

Association of Condominium,
Townhouse, and
Homeowners Associations



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November 2014

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WHY YOUR MONTHLY

FINANCIAL PACKAGE IS SO IMPORTANT!

BY: Steven Silberman

You just received your monthly financial package. You open it up but before you ever look at it, you make the same decision that many Boards make. You decide that you do not have to review the financial package since you believe that the Management Company is responsible for the financial information of the Association. As long as they review it, your Association should be in good shape. Boards of self managed Associations feel they do not have to review the financial package, since they believe this is the treasurer's job and as long as the treasurer understands the financial information, then the Association should be in good shape.

The first thing all Boards have to understand is that they are responsible for the financial information of the Association. I always tell Boards that if they were the owners of a business and an Association is a business, would you trust the financial management of your business to an outside company. **OF COURSE NOT!**

Let's begin discussing your financial package and why it is so important to review it each month. Your financial package should include the following items:

- ⇒ Accounts Receivable Aging
- ⇒ Bank Statements – Operating and Reserve
- ⇒ Bank Reconciliations – Operating and Reserve
- ⇒ Check Register and Cash Receipts Journal
- ⇒ General Ledger
- ⇒ Replacement (Reserve) Fund Report
- ⇒ Accounts Payable Report
- ⇒ Balance Sheet
- ⇒ Income and Expense Statement

**HAPPY
THANKSGIVING**

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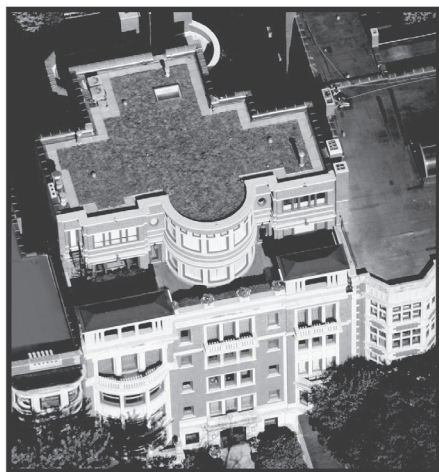
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COURT CASE DECISION

By: Mark R. Rosenbaum / Fischel & Kahn, Ltd. / 312 726-0440/ mmmrosmbaum@fischelkahn.com

In a case that is a big win for condo associations, the 1st District Appellate Court (governing Cook County) in 1010 Lake Shore Assn v Deutsche Bank, as Trustee, 2014 IL App (1st) 130962, has held that a foreclosing lender that is the buyer at a foreclosure sale is liable for all pre-sale arrearages if the lender has not made at least one post-sale assessment payment to the association. Its outcome should be used to push hard for collection of arrearages on foreclosed units.

In the case at issue, the association filed a forcible action against the foreclosing lender that bought the relevant unit at the foreclosure sale. The association claimed that the lender had never paid any post-sale assessments, and therefore, under Condo Act, Section 9(g)(3), the association's lien for the pre-sale arrearage (over \$40,000), was now the liability of the lender to pay.

The parties agreed that the lender owed assessments for the post-sale period. At issue was the second sentence of (g)(3) which states: "Such payment confirms the extinguishment of any lien created pursuant to paragraph (1) or (2) of this subsection (g) by virtue of the failure or refusal of a prior unit owner to make payment of common expenses, where the judicial foreclosure sale has been confirmed by order of court..." The association argued that because the lender had never paid any post-sale assessments, the lien was never extinguished and the lender was liable (apparently as the successor in title to the former owner) for all the unpaid pre-sale assessments. The lender argued that the foreclosure had the effect of wiping out the association's lien, so there was no lien right left for the association to enforce.

The court decided on these facts, that the lien of the association is not extinguished (even after the foreclosure sale and the confirmation of the sale) if the buyer has not paid any post-sale assessments to the association, and the buyer owes the pre-sale assessments to the association.

If an association has a unit that has gone through a foreclosure sale, and has not yet been sold to a 3rd party buyer, and if the buyer at the foreclosure sale has not yet made any assessment payments to the association, now is the time to issue a 30 day demand for the entire arrearage (pre and post-sale) owing on the unit, and to file a forcible as soon as the 30 day period is over. Under the 1010 case, the association will be entitled to a judgment for the entire arrearage.

It also appears to be a possible corollary of the decision that if the person who buys at the foreclosure sale never pays post-sale assessments, then if the unit is later sold to a 3rd party buyer, at that closing, which is obviously a title transaction, the association can claim more than just the super Lien rights: It can claim the entire pre-sale arrearage (along with the post-sale arrearage) is due at the closing. This case thus relegates the 6 month "super lien" right of collection to only those situations where there has been a foreclosure sale, and the buyer has paid at least some of the post-sale assessments.

At this writing, the Governor has just issued an amendatory veto of SB 2664. The changes to Section 9(g)(4) contained in the veto (although a different subsection than the one at issue in the 1010 case), if upheld, could have impact on the issues discussed above. However, as of this date, we do not know if the veto will be upheld or overridden. The interplay between the case and SB 2664 may have to be revisited when the veto situation is resolved.

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Accountant/Advisor: Garry Chankin, Frost Ruttenberg & Rothblatt, C.P.A.

Insurance Broker/Advisor: Karyl Foray, Rosenthal Bros.

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Accounts Receivable – Every Association should review their Aged Accounts Receivable each month to monitor the delinquent assessments. Review any changes each month and write-off any uncollectable receivables. If you budgeted for contingency bad debts you should, on a monthly basis, compare actual write-offs to what you budgeted. In addition to your monthly review of accounts receivable, every Association should have a collection policy and should diligently follow their policy. Review your declaration and bylaws to ensure you are in compliance with your Association's policy.

Bank Statements – Your financial package should include copies of the bank statements of your operating checking account along with any operating contingency and reserve account statements. We always recommend that an original bank statement be sent to more than one person. For example, an original statement should go to the Board and the Management Company. Many times over the years we have seen copies of statements altered so that the Board and/or Management Company do not see the actual activity and/or balance. Statements are altered to cover up fraud by the perpetrator.

Bank Reconciliations – A bank reconciliation for all accounts should be included with the financial package. Please make sure that whoever reconciles the accounts is not the same person writing checks or making deposits. When reviewing the reconciliations with the bank statements, review the checks cleared for the check number, payee and amount. Review outstanding checks to see if there are any old outstanding checks and inquire as to why these have not cleared. Review deposits in transit. All deposits in transit at the end of the month should clear at the beginning of the next month. If you are able to view activity online, review to make sure that the deposits in transit did clear at the beginning of the next month. Any unusual items on the reconciliation or variance from financial statement balances should be questioned.

Check Register and Cash Receipts Journals – Review the check register to make sure all checks are in check number order. Review the payees to make sure that these are approved vendors.

Review cash receipts to see if there are any unusual deposits and that all deposits cleared or are in transit at the end of the month. Trace the receipts and disbursement to the bank reconciliations and the cash accounts in the general ledger.

General Ledger – Review the general ledger accounts for classification of expenditures and deposits. Also, make sure that the cash receipts, cash disbursements and bank reconciliations agree with the general ledger balances and postings.

Replacement Fund Report – Review the activity on the report to both the statements and reconciliations. Also, make sure that the activity agrees with the general ledger and all expenditures for Reserve Fund projects have been approved by the Board and paid out of reserve funds.

Accounts Payable Report – Review the report to determine what bills have not been paid and determine why they have not been paid at month end. Also, review it to determine if there are reserve or operating fund projects that have been completed but not paid or if progress payments are due on the projects but not paid by the end of the month.

Now that you have reviewed all of the monthly reports, it's time to review the Balance Sheet and Income and Expense Statement. The first thing that you have to determine is what basis of accounting are your financials on. Is your Association on the cash, modified-cash or accrual basis of accounting? The cash basis of accounting recognizes income when received and expenses when paid. Usually the modified-cash basis of accounting recognizes income when billed or earned and expenses when paid. Many Management Companies use this method. The accrual basis of accounting recognizes income when billed or earned and expenses when incurred. The accrual method is the preferred method, since it shows the Association's actual financial position at a specific date. Even if your Association uses the accrual basis method on a monthly basis, you still could be missing payables or prepaid expenses since Management Companies have to cut off shortly after the end of the month in order to send out your monthly financial package in a timely manner. This is one of the reasons that we always recommend that a third party financial

Continued from page 4

statement be prepared by a CPA firm at the end of the year. Your Association will now know your actual financial position at year-end and can then compare actual income and expenses to budgeted amounts. An audit is highly recommended but if you do not have an audit, it is recommended that at a minimum a review or compilation should be prepared, as described above, because the Board is responsible for the financial information of the Association.

Balance Sheet – If your financials are prepared on the cash basis, the only asset will be cash; therefore, you should make sure that the cash balance agrees with the general ledger and the bank reconciliations. If you are on the accrual or the modified-cash basis, you need to make sure that the Accounts Receivable balance agrees with the general ledger and the aging report. There could be a Provision for Bad Debts for accounts that could be written-off within the next year that would reduce your Accounts Receivable on the Balance Sheet. This provision is usually done at the end of the year and is reported on your CPA prepared financial statements. When your budget was prepared, a contingency for bad debts could have been included and shown on your Income and Expense Statement. Compare any possible bad debt write-offs each month to your budgeted bad debt contingency. If you are on the accrual basis, you should also make sure the Accounts Payable agrees with the General Ledger and your Accounts Payable report. If there are prepaid expenses or accruals on your accrual basis Balance Sheet inquire as to why they are recorded.

Income and Expense Statement – There are a few key things that you should review on your Income and Expense Statement. The first thing you should look for is any unusual income or expense items that have not been budgeted. The next key thing to look at is comparing the actual results each month and year-to-date with your budget. If there are any material variances, determine why. It is much easier to compare actual to budget if your Association is on the accrual basis of accounting since you budgeted based upon what your Association will bill and what projects or expenses will be completed or incurred rather than paid. The last key thing is to review the activity for each fund. Make sure all reserve fund projects are shown as reserve fund expenditures. Then review the reserve fund report to determine if these reserve fund expenditures were actually paid out of the Reserve Fund.

Now that you have reviewed the financial package, you should now understand why it is so important for all Board members to review and understand the financial information of your Association. Again, please remember that the Board is responsible for the financial information of the Association and that active Boards help discourage fraud.

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ANNOUNCEMENT

ACTHA's Board of Directors has appointed Michael Pietrzak of Park Place Tower Condo Assn. in Chicago to fill a vacancy on its board.

Mike stated, "My goal is to use my organizational skills and background in technology to help grow ACTHA into a viable support system for owners and increase visibility to the over 17,000 associations in Illinois."

Mike is also a member of the Membership Committee.

Mike will serve until April at such time ACTHA will hold its annual meeting for directors.



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When are minutes of an owner's meeting approved?

Most homeowners associations have been incorporated under the NFPCA. Section 107.75 of this Act provides: "Any voting member shall have the right to examine, in person or by agent, at any reasonable time or times, the corporation's books and records of account and minutes, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a voting member must make written demand upon the corporation, stating with particularity the records sought to be examined and the purpose therefor. If the corporation refuses examination, the voting member may file suit in the circuit court of the county in which either the registered agent or principal office of the corporation is located to compel by mandamus or otherwise such examination as may be proper. If a voting member seeks to examine books or records of account, the burden of proof is upon the voting member to establish a proper purpose. If the purpose is to examine minutes, the burden of proof is upon the corporation to establish that the voting member does not have a proper purpose." With you having the right to inspect minutes, you have hit on the right question in asking when do notes taken by a secretary ripen into being "minutes"?

Section 40 of RRO clearly states "the minutes do not become *the* minutes and assume their essential status as the official record of the proceedings of the society until they have been approved." (Emphasis original) RRO Section 47 generally provides that at a regular meeting, the chair will call for the reading of the prior meetings' minutes, ask for corrections, and then declare the minutes approved. If there is a dispute, a vote is taken to approve. Often, draft minutes are sent to members of the board in advance, in which case, they are typically not read at the next meeting before they are approved.

This works fine for board meetings that occur with regularity, but the question is targeted to address annual meetings of the members. The answer is found in Section 47 of RRO, which provides: "In organizations where regular business sessions are not held as often as quarterly and do not last longer than one day... the executive board-or, if there is none, a committee appointed for the purpose-should be authorized to approve the minutes." The, in most cases, it is the board of directors that approves the minutes of the last annual meeting of the members.

What if there are discrepancies between what occurred and what was stated in the minutes?

Section 47 of RRO also provides: "The fact that the minutes [of the annual meeting of the members] are not then read for approval at the next [annual meeting of the members a year after the prior annual meeting] does not prevent a member from having a relevant excerpt read for information; nor does it prevent the assembly in such a case from making additional corrections, treating the minutes as having been previously approved." The reason for this is that if "the existence of an error or material omission in the minutes becomes reasonably established after their approval-even many years later-the minutes can then be corrected by means of the motion to *Amend Something Previously Adopted*." (Emphasis original). This generally "requires a two-thirds vote, or a majority vote with notice, or the vote of a majority of the entire membership, or unanimous consent." *Id.*

Do board minutes fall under the same provision in terms of having to be approved before being circulated to owners?

Robert's Rules of Order makes it clear that minutes are not minutes until they are approved. Until then, they may be referred to as notes that ripen into draft minutes, but they are not minutes.

Can draft minutes be circulated soon after a meeting with a proviso that they are draft minutes yet to be approved?

Yes, this is possible, as there is nothing in the various statutes or in RRO that would prevent it. However, as a practical matter, such a procedure is not typically advisable, as the notes taken by the secretary during the meeting are often in need of correction and revision because often there is simply not enough time for the secretary to finalize them as the meeting progresses.



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Question of the Month

By: Scott Pointner of Rathje & Woodward, LLC

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Q. I am an owner seeking minutes from the owners' annual meeting. The management company and the board claim they cannot give them to me because the minutes have not yet been approved. When are owner minutes approved? At the next owners' meeting, a year later? What if there were discrepancies between what occurred and what was stated in the minutes? Do board minutes fall under the same provision in terms of having to be approved before being circulated to owners or may they be circulated soon after a meeting with a proviso that they are draft or minutes yet to be approved?

A. In this posting there are actually multiple questions. Although I will take each question in order, I will first go over a few basic principles and realities that impact the following answers, which are of general applicability, and are based in large part on the fact that most associations follow Robert's Rules of Order ("RRO"). Additionally, most associations have a few common provisions built into their bylaws. Most Associations have in their community instruments (usually in bylaws) a provision that obligates "the Association", or in some cases, the "Board of Directors", to keep minutes of the proceedings of its members, the board, and committees. Furthermore, most association bylaws provide that members may inspect the books and records (that would include minutes) at a reasonable time, for any proper purpose. This provision is not only found in bylaws, but is also found in Section 107.75(d) of the Illinois Not For Profit Corporation Act (the "NFPCA") (805 ILCS 105/107.75(a)). Finally, most Association bylaws obligate the secretary of the association to keep the minutes of meetings of the members and of the Board, and to be the custodian of the association's documents. This common provision is also found in Section 18(d) of the Illinois Condominium Property Act ("CPA") (765 ILCS 605/18(d)), Section 25(f)(2) of the Common Interest Community Association Act ("CICA Act") (765 ILCS 160/1-25(f)(2)), and Section 107.75(d) of the NFPCA (805 ILCS 105/107.75(a)). In the event the community instruments of a given association provide otherwise, such provisions (assuming they are valid) shall control over the following generalities:

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