



Budgeting in These Challenging Economic Times

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Overview

- Basic budgeting rules
- Special areas of concern
 - Bad debts
 - Prior year deficits
 - Snow
 - Hurricane Irene
 - Contingency line item
 - New replacement fund study
 - Deferred maintenance fund
- Other sources of revenue
- Collections



BASIC BUDGETING RULES



The Rules

- Do your homework
 - Determine estimated current year expenses
 - Obtain contracts signed and in effect for upcoming year. Obtain estimates for planned projects
 - Review prior year audited financial Statements
- Estimate upcoming year expenses
 - Be conservative
- Fees should equal expenses less other income

Example: Landscaping Expense

- Year to date expenses are \$74,900 (all contract payments) (next year contract calls for 5% increase)
- Two months payments left on landscaping contract. (\$10,000 plus tax each payment)
- The landscaper informed you that fall clean up would be approx \$30,000 due to the hurricane. (usually \$20,000)
- Estimate for this year-- $\$74,900 + (2 * 10,700)$
 $= \$96,300 + 30,000 = \$126,300$
- Next year should be \$101,115 (contract plus increase) plus \$25000 (usual plus some extra = 127,000 (rounded for a little extra)



SPECIAL AREAS OF CONCERN



Bad Debts

- Increasing
- Estimate amount of current year fees that may not be collected
 - Discuss with attorney what is not collectible
 - Consider unit owners significantly in arrears
 - Include all fees assessed to that unit
 - Late fees
 - Legal fees
 - Special assessments



Prior Year Operating Fund Deficits

- Additional assessment or special assessment
- Budgeted line item expense
- Budget for planned surplus



Snow

- Very difficult to budget
- Look at last year
- Better to budget more than less
- Monitor carefully for overages



Hurricane Irene

- Effect on next year budget
 - Trees
 - Landscaping
 - Roof repairs
- Effect on replacement fund
 - Replacements earlier than anticipated?
 - Early updating of study?
- May cause excess expenses/deficit in current year



Contingency Line Item

- Purpose
 - Excess snow costs
 - Unexpected repair projects
- How much?
 - Three to five percent of total expenses before replacement funding and deferred maintenance funding



New Replacement Fund Study

- Review funding options to determine amount to include in budget
- Consider cash flow requirements vs. benefit
- If due for a new study, then include in budget
 - Consider what type of study
 - Full
 - Update
 - Update with site visit



Deferred Maintenance Fund

- Consider for “smoothing out” effect of expenses occurring less frequently than annually
 - Mulching
 - Painting
 - Repairs/maintenance not capital in nature



OTHER SOURCES OF REVENUE



Consider Other Sources of Revenue

- Membership fees/working capital contributions
- Roof rental income (antennas) and marketing fees (Verizon/Comcast)



COLLECTIONS



Importance of a Uniform, Written Collection Policy

- Control skyrocketing delinquencies
- Comply with FHA guidelines
- Satisfy fiduciary obligations of board members



Claims of Lien

- Record with the County Clerk pursuant to N.J.S.A. 46:8B-21
- Accelerate assessments first if permitted to do so by governing documents
- Helps establish a secured claim if owner files bankruptcy

Claims of Lien *(cont.)*

- Possibly a 6-month priority if recorded before the Association is served with a foreclosure complaint or a Notice of Lis Pendens is recorded in connection with a foreclosure action by the first mortgagee
- Although the foregoing statute applies to condominium association, homeowner associations can file similar liens, but will not enjoy a 6-month priority



Special Civil Part or Law Division?

- If the amount of the debt is under \$15,000, suit may be filed in the Special Civil Part in the county where the defendant lives
- If the amount is close to the \$15,000 jurisdictional limit, file in Law Division
- Perform an analysis early on to determine if the unit has equity, since the answer will impact on litigation strategy



Special Civil Part or Law Division? (cont.)

- Move through the process as quickly as possible
- Find a reliable and economical process server for those occasions when the SCP clerk is unable to serve the owners by mail



Special Civil Part or Law Division? (cont.)

- Unless one has information that the unit owner has an ownership interest in real estate other than the unit in issue, it may not be wise to docket the judgment in Trenton, since you have already recorded a lien against the unit

Special Civil Part or Law Division? (cont.)

- Determine if the client has retained copies of checks tendered by the owners (when they were actually paying their assessments), since this will give you a place to first attempt a bank levy before asset discovery
- Serve an Information Subpoena if you do not have any idea about the defendants' assets (including where they work)



Special Civil Part or Law Division? (cont.)

- If the defendants fail to answer, consider asset searches before pursuing a motion to enforce litigant's rights. It may be more cost effective
- Levying on bank accounts or wages is a good way to open communications with a delinquent owner when all other efforts have been fruitless



Foreclosing claims of lien

- Serve a notice of intent to foreclose
- Review equity analysis as it will affect litigation strategy
- Filing the foreclosure complaint
- What are the banks doing and how does that affect an Association's strategy?



Bankruptcy Issues

- Chapter 13 v. Chapter 7
- Procedures
 - File a notice of appearance
 - File a proof of claim
 - If it's a Chapter 13, decide if there is a basis to object to the plan
 - Instruct management to “split” the ledgers. The post-petition assessments should be treated as if the unit was sold and a new owner in title. Payments under the plan must be applied to pre-petition debt



Bankruptcy Issues *(cont.)*

- Procedures *(cont.)*
 - Determine if the owner is making post-petition payments, which are not dischargeable, follow up with letters to debtors' counsel and if that fails to achieve payment, consider a motion to vacate the automatic stay to pursue collection in state court
 - Do not dun the owners for pre-petition debt, as it will expose you and the association to statutory sanctions and damages



Bankruptcy Issues *(cont.)*

- Procedures *(cont.)*
 - If the bankruptcy case is dismissed prior to discharge of the debt, it is as if the bankruptcy had never been filed. It is a good time to record liens or update them, since it is not unheard of that a subsequent filing may occur or the case be reinstated



Good Ideas to Reduce Legal Fees for Collections

- Maintain accurate contact information for owners and tenants (mailing addresses, email addresses, telephone (cell) numbers, copies of leases, etc.)
- Attachment of rent from tenants
- Suspension of privileges such as parking and pool
- Sensible payment plan agreements

Questions?

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