

# The Full Cost of Self Management

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The number one reason homeowner associations self manage is to "save money." But this myopic attitude often leads to avoidable problems and unnecessary headaches, and in many instances, higher costs over time. The benefits provided by a professional management company often transcend and outweigh the monetary cost of monthly management fees. The troubles self-managed associations face can be grouped into three primary areas:

1. Financial/Bookkeeping/Reserves
2. Maintenance/Administrative
3. Governance/Legal

## Financial/Bookkeeping/Reserves:

Finances account for a significant portion of a board's responsibilities. But it is not as simple as merely collecting assessments (dues) and paying bills. There are no less than 8 separate Washington statutory provisions dictating how a non-profit corporation condominium or homeowner association must manage and report its financial accounts. Also, there are separate audit requirements that depend upon a condominium or homeowner association's size (state statutes provide a methodology for waiving an audit if certain conditions are met).

Association funds need to be segregated and cannot be commingled. Reserve funds must be kept in a separate account and must be disbursed on the signature of two officers or directors of the association. Without proper education and training, it is easy for association boards to find themselves in situations where they unknowingly violate state law or their own governing documents; thus, exposing the association to unnecessary legal liability.

Some condominium and homeowner association boards do not fully understand the rationale behind reserve funding and feel that putting money away each month for reserves adversely affects the association by merely raising monthly assessments. These boards believe that future owners should pay for a component when it needs to be replaced. Layperson condominium association boards often struggle with the reserve study law (RCW 64.34.380-.392) adopted in 2008.

Unless doing so would impose an unreasonable hardship, every condominium in Washington must have an onsite reserve study conducted every three years by a professional reserve study consultant and less comprehensive updates prepared annually in years between. A professional reserve study acts as a continuous "blueprint" for the future. Board members constantly change and future board members may not understand the logic or reasons why prior reserve funding decisions were made. A professional reserve study firm can discuss the reserve study, the methodology used, and considerations that went into the analysis years after the reserve study was conducted.

Professionally conducted reserve studies will reduce claims of financial mismanagement because the board sought out the advice of independent reserve study experts.

## Maintenance/Administrative

A high percentage of self-managed properties do not have a maintenance plan or log for performing and documenting maintenance on the property. Consequently, inefficient, redundant and oftentimes deferred maintenance arises. Deferred maintenance ordinarily leads to more expensive repair and maintenance over time. Examples of deferred maintenance include extending the recommended painting schedule from 7 years to 10 or 12 years, failing to top coat decks to keep them waterproof, and not sealing asphalt on a regular cycle. Having to prematurely replace siding that is cracked and warped, rotted decks and parking lot or roadway asphalt due to lack of proper maintenance costs more money in the long run. Underfunded reserves, shortsightedness and inexperience are the main culprits for deferred maintenance.

Self-managed boards often lack the experience or contacts within the industry to retain the best service providers. Consequently, some work may be performed through crisis response utilizing incompetent or uninsured contractors, in lieu of proactive planning and effective management. These associations may also perform work themselves, through work parties, to save money. This can lead to using the wrong products or failing to meet building codes. One such example is an association that replaced elevated walkways railings on a three-story building. Unfortunately, the spacing between the slats was too wide, the wrong cap was used and substandard screws and material were used to attach the railing to the building supports. The result was structurally unsound and unsafe railings causing a safety hazard to owners and guests. The association had to hire a contractor to redo the entire project; thus costing the association much more money than if the board had contracted with the professional in the first place.

Not all self-managed problems relate to maintenance and money. Often, self-managed associations rely upon a few key individuals to step forward to oversee the community's day-to-day administrative and operational business. These individuals are tasked with responding to calls from owners at all hours of the day and night. They also have to respond under tight timelines to lenders, insurers, real estate agents and others regarding home sales and refinancing. These individuals need to keep abreast of ever changing mortgage, insurance, banking and real estate disclosure laws. These same board members usually end up enforcing the association's governing documents, having to perform compliance patrols, send out warning and violation notices and conduct hearing boards. Self-managed associations often burn out their volunteers or simply run out of motivated, qualified members to oversee and manage their communities.

## Governance/Legal

Self-managed homeowner association board members often do not have the background, training or experience to recognize potential legal hazards or to act in strict compliance with specific statutes or general laws. All too often, an association board may act in good faith, but in contravention of one or more laws or standards. Unfortunately, determination of whether that action or omission was reasonable is sometimes left for a jury to decide.<sup>1</sup> Common missteps involve an association board that asserts itself into the unit rental process, neglects to properly file governing documents and amendments, fails to file annual corporate or renewal documents or neglects to follow Washington's corporate legal governance requirements.

A community association is created by a declarant who drafts and files original corporate and governance documents. The declarant retains control of the association until turnover to the owners, which takes place many months or years later. Accordingly, a homeowner association has absolutely no input into creation of its corporation or preparation of its governing documents. Though declarants ordinarily are experienced and sophisticated entities, sometimes issues slip through the cracks or governing documents are written in such a manner as to limit an association's ability to conduct business and preserve its common property. A self-managed association board often lacks experience to identify these potential dangers. The situation is not unlike new parents who are escorted to the hospital parking lot by hospital staff with a newborn baby in their arms. The parents are given a blanket, bottle and basic care instructions, but after a day or two of the hospital attending to every need, the parents are now alone and independently need to care for the child. First-time parents usually rely on a network of family and friends to assist them on the first years of the newborn's life. The same holds true for homeowner association boards. Well qualified property managers are the experts to whom a board can rely upon to appropriately and reasonably help manage a homeowner association.

Other than the specific missteps noted above, other examples of self-managed association pitfalls include imposing improper limitations on satellite TV dishes (in violation of the Federal Telecommunications Act), denial of certain rental leases (in violation of the Fair Housing Act), failure to properly follow corporate governance (in violation of the Washington Nonprofit Corporation Act), failure to respond properly to homeowner disputes (in violation of ordinary and reasonable care) and failure to update and provide resale certificates (in violation of the Washington Condominium Act), to name but a few.

In order to avoid unnecessary risks, an association board may wish to explore the ordinary and reasonable step of hiring an experienced association management company to help guide them through the sometimes precarious, yet always eventful, experience of community association governance and management. ■

<sup>1</sup> There is a common misperception that a condominium association board other than a board run by a declarant has a fiduciary duty to its homeowner members. This is not accurate. The proper duty is defined as "ordinary and reasonable care," as codified in RCW 64.34.308(1).



—Daniel Zimberoff is a Shareholder of Barker Martin, P.S., a Pacific Northwest law firm focusing on complex civil litigation and homeowner association general counsel representation. Daniel is an active member of WSCAI.



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