



NOWACKHOWARD
COMMUNITY ASSOCIATION ATTORNEYS

Financials, Budgets & Contracts

Presented by

Bill Gourley, Neal Bach, and Rebecca Drube

05.02.19



Budgets

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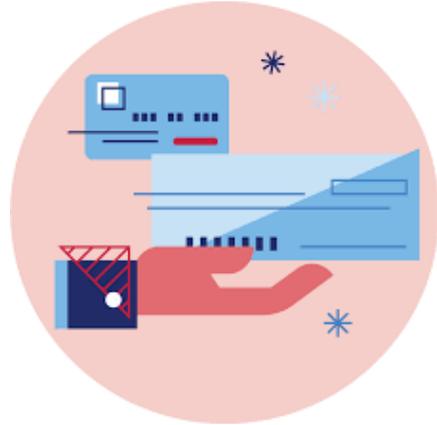
What is a Budget?





Budget = an estimate of income and expenditures for a set period of time.





Operating Fund

- Funds used for day-to-day operations of the community
- Contracted services (landscaping, pest control, professional management)
- Insurance & Taxes
- Regular, routine maintenance (pipe leak, lightbulbs, etc.)

Reserve Fund

- Funds used for major capital repairs or replacement
- Roof replacement, pool resurfacing, paving, clubhouse renovation
- Unanticipated expenses (i.e. surprises!)





Technical Requirements & Practical Considerations



Section 10.3. Annual Budget and Annual Assessments.

(a) Preparation of Budget. For each fiscal year, the Board shall prepare a budget listing by category the estimated Common Expenses for such year, including the establishment and maintenance of reserves as the Board may consider appropriate. The Board shall cause the proposed annual budget and Annual Assessment amount to be delivered to each Owner at least twenty-one (21) days prior to the Association's annual meeting.

The budget and the assessment shall become effective **unless** disapproved at a duly called and constituted annual meeting of the Association by a vote of a Majority of the Total Association Vote; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called for at such meeting.



(c) Failure to Establish Annual Budget. In the event that the Owners disapprove the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and Annual Assessment shall be delivered to the Owners at least twenty-one (21) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.



(e) Capital Reserve Budget and Contribution. The Board of Directors may annually prepare a capital reserve budget, which may take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board may set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal Annual Assessments over the period of the budget. Any capital reserve contribution shall be included within the annual budget and Annual Assessment as provided above. A copy of the capital reserve budget, if any, shall be distributed to each Owner in the same manner as the operating budget.



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10 (i) The Association shall maintain a working capital fund to meet unforeseen Association expenditures, to purchase any additional equipment or services for the Association, or to pay for capital improvements...



Why do we fund reserves?

- Governing documents require it
- Fiscally responsible
- FHA certification (condominium)
- Avoid HUGE special assessments



FHA Certification Requirements

Reserve funding requirement

- The funding of replacement reserves for capital expenditures and deferred maintenance in an account representing at least 10% of the budget



How do we fund reserves?

Estimated Future Capital Repairs

Capital Item To Be Replaced	Quantity	Unit cost	Reserve Requirement	Frequency (yrs)	Remaining Life (yrs)	Information Source	
Site							
Reseal and stripe asphalt paving	18,600	SY	\$1.75	\$32,550.00	7	2	
Re-surface/Overlay Asphalt Paving	18,600	SY	\$8.00	\$148,800.00	20	15	
Concrete Curb and Gutter Repair	560	LF	\$20.00	\$11,200.00	8	3	5% of total repaired every 8 years.
Concrete Flatwork Repair	370	SY	\$50.00	\$18,500.00	5	1	5% of total repaired every 8 years.
Paint Anodized Aluminum Fencing & rails	2,800	LF	\$5.00	\$14,000.00	15	10	
Drainage Improvements	1	EA	\$5,000.00	\$5,000.00	8	5	
Erosion Repair, behind unit 170 Phase 2.	1	EA	\$5,000.00	\$5,000.00	30	0	
Retaining Wall Repair	1	EA	\$5,000.00	\$5,000.00	8	3	
New Street Sign Installation	1	EA	\$3,100.00	\$3,100.00	30	0	
PVC privacy fencing repairs	1	set	\$500.00	\$500.00	20	15	
Building Exterior							
Roof and gutter replacement	2,380	SQ	\$235.00	\$559,300.00	20	15	
Repar Wood Decking and railings	80	EA	\$1,000.00	\$80,000.00	20	15	
Paint Doors and Trim	257	Units	\$200.00	\$51,400.00	7	3	
Repair, improve downspout extensions	1	EA	\$2,000.00	\$2,000.00	30	0	
Water Seal Wood Decks	80	EA	\$100.00	\$8,000.00	7	3	
New House Number Plaque Installation	24	EA	\$75.00	\$1,800.00	30	0	
Building Interior							
Mechanical							
Exterior Lighting Fixtures	514	EA	\$40.00	\$20,560.00	18	13	
Amenities							
Pet waste station replacement	4	EA	\$500.00	\$2,000.00	20	15	
Other							
Mailbox replacement	304	EA	\$50.00	\$15,200.00	22	17	
Replace Composite Entrance Signage	4	EA	\$350.00	\$1,400.00	15	10	

Reserve Study

- Obtain It !
- Review It !
- Follow It !
- Update It !



Standards of Conduct for Directors

- Duty of Loyalty
- Duty of Care



14-3-830 Standards for directors

Unless a different standard is prescribed by law:

- (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
 - (A) In a manner the director believes in good faith to be in the best interests of the corporation; and
 - (B) With the care an ordinarily prudent person in a like position would exercise under similar circumstances;



14-3-830 Standards for directors

(2) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(A) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(B) Legal counsel, public accountants, or other persons as to matters the directors reasonably believes are within the person's professional or expert competence;

(C) A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(D) Religious authorities, ministers, priests, rabbis, or other persons whose positions or duties in the corporation the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented;



14-3-830 Standards for directors

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this code section; and...



Practical Tips

- Review prior budgets and compare them to actual expenditures
- Consider the current state of the community
- Be forward-thinking
- Plan for a rainy day





Results of Poor Budgeting

- HUGE special assessments
- Inability to borrow money
- Property values fall
- Lawsuits

“If you fail to plan, you are planning to fail”

Benjamin Franklin



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Financials

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Learning Objectives

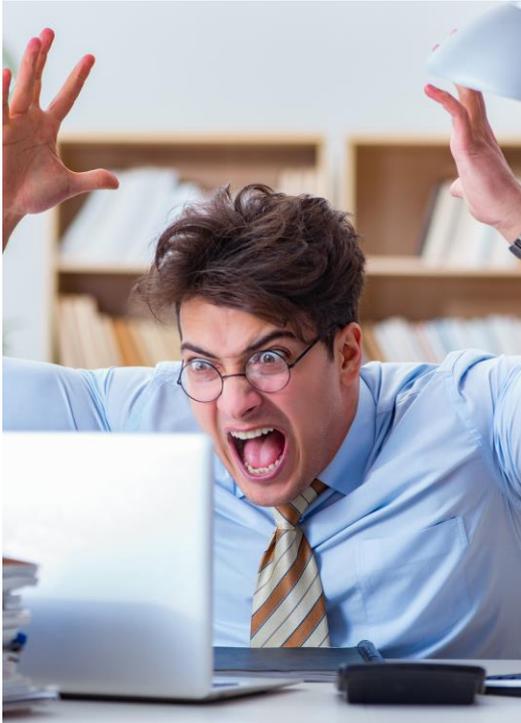
1. Understand basic requirements for community association financial management
2. Effectively identify and minimize community association liability and risk
3. Help associations plan for current and future financial needs
4. Utilize enhanced financial knowledge to improve association management



Understanding the financials

Here's what we'll review

- How to utilize core financial documents
- Monthly financial reporting package and review process





QUESTION

What are the 4 primary monthly financial documents?

ANSWER

1. Balance sheet
2. Income statement
3. Bank statement and reconciliation
4. Delinquency report



What is it? Why should I care?

Balance sheet

- Financial position at a point in time
- Assets are most important – operating and reserve bank account balances
- Only liability is usually pre-paid assessments
- Cash vs. accrual vs. modified cash basis

Income Statement

- Shows income and expenses at a point in time vs. budget
- Need to explain/document variances, unbudgeted items



What is it? Why should I care?

Bank reconciliation

- List of outstanding checks and deposits in transit
- Ties the bank statements back to the balance sheet

Delinquency report

- Shows how much is owed in assessments
- Under 8% is good, 5-7% target



What is it? Why should I care?

Other monthly financial documents

- General ledger
- Invoice copies
- What else?



Monthly Financial Review

Manager and treasure need to participate!

- Early indicator of issues – from misstatements to fraud
- Focus on variances or unbudgeted line items
- Easier to fix now than later
- Fiduciary duty – a board member (hopefully the treasurer) should have some financial background



Monthly Financial Review

5 components of a monthly financial results presentation:

1. Balance sheet – confirm cash balance and liabilities
2. Income statement – net income, major variances
3. Bank statements – confirm starting point for bank recon.
4. Delinquency report – report receivables status
5. Reserve account – confirm funding, highlight planned expenditures on target



Audits and Audit-Like Procedures

Here's what we'll review

- Understand the similarities and differences between various financial procedures
- Identifying the right procedure for specific association needs, interpreting covenants





Audits and Audit-Like Procedures

Generally, an audit is a detailed, methodical and objective examination of accounts and all other items that support an association's financial statements

- Helps manage risk
- Can identify potential issues



Audits and Audit-Like Procedures

Official Audit

- Strict AICPA rules
- Expensive - \$8K+ if you do it right
- One year only

Agreed-upon procedures engagement (AUP)

- “Audit Lite”
- Half the price of an audit
- Flexible – tailored to trouble spots and budget



Audits and Audit-Like Procedures

Review

- Compares trends between financial periods
- Ask questions
- So what?

Compilation

- Restatement of the financials
- Not much value



Audits and Audit-Like Procedures

These procedures uncover a variety of issues

- Duplicate payments
- Contract fees don't match amounts paid
- Inappropriate charges
- Conflicts of interest
- Missing, misstated, or incomplete records
- Insufficient insurance coverage
- Underfunded reserve liabilities



QUESTION

Why should we embrace audits and audit alternatives?

ANSWER

1. Could be required by covenants
2. Confirms sound financial procedures
3. Maintains board confidence
4. Keeps dissenters at bay
5. You lead, but CPAs do most of the work
6. Makes you look good



Additional Financial Insights

Here's what we'll review

- Tax returns
- Fraud protection
- Maintaining financial health in aging communities
- Top tips





Additional Financial Insights

Community associations and tax returns...
briefly...

- Yes, you do need to file tax returns
- Identifying taxable vs. non-taxable income
- Resolving previous tax filing (or non-filing) issues



Additional Financial Insights

Protecting the community from theft and fraud

- Early warning signs
- Issue identification and resolution



Additional Financial Insights

Tips for maintaining financial health in aging communities

- Update (and fund) reserve studies
- Increase facilities inspections
- Increase maintenance budget – not just reserve budget
- Raise the dues



Understanding Financials

Neal's top HOA financial management tips

- Create new budgets every year
- Stick to the budget, documenting variances
- Honor thy reserve funds
- Maintain adequate operating cash
- Maintain adequate insurance coverage
- Review financials every month
- Audit (or AUP) at a minimum of every 2 years
- File annual tax returns



Contracts

Presented by Rebecca Drube

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Freedom to Contract

“Parties should be entitled to contract on their own terms without the courts saving one side or another from the effects of a bad bargain; they should be permitted to enter into contracts that may actually be unreasonable or which may lead to hardship.”



SCOPE OF WORK:
POWERWASH CONCRETE SIDEWALKS PUBLIC AND EACH HOUSE SIDE WALK-ALL THE CONCRETE AROUND THE (28 BUILDINGS+/-)

PS: WE WILL USE RUST REMOVAL FOR RUST ON CONCRETE-WE WILL TRY OUR BEST

PS: 15 AREAS WITH RUST ON CONCRETE

SCOPE OF WORK:
POWERWASH HOUSES AND CARPORTS EXTERIOR (28 BUILDINGS+/-)

SCOPE OF WORK:
BLOWING OR POWERWASH ROOFS HOUSES+ CARPORTS WHATEVER IS NEEDED(28 BUILDINGS +/-)

TOTAL LABOR+ MATERIAL \$ 8,975.00

PAYMENT: A SOON WE FINISH WOULD BE GOOD

INSPECTION: INSPECTION AS WE FINISH ONE SCOPE AT THE TIME WOULD BE GOOD

WATER ACCESS: WE WILL USE HOMEOWNERS WATER AROUND THE PROPERTIES AS WE GO

PS: RESIDENT KURT HE CAN INSPECT AS WE GO IS BETTER LIKE THAT LESS WASTE OF TIME

PLEASE NOTE:

WE ARE NOT RESPONSIBLE FOR ANY PRE -EXISTING CONDITIONS ROOF-FLOOR-CONCRETE-CARS-OR ANY PERSONAL ITEMS

WE ARE NOT RESPONSIBLE FOR ANY LEAKS INSIDE THE HOUSE

WE ARE NOT RESPONSIBLE TO CLOSE WINDOWS

WE ARE NOT RESPONSIBLE FOR LEAVING PERSONAL ITEMS OUTSIDE

WE ARE NOT RESPONSIBLE FOR ANY PERMITS AND/OR FEES IF NEEDED.

THERE IS AN EXTRA CHARGE FOR ANY CHANGE ORDERS.

NO WARRANTY

WE ARE NOT RESPONSIBLE FOR PERSONAL ITEMS AT PROPERTY

NON-CIRCUMVENTION : NEITHER CLIENT OR AFFILIATES WILL NEGOTIATE OR PARTICIPATE IN ANY TRANSACTION WITH OUTDOOR LIVING BY VIVA S CREW MEMBERS WITHOUT WRITTEN PERMISSION FROM VIVA.



This Agreement shall become effective on the first day of September 1, 2018 shall continue in full force and effect for a twelve (12) month term or until such time as proper notice of termination of this Agreement is given. Upon failure by either party to give the other thirty (30) days written notice of the intention not to renew this Agreement, the Agreement shall self-renew and continue in full force and effect for an additional twelve (12) months.



CANCELLATION

The Owner shall have the right to cancel this Agreement based upon Company's non-performance of duties and responsibilities as follows:

(1) Owner shall notify corporate office (1000 Blue Street, Shysterville, GA 3000) by certified mail and by phone of any problem regarding performance as detailed in the Agreement. Company shall have at least five (5) business days following receipt of certified notification to remedy stated violation of agreement (the "Remedy Period")

(2) If Company fails to remedy the violation within the Remedy Period, Owner may then cancel this Agreement via certified mail, within ten (1) days of the end of the Remedy Period. This Agreement shall terminate five (5) days after the receipt thereof by the Company.



This Agreement may be terminated by either party, at any time, with or without cause, upon 30 days' written notice to the other party.



In the event of legal or other action to enforce the provisions hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees from the other party.



To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify Owner, its officers, directors, property managers, employees, agents and volunteers, against any and all liability, claims, penalties, fines, losses, damages or expenses, including reasonable attorneys' fees, arising from, related to, resulting to, or resulting from any acts or omissions of Contractor or its officers, agents, sub-contractors or employees in performance of the Work to be accomplished hereunder and/or in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from Association's sole negligence or willful acts.



CONTRACTOR / VENDOR INSURANCE

- **General Liability**
 - ✓ Additional Insured
 - ✓ Automobile Liability
 - ✓ Contractual Indemnity Coverage

- **Workers Compensation**

- **Specialty**
 - ✓ Builders Risk
 - ✓ Professional E&O



ASSOCIATION INSURANCE

- Directors and Officers that Cover Contract Disputes:
 - ✓ CNA
 - ✓ CAU
 - ✓ USLI
 - ✓ Traveler's
 - ✓ Great American



TERMS WE'VE COVERED

- Term (Contract Duration)
- Termination
- Payment Terms
- Scope of Work (Description of Work to be Performed)
- Dispute Resolution/Attorneys Fees
- Indemnity
- Insurance



Thank You

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