

July 2013

Emergency Assessments: Are They for Real?

An [HOAleader.com](#) reader has complained that the home owners association board tried to pass a special assessment, failed, and then imposed an "emergency" assessment on owners.

So what's an "emergency" assessment and when can you impose one?

The Uncommon Emergency Assessment

Though they're rare, states statutes permitting associations to pass "emergency" assessments do exist.

"We've had associations pass emergency assessments," says Alessandra Stivelman, an associate attorney who specializes in community association law at Eisinger Brown Lewis Frankel & Chalet in Hollywood, Fla. "Florida statute authorizes associations, if there's an emergency, to pass an assessment without notice if you're acting in the best interest of the association. But you need to justify the emergency. It can't be that you've been dealing with this issue for a year, and now you're claiming it's an emergency, and it's not. It's more along the lines of a water pipe has burst, causing harm to the whole building that requires \$30,000 to stop the damage from spreading, and the board needs to pass that right away."

That doesn't mean an [HOA special assessment](#) expense rejected by the owners couldn't turn into an emergency. "It depends on the facts, but maybe the association has dealt with this issue for year," says Stivelman. "But in the past week, things got really bad, or the city has provided notice it's going to take action within 10 days. The board could use this statutory provision to deal with the fact that its special didn't pass, and this is its next option. Again, however, the board would have to justify the emergency."

Florida has another statute that grants boards similar emergency powers, but its scope is even more limited. "The law specifically authorizes boards to pass assessments in response to damage caused by an event for which there's been declared a state of emergency, like a hurricane," explains Stivelman. "It allows boards to be flexible as far as board meetings, and the notice required is only as is practicable. The expense should be to protect residents, prevent further damage, or do emergency repairs."

No Consensus on Emergencies

Outside of Florida, our veteran experts haven't seen this animal our reader's board calls an emergency assessment.

"I frankly have never heard the term emergency assessment," says [Nancy T. Polomis](#), a partner at Hellmuth & Johnson PLLC who advises homeowners associations. "In Minnesota, we typically talk about annual, special, and in some cases limited assessments, which benefit only a certain number of units."

That said, Polomis could envision a need for sudden budget adjustments. "One question that came to my mind is whether this reader's [bylaws](#) allow for amendment of the association's budget," she explains. "In Minnesota, many do, allowing the board to establish and amend a

budget without owner approval. So maybe we had a horrible snow season, it's July, and the association is coming up short. So it's amending its budget. Boards in Minnesota have the

authority to do that to cover some unforeseen expenses. However, something called an emergency assessment, I don't know what that would be."

That's also true in Ohio. "We have reserve laws that require the board to build and maintain reserves for the physical items," says David W. Kaman, a Columbus-based partner at Kaman & Cusimano LLC, which represents associations throughout Ohio. "If we normally have a budget of, say, \$30,000 a year for snow plowing and we get a double amount of snow and have to pay \$60,000, to me that would be an emergency special assessment. It's not related to the physical components of the building covered by reserves; it's an event that requires an expenditure that couldn't have been contemplated.

"That's different than if association property gets struck by lightning," says Kaman. "It should be covered by insurance, and if your HOA has a \$10,000 deductible, you should have self insured for that, not passed a special assessment. Outside of something like the snow example, for any physical component like roofs or roads, to me that's something that should be reserved for."

What To Do When a Special Assessment Fails

What if you believe work must be done but your special has failed? "If it's a health and safety issue, like an elevator is broken or decks or balconies will collapse, even though the board couldn't get the membership to pass a special, there are other ways to do the work," explains Andrew Schlegel, CCAM®, executive vice president of community management for Orange County and Los Angeles at Merit Property Management in Aliso Viejo, Calif.

Check whether you can raise regular assessments without an owner vote and by how much. "In California, you can increase assessments up to 20 percent without member approval," says Schlegel. "First, do that—take the maximum increase under your statute. Then you can do it again the next year. I wouldn't call that necessarily an emergency special assessment. But boards can do that every year regardless of whether there's an emergency or not."

Sometimes, you may just be out of luck, or you have to adjust your priorities. "If you can't get a special assessment passed, perhaps you run in the red for a while," says Polomis. "If a retaining wall falls down, the board has to fix that. But that may mean the association doesn't get the planned deck project done. The association might also be able to do a loan. Or it may mean the association doesn't do the retaining wall work altogether. But whether the board has acted properly depends on what the governing documents say."