



HOA Finances:

Best Practices for Getting Your Homeowners Association through Difficult Economic Times

*An Exclusive Special Report
from HOAleader.com*

A Message from the President

Dear HOA Leader,

This report was created to help you make smart decisions that will in turn help your HOA weather the current financial storm. We've spoken to leading condominium and homeowner association advisors across the country and distilled their recommendations down into practical, plain-English suggestions for what you can do now to best position your association for financial stability. Times are tough, but the good news is there are steps you can take today that will help.

Best regards,
Matt Humphrey
President

Table of Contents

Can You Sell Common Areas To Generate Revenue?	1
Can Your Homeowner Association Purchase Distressed Units?	2
Should Your HOA Hire a Collection Company?	3
Cleaning Up Vacant Properties in Your HOA	4
5 Ways To Trim Your HOA's Budget Today	5
What To Do When Owners Go Bankrupt	6
6 Critical Moves for Smart HOA Management in Today's Economy	7
7 Keys To Collecting Assessments in Today's Economy	8
Sample Homeowners Association Delinquency Policy	10

Improve your compliance with HOA laws and train your homeowner association board in best practices more easily

Sign up today for a FREE TRIAL MEMBERSHIP to HOAleader.com. You'll discover:

- Updates: the latest new laws and court cases affecting HOAs
- Analysis: Plain-English explanations of what those developments mean to you
- Advice: Step-by-step guidance on best practices for homeowner associations
- Tools: Checklists, Sample Policies and Forms to keep your community association in compliance with HOA law

Click here for [quick FREE trial sign-up](#).

About HOAleader.com

HOAleader.com's attorney editors and experienced journalists constantly research the latest developments in HOA law affecting homeowner and condominium associations across the U.S. Then we publish plain-English analyses of what those developments mean to you as an HOA leader, and what you need to do now to comply with HOA laws, steer clear of legal trouble, avoid or resolve conflicts within your homeowners association, make HOA management easier, and safeguard your community association's property values and quality of life.

You can sign up for [free trial membership here](#).

The Practical Guide to Homeowner Association Management



Home | Browse by Topic | Discussion Forum | Tell a Friend | Text Size | Search | Member Area

INTERACT <ul style="list-style-type: none">▶ Free Newsletter▶ Discussion Forum RSS Feed	Home Most Popular	TIP OF THE WEEK <p>Sign up for the FREE weekly e-zine from HOAleader.com</p> <input type="text" value="Your E-Mail"/> <input type="button" value="Sign Me Up"/> View past articles »
BROWSE <ul style="list-style-type: none">▶ Search▶ New Headlines▶ Topics▶ Most Popular▶ Store▶ Vendor Directory	Most Popular Articles on HOAleader.com <p>The list shows the most widely read articles on this site.</p> <ol style="list-style-type: none"><u>HOA Rules: Which Political Signs Can You Regulate?</u> July 2008 While a campaign-issued two-foot by two-foot Barack Obama or John McCain sign might look just fine on owners' lawns, would you feel as comfortable with a 10-foot by 10-foot sign? What if the sign promoted a White supremacist running for local office? The answer may be a rule banning political signs in your homeowners association. Before you enact such a rule, however, make sure you know whether your state permits you to do so and understand the Pandora's box you may be opening. . . . keep reading<u>HOA Reserves: Put Your Homeowners Association Reserves to Work--Safely</u> August 2008 You've managed your homeowner association well, and you're proud to have substantial HOA reserves. Now you'd like to put those reserves to work so that you strengthen your association's financial footing even further. Can you even do that? If so, what investments are appropriate? And what are your duties and risks as an HOA leader? . . . keep reading<u>HOA Communications: What to Say--and What Not to Say--In Your Homeowner Association Newsletter</u> September 2008 Whether it's online or on old-fashioned paper, a newsletter is a good way	TOPICS <ul style="list-style-type: none">▶ Communications▶ Dispute Resolution▶ Facilities & Maintenance▶ Financial Matters▶ Governance▶ Human Resources▶ Legal Compliance▶ Rules▶ Security▶ HOA Glossary▶ Complete Topic List
MEMBERSHIP <ul style="list-style-type: none">▶ Join HOAleader.com▶ Members-Only Home▶ Group Discounts		
FAQ <ul style="list-style-type: none">▶ About HOAleader.com▶ Affiliates▶ HOA Vendors		

This report is provided as a research and reference tool. Although we make every reasonable effort to ensure that the information, analytical tools and data provided at this site are useful, accurate, and current, we cannot guarantee that the information, tools and data provided here will be error-free or appropriate for your situation. This site and the information available through it do not, and are not intended to constitute legal or other professional advice. HOA management often involves complex decisions requiring the services of competent, licensed professionals; we urge you to obtain such services before making decisions with legal and other professional implications.

Copyright 2008, Plain-English Media, LLC

All rights reserved.

Users are permitted to make one paper copy for personal, noncommercial use. Unauthorized reprinting, quoting, photocopying, duplication, transmission by facsimile, or incorporation into any information retrieval system, or any unauthorized use without written permission, is a federal offense with severe civil and criminal penalties.

Additional copies of this report can be purchased at

<http://www.hoaleader.com/HOA-finances-report>



www.HOAlender.com

custserv@HOAlender.com

(866) 641-4548

909 Marina Village Parkway #183

Alameda, CA 94501

Can You Sell Common Areas To Generate Revenue?

Your HOA has a great Olympic-sized pool that you can't afford to maintain. You've also got a parking lot that the growing business next to your property might like a piece of. Can you sell them to generate revenue for your homeowners association? It depends on who actually owns them and how hard you're willing to work to complete the sale.

Let's get our terms clear first. There's a difference between association-owned property and common areas. For instance, your HOA may own a strip of land as part of your grounds that's not designated as common area. In that case, a sale would be relatively simple. But those types of property are rare. Most areas that aren't owned by individuals in your association are likely designated as common areas, which are much more difficult to sell.

"In theory, selling common areas might be a great way to generate revenue," says Penny Koepke, an attorney with Ekmark & Ekmark LLC in Scottsdale, Ariz. "But in practice, it's impractical. It's document intensive, and sometimes the approval requirements end up meaning that you won't be able to do it."

Since every owner possesses an interest in the common areas, to sell common areas, governing documents usually require approval by 100 percent of owners and all lienholders, which typically means each owner's mortgage company. Why do you have to get the mortgage companies' approval? They have an interest in the property that secures the owners' debt, and you can't do anything to diminish the value of that property without their consent. So if you're interested in selling a portion of your parking lot and have 100 units in your association, you'll need the approval of all owners of the 100 units, along with every last one of their lenders.

That doesn't mean associations don't take a shot at the idea. "I have one association that's talking about selling its pool right now, but not so much to raise revenue," says Nancy Polomis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn. "The pool is a revenue sucker, and Minnesota recently passed a law that requires updates to pool drainage systems, which could be a major financial investment. In this case, the pool is old, and not that many people use it, but whether the sale will come to fruition, I don't know. Other associations I've worked with have considered such sales, but the approval requirements are overly burdensome, and they haven't been able to get the deal done."

If you're not scared off yet, whether you're considering selling association property or common areas, get buy-in first. "If you're going to take away what some might see as an amenity, you certainly want them on board," says Polomis. "Even if you technically don't need their approval, you at least want them in your camp."

The complexities are the bad news. The good news is that sales can be successful. For instance, in densely built New York City, associations sometimes successfully sell their roof rights to neighboring buildings. "I represent an association that just signed an agreement to sell its roof rights to the owner of an adjoining property," says Marc Landis, a partner at Phillips Nizer in New York City. "Even if the purchase isn't completed, my clients have already received compensation for entering into the agreement."

And there are options other than sales. In New York City and other metro areas, associations sometimes lease space on their roofs to add cell phone towers and satellite dishes. And don't forget to think beyond your tangible property. "I have an association client that sells advertising on its in-house cable channel, and what they earn is pretty significant," says Donna DiMaggio Berger, managing partner at Katzman Garfinkel in Ft. Lauderdale, Fla. "There are other ways to be creative and generate revenue." 🏠

Can Your Homeowner Association Purchase Distressed Units?

Surely, someone in your homeowner association has tossed out the idea of foreclosing on a unit or purchasing outright a distressed property in your association so it doesn't get sold for half its value in a fire sale. The thinking is that you're investing HOA funds to maintain the value of all the properties in your association. Smart move, right? Not everybody agrees.

"I've never seen it done," says Nancy Polomis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn. "I think for the most part, it's not the best way to spend association money, and most associations don't have that kind of cash. Even if they do, they'll be hard pressed to get their money out of the property, and it doesn't mean it's going to prop up the other owners' values. When owners sell, their prices will be based on what the market will bear."

"Depending on how the association's governing documents are drafted, that may or may not be a proper use of association funds or may not even be permitted," says Penny Koepke, an attorney with Ekmark & Ekmark LLC in Scottsdale, Ariz. "Often association funds can be used only for association expenses, and that might not be an association expense. Other governing documents are written more broadly, but I could see some homeowners getting pretty peeved paying hundreds of thousands of dollars for a residence."

In addition, if your plan is to purchase a property and rent it out until the market recovers, you have to consider the burdens of being a landlord. "Taking on the responsibility of overseeing tenants, making house payments, and paying assessments to the association makes me nervous," says Koepke. "You'd also have to make sure the property is maintained. For most of my clients, the last thing they want to do is become property owners. They have enough to worry about."

There are also the costs of foreclosure if you can't purchase directly from the homeowners. Those costs can add significantly to the purchase price.

However, there may be times when the move makes sense. "It can and does happen," says Luigi Rosabianca, the principal attorney at Rosabianca & Associates in New York. "Typically, condo boards retain a right of first refusal on any sale here in New York City. So if Mr. Seller of Unit 1A is selling a condo for \$100,000, and it's really worth \$250,000, and the condo association has the wherewithal to purchase the unit, why wouldn't it exercise its right and then lease the unit out? That's strictly a business decision."

Rosabianca offers another example that might make sense. "Let's say there's a need for additional services or a building that doesn't have housing for a superintendent," he explains. "The association knows the only way it'll attract a good super is to provide good housing. So it decides that the next time there's an opportunity, it'll exercise its right of first refusal. Suddenly, it's able to attract better talent, and the association has an asset in the super's unit."

Of course, you have to make sure the purchase makes sense, not just financially, but also physically. "It's based on the specific unit and its location," says Eric J. Gould, an attorney with Couzens, Lansky, Fealk, Ellis, Roeder & Lazar P.C. in Farmington Hills, Mich. "If you don't have a clubhouse and there's a desire for one, it may provide a great opportunity to take a distressed unit and buy it, assuming there are dollars available. But if the unit is in the middle of a building with four side-by-side units, the purchase may not go all that well.

"You have to ask yourself," Gould concludes, "with today's economic sluggishness, is the money there, and is it an appropriate use of association funds in light of everything else the association has to deal with?" 🏠

Should Your HOA Hire a Collection Company?

You've never really had a problem collecting fees from owners, but suddenly several owners are behind—some way behind—in dues. Should you hire a collection agency to help your homeowners association collect?

Most attorneys aren't keen on the idea for several reasons. "Often collection agencies say they want full control and autonomy in how they deal with debtors," says Penny Koepke, an attorney with Ekmark & Ekmark LLC in Scottsdale, Ariz. In other words, if the collection agency beats up (verbally, not literally) your neighbors, you may get an earful later. That may increase tensions in your homeowners association.

That's exactly why Luigi Rosabianca, the principal attorney at Rosabianca & Associates in New York City, recommends his HOA clients not hire a collection agency. "It's a bad idea—a super bad idea," he says. "Any time you're dealing with an external third party, you have no control over that third party. But like it or not, the person who's not paying his debt is a neighbor, and you always have to deal with neighbors."

In addition, contracts with debt collection companies are often more favorable to the debt collector than to your association. Typically, they keep 25-33 percent of any amounts they recover, sometimes in addition to costs. The costs of locating people and doing searches can eat up another chunk of the recovery, leaving you with much less than you hoped for in the end.

"Read the contract carefully," says Koepke. "If you're turning over numerous accounts, will the agency get to keep a percentage recovered on all the accounts, or just the accounts it's successful collecting on?" That question is important because you may turn over 10 accounts and later decide that you're not pleased with the way the company is behaving. If the company has successfully collected on one, and you ask it to return the other

nine, the contract may require you to pay a percentage of anything you recover on the other nine.

Donna DiMaggio Berger, managing partner at Katzman Garfinkel in Ft. Lauderdale, Fla., has also seen improper contract provisions in debt collection agreements. "In one case, the debt collection company wanted the association to agree that the collection agency wasn't subject to the Fair Debt Collections Practice Act," she says. Such an agreement is probably not legal. "A lot of these contracts are very questionable, and you need to have your attorney scrutinize them."

Though you must consider their self-interest, many attorneys recommend you hire them to collect unpaid fees. "If you turn files over to legal counsel, typically you're charged on an hourly basis," says Koepke. And you have to pay that hourly rate regardless of the attorney's success in collecting. "However, you'll always retain the authority to tell the attorney what to and not to do."

Even if you're considering a collection agency, good luck finding one that will take the work. "There aren't that many collection agencies that have been willing to take on this work because for the amount of work, the amount that's recovered isn't worth their while," says Koepke. "A \$500 debt might be a big deal to your association, but not to the collection agency that collects for hospitals and credit cards, which are typically thousands-of-dollar debts,"

That's also why it's hard for associations to sell their bad debt, as many companies do. For instance, if an owner owes \$2,000, you can sell or "assign" that debt to a third party for pennies on the dollar. You get your money up front, and you owe nothing later, even if the third party never recovers a dime from the owners.

"I've had associations inquire about selling their unpaid collections," says Koepke. "But it's not attractive to debt purchasers. The dollar amounts are relatively low, and the likelihood of recovery isn't very good."

Your smartest collection tactic may be the least expensive. "The best way to collect money owed is through personal contact either by phone or in person, and if that doesn't work, follow up with a small claims lawsuit," says Kevin Corcoran, general counsel at Bob Schmitt Homes in North Ridgeville, Ohio. "Small claims cases are scheduled relatively quickly and are a less costly approach than other forms of litigation."

They've worked for Corcoran. "It's been my experience that once you drag people to court, and the judge tells them to pay, they pay up," he says. "If they don't, you can drag them back into court to identify assets you can attach. You can attach wages and bank accounts, which the association should already have a lead on by looking at a copy of a previous check sent by the owners."

"The whole process can be a pain in the neck," adds Corcoran. "But it works." 🏠

Cleaning Up Vacant Properties in Your HOA

Even one vacant property as a result of foreclosure in your homeowners association can bring down the values throughout your community. If your HOA is plagued by empty property, here's how to clean them up successfully.

First, check your governing documents to determine your rights. "Some governing documents allow associations to perform maintenance if the owners don't," says Michael S. Hunter, a partner at Horack Talley Pharr & Lowndes P.A. in Charlotte, N.C. "If they don't, it's risky to enter onto the owners' property, and I don't recommend associations do it. It could be considered trespassing, and you have the question of liability. The homeowners could accuse the association of taking or damaging their property by saying, "My kid's bike is missing from the back

porch.' Or 'The guy who cut my grass damaged my sprinkler system.'"

"I understand the problem," Hunter adds. "These properties look bad and detract from the value of other properties. And just mowing the grass is probably a low-risk matter. But if the association is cutting dead trees or hauling off junk, that's a different story."

If the property is now bank-owned, don't hesitate to push lenders to live up to their ownership responsibilities. "We take a very aggressive approach to notifying the bank about problems and running fines," says Julie McGhee Howard, an attorney at Weissman, Nowack, Curry & Wilco P.C. in Atlanta. "Do a very detailed letter to the bank's registered agent, and serve the registered agent and the bank's president, and you usually get a response. Our notice says, 'These are the problems. These are the things you have to fix, and these are the fines for not fixing them.' We run fines of \$25 per day for our associations. If your association doesn't have the right to fine but can institute self-help, the other option is for the association to fix the property and add the costs to the lien.

"We have one association with a vacant property right now, and the bank is responding," adds Howard. "The former owner is in the federal penitentiary. The property's ceiling is caving in, the home is infested by rats, and the yard is overgrown. We've got fines of \$75,000, and the bank is out working on the property as we speak."

The bottom line? "Know your rights," says Howard. "Hopefully you have the right to attach fines for failure to maintain. Have a procedure in place, and follow the same procedure in notifying banks as you would with homeowners. That's critical because it's miserable for neighbors when homes fall into a state of disrepair." 🏠

5 Ways To Trim Your HOA's Budget Today

"Buy a giant magnifying glass," advises Luigi Rosabianca, the principal attorney at Rosabianca & Associates in New York City. "There's always fat to be trimmed—always." Here are five ideas for tightening your homeowners association's belt.

1) Negotiate hard. "In many cases, you can get pretty good prices on contractors today because business is slow," says Sharon Glenn Pratt, a principal at Pratt & Associates in Campbell, Calif. "I have clients who have to rebuild after fire damage, and they're experiencing the benefits of having more competitive bidding, which you can also apply to your own contractors. If you've always used the same fence contractor or security company, there's probably more competition today. Bid your jobs out now, ask your present vendors about price reductions, and explore using different companies."

2) Cut staff where possible. If your association employs staff to maintain or oversee common areas, such as a clubhouse, pool, or grounds, think about whether you can trim positions. Rosabianca advises an association that has an Olympic-sized pool in its building. "Maintenance of a pool isn't that egregious, but what's expensive is the liability and the lifeguards," he says. "So rather than opening the pool from 5 a.m. to midnight, the association kept it open only from 9 a.m. to 5 p.m., which enabled it to cut lifeguard shifts." In another building that employed both 24-hour doormen to help people with packages and a concierge to announce guests to residents, the association cut the doormen in favor of an automatic sliding glass door with a motion sensor. "They've eliminated the doormen, which is a tremendous savings over the long term," says Rosabianca. "A couple of people lost their jobs, but tough times call for tough measures."

3) Make non-necessities less frequent. "I've had condo associations that have had to really scale back what that cleaning staff does," says Nancy Polomis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn. "A lot are also scaling back on landscaping budgets."

4) Put a hold on your wish list. "Many associations are cutting back on anything that's not a complete necessity," says Donna DiMaggio Berger, managing partner at Katzman Garfinkel in Ft. Lauderdale, Fla. "For example, they may have been planning to redo the clubhouse, but that's not going to be happening right now. Others are waiving payments to reserves because owners can't afford the full assessments with those payments included."

Other attorneys, however, recommend against cutting back on funding reserves. "You can lower assessments to trim the reserves, but we don't think that's fiscally responsible," says Stephen W. Thompson, a partner at Porges, Hamlin, Knowles, Prouty, Thompson & Najmy P.A. in Bradenton, Fla. "Instead of funding reserves to 100 percent, some associations are cutting back to even 10 percent. It's not good for fiscal responsibility or for resale because buyers will know they'll be looking at a special assessment to fund unplanned projects."

5) Be creative with utilities. If your association provides heat or electricity to common areas or owners' units, think outside the meter box. "Everybody is looking at anything related to energy consumption," says Marc Landis, a partner at Phillips Nizer in New York City. "They're switching to light bulbs that use less electricity because that's an easy electricity saver in the long run, even if they cost more on the front end. And rather than have individuals purchase power on their own, they're trying to buy in bulk as a condo or co-op. That could even be revenue-generating because the condo or co-op can keep an amount that's somewhere between the original higher price for individuals and the lower bulk price." 🏠

What To Do When Owners Go Bankrupt

You've just received notice that a delinquent owner's property is being foreclosed. Another unhappy soul has filed for bankruptcy. Here's what you need to know about protecting your HOA when owners go under.

If an owner files for bankruptcy, find out more about the filing. "The association's response depends on the chapter the owner files under," says Julie McGhee Howard, an attorney at Weissman, Nowack, Curry & Wilco P.C. in Atlanta. "Most homeowners file under chapter 7 or 13 of the bankruptcy code. In a Chapter 7, the case is usually resolved in three to four months, and there's nothing really for the association to do. Owners' assets are liquidated, and they get a discharge of their personal liability for their debts."

In other words, if owners owe your homeowners association \$2,000 and file for Chapter 7 bankruptcy protection, if your association hasn't protected itself by filing a lien, it will be an unsecured creditor. The likelihood is that the owners will be discharged of that obligation, which means your right to collect that money is extinguished.

If you've been smart enough to file a lien, your association becomes a secured creditor, much like the first mortgage holder or the holder of a note on a car. "In bankruptcy, secured creditors get far better treatment in how much they'll get paid," says Michael S. Hunter, a partner at Horack Talley Pharr & Lowndes P.A. in Charlotte, N.C. "It could be as high as 100 percent depending on how much equity the owners have in their home. Unsecured creditors can get as little as 5-10 percent of the money they're owed."

That means that no matter how many times your neighbors promise to pay, you must file a lien against their property for unpaid assessments to protect the association. "A lot of association boards say they feel sorry for people because a lot of them

are struggling, so they think they should back off collections," says Hunter. "That's the exact opposite of what you should do. Otherwise, whatever money they have will go to other creditors."

Some states provide for automatic liens for condo and homeowners association debt, but even in those states, many attorneys recommend you still file a lien to put the rest of the world on notice that the property is encumbered by the owners' debt.

"We do it anyway so there's no question, and it's much harder for the title companies to ignore in the event of a sale," says Nancy Polomis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn. "Our conservative recommendation is no matter what, file a lien."

If owners file for Chapter 13 bankruptcy, which means they're seeking protection while they try to pay back their debt over time, it's still in the association's interest to have a lien. "The lien stays on the property," says Howard. "The association may not be able to collect from the owners personally, but it could collect at the closing table if the owners later sell their property."

A lien also protects your association if the owners suffer a foreclosure. "Some states give the association a super-priority lien for six months worth of dues even if the mortgage company forecloses," says Hunter. "So even if the lender forecloses, the association gets money for those six months."

But having a lien doesn't guarantee payment in a foreclosure. "Foreclosures usually mean big write-offs for most associations," says Howard. "If the property is sold for more than the amount of the mortgage and government lien amount, the association will get paid. But in this market, we're not seeing folks buy homes at foreclosure sales like they were at the height of the investment property boom."

Keep in mind that the Servicemembers Civil Relief Act protects owners who are actively serving in the military. If they fall behind on their debts

while on active duty, you're prevented from getting a judgment against them. You can try to collect from their home-based spouse and suspend association rights—such as access to your pool or tennis court—but your right to file a lawsuit and get a judgment against them is curtailed.

"The most important thing an association can do occurs before owners get into trouble," says Hunter. "Have a written policy for delinquencies, and stick to it." **See a sample policy on page 10.**



6 Critical Moves For Smart HOA Management in Today's Economy

Sound management includes more than collecting your homeowners association's assessments. It also involves ensuring you've made smart business decisions about the future of your HOA. Here, association lawyers throughout the country offer their six best suggestions for making sure you don't neglect your other management responsibilities as you focus on collections.

1) Do what you've always done—carefully. "Just because times are hard, don't neglect things you can't neglect," says Sharon Glenn Pratt, a principal at Pratt & Associates in Campbell, Calif. "There's always the risk of boards thinking their only objective is to keep assessments down, so they don't fund reserves and keep things fixed."

2) Think long range. "The single most important thing associations need to do today is to plan, particularly with respect to major capital expenditures but also from an operating budget standpoint," says Marc Landis, a partner at Phillips Nizer in New York City. "Avoid deferring major

maintenance issues. That's always a temptation, but it ends up costing more in the end. If you need to take out a loan to finance improvements, it might take longer to get, and you might not get it at as attractive terms as you would have earlier. If you have to increase assessments, do it sooner, and spread it out over a longer period of time because homeowners might not be able to do short-term, high payments. And begin the annual budgeting process early because you have to take a hard look at projections, particularly for fuel costs if you live in a condo or co-op."

3) Be transparent. As you go about association business, communicate often with owners. "Tell owners that you know these are hard times, and explain what you're doing to minimize the effect on owners," says Ann Marie Mehlert, senior counsel at Garson Claxton in Bethesda, Md. "I work with one association where members were shocked not because there was a special assessment but by the way the board handled it. Rather than hunkering down, boards should be more open. Let owners know what's going on, that delinquencies have gone up, that you're looking for places to find savings, and that the 2009 budget will likely include increased fees as a result. The more open you are, the more it helps prepare your members for difficult decisions."

4) Plan for trouble. "You can't live in a Pollyanna-world and say everybody's going to pay their assessments so we don't need to raise assessments," says Nancy Polomis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn. "Ensure that your budget includes some allocation for losses so that your assessments are realistic. For instance, you can assume you won't be able to collect five percent of your assessments, so you need to raise your assessments to cover your costs."

5) Don't scrimp on insurance. "Make sure you review your insurance policy so your association is adequately protected if something happens," advises Eric J. Gould, an attorney with Couzens, Lansky, Fealk, Ellis, Roeder & Lazar P.C. in Farmington Hills, Mich. "With people stretched tightly already, coming back with a special assessment to pay for something that could have

been covered by insurance could really push people over the edge. You've got a fiduciary duty, and you don't want members to ask whether you reviewed the insurance policy and shopped it around or just renewed it. Make sure the protection is adequate and the cost is competitive. And when you enter into contracts with service providers, make sure they're also adequately insured."

6) Protect your reserves. "Don't neglect the protection of your reserves," says Stephen W. Thompson, a partner at Porges, Hamlin, Knowles, Prouty, Thompson & Najmy P.A. in Bradenton, Fla. "We recently had a client that for whatever reason had more than \$100,000 in its account, exposing some of those funds to loss in case of the bank's failure. Until recently, the idea of a bank failing was remote. It's very easy for associations to protect themselves by making sure they don't have more than \$100,000 with any one bank." 🏠

7 Keys To Collecting Assessments in Today's Economy

If your homeowners association is sailing along with no financial concerns, thank your lucky stars. Many are caught in a vise of increasing owner delinquencies and rising operating costs. And even if your HOA is financially sound today, you can't be sure the same will be true tomorrow.

So we tapped into association lawyers throughout the country to get their best tips for protecting your association in this economic upheaval. Here are seven critical moves to take today to improve your odds of collecting assessments from your owners.

1) Take the wheel. "You can't fix a problem unless you know about it," says Donna DiMaggio Berger, managing partner at Katzman Garfinkel in Ft. Lauderdale, Fla. "Get a handle on

your community. In the past, many boards have taken a hands-off approach and left collections to their property manager. A manager might say, 'Ms. Smith is delinquent.' When the board asks how long Ms. Smith has been delinquent, the property manager might say, 'Two years, but she's the only one, and that's how she is.' Those days are gone. You have to be more hands on."

2) Don't minimize problems. "Many associations have never had any trouble with people being late on assessments and aren't used to having to stay on top of that," says Sharon Glenn Pratt, a principal at Pratt & Associates in Campbell, Calif. "This isn't the time to be lax or informal on collection on monthly assessments. Get on top of all the late payers immediately so that you don't let any get away from you."

3) Know your rights. "Look at your governing documents to be sure you know what happens when you have a delinquency," advises Ann Marie Mehlert, senior counsel at Garson Claxton in Bethesda, Md. "Can you add late fees, interest, and collection costs to the outstanding amounts? And what's the timeline that owners have to pay within? See what your CC&Rs say, and if they don't address those issues and your state law allows it, change them so that they do. For example, I just helped one association change its rules to decrease the grace period from 30 to 15 days." (For more information on [the process of changing your CC&Rs](#), see the article on our website.)

4) Assert your rights. "When members fall behind, set your delinquency policy in action," says Michael S. Hunter, a partner at Horack Talley Pharr & Lowndes P.A. in Charlotte, N.C. "For instance, with my associations, if a person is 30 days past due, they get a letter. At 60 days, they get another letter, and then a final 15-day warning. Then we attorneys file a lien." Also enforce all the other rules that come with delinquency. For instance, if your governing documents allow you to prohibit delinquent members from using the pool, golf course, clubhouse or other amenities, be sure you enforce those restrictions.

5) Enforce your rules evenly. "Have a formal collection process that everybody is aware of, and actually follow it for everybody," recommends Nancy Polomis, a partner at Hellmuth & Johnson PLLC in Eden Prairie, Minn. "A lot of places don't want to do that. They say, 'So-and-so is a having a rough time, but he's always paid in the past.' The past is the past. I realize that's very cold, but if John Smith isn't paying his assessments, you're paying them for him. And it's easier for him to write check for \$600 for three months' assessments than \$1,600 for eight months. Finally, you open yourself to other homeowners saying, 'Why did you wait to go after John until he was eight months behind?'"

6) Know your trends. "Be aware of your problem accounts," says Eric J. Gould, an attorney with Couzens, Lansky, Fealk, Ellis, Roeder & Lazar P.C. in Farmington Hills, Mich. "The longer it takes to initiate an action, the less likely you are to achieve results. So if someone's 30 days behind,

that may be an indication that there's a problem. However, if somebody's regularly and continuously 60 days behind or more, that's probably a good signal you should be proactive in minimizing the association's exposure."

7) Consider deposits. "In my co-ops, I'm advising boards to consider holding escrows or obtaining guarantees from financially responsible parties before they approve purchasers," says Marc Landis, a partner at Phillips Nizer in New York City. "It's usually a number that's linked to the current monthly charges. It could be the charges for 6, 12, or 24 months, and the co-op might ask to hold the funds for two years, five years, or indefinitely." Because co-ops are corporations, not associations, they're different animals than condos and homeowners associations. So if you're in a condo or homeowners association, get legal advice to make sure your deposit plan meets your state laws. 🏠

Your Entire HOA Board Can Benefit with a [Group Membership to HOAleader.com](http://HOAleader.com)

For just \$39.99 per quarter, your entire HOA board of directors (up to 10 members) can get full access to all of the resources available on the HOAleader.com site.

Each board member gets his or her own username and password, and access to:

- **Updates:** the latest new laws and court cases affecting HOAs
- **Analysis:** Plain-English explanations of what those developments mean to you
- **Advice:** Step-by-step guidance on best practices
- **Tools:** Checklists, Sample Policies and Forms
- **Community:** The HOAleader.com discussion forum



It's an unbeatable deal!

[Start your Group Membership Today.](http://HOAleader.com)

SAMPLE HOMEOWNERS ASSOCIATION DELINQUENCY POLICY

The following is the [Association Name] Inc. Delinquency Policy. This policy has been written within the guidelines of the Declaration of Covenants, Conditions, and Restrictions applicable to the [Association Name] Homeowners Association and the laws of the State of North Carolina. This policy will be enforced to ensure the financial security of the Association, while simultaneously ensuring the value, desirability and integrity of the the [Association Name] community. This delinquency policy will be enforced effective [date] and will apply to assessments billed for the year [year] and thereafter.

I. ANNUAL BILLING

Each homeowner will be billed annually for the homeowners' assessments. Any payment* made must be made within thirty (30) days of the due date. Payments must be received within thirty (30) days in order to avoid incurring any penalties.

II. LATE PAYMENTS

A reminder notice will be sent to the owner if the payment is not received thirty (30) days from the due date. If payment of the assessment is not received within thirty (30) days from the initial due date, said assessment will incur a late charge as determined by the Board of Directors and will bear interest from the due date at the rate of eight percent (8%) per annum until paid in full.

If full payment of the assessment, late fee and accrued interest has not been made within sixty (60) days after the due date, the owner will be mailed a 15-day demand letter as required by statute. The notice will set out the balance due as of the date of the notice and will state that the owner has fifteen (15) days from the mailing of the notice to pay the outstanding balance without the attorney's fees and court costs. If full payment is not received within fifteen (15) days of the mailing of that letter, then the account will be turned over to the association's attorney for collection.

III. COSTS OF LEGAL ACTION

If it is necessary to initiate legal action, including but not limited to liens, foreclosure proceedings, and law suits, in order to collect overdue assessments, the homeowner will be responsible for all overdue assessments, late fees, accrued interest, costs of collection, reasonable attorney's fees and court costs as provided by the Declaration of Covenants, Conditions and Restrictions for _____ and the North Carolina Planned Community Act.

[The Board of Directors for the _____ Homeowners Association will determine the appropriate action to be taken in any situation not expressly covered by this delinquency policy.]

*A returned check reimbursement charge of \$25.00 or the maximum allowed by North Carolina State law will be issued to any account whose checks on which payment has been refused by the payer bank because of insufficient funds, or because the drawer did not have an account at that bank.

Source: Michael S. Hunter, Horack Talley Pharr & Lowndes P.A., Charlotte, N.C. This sample is based on North Carolina law, and you should check your association's governing documents and state law before adopting your own policy.