

Enforcing CC&R's, Maintaining Property, Managing Budgets

Presented By:
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Why these topics?

- CC&Rs (i.e., Declarations) are the base authority for:
 - Assessments to establish funds for maintenance and other budget items
 - Jurisdiction to enforce requirements on both common property and member property
 - Obligations to Maintain, Repair, and Replace
- Maintaining Property is key role of Association AND Members
 - Who does what?
 - How do you approach the problem?
 - Who pays?
- Budget is essential immediate-term planning tool for the Association
 - Enables maintenance, repair, and replacement
 - Is based on assessment power afforded by CC&R's

Overview

- Review Levels of Authority
- Enforcement of CC&R's
- Maintenance, Repair & Replacement
- Budgets and Finances
- Questions

Levels of Authority

- Governing Law (Condo Act/Homeowners' Associations Act; Corporate Law; Common Law)
- Declaration
- Bylaws
- Rules & Regulations
- Committee Decisions
- Prior Actions





Enforcement of CC&R's

■ HOA Act (RCW 64.38):

“Unless otherwise provided in the governing documents, an association may:

(1) Adopt and amend bylaws, rules, and regulations;

(11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;

* * *

(12) Exercise any other powers conferred by the bylaws;

(13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(14) Exercise any other powers necessary and proper for the governance and operation of the association.”



Enforcement of CC&R's

■ WCA (RCW 64.34):

“... subject to the provisions of the declaration, the association may:

(a) Adopt and amend bylaws, rules, and regulations;

* * *

(k) Impose and collect charges for late payment of assessments pursuant to RCW [64.34.364](#)(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

* * *

(p) Exercise any other powers conferred by the declaration or bylaws;

(q) Exercise all other powers that may be exercised in this state by the same type of corporation as the association;
and

(r) Exercise any other powers necessary and proper for the governance and operation of the association.



Enforcement of CC&R's

- Declarations & Bylaws *may* create intermediate steps before court enforcement
- Other tools include mediation, fines, peer pressure . . . ?
 - Association must provide for notice and opportunity to be heard if its rules will terminate access/use of common property or impose fines for violations
 - Must adopt and mail any fine schedule to each owner prior to imposing fines

Maintenance, Repair & Replacement

A Problem-Solving Workshop

- The Problem:
 - Mrs. DeLite has an electrical problem in her condominium unit – her breaker switches keep tripping off. She wants Association to arrange and pay for the electrician to come out, identify problem, and fix it.
- The CC&Rs:
 - See Handout
 - Who is responsible for the problem? Why?
- An approach to problem solving
 - Identify the scope of the problem
 - Determine who has authority and responsibility to act
 - Consider different approaches to the problem
 - Form plan of action
 - Communicate plan
 - Monitor and evaluate
- Break into 2 groups and brainstorm using steps for 5-10 minutes

Budget and Finances

The 3 Phases of Fiscal Management:

1. Planning

- Budget

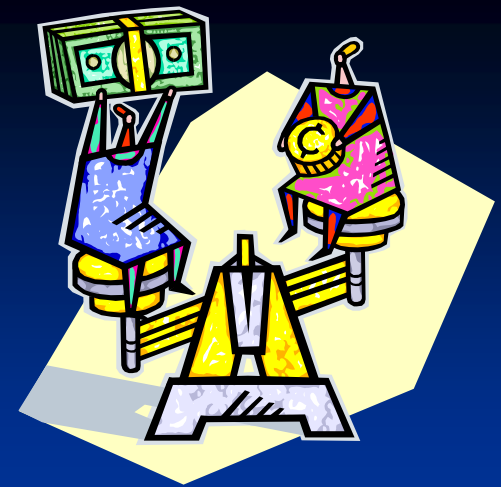
2. Operation

- Balance Sheet
- Income and Expense Statement (P&L)
- Budget Variance Report
- Accounts Receivable Report
- Accounts Payable Report
- Bank Reconciliation Report

3. Evaluation

- Compilation
- Review
- Audit

Budgets



- Within 30 days after adopting proposed budget, the Board must:
 - provide a summary of the budget to all unit owners;
 - Adoption process is required to be in bylaws
- If the board fails to adopt a budget, the budget for the previous year remains in effect

Budgets & Financials

WCA:

- At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles.
- Condos of 50 or more units must undergo audit by CPA unless waived by 60% of non-declarant controlled voting interests
- Association funds shall not be commingled and shall be kept in accounts in the name of the association
- Association reserve funds shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association

Budgets & Financials

HOA:

- The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status.
- At least annually, the association shall prepare a financial statement of the association. Associations with annual assessments of fifty thousand dollars or more shall be audited annually by CPA unless waived by 67% of votes cast by owners.
- Association funds shall not be commingled and shall be kept in accounts in the name of the association

[RCW 64.38.045]

Budget & Finances

1. Understand *terminology* used with financial statements;
2. Get help to *read and understand* basic financial statements;
3. Increase your *comfort level* with financial reports;
4. Gain *experience interpreting* financial statements and determining financial difficulties.

Budget & Finances

ANNUAL BUDGET

**A Budget is the Fiscal Plan for the
Community adopted by an
Association
for a fiscal or calendar year.**

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- The budget is tied to the power to Assess in the CC&R's – Don't budget for things you don't have jurisdiction over!

# Budget & Finances

## BUDGET

- Method used to develop a Budget
  - Governing documents and State Law

**Expenses + Reserves = Assessment Income**

**Expenses + Contingencies + Reserves = Assessment Income**

**A Budget must be balanced:**

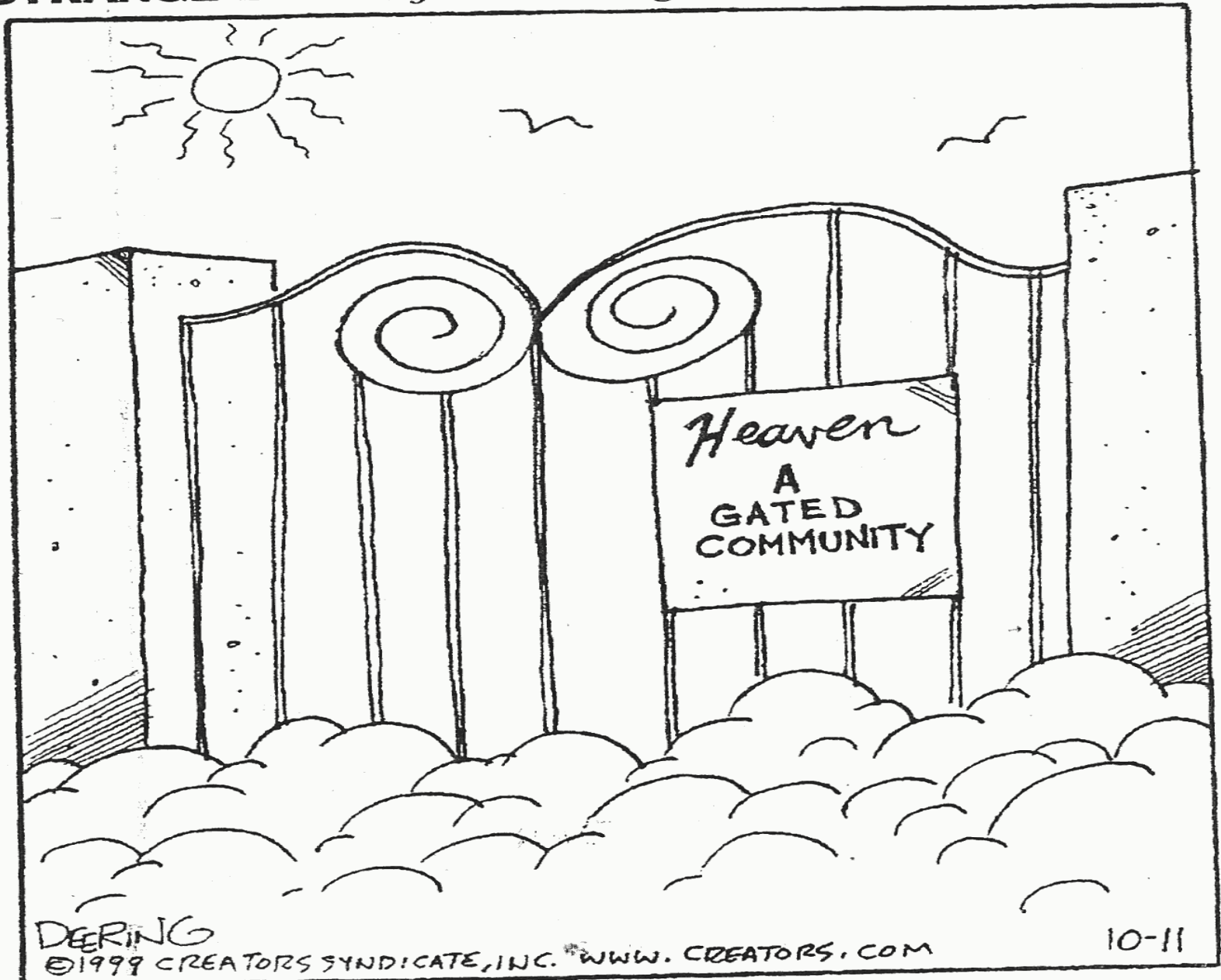
**TOTAL REVENUE = TOAL EXPENSES**

# Maintenance Plans



- Not statutorily required
- In Oregon (future in Washington?): Prepared in conjunction with reserve studies
  - “The reserve study shall include a 30-year plan for the maintenance, repair and replacement of common elements and association property...”
- In Oregon: Amendment to current reserve study statutes

**STRANGE BREW** / John Deering



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# Questions?



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CONSTRUCTION DEFECT  
AND  
HOMEOWNER ASSOCIATION ATTORNEYS

*A Professional Services Corporation*