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After The Storm- Common Snow Fall Concerns

By: Peter S. Philbin and Kellie M. L. Budd

As result of the significant recent winter storms (whether remembered as “Snowmageddon”, “Snowpocalypse” or even “Snowverit”) many of our clients have approached us with questions regarding handling the fall out from the record snowfall. Many associations have inquired about their liability for snow/ice related injuries on the common areas within their communities. Others have asked for advice as to how address the financial strain of unexpected snow removal costs.

Liability

Community associations generally have a duty to undertake reasonable efforts to remove snow and ice from the common areas where pedestrians and motorists are likely to travel. This duty generally stems from the Association’s duty to maintain those areas under the Association’s governing documents.

In the unfortunate case that an individual is injured because snow or ice has not been reasonably removed, the Association may be liable to the individual for damages.

Like most personal injury claims leveled against community associations, whether the

community (and its contractors) acted reasonably and responsibly is usually a question of fact centering on the issue of the expected standard of care.

The best protection the Association can afford itself is to first, and foremost, ensure that the Association’s liability insurance coverage is paid up. In addition, that the agreement with the Association’s snow removal contractor contains adequate insurance and indemnification provisions in case the contractor was at fault.

The presence of adequate insurance and contractual provisions should help insulate the community association for most liability associated with injury claims associated with snow removal.

Funding the Costs

Another concern facing associations are the extensive snow removal costs they have incurred as a result of the storms. These costs could not have been anticipated and consequently, were likely not included in the yearly budget.

Some associations have turned to their reserves to cover these costs. However, the

governing documents may limit how the reserves are used. Also, the association may not have sufficient reserves or even if they do, borrowing from the reserves may deplete the reserves and mandate replenishment in the near term.

A few associations may have the ability under their governing documents to levy special assessments to defray maintenance expenses. In most cases, the special assessment authority requires a membership vote (but in some cases Boards are empowered to levy special assessments unilaterally).

Finally, please note that there may be statutory authority that the association can rely upon to raise the needed funds. For example, in Virginia, both condominiums and homeowners associations are empowered by statute to levy special assessments against the members (see 55-79.83 and 55-514). Such assessments can be imposed by the Board (but may be rescinded by the membership) and must be disclosed in the resale packets.

We would also note that individual unit owners might be eligible for Small Business Administration disaster loans to repair or replace damages not fully covered by insurance or other disaster recoveries. They might also be eligible for loans to cover a onetime assessment by the Association for the repair of common areas.

In addition homeowner associations and condominium associations might be eligible for low interest loans from the U.S. Small Business Administration if they experienced damage or loss during to their common areas. Loan amounts and terms are set by the Small Business Administration and are based on each applicant's financial condition. For further information please contact the SBA at (800) 659-2955.

Going Forward

Finally, while we think everyone is ready to forget this winter, Boards should use the experience as a lesson for budgeting purposes.

Perhaps it is time to review the snow removal contracts that have been in place and consider, among other things, whether it is advisable to look into a "fixed price" snow contract that pays the same amount each year whether there's three inches or thirty-six.

Perhaps more specificity or detail is desired in terms of what the protocol is for a contractor when crews reach (and leave) the community is necessary as well as what the contractor can/must do in terms of snow removal versus snow relocation on-site, etc.

Here's to a "light" snow season next year and please contact any of our community association professionals should you have any questions or need for assistance.

FHA ALERT!

By: Todd A. Sinkins, Kimberley M. O'Halloran-Cordray and Winta Mengisteab

FHA financing is becoming increasingly important in the real estate market; it is estimated that the FHA currently insures about 25% of all home mortgages. Moreover, as of February 1, 2010, the FHA will no longer allow "spot loans" or "spot approvals" for condominium units, which previously allowed individual buyers to obtain FHA financing to purchase a unit within a condominium project even if that project was not already FHA approved. Without the spot loan process, if a condominium association is not FHA approved, buyers who rely on FHA financing will not be able to purchase units within the condominium until the condominium has completed the FHA approval process. As you can imagine, the elimination of the spot loan approval will delay and possibly prevent a lot of potential unit sales from occurring.

In addition, do not assume that you are in the clear if your association has previously obtained FHA approval because recertification is required every 2 years to determine whether your association is still in compliance with FHA regulations.

If you are not already aware of the new Federal Housing Administration ("FHA") regulations regarding FHA financed loans for condominium units, or if your association has not reviewed its eligibility for FHA approval, we urge you to contact our office for further information.