

Ad Hoc Committee on Legislative Review

Key Recommendations Update

As of October 15, 2009

Mike Harrison, Treasurer

Note: Text from the Key Recommendations of the original report has been repeated here in this update. **The STATUS information is in bold.**

Each suggested change the Ad Hoc Committee has identified for specific sections of policy contain recommendations, either as rewritten text to consider, or specific questions that should be addressed. **This update is dedicated to the critical changes needed that require completion and are non-compliance issues that have been found relating to the POAA.**

Fix the Disclosure Package. The Ad Hoc Committee has provided a proposed new disclosure package that is aligned with the POAA. LMOA should provide nothing more than is required by the POAA, in the exact order of the POAA requirements and with appropriate notes to explain where LMOA deviates from the content. An example is the continued consideration of the Long-Term Investment Account as a reserve item. Until the balance of Chapter 4 can be recast, use an interim approach to properly characterizing reserves. **STATUS: Package Updated. A second update will be needed at approval of the 2010 budget and alignment of terms in the budget with policy changes. LMOA staff is thanked for making these changes and now there is a need for a scheduled, periodic review of the package.**

Define Accounts Consistent with the POAA. The POAA identifies “capital components” which are items, whether or not a part of the common area, as to which the association has the obligation for repair, replacement or restoration. It specifies the need for reserves for capital components and the need to make any adjustments the Board of Directors deems necessary to maintain reserves. Over the years, policies and procedures have been modified to muddle the characterization of accounts. This alignment, especially on the capital and reserves side, should be done before the annual meeting in June and explained to the members, reflected in the disclosure package, and used in formulation of the next budget. **STATUS: The 2010 budget focus and priorities are on resolving the approach for and funding of reserves. The Finance Committee is defining the categories of reserves and is far enough along on the reserve budget to now define each of these categories within PM 4.02A, Financial Management Policy. There are first readings on definitions within PM 4.02Q, Investment Policy and changes defining how to handle member-initiated donations that change several policies relating to accepting and handling donations at the October 2009 meeting. At the November meeting, there will be the first readings of numerous sections of PM 4.02. The objective is to not only vote on approval of the 2010 budget in December, but to align policies consistent with the POAA so that 2010 starts with consistent policies relating to financial management.**

Create Clear and Unambiguous Policies on the Release of Information to Members. The POAA § 55-510, consistent with the restrictions in §55-510 C., that limits certain information, tells LMOA what information must be available and how to do it. All other information should be made available upon request or provided in the resource room and be available for copying by those members in good standing. If withholding the information is not specifically authorized by the POAA, it is releasable, including all books, taxes filed, insurance policies, awarded contracts, and related financial documents upon written request. **STATUS: While we have seen some improvements in access, policies and procedures contained in PM 4.05C was last updated February, 2000. A first reading of recommended changes will be presented at the November 2009 Board Meeting, for approval at second reading in December. Once the policy manual changes are made, staff procedures shall be defined that clarify how to comply with the LMOA procedures. At the annual July Board of Directors Orientation Meeting, policy and procedures shall be covered on an annual basis.**

Provide the Basis for Board Meeting Motions. In our research it often was difficult to identify the rationale for changes in policies. This is because the minutes of meetings lack sufficient detail. As a minimum, the resolution proposal containing the background, alternatives considered, sources of funds, etc., should be included in the meeting minutes. Each motion requiring the obligation of funds should identify the source(s) of these funds. This allows members to reconstruct why changes were made over time. This body of information provides the history for change. The fact that the meetings are recorded on video does adequately facilitate research on policy changes. This recommendation should be adopted retroactively to the start of the fiscal year so that there is traceability with changes in expenses and the budget. **STATUS: While the information is available, it is certainly not easy to identify the basis for policy changes. Board meeting resolution sheets can be attached to the minutes as a means of preserving history. This would mean that the Secretary would need to modify the resolution proposal to reflect the final motion. Action is to the Secretary and staff to work a solution.**

Create a New Policy Chapter for Compliance. This recommendation is intended to address procedures, rules and regulations being developed by the CICB and possible rights of appeal of "final actions" taken by LMOA. This would pull the compliance procedures out of Chapter 16, and, ultimately merge LMOA policies and procedures and the requirements and rights established by the CICB rules and regulations. There is adequate time to make this change, but it should not be approached piecemeal. It needs an integrated re-write. **STATUS: Pending. Rules and regulations of the Common Interest Community Board are in their infancy. The annual reporting and fees payment has been implemented. The new PM chapter can wait until February or March 2010 to be added.**

Create a New Operating Committee on Reserves. This should be an operating committee of LMOA charged with the responsibilities identified in POAA § 55-514.1 and making a recommendation to the Board of Directors at the start of the annual budget process on reserve requirements. This committee would then work with the Finance Committee to

refine depreciation, funding of reserves, and major repair and replacement funding for facilities and infrastructure. The job is much different from committee work by Building, Roads and Grounds. However, Building, Roads and Grounds is a major input to any reserve requirements. This new committee should be in place to work the 5-year reserve study and can be made up of members currently working this issue through the strategic plan. The committee needs to be in place in time to accept responsibility for the next 5-year reserve study. **STATUS: The 5-year reserve study is in draft and the reserve actions to prepare for the 2010 budget are underway. At completion of the 2010 Budget and receipt of the reserve report, the Board needs to hold a discussion on lessons learned and the benefit and need to add a new advisory or operating committee dedicated to reserves or modifying the terms and references for the existing Building, Roads and Grounds committee. This discussion should occur in January.**

Meet the Reserve Requirements for Budgeting. § 55-514.1.B of the POAA requires associations to address reserves:

B. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include, without limitation:

1. The current estimated replacement cost, estimated remaining life, estimated useful life, and remaining depreciation balance of the capital components;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace or restore capital components and the amount of the expected contribution to the reserve fund for that year; and
3. A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the association is funding its reserve obligations consistent with the study currently in effect.

This can be interpreted as a reporting requirement, letting members know within the context of the budget that there is a shortfall in reserves or that reserves have been adequately provided for. Where LMOA has fallen behind is in proper disclosure of the reserves status with respect to the POAA and in funding with respect to the vitality of LMOA. The reporting requirement cannot be ignored and must be part of any future budget. This section of the POAA can have a powerful influence on the discipline of the Board of Directors, specifically in B.3, where the Board must explain the level of reserves. As discussed earlier, recasting how accounts are identified and handled will facilitate this. **STATUS: The 2010 dues increase of \$130 is identified to offset operations costs (so that dues reflect the cost of day-to-day operations). But the dues increase also frees up funds that would have normally gone to capital and reserve**

needs that were consumed by operations costs. The Board now has restored the ability to use funds from investment income from the Emergency Reserve Fund (ERA) for capital and reserve needs. At the approval of the 2010 Budget, the Treasurer shall prepare a statement consistent with POAA § 55-514.1.B.3, on reserves that can be used in the Discloser Packet and posted on the LMOA Web Site and made part of the January Board Meeting minutes (a subset of the Monthly Treasurer's report).

Procedures for Liens. § 55-516 of the POAA is specific on the authority to issue liens against delinquent property owners. LMOA needs to review and include in a new compliance chapter provisions and policies for imposing liens. This new policy, aligned with the POAA, needs to be in place by December 2009. **STATUS: First reading December 2009, second reading January 2010.**

General Budget Processes. Because of the specificity of POAA requirements about "capital components" and reserves, changes to Chapter 4 and the structure of our accounts need to be changed before release of the 2010 budget. LMOA must show immediately that it is beginning to come in line with the POAA. The characterization of the budget and provision of financial information to the members and prospective members (through the disclosure package) frames a change in direction by the Board and the operating/advisory committees toward compliance and transparency. **STATUS: First reading November 2009, second reading December 2009.**

The Investment Strategy. The POAA is silent about investments. However, the fundamental reason for the POAA and the CICB appears to be regulation of "professional" managers who have ripped off or ineffectively managed homeowners' association resources. The Ad Hoc Committee did not take on the investment strategy (Chapter 4.02Q) but believes that the Long Term Investment Account (LTIA) needs to be explained in terms of how it can and cannot be used. Members need to understand that while it is an asset of the organization, it is not available to deal with the management of the common areas and facilities. Further, the restrictions are such that it is really an emergency contingency fund, not available for association use to offset other costs. **STATUS: There are two first reading change revisions to PM 4.02Q at the October 2009 meeting. One defines the purpose of the reserves and provides the voting basis for these funds. Both describe different approaches to dealing with the principal. One requires that the principal cannot be eroded due to investment losses and any investment income must be applied to return the balance to the original principal, the other allows continued use of investment income for LMOA needs.**

Terms Should Be Defined. There is a need to define terms used in the Policy Manual. These terms have their origin in the POAA, the covenants and restrictions, the statement of subdivision and other documents. It is recommended that as each committee makes recommended changes to their respective sections of the Policy Manual, they also define the terms used in that section. The Board can decide whether these definitions should appear in each policy section, be aggregated and appear in the front of the Policy Manual or as an appendix to the Policy Manual.

STATUS: No action.