

Condo Insights

#77 – Capital Improvements and Special Assessments

Over the years, we've run across a number of condo association governing documents that require unit owner vote if the association board wants to implement a special assessment for capital improvements. But what exactly is a "capital improvement"? To some, a capital improvement specifically pertains to an addition to the association common elements. To others, capital improvements also include major repairs, rehabilitation and/or replacement of existing common elements. What exactly is a "capital improvement"?

A capital improvement for a condominium, community or homeowner's association is generally defined as a permanent structural enhancement, change, addition, or major renovation to the association's common elements that increases the property's value, increases its utility, and/or appreciably prolongs its useful life. Unlike routine repairs which restore an item to its original condition, capital improvements are substantial, long-term investments that modernize the property. As such, they are capitalized, added to the asset's cost basis, and depreciated over time.

To qualify as a capital improvement, a project must meet three conditions. First is permanence - It is added to the property in a way that removal would cause material damage. Second is value enhancement - It substantially increases the overall value of the association property. Third is life extension - It significantly prolongs the useful life of an asset beyond its original expected lifespan.

The distinction between capital improvements and routine maintenance is crucial for budgeting and taxation. Replacing the entire building roof, installing new elevators, upgrading the entire fire alarm system, adding a clubhouse, or converting a parking lot into a garden are examples of a capital improvement (or capital investment). Patching a roof leak, repairing a fence, painting an existing room, or replacing light bulbs are examples of routine maintenance.

There are different types of capital improvements within condo associations including structural alterations, infrastructure upgrades, safety upgrades and landscaping. Structural alterations include adding a new deck, patio, or room to the clubhouse. Infrastructure upgrades include installing a new energy-efficient HVAC system, upgrading electrical systems, or replacing all windows. Safety upgrades include installing security cameras/controlled access, replacing old pipes, or adding an emergency generator. And substantial new landscaping projects that alter the grounds, such as adding a new sprinkler system are considered capital improvements.

There are legal and financial considerations. Boards must check their governing documents as they often contain specific definitions of what requires owner approval, but governing documents themselves do not generally define capital improvements. The larger the project and greater the expense, the more important that a board rely on advice from its property manager, accountant and attorney.

Capital improvements are typically funded through reserve accounts, special assessments, or loans rather than the regular operating budget. However, some associations may implement a special assessment for capital improvements, then add the one-time special assessment to the monthly condo fee spread out over a period of time to make payments manageable for members.

Many association documents require a membership vote if the improvement exceeds a certain dollar amount or to authorize a special assessment or loan.

While it's generally good practice to require member authorization for the board to borrow money, not all capital improvements and special assessments should require member approval. Condo docs often require a member vote for special assessments to protect owners from excessive, unexpected financial burdens and to limit board power on non-essential, expensive projects. These voting requirements, aimed at ensuring accountability, usually apply when assessments exceed a certain dollar amount, a percentage of the annual budget, or are for non-emergency improvements.

There are valid reasons for requiring member authorization. While boards can often pass emergency or small assessments, member approval acts as a check against board overreach for high-cost improvements or discretionary projects. Because special assessments are extra fees outside the regular budget, a vote allows members to have a say in major, unexpected expenses. Ultimately, the association's specific governing documents stipulate when homeowner authorization is required.

However, requiring member vote for every special assessment can pose unintended consequences. Suppose the association's roof is leaking and causing damage in top floor units. The condo board hires a contractor or engineer that determines the building needs a new roof. But the association doesn't have enough cash on hand to pay for the new roof, so they need to impose a special assessment. The condo board presents the special assessment vote to the members. But for whatever reason, the vote for the assessment fails. The condo board is now conflicted because the board has a duty to maintain the common elements but there isn't adequate cash on hand and the association members didn't vote in favor of a special assessment to raise funds immediately to replace the roof. What happens next?

If a condo board lacks funds for a new roof and members reject a special assessment, the association faces severe consequences. Without a new roof, leaks cause damage to common areas and individual units. Insurance providers may drop coverage, making it impossible for owners to sell, as buyers cannot obtain financing. If the repair is necessary for safety, the board often has the authority to override the vote to secure funding, potentially through a bank loan or simply passing the assessment anyway. Despite the unusual circumstances, the board can place a lien on units that do not pay the assessment. Members might attempt to vote out the current board and install new leadership, though this does not remove the need for a new roof. Ultimately, the roof is a common element, and the responsibility to pay for it falls on the unit owners. In such a situation, overall costs will likely increase due to emergency repairs and additional expenses for legal and other professional fees.

One caveat. Under the Structural Integrity Act passed into law in early 2024, if a structural inspection identified problems that require significant repairs, the board can implement a special assessment for the cost of repairs and bypass member approval regardless of whether the governing documents require member vote to allow a special assessment or not.

And this circles back to one of the objectives of the Structural Integrity Act – requiring associations to have a long-term plan to maintain common elements and adequately fund reserves to prevent such situations.

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