

Questions from 4/20 HCCA Seminar “How to Reserve Study”

- 1) AC Hasn't been working for more than 9 months in common areas. Asked Board why it has not yet been fixed. Reply: took many months to get parts (some foreign made) which came one at a time. Asked why they did not get a new engine? Reply: Cost \$275,000.

Your board needs to get an expert's advice as to how to address the cooling issue at the most economical cost. Maybe the association can install ceiling fans in the short term.

What can I do?

- 2) Shouldn't a Building have a ledger showing what needs doing when and when it was done?

That is basically what the reserve study is. It lists the repair and maintenance components for your building; provides date when last installed or repaired; provides “useful life” of each component; provides the replacement cost of the component. The reserve study helps the Board determine how much needs to be placed into the Association's reserve account for deferred maintenance, e.g., spalling, painting the building, install or repair roofing

- 3) Can a past director be sued for past decision (while on the Board) that resulted in inadequate Reserves to fund future projects/repairs. That depends on the facts relating to how the past director made his or her decision. First there's the statute of limitations that prohibits you from filing or pursuing a claim that is beyond the 6 years period. This means that you can only go back 6 years. Since board decisions are not made by 1 director, you cannot hold 1 director liable for the decisions that the board makes as a collective body. You may be able to sue the entire board for bad decisions that they made; however, you would still have the burden of proving that the conduct of the board caused you monetary harm. So I suggest that you confer with a lawyer about your specific fact pattern to see if there is any actionable conduct that would justify a lawsuit.
- 4) How important is it to use a CM (Construction Manager?) or having a Board member or Resident Manger be the CM. Unless the Board member or Resident Manager is a licensed contractor, architect or engineer, he or she would not be qualified to be a construction manager. On large complicated repairs like spall repairs or pipe replacement, it is highly recommended that you hire a CM to protect the association's interest)
- 5) Is it important in having CM for big projects such as spalling? Absolutely.

- 6) RE: Co-Op Bldgs – Is the requirement for Co-ops Reserve Funding the same as for Condos?
There is no reserve law for condos, but there is nothing stopping co-ops from doing a reserve study and setting aside amounts for deferred maintenance. Since Co-ops have the same issues re maintaining their buildings, it would be prudent to set up reserves so that it will not have to special assess their stockholders for future repairs
- 7) If not what is the requirement of Co-Ops in Reserve Studies, how often and funding?
There are no statutory requirements for co-ops.
- 8) What's an equitable approach to funding plumbing replacement costs? PCI usually reflects # of bedrooms rather than # of plumbing fixtures. Most condominium Declaration and Bylaws provide how these expenses are allocated and typically the cost is allocated based on the unit owner's interest in the common elements. This fraction is usually reflected in the exhibit attached to the condominium's Declaration.
- 9) What if a property does not have an office to house property records – but could create a space to house these property records. Should properties be mandated to have on hand records on when the last replacements were done. Ie: roof, elevator etc. The association's should have adopted a purging policy that sets out how long the Association will keep certain records, e.g., Board Minutes, financial records, contracts; and then the association need to follow those policies so that the records are manageable and will not be expensive to store. Also the records can be scanned and stored on the cloud to save on storage costs. .
- 10) Is there a formula of how much (per sq ft) a unit should contribute to the reserve?
Contributions to the reserve account is based on the provisions of the condominium declaration and bylaws and the typical provision allocates the amount a unit owner will pay based on his or her percentage ownership of the common elements and this fraction is noted on the deed and in the Exhibit "A" to the Condominium Declaration.
- 11) Who is ultimately responsible for the Reserve funding? No one person is "responsible" for the preparation of the reserve study. It is a group effort. The consultant who will prepare the report has a canned program that lists the useful life of condo components and possibly the replacement costs. The consultant will inspect the project and determine what components are on the property. The Board members need to review the preliminary reserve study to check for

accuracy, i.e., does the report in fact include all of the component parts that exist at the condo project; does the report include component parts or equipment that do not exist in your condo project; has the consultant been told of any performance issues of existing components since that may affect (i.e., reduce) its useful life. Also, the reserve study is affected by economic factors and may have to be updated annually. The reserve study is a tool that can and should be useful to the Board members budget for deferred maintenance. The reserve study is a not a scientific document that will accurately “predict” what the association needs to set aside for deferred maintenance. We recently learned that clay pipes that should have a useful life of 80 years do not last that long in Hawaii.

12) What about the managing agents as hired experts? Assume responsibility for their expertise.

The managing agents are not and cannot be “hired experts.” The managing agents are “agents” of the Association. They take direction from the Board and implement their decisions. They may have real estate backgrounds, but they usually do not have the expertise or training or knowledge about construction, law, finances, etc. The business judgment rule in HRS 514B provides that if you don’t know, then you need to engage an expert who is licensed to consult, e.g., a lawyer on legal issues; an accountant or financial adviser on financial issues; an engineer or architect on construction or repair issues. Also, you need to pay the expert for his or her advice.

13) Why are reserve studies not including pipes? The reserve study typically covers a 20-year period. Until very recently, plumbing was never an issue because pipes were thought to last more than 20 years. In fact, the useful life for clay pipes is 80-100 years. Now we know that in Hawaii, clay pipes can fail after 30-40 years so now all buildings that are that old have replacement of plumbing as part of the reserve studies.

14) What’s keeping Board members from volunteering? Why should they?

15) Who owns the electric transformer? HECO or the AOQU?

16) If the AOQU owns it how do we get the replacement cost?

17) How will courts rule on a condo that has had the managing company complete a reserve study every 3 – 5 years. Then or now they discover they have sewer pipe problems of the tree roots causing damage and drains are backing up into units periodically. **Tree roots causing damage to**

pipes is not a reserve study issue. That is a repair issue and when the Board is faced with that situation, they need to address it immediately. If an association has trees near the building or near structures in the project, they should expect problems with tree roots interfering with sewer pipes

18) Please explain 100% funding requirement with examples

19) The former Board president threw away 10 boxes of documents. What do we do now?

- a) Figure out what was in the boxes if anyone can remember.
- b) Go back to maybe the managing agents and or vendors used to see if they have copies
- c) Of importance would be the repair records if it is not noted in a Reserve Study