

APRA Advisor

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Association of Professional Reserve Analysts (APRA) is a nonprofit corporation established in 1995 by principals of America's leading reserve study companies. The purpose of APRA is to provide a forum to establish a common base of knowledge, standards of care and professionalism within the reserve study industry.

The **APRA Advisor** is a bimonthly publication designed to expand the understanding of reserve planning and increase awareness of **Professional Reserve Analysts**.

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Planning to Reserve

Homeowner associations across the nation have discovered the advantages of planning ahead for major maintenance by following a well executed Reserve Study. A Reserve Study identifies the building and grounds components that the HOA is responsible to repair and replace that have useful lives of 3 to 30 years. These components require cyclical maintenance so the cost would typically not be included in the annual Operating Budget. And when these repairs come due, the cost is often enormous. If not planned for years in advance, the money would not be there.

A Reserve Study lays out a plan that is fair to all members along the 30 year time line. By dividing up the costs into 360 monthly payments (as in the case of condominiums and other common wall communities), each member pays only the part of that 360 months applicable to their ownership in the HOA. If all members are paying monthly, no member will get stuck paying for someone that didn't. That is what a special assessment is: You just got nailed because those that bought and sold skated on paying their share of these costs.

But your HOA is different, right? Even if these costs have been handled by special assessments in the past, your Board won't continue this clearly unfair method...right? Sadly, many Boards keep trudging the same path because "that's the way it's always been done". Progressive states have realized that special assessment funding is irresponsible and have enacted reserve funding requirements for their HOAs. In those states that haven't, it's incumbent on the Board to plan for these events without being told to. It is simply the right thing to do and to do otherwise is negligent.

Adopting a Reserve Planning philosophy is what the business gurus call a "paradigm shift". There is often

significant resistance to change from certain HOA members who view it as an added cost. These folks like to live on the edge and often have more month left over than money. For them, problems aren't problems until they are long overdue.

While individuals have the right to live on the edge for personal finances, this does not work in a homeowner association where the finances are inextricably linked. Reserve Planning recognizes this phenomena and charts a course where all participants play their part.

While a Reserve Study charts the course, it doesn't establish the policy. A plan without a policy is like a ship without a rudder. It may sail straight for a while but then change course because a new captain is at the helm. A Reserve Policy holds future boards to the original course. It identifies what will be included in the Reserve Plan, how it be funded and restrain future Boards from unilaterally deciding not to follow it.

Since Boards can and do change frequently, having a clear philosophy on reserving is critical. It will help stop the all too common boom and bust cycle of one Board putting money away and the next one spending it.

If your homeowner association has not had a professional Reserve Study performed, do yourself a favor and do it. Having large numbers of units/homes is not the determining factor. Curiously, the smaller the HOA, the more critical a Reserve Study is because the cost per owner goes up. So, get it done and adopt a Reserve Plan & Funding Policy so this paradigm becomes reality.

For a list of credentialed Professional Reserve Analysts (PRA), go to www.apra-usa.com

By Rich Thompson - Regenesi, Inc.
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Insects, Rodents, Birds and Bears

It is that time of the year; things are heating up and the insects are showing up. In fact, in many cases they are moving into your home with you. What do you do about them? And is it your responsibility to deal with them or the homeowner association's? (This article will not address termites because they are often handled uniquely, both in the governing documents and in the civil code. Termites are a subject of their own.)

Generally, if the pest is in your house it is your problem, not the association's. You can turn them into pets, or eradicate them (eradicating is probably better), but once they enter your home, in most cases they are yours. Do check your governing documents to make sure you are not the rare exception, but in all likelihood they are your pests once they are in the home.

The pests can't get into your unit or home unless they come from the common area. The homeowner association has a duty to use reasonable measures to control pests in the common area and to deal with dangerous pests (bees and wasps) or pests that can cause health concerns like pigeons.

However, the association typically has no duty to ensure that the common area is entirely pest-free (assuming that would even be possible) or that pests would not enter your home

Insects. This is the time of year when ants start heading indoors and a signal that the association should begin

increasing the pest control service.

Honey Bees are a challenge. The rules for killing or removing honey bees vary by jurisdiction. In some, you can kill them if they are in the walls, but not if the hive is outside the walls. In others, you cannot eradicate them at all. Africanized bees have spread to the point that hives may not be able to be relocated because bee keepers are afraid of contaminating their hives. In short, if they are stinging insects you should seek professional advice.

Rodents are nasty creatures and can spread disease. They are also prolific, so if you see them or their droppings it is time to do something quickly. You can easily get a rather large infestation that is going to affect your walls, electrical wiring, wiring in your car (if in the garage) – and worse. Like ants, if you are getting a rat or mouse infestation you also need to let the association know. While they may not be able to help you inside your home, they certainly need to be aware and to step up mitigation in the common area.

Gophers are another common rodent and while they are not protected, they are both prolific and recurring. They can be trapped, smoked, poisoned, and in rural areas you can even blow up the tunnels (remember the movie *Caddy Shack?*). However, they tend to come back again and again, particularly if you live near open fields.

Pigeons and swallows are the most common bird problem in urban areas. When pigeons move in it is both unsightly and unhealthy. The only good news is they tend not to occupy an entire community at once, but rather pick a specific building or two. When driven off from that building, the other good news is they typically do not move next door but rather move many blocks away. The bad news is they will eventually move back to a closer building as they get forced to move again.

Swallows also start nesting in the spring. Once they begin to build their nest, disturbing them or the nest is prohibited. Once their offspring are born and they all leave the nest, then you can remove the nest. Be advised they will come back next year to

exactly the same spot, so expect to deal with them every year.

Ducks, geese and other waterfowl have been known to choose the HOA's pool or pond as their new home. If that is where you do not want them, you are going to probably need professional assistance in removing them. Some species are protected.

Lions and Tigers and Bears. Okay, maybe not tigers but in many rural communities mountain lions, bears and other wildlife can be a part of life. The good news is these residents typically accept that as part of rural living. Some of it is self-correcting. In one community, the deer population was becoming a real problem until a mountain lion moved in and thinned them out. Residents in urban areas with ants and rats are usually way more upset than residents in communities with mountain lions and bears. At least the kids can go out and play without being bait.

By Roy Helsing - The Helsing Group
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Neighbor Nuisances

When people live in close proximity, lifestyle clashes are likely. Noise is the most common complaint followed closely by odors, health and sanitation

issues, cigarette smoke and curb appeal. The board is challenged from time to time to sort out various nuisances that interfere with a member's enjoyment of their property. To intervene or not to intervene? That is the question.

Some nuisances are clear violations of law and should be handled by law enforcement. Among these are domestic disputes, out of control parties, abuse of alcohol and use of illegal drugs should all be directed to law enforcement. These are not situations that neighbors or boards are prepared to deal with and there is a chance attempts to do so could escalate to physical altercations. The complainant should be directed to call the police immediately.

Other nuisances, like a neighbor's choice or volume of music, house cleaning acumen, hard stepping ways, or Marlboros can cause ongoing nuisance that are more appropriate for board intervention.

But these issues may come in several flavors: people driven or building design driven or a combination of both. People driven issues are more easily dealt with (STOP doing that!!!), but the board's approach to building design nuisances is more problematic.

New construction generally provides for adequate sound barriers, but older properties often don't. Sound transmission is a very common problem in condo conversions using apartment buildings. In older buildings where common walls, floors and ceilings are wood frame construction, there will often be ongoing noise issues to deal with.

Correcting these soundproofing deficiencies is possible but very expensive. Carpet and sound deadening drywall will help but not totally kill the noise. Installation of hardwood and tile floors in upper units will virtually guarantee an ongoing upstairs/downstairs war. The best the board can do is enact bans on hard surface flooring and encourage greater noise sensitivity between neighbors.

For people generated nuisances not better handled by John Law, the board's

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involvement is certainly called for. In this, the board is challenged to "balance competing interests" such as the upstairs neighbor's need to have a trampoline and the downstairs neighbor's need to sleep. In balancing these interests, the board needs to have an actual chance of reconciling the problem. As one judge put it, "The test of nuisance is not what effects it has on persons of delicate or dainty habits or living, or of fanciful or fastidious tastes, or on persons who are invalids, afflicted with disease, bodily ills, or abnormal physical conditions, or on person who are of nervous temperament, or peculiarly sensitive to annoyance or of disturbance of the character complained".

In plain English, this means that just because someone is bothered doesn't automatically make something a nuisance. People living in close quarters are called on for a higher degree of tolerance. But some just can't adjust. Some folks simply need more space, a wider buffer zone. No degree of board intervention will ever satisfy them short of vacating all adjoining units.

Most long lasting solutions for nuisances are compromises. For example, instead of banning Mr. Trampoline from his passion, maybe he will agree to bounce from 9 am to 7 pm instead of at 3 #\$\$!! am. When settling the nuisance dust between neighbors, creativity and humor is called for (a LOT of humor). The board should deflect those which can be to the combatants or the law, and for those that can't, ply the waters of compromise.

By Rich Thompson - Regensis, Inc.
APRA

Directors & Officers 101

All homeowner associations have the rights, powers and duties of a corporation. Corporations are operated by their directors and officers. In associations, the directors do even more by performing all of the association functions, although they may delegate specific tasks to others. Association members are like shareholders. They have an interest in the corporation but don't run the homeowner association. Three or more owners are elected to the

board.

Fiduciary duties imposed upon board members include two components, undivided loyalty and reasonable business judgment. Undivided loyalty means that each board member must act in the best interest of the association. For example, a board member should vote for a needed increase in assessment or for greater reserves even though the board member personally can't afford it. Similarly, a board member should vote for matters that are necessary or appropriate even though some owners do not agree.

Reasonable business judgment in conducting the affairs of the association is the second requirement of director fiduciary duty. Each director must understand the association business, actively participate, determine what is required for the association to operate, and then vote prudently. For example, securing three proposals on a project is not mandated by law. However, it is a reasonable method to determine a fair price to pay for work.

It's also reasonable to get competent advice in areas that require expertise. Engineering, architecture, law and reserve planning are all areas that require a high level of training to do well. The board is not elected to guess at highly complex issues but to use prudent judgment based on competent input. While that input may cost money, the consequences of uninformed decisions are usually much more costly.

In addition to these fiduciary standards, the board is responsible to:

- ✓ Provide for the operation, care and improvement of the common elements.
- ✓ Prepare, adopt, and distribute the annual budget.
- ✓ Order a reserve study done from a qualified professional so that the board can properly schedule and collect funds for major renovation.
- ✓ Levy, collect and spend assessments according to the approved budget.
- ✓ Hire qualified contractors to maintain the property.
- ✓ Obtain adequate and appropriate kinds of insurance.

- ✓ Adopt rules and regulations regarding the use of the common area.
- ✓ Keep detailed and accurate financial records of the property operation.
- ✓ Enforce provisions of the governing documents, rules and regulations

Board officers are usually appointed by the directors themselves. The directors vote on all contracts and policies while officers execute specific duties authorized by the governing documents and the directors. Each association should have at least a President, Secretary and Treasurer.

President. Conducts board and annual meetings; handles the day to day activities of the association (deals with management, vendors); signs contracts approved by the board;

Treasurer. (Unless performed by management). Maintains all of the financial records and documents of the association; May or may not be signatory on financial accounts of the association; Responsible for all financial accounts (checking, savings, CDs, etc); Reports income and expenses to the board.

Secretary. (Unless performed by management). Maintains the association business records (corporate papers, contracts, correspondence, communications, insurance, owner files); records meeting minutes; responsible for producing newsletters.

Ideally, the directors and officers provide the leadership to adequately protect and enhance the association's and owners' property through prudent administration. This requires careful planning and regular communication.

By Rich Thompson - Regenesi, Inc.
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Spring Checklist

Finally! The sun is shining and plants are poking their heads out of the ground. But before you get mesmerized by Spring Fever, do a quick "walk about" for post winter grounds and building maintenance:

Buildings. Look for sagging gutters,

loose window frames, deteriorating concrete or brickwork, missing roof shingles, or water damage under.

Landscaping. Clean up fallen branches and leaves. Use a mulching mower to spread clippings evenly over the lawn and fertilize naturally. Loosen the soil around perennials; plant annuals or a vegetable garden. Prune shrubs and trees; repair sprinkler system.

Patch and Paint. Repair siding; patch and paint as necessary.

Turn on Outside Water. Hook up the hoses and inspect for cracks or leaks. Replace old washers.

Windows. Wash and repair caulking.

Check Vents. Make sure all exhaust fans and are clean and remove lint buildup from the clothes dryer vents.

Repair Wood Decks. Hammer loose nails or replace them with galvanized deck screws. Replace any broken boards or rails. Rent a power washer to clean dirt and mildew from the wood, then apply an all-weather sealer or stain. Set up patio furniture.

Repair Fences. Repair broken fence boards and paint or seal them as needed.

Prepare for Pool Opening. Purchase pool chemicals and needed equipment. Schedule and perform cleaning. Clean pool furniture.

Spring Clubhouse Cleaning. Remove cobwebs and wash grimy areas. Wash heat registers. Remove drapes for dry cleaning. Clean carpeting and bathrooms. Wax floors. Polish woodwork.

Sweep parking lot and private streets.

Hopefully all you have to do is identify the work and assign it, not actually do it. But put these things in motion so your community can hit the ground running. It's Spring! It's Spring!

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