

The bylaws provide as follows:

The board has the power (1) to exercise for the HOA all powers, duties and authority vested in or delegated to the HOA and not reserved to the membership; (2) to employ an independent contractor as they deem necessary [including presumably someone to do a reserve study]; (3) to exercise all powers of a non profit corporation as set forth in the Non Profit Corporation Act.

It is also the duty of the board to "fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period."

The treasurer shall cause proper books of account to be maintained and shall cause an annual audit to be made of the HOA's books upon the completion of each fiscal year.

The Declaration provides that:

The maximum annual assessment shall be established by the Board.

The HOA's governing documents do not appear to specifically address reserve studies which is normal.

The non profit act at section 33-31-302 gives the HOA the following powers [which ostensibly are exercised through the HOA's board]:

- to make contracts and guaranties
- to incur liabilities
- to impose dues, assessments upon its members
- to carry on a business
- to do all things necessary or convenient to further the activities and affairs of the corporation.

So, it appears clear in my opinion that the board can unilaterally commission a reserve study without membership approval.

The board also has the duty and power to set the amount of the annual assessment.

I think it is reasonable to adjust the annual assessment amount in order to absorb the cost of the reserve study.

Article V, Section 3 does not have a contingent membership vote approval clause like Section 4 does.

Thus, I interpret Section 5 to mean only that the requisite notice of the anticipated increase in the annual assessment must be given to the ownership.

It's not very artfully worded but I assume you could give the notice in advance of the annual meeting or you could give notice of a board meeting where the new assessment is to be voted upon and approved.

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