



## **Assessment Caps – Consequences & Possible Solutions**

A very important responsibility of an HOA Board is to provide services and maintenance to the community, which are paid solely from assessments or special assessments. However, some HOA Declarations contain a cap on how much assessments can be raised each year without membership approval. Other HOA Declarations require membership approval on special assessments that are to fund “capital improvements” or require membership approval on any proposed special assessment. If your HOA Declaration provides for such caps and restrictions on levying assessments or special assessments, you may want to consider the following consequences that these may cause, as well as the benefits to amending the Declaration to give the Board more discretion over assessments and special assessments.

### **Consequences of Assessment Cap or Restriction**

- **Lower Property Values.** If an HOA cannot meet its maintenance responsibilities, property values are likely to be reduced. Remember, the primary purpose of the HOA is to enhance property values & the investment of each owner.
- **Potential Liability.** If maintenance issues are deferred due to insufficient funds and lack of ability to levy special assessments, then this leaves the HOA open to liability if an accident occurs, if property values are lost, or if the HOA loses FHA standing due to deferred maintenance.
- **Bankruptcy.** If an HOA is unable to pay its bills, the HOA entity may have to declare bankruptcy. This outcome is extremely damaging to the HOA, and individual owners as sales & refinances would become almost impossible during the time the HOA is in bankruptcy. This situation should be avoided at all costs, and the Board of Directors should consider this matter seriously.

### **Possible Solutions**

- **Declaration Amendment.** A Declaration amendment is recommended to remove the assessment cap and/or membership approval of special assessments. Whether limited or for the entire Declaration, an amendment would serve the Board of Directors well in ensuring that the Association can collect all the funds necessary for the proper maintenance of the HOA responsibilities. The Owners would still be able to keep the expenses in check through the budget ratification process where the Owners could veto a Board adopted budget.
- **Reserve Study.** It is recommended that the Board of Directors engage a reserve specialist to create or update a reserve study, which is a great tool that the Board can use to create budgets, expenditure projections and use in justifying increases in assessments.
- **Loans.** Once assessment caps are removed, the Association would be able to obtain a loan in case of an emergency or in an effort to address deferred maintenance.

**Have questions about your HOA’s Declaration Limits on Raising Assessments?**

**Contact us at: [info@westernlawgroup.com](mailto:info@westernlawgroup.com)**

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