doors, plumbing pipes and drywall, tend to be particularly troublesome. The laws and condominium documents which govern the allocations of these responsibilities are often written in language that is not easy to understand. Therefore, having a definitive interpretation of the maintenance responsibilities will help Associations to more accurately plan for these projects and budget for expenses.

It is important that the board's interpretations be consistent from year to year. As such, I recommend to boards that they, with the help of their attorney and manager, develop an easy to use table showing the allocation of these responsibilities. They will need to analyze the condominium's governing documents, identify all of the property items or features, determine whether they are common elements, limited common elements or part of a unit, and then determine whether the association or the unit owner is responsible to perform and/or pay for their maintenance, repair and replacement. The tricky part is applying the rules to the hard-to-categorize items, so the association's attorney should do that. For future reference, the table should be adopted as part of the rules and regulations.

Once the board has adopted such a tool, it should use it for planning and budgeting purposes. Creating a comprehensive list of the items within the condominium property that require maintenance will help the board be thorough when planning for up-coming repairs. Then, the board will be able to be more inclusive and accurate when preparing the budget. Also, the association's reserve study professional should refer to it when calculating the reserve contributions.

Having an easy-to-use reference table will minimize disputes between the Board and owners over who is responsible for what. Fewer disputes means less use of legal services and lower chance of litigation, both of which make it easier to accurately budget for legal fees from year to year.

The attorney's conclusions as to who is responsible for which maintenance may not be what the board or the owners expected, and they may not be what they want. If that is the case, they could amend the condominium's governing documents to reallocate the responsibilities. Changing the maintenance allocations will shift some of the costs and almost certainly affect the budget. Also, the board will need to budget for the legal fees to prepare the amendment.

Sometimes, the interpretations in the maintenance table conflict with decisions made in previous years. For instance, a prior board may have determined that windows were owners' responsibility, but the association's attorney concludes that windows have been the association's responsibility all along. In that event, the board is faced with a difficult decision. Among its options are to compensate owners who paid to replace their windows or amend the governing documents to match the previous board's interpretation. In any case, its decision may have a direct impact on the next year's budget.

My prescription to treat the headaches created by hard to understand legal documents: Take two maintenance tables and call me in the morning!

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