

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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Case for Maintenance

One of a homeowner association's primary charges is maintaining the common elements. When done properly, the members are happier and homes sell for more. Proper maintenance requires consistency, planning, funding and is necessary to:

1. Protect and maintain member property values.
2. Protect the board from personal liability, and
3. Preserve legal options when a contractor fails to perform renovation properly.

Maintaining Property Values. The board has direct influence over member home values, particularly in common wall communities with extensive common elements. How well those common elements are maintained directly affects how quickly homes sell as well as for how much. When maintenance slides, buyers (except bargain hunters) *do* take notice. Curb appeal is the number one key to home sales.

Protect from Personal Liability. One of the board's basic duties includes the duty to maintain, repair and replace common elements. What if the board ignores that charge? HOA boards are protected by the "Business Judgment Rule", a legal theory designed to protect directors from personal liability for decisions made while on the board. However, the Business Judgment Rule does not protect against failure to "*exercise ordinary and reasonable care.*"

Failure to act is no defense. The board members must act prudently to protect themselves. This issue also directly affects the effectiveness of Directors & Officers (D&O) Liability insurance. As a wise insurance agent once said, "D&O doesn't defend against stupidity."

Preserving Legal Options with

Contractors Many builders lean toward low cost designs and materials that are quick to assemble. Speed of construction can run roughshod over quality of construction due to lack of proper detailing. Since one facet of construction often conceals another (framing is covered by sheathing which is covered by vapor barrier which is covered by siding which is covered by paint, etc.), haste generally means sloppy installation that has dire consequences. Most construction defects, however, don't reveal themselves immediately. It may take years.

In the meantime, the HOA is charged with proper, adequate and consistent maintenance. That means that the roof is kept clean and in good repair, the gutters are kept clear so they don't overflow, siding is recaulked and renailed periodically, etc. Failure to do these things can be used by a contractor as a defense for poor construction. If the HOA is faithful in doing its part, the case for construction defect is easier to prove.

Does your HOA have an adequate maintenance plan in place? If not, make the case today to ratchet up and get moving. There is simply too much riding on failing the charge.

By Rich Thompson - Regensis, Inc.
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Who Needs Reserves?

If there is one thing people hate almost as much as an assessment increase, it is properly funding reserves. Some look at those reserve funds, chock full of unused cash just sitting there, and think, "Hey, let's use that money now! That way, we don't have to raise assessments this year!" Others look at the reserves and wonder if perhaps it's okay to defer reserve contributions until a time when finances loosen up.

Hogwash.

The fact is, if your homeowner association has repair and replacement obligations, you really can't have a robust enough reserve fund. Even a good reserve study can fail to plan for expensive repairs like dryrot and components like roofs and siding that fail prematurely because they were not installed properly. This is especially problematic if your governing documents are at all ambiguous about what should be reserved for.

If your HOA reserves for the expected life of a product that fails significantly sooner, a strong reserve account can help prevent special assessments.

Special assessments can be catastrophic for a community, resulting in lending problems and foreclosures.

Some owners will run for the board on a platform of "No Assessment Increases," and some board members are proud if they never increase assessments. However, a refusal to increase assessments when necessary to keep up with inflation and reserve obligations can be seen as a failure of fiduciary duty by the board.

By no means should boards increase assessments willy nilly or ignore the impact that increased assessments can have on owners, but operating a business costs money and if a board member wants to be protected by the business judgment rule, that board member needs to look at budgeting from a business perspective. Don't skimp on reserves.

By Lindsay Smith - Attorney [APRA](#)

Constructive Conflict

While conflict is inevitable in a homeowner association, there are choices about how it's dealt with. When handled constructively, conflict can

create a healthier awareness and better relationships.

Conflict rarely gets better with time. If allowed to fester by avoidance or grow by ongoing aggression, the feuding parties become more entrenched in their positions and arriving at resolution becomes more difficult. Resolution is most easily achieved early on. Here are the steps to getting it done:

Speak Directly. Speaking directly with the person with whom you have the problem, assuming that there is no threat of violence, will usually resolve the issue. Meet in person or talk over the phone to explain your concern in a positive, respectful way. (Anonymous letters, banging on the wall or complaining to your neighbors does not qualify.)

Plan Your Approach. Think about what you want to say in advance. Talk about the problem as you see it and how it affects you. Help the other party understand that a problem exists and invite them to help you find a solution that you can both live with.

Choose a Good Time. Consider a time when you think the other person will be most receptive. A quiet place where you won't be easily disturbed, perhaps with a cup of coffee, can make it easier to talk and listen. Avoid cocktail hour.

Communicate Openly and Honestly. Express a positive attitude about working together to find solutions. Blaming the other person makes it harder for him to hear and understand your concerns. Remain open to a different perspective than your own and try to understand it.

Listen. Give the other person a chance to explain their view, concerns and feelings. Summarize what you hear and ask questions to clarify your understanding. Understanding doesn't mean that you agree. But just echoing another's thoughts goes along way toward compromise.

Open Up. Get the issues and feelings out in the open. Don't ignore the part that seems too "difficult" or "minor". Your resolution will be durable if the

issues are considered and addressed.

Consider Options. Be creative and offer solutions that you both think might work. Cooperating to find a solution is much more effective than one person demanding that the other change.

Be SMART. SMART stands for Specific, Measurable, Achievable, Realistic and Timely. For example, "Beginning tomorrow, I'll turn down my music by 9:30. If I forget, call me and let me know."

Keep the Door Open. Agree to revisit the issue to make sure your agreement is working. Communicate immediately if the solutions are not having the desired effect. Congratulate yourselves on working together to resolve the problem.

Building a lasting resolution from conflict can not only solve an immediate problem, but opens the door to better understanding and even, possibly, a lasting friendship. Don't preclude the latter. Build on your success and miracles can happen.

By Rich Thompson - *Regenesi s, Inc.*
APRA

Ignoring the Obvious

Reserve studies recommend scheduling and funding models to keep major building and grounds components like painting, fencing and paving in good repair. Unfortunately, the study recommendations are often being ignored by HOA boards or only partially implemented. As HOAs reach around 20 years old, many of the most expensive repairs come due. HOAs that are not prepared face unpopular and unfair special assessments.

The natural consequence of this kind of unpopular action is for the board to defer and delay. The thinking is, what's a year or two more going to matter? By then, the directors might be able to sell their units and avoid the unpleasantry altogether. Meanwhile, Rome burns.

When your HOA is caught in this kind of quagmire, it's best to call in a

Professional Reserve Analyst (PRA) that can present a proper reserve study and the case for urgency. Deferring maintenance always costs more money and dampens sales of homes. PRAs don't have the political problem that board members do of being neighbors. PRAs can explain the cold hard realities of raising the funds and getting the job done and the dire consequences for failing to do so.

PRAs can also recommend material and design upgrades to reduce future repair and replacement costs plus interval maintenance that will significantly extend the useful lives of some components. With longer lives, comes reduced owner contributions. Yippee!

One oft overlooked advantage of effective reserve planning is strategic investing of the funds. The study reveals when funds will be needed and thus allows available funds to be

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One option that HOAs use to finance

urgent repairs is bank loans. Unfortunately, when HOAs borrow money, it's considered a commercial loan and both the rate and loan fees are considerably higher than home loans. These loans are also short term, five to ten years and HOA loans require monthly payments just like any other. Lenders require much hoop jumping to get them. There are only a few lenders that will do them at all. There's simply no free lunch and this one comes at a premium price.

The HOA should not finance special assessments. If certain owners lack the cash to pay, they can get a home equity loan or draw on a credit card. Home equity loan interest is deductible for this purpose.

For a variety of reasons including disability, divorce, retirement and unemployment, some HOA members may not be able to fulfill their financial obligations to the HOA. But consider this: shelter is only trumped by food as a life priority. If a member is unable to afford HOA expenses, it may be time for a lifestyle adjustment. The HOA simply cannot fulfill its financial obligation when it plans according to the weakest link. While this sounds cruel, remember that there is no government bail-out for HOAs. If some don't pay, the rest must ante up.

Most members can come up with their share of cash when pressed. For the rest, it may be time for a heart to heart about downsizing.

All things wear out sooner or later. A reserve study analyzes those assets that the HOA is responsible for, projects future costs, current funding needs and a schedule for keeping the assets in good repair. The approach is fair to all owners, now and in the future, and ensures repairs are done when needed. Result: happy members with sustainable home values. Ignoring the obvious has obvious pitfalls. As the saying goes, "If you find yourself in a hole, stop digging." Contact a Professional Reserve Analyst for a pit stop.

By Rich Thompson - *Regenesi s, Inc.*
APRA

Roofing Q & A

Question: I am the treasurer for a condominium association. We are in dire need of replacing our roofs and need a special assessment to cover the costs. We are thinking about changing roof type to save money. We are thinking about offering a payment option but we need to make sure we get the money we need to cover the costs. How do other HOA handle this issue?

Answer: Special assessments are unfair because prior owners have not contributed their fair share to future roofing costs. All HOAs should have a 30 year reserve study done that provides a funding plan for major maintenance items like roofs.

There is more than price that goes into a roofing decision. What kind of roof do you currently have? Do the owners not like the type or color? Has it been an ongoing maintenance problem? What kind of longevity or warranty do the alternative roofs have? From an appearance standpoint, changing roof types (like paint colors) is highly emotional and should be handled carefully. Changes should be discussed in open meetings with samples available for show and tell. Experts should be available to comment on the relative merits of each. Consider inviting someone like an architect to comment. The opinion is less likely to be biased. Also discuss possible impact on the market values by asking input from local real estate agents.

If the HOA plans to special assess and allow payments remember that each payment is a potential collection problem. Instead, each owner should tap a home equity loan, line of credit or credit cards to raise the necessary money.

Question: I live in a condominium and a roof leak damaged my ceilings. Should the HOA repair the damage?

Answer: If the HOA is responsible for roof maintenance and is negligent in keeping the roof in good repair and your unit gets damaged, the HOA should pay for repairs to your ceiling. If, however, the roof leaks and the board or management has it repaired as

soon as possible, the HOA would pay only for the roof and repairs to other common elements of the building but not to the interior finishes a unit.

The key word is "negligence". Negligence would apply if the HOA did not respond or ordered minimal repairs which allowed the leaks to continue. As long as response is timely and adequate, negligence does not apply.

Question: Is it permissible for individual condo unit owners to pay for their own roof replacement?

Answer: Condo owners typically don't own their roofs unless the condos are stand alone units. So common wall condo roofs belong to and are maintained by the HOA. While lack of funds may force doing only a portion of the condo roofs, for example two of five buildings, doing the roof over one condo makes little sense since the same unit owner is responsible for a share of the repairs of all unit roofs. If the HOA is short of reserves to replace overdue roofs, a special assessment should be passed to raise the money. There are few repairs more critical than those dealing with roofs.

Question: I recently had a leak in my unit that damaged wall and flooring and I am in a battle with the HOA regarding who is responsible for the repair charges. My unit is in a mid-rise condominium. The leak was coming from a rooftop chiller pipe that feeds the air conditioning units for me and several neighbors. The plumber determined that the pipe was leaking because of improper soldering. The board says neither the plumbing repair or damage to my unit is the HOA's responsibility.

Answer: This is a classic example of why all HOAs (particularly the common wall kind) should have a clear Areas of Maintenance and Insurance Policy that defines who (owner or HOA) is responsible. This policy should identify all building and grounds components and where the dividing line is between common and non-common. Most governing documents are not precise in defining this so the board needs to adopt a policy that gets more specific. This policy not only helps

avoid disputes but directs the various insurance companies concerning their responsibility to cover certain damage claims. The importance of this policy cannot be understated.

Typically, the HOA is responsible for repairing common plumbing lines. Since the plumbing line in question serves multiple units, it is considered common. Damage repair to units caused by the leaking pipe, however, is usually the unit owners' responsibility unless the HOA neglects to perform plumbing repairs in a timely manner when informed by a unit owner. **APRA**

Construction Terminology

Contractor - A gambler who never gets to shuffle, cut or deal.

Bid Opening - A poker game in which the losing hand wins.

Bid - A wild guess carried out to two decimal places.

Low Bidder - A contractor who is wondering what he left out.

Engineer's Estimate - The cost of construction in heaven.

Project Manager - The conductor of an orchestra in which every musician is in a different union.

Critical Path Method - A management technique for losing your shirt under perfect control.

OSHA - A protective coating made by half-baking a mixture of fine print, red tape, split hairs and baloney--usually applied randomly with a shotgun.

Delayed Payment - A tourniquet applied at the pockets.

Completion Date - The point at which liquidated damages begin.

Liquidated Damages - A penalty for failing to achieve the impossible.

Auditor - Person who goes in after the battle is over to bayonet the wounded.

Lawyer - Person who goes in after the auditors to strip the bodies. **APRA**