

Association Budgets: Are major repairs to common areas “additions and improvements” that require member approval?

By statute, an Association’s Board generally has authority to impose and collect assessments for common expenses, including necessary repairs, additions, and improvements to common areas.¹ These assessments must follow the requirements for adoption of budgets as required by the Governing Documents and Statutes. However, these statutory assessment powers may be limited by the provisions of the Association’s Governing Documents.

The Governing Documents of many Associations contain provisions that prohibit the Board from independently assessing owners or paying out funds for additions or capital improvements to the common area. If such a provision exists, then a Board’s power to assess owners and pay for common area construction projects, such as the installation of new siding, windows, or decks, will depend on whether the project is a repair or a capital addition or improvement. Note: the IRS definition of a capital improvement has no application to how this term is defined for an Association’s Declaration.²

An unpublished decision by the Washington Court of Appeals, *Lowry v. Allenmore Ridge Condo. Ass’n*, sheds some light on this issue.³ In that case, a condo Association’s Board levied assessments on each unit to cover over \$1 million in construction costs for work on the building exterior. One of the unit owners refused to pay and sued the Association, arguing that the Board

had no authority to impose the \$1 million assessment without approval of the owners, claiming it was an improvement. The condo Association's Declaration specifically authorized the Board to make assessments for restoration, repair, or replacement of portions of the common areas, but it precluded the Board from making assessments to fund capital additions and improvements without specific approval by a percentage of the members. In order to decide whether the Board's action was authorized, the court had to determine whether the project was a "repair" or an "improvement" within the meaning of the Declaration.

The court noted that several unit owners had testified that the construction project was for necessary restoration, repair, and replacement of damaged components of the building envelope, which had been damaged or were nearing the end of their service life. In addition, the Association's expert had testified that:

[T]he project "did not include any alterations or modifications to structural components of the buildings or construction of new buildings or property" and allowances for repair of structural damage found during construction were limited to "repair and restoration work."...He further declared that the work was "intended to repair, restore, remove and replace, in like-kind, those components of the building envelope that had been damaged or had otherwise reached or exceeded their serviceable life."

The court also noted the project manager's similar statements that:

"Damaged structural components were removed and replaced with like-kind products. Any upgrades to components were solely for the purpose of restoring the weathertight [sic] condition of the building envelope, but all efforts were made to select products that were similar to the original materials."

Based largely on these statements, the court determined that the project was a repair, for which the Board was entitled to assess without a vote by the members; it was not a capital addition or

improvement. This was true even though the exterior envelope designed and installed was substantially better (an improvement) over the original siding system.

Although the court in *Lowry* determined that replacements (as well as some necessary upgrades) to the building envelope were repairs and not capital additions improvements, what constitutes a repair and what constitutes a capital addition or improvement will likely vary from case to case. As in *Lowry*, the determination will depend, at least in part, on any applicable definition of the terms in the Association's Governing Documents. A court would also likely consider evidence that a significant majority of members and those involved with the project understood it to be a repair as opposed to an addition or improvement.

¹ RCW 34.34.304 provides, in relevant, part:

- (1) Except as provided in subsection (2) of this section, and subject to the provisions of the Declaration, the Association may:
 - (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
 - (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
 - (g) Cause additional improvements to be made as a part of the common elements...

These New Act provisions are applicable to Old Act condo Associations. See RCW 64.34.010.

RCW 64.38.020 provides in relevant part:

Unless otherwise provided in the governing documents, an Association may:

- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;

(7) Cause additional improvements to be made as a part of the common areas...

² The IRS also draws a distinction between “repairs” and “capital improvements” for purposes of federal income tax. Namely, it allows an immediate full tax deduction for repairs, but not for capital improvements or “capitalization.” The definitions of these terms promulgated by the IRS have no bearing on their meaning in the context of a Board’s authority to make assessments, unless the Association’s Governing Documents expressly adopt the IRS definitions. For more information on the IRS definitions of repairs and capital improvements, see the IRS Capitalization v. Repairs Audit Technique Guide at <http://www.irs.gov/Businesses/Capitalization-v-Repairs-Audit-Technique-Guide#14>.

³ 2012 Wn. App. LEXIS 2372.