

Real Estate Law: Initiation fees may be doorway to needed revenue for HOAs during pandemic



By **KARIANNE M. POLIMENI**

No homeowner likes to learn that their homeowners' association ("HOA") dues are being raised, especially during a global pandemic when finances are tight. The reality, though, is that maintaining an HOA is expensive, and the expenses do not decrease or slow down even when the rest of the world appears to. Given the current economy, many HOAs are looking for ways to increase revenue without raising the current members' dues.

Most HOA expenses are typically covered by assessments (also commonly referred to as dues) paid by the members of the HOA. Typically, HOA members are responsible for regular and special assessments. Regular assessments typically cover standard maintenance costs anticipated for a given year. Special assessments, if levied by the board of directors of an HOA (the "Board"), typically cover extraordinary maintenance costs anticipated for a given year, such as capital expenditures. While many HOAs maintain a reserve fund for emergency and unanticipated expenses, some HOAs rely solely upon special assessments to cover such expenses.

While many HOAs grant their Board the power to increase regular assessments and to levy special assessments, it is very common for HOAs to limit the Board's ability to do so in certain circumstances. For example, a Declaration may contain a restriction providing that the HOA's members must approve of an increase to the annual assessments by more than 20%. Convincing

members to agree to increase their dues is difficult under normal circumstances; convincing members to agree to increase their dues during a global pandemic is nearly impossible.

As such, many HOAs are looking for ways to increase revenue without obligating their members to pay more in dues. One way to accomplish this goal is by implementing an initiation fee (sometimes known as a buy-in fee or a capital contribution fee): a fee charged upon the transfer of an HOA property to a new owner. In practice, an initiation fee is looked at as a one-time membership fee to be paid by each new owner, and it is paid by the new owner/ purchaser at closing.

While some states prohibit initiation fees, New York allows HOAs to levy initiation fees if such practice is expressly allowed under the HOA's governing documents. Importantly, the law requires that the initiation fee be determined on the same basis for all members of a given class. In other words, all members of a particular class must pay the same amount, if the initiation fee is a set amount, or an amount determined using the same formula, if the initiation fee is not a set amount. In New York, depending on the HOA and type of community, initiation fees could range anywhere from \$100 to \$2,500.

In the event an HOA wishes to obligate its new members to pay an initiation fee and its governing documents do not already expressly allow such practice, the governing documents would first need to be amended to expressly allow the same. In doing so, the HOA should be careful to strictly follow the requirements for amending such document(s). For example, many HOAs require the consent of the majority of its members to

amend its bylaws and/or Declaration. While obtaining such consent is not typically easy where a Board is seeking to raise or implement dues or fees, it may be easier in this instance because the existing members voting on such amendment would be benefitted by it; obligating new members to pay an initiation fee would raise revenue for the HOA and help take the burden off of the existing members for expenses for which they would otherwise be responsible.

On the other hand, existing members may be hesitant to implement an initiation fee in fear of deterring prospective homebuyers. Prospective purchasers should always do their research to learn of any fees that may be charged by a prospective HOA. While initiation fees are not uncommon, they are not yet so common that they are unavoidable. When taking such fee into consideration with the numerous other fees and expenses associated with belonging to an HOA, it may deter a prospective purchaser from buying a home located in a HOA community. To that end, non-essential (or otherwise additional) fees may make it difficult for current members/homeowners to sell their homes. Of course, prospective purchasers could negotiate to have the initiation fee paid for by the seller, instead.

HOAs considering the possibility of implementing an initiation fee should consult with legal counsel to discuss the potential implications and process for opening that door.

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