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Annual Budgets and Special Assessments:
The Power of Rejection

By Scott J. Sandler, Esq., CCAL

Every year, the association must adopt an annual budget. From time to time, the association may need to adopt a special assessment. The procedures for adopting the budget and certain assessments provide for a balance of power between the board and the individual unit owners.

The Annual Budget

The procedures for adopting an annual budget are set out in Subsection 47-261e(a)(1) of the Connecticut Common Interest Ownership Act (CIOA). Subsection 47-261e(a)(2) of the Act sets out an alternative process, but this alternative applies to only one community in Connecticut. All other Connecticut communities must follow the procedures set out in Subsection 47-261e(a)(1).

Under Subsection 47-261e(a)(1) of the Act, the association adopts the budget as follows:

1. The board of the association adopts a proposed annual budget.
2. Within 30 days of adopting the proposed budget, the board must send a summary of the budget to all unit owners. The summary must include a statement of the amount of any reserves provided for under the proposed budget, and how those reserves were calculated.
3. When the board provides the summary, it must also give the owners notice of either a meeting or a vote by ballot without a meeting to approve the proposed budget.
4. The budget is deemed approved unless it is rejected by owners having a majority of the total voting power in the association at the meeting or in the vote by ballot without a meeting.

Under this process, the owners can reject, i.e. veto, the proposed budget. The rejection or veto requires the vote of owners having a majority of the total voting power in the association. If the budget is not rejected, then it is automatically approved.

The statute permits the declaration of the community to require a higher voting requirement to reject the budget, but not a lower requirement. Thus, the declaration could require the vote of owners having 75% of the total voting power to reject the budget. The declaration cannot permit rejection by owners having anything less than a majority of the total voting power.

Rejection: It's Not Me; It's Definitely You

In embracing the budget rejection process, the Act acknowledges several real-world factors that impact association governance:

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- The association is governed by a board, the members of which have been elected by the unit owners. Presumably, the unit owners elected those board members because the owners trust their judgment and have faith in their leadership abilities.
- Often, unit owners choose not to participate in association business. Unit owners often purchase units in a common interest community so that they don't have to worry about the daily details of operating and governing the community.
- Unit owners will participate when they are upset. If owners are angry or concerned about an issue impacting the community, they are much more likely to participate in association business.
- Anytime an association considers increasing charges, some owners will object. The board is usually in the best position to determine the financial needs of the community. Its decisions should not be easily overturned by a small but vocal minority of the owners in the community.
- If a majority of the owners in the community object to the board's proposed budget, then the board has misread the priorities of its constituents. The board must then consider alternatives that are more appealing to the community at large.

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Rejection vs. Approval: All or Nothing

The Act empowers the owners to reject the entire budget. The Act does not empower the owners to reject just a portion of the budget. Thus, the owners may not review the budget and exercise a line-item veto. The proposed budget is either approved or rejected as a whole.

The Voting Process

The association must conduct either a meeting of the owners to approve the budget, or a vote by ballot without a meeting.

Voting at a Meeting. At any meeting of the owners, the first issue is establishing whether enough owners are present to constitute a quorum. In some associations, the presence of any owners will constitute a quorum. Other associations, however, require some minimum number of owners to be present, in person or by proxy, in order to establish a quorum.

If a quorum is not present at the meeting, then the association cannot proceed with the meeting. Under the Act, the budget is then automatically approved because it was not rejected at the meeting.

If a quorum is present, then the chair must ask the owners whether anyone wishes to make a motion to reject the budget.

- If no motion is made, then the budget is automatically approved.
- If the motion is made but not seconded, then the motion fails and the budget is automatically approved.

If there is a motion and a second, then the owners may discuss whether to reject the budget. After that discussion, the owners will conduct a vote. Rejection of the budget requires the vote of owners having a majority of the total voting power in the association. For example:

- Assume that the community consist of 100 units, each with one equal vote.
- Rejection of the budget requires the affirmative vote of the owners of at least 51 units.
- If less than 51 unit owners are participating in the vote, in person or by proxy, the vote fails and the budget is approved.
- If 60 owners participate in the vote, and 49 owners vote to reject the budget, the vote fails and the budget is approved. It does not matter that a majority of the votes cast were in favor of rejection.

Voting by Ballot Without a Meeting. Conducting a vote by ballot without a meeting may be more convenient for owners. The vote can be conducted using mail-in ballots or, for a more sophisticated or tech-savvy community, using electronic ballots.

A vote by ballot without a meeting also eliminates the use of parliamentary procedures. There is no need to have a motion with a second. Instead, the question is set in advance: "Shall the proposed annual budget be approved or rejected?"

A vote without a meeting must still honor the association's quorum requirements. If not enough votes are cast to establish a quorum, then the vote fails and the budget is automatically approved.

If enough votes are cast to satisfy the quorum requirements, then the ballots are tallied. Just like a vote at a meeting, rejection requires the vote of a majority of the total voting power in the association. Otherwise, the budget is approved.

Rejection of Special Assessments

Under Subsection 47-261e(b)(1) of the Act, the unit owners may reject certain special assessments. Subsection 47-261e(b)(2) of the Act contains an alternative method for rejecting special assessment. This alternative, however, applies to only one community in Connecticut. All other Connecticut communities are governed by the procedures set out in Subsection 47-261e(b)(1).

Subsection 47-261e(b)(1) allows the board of the association, in any calendar year, to levy special assessments of up to 15% of the association's current operating budget, without unit owner approval. Once the total amount of special assessments levied in a given year exceed 15% of the budget, any additional assessment, regardless of size, is subject to rejection by the owners. For example:

- Assume the association has an annual budget of $100,000.
- In February, the association must levy a special assessment in the amount of $10,000 to cover additional, unforeseen snow removal costs. Because this assessment is equal to only 10% of the operating budget, the board may approve it without any vote of the unit owners.
- In September, the association must levy a special assessment in the amount of $8,000 to cover the costs of cleaning up after a severe storm. The January and September assessments, combined, equal 18% of the operating budget. The association must therefore call a meeting of the owners, or conduct a vote by ballot without a meeting, to approve the assessment.

Just like the annual budget, the assessment is approved unless rejected by unit owners having a majority of the total voting power in the association.

These procedures grant the board the flexibility to make financial decisions for the association, while also giving the unit owners protection against a board that has largely misread their priorities and expectations. ■

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