

CAPITAL PROJECT GONE AWRY

This Course is approved by the DBPR Council of Community Association Managers, for 4 hours of continuing education credit in the area of:

Operation of Physical Property

Gold Coast Professional Schools, Inc.

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INTRODUCTION

COURSE DESCRIPTION

Welcome to the Capital Project Gone Awry 4-hr CAM CE Course. This course meets the state required continuing education credit in the area of Operation of Physical Property. In this course, we provide you with information regarding how an association should conduct a capital project, including details regarding the association's responsibility and elements of a project. Then we discuss an association's capital project that was handled incorrectly. We analyze what was done correctly, what was done incorrectly, and how the board could have better handled the project. Your role, as a student and as a CAM, is to learn from this association's mistakes.

OUTLINE

The following topics are covered in this course:

- The Association
- Association Maintenance
- Elements of a Project
- Capital Project Gone Awry
- Summary

So let's start by looking at the association and how it operates.

PART I

1 THE ASSOCIATION

2 Association Responsibilities

3 The most important responsibility of a community association is to preserve, maintain, and enhance the
 4 property, its value, and the association assets. The board's fiduciary responsibility requires that it safeguard
 5 and provide maintenance for the common elements. This includes properly maintaining all physical property,
 6 such as.

- 7 ▪ Pool
- 8 ▪ Parking lots
- 9 ▪ Grounds
- 10 ▪ Landscaping
- 11 ▪ Building components

12 If the association board has acted responsibly, so that the property is well maintained, the owners, will reap the
 13 benefits such as.

- 14 ▪ Sustained and/or enhanced property values and curb appeal
- 15 ▪ Less accidents and insurance claims that results in lower insurance costs
- 16 ▪ Lower assessments

17 Maintenance Responsibilities

18 When the board selects and hires a CAM, it usually delegates the responsibility for planning, oversight, and
 19 coordination of the physical property maintenance to him.¹

20 The board assumes that he understands his responsibilities and can recommend/or select contractors and
 21 employees who are competent to carry out the day-to-day (routine), preventative, and emergency maintenance
 22 requirements.

23 *Personnel*

24 **Vendors**

25 In some cases, the association has used the same vendors for years to perform tasks, such as:

- 26 ▪ Service the pool
- 27 ▪ Service the elevators
- 28 ▪ Landscaping
- 29 ▪ Inspect fire safety equipment

30 **Building Maintenance Personnel**

31 In many buildings, the maintenance supervisor or building engineer has overseen repairs in the building or
 32 complex since its turnover from the developer 15 to 20 years ago. This individual may have little formal training,
 33 but has learned through experience and trial and error what he must do to keep the components working. Many
 34 have also started as assistants to maintenance supervisors or building engineers. Some have certifications in
 35 specific service areas.

36 Often, the message conveyed by the board to onsite personnel is to keep costs down. This may result in the
 37 maintenance supervisor making patchwork repairs to systems rather than having them repaired professionally.

1 In this course, we use the male pronoun (e.g. he, him) to denote both male and female CAMs.

1 **Problems with Older Associations**

2 Some problems with older associations include

- 3 ▪ They generally don't practice preventive maintenance
- 4 ▪ They provide maintenance on an emergency and/or requested basis (that is, when a component stops
- 5 working or someone complains.)
- 6 ▪ They don't schedule regular inspections of equipment or components, and are often surprised when a
- 7 component fails.
- 8 ○ Emergency repairs to components raise costs substantially and often result in unexpected major
- 9 projects.

10 **Major Projects Supervision**

11 Managers and boards are typically unqualified to supervise major projects and improvements, such as

- 12 ▪ Roof replacement
- 13 ▪ Concrete restoration
- 14 ▪ Expansion joint replacement
- 15 ▪ New entryway construction
- 16 ▪ Fountain and seawall repair

17 If the association or manager does not plan and execute a major project properly, the association could face

18 significant cost overruns and large special assessments.

19 **ASSOCIATION MAINTENANCE**

20 The following topics are covered in this section:

- 21 ▪ Types of required maintenance
- 22 ▪ Maintenance recordkeeping system
- 23 ▪ Owner required repairs
- 24 ▪ Major and minor projects
- 25 ▪ Problem identification

26 **Types of required maintenance**

27 Each community association has five types of required maintenance work that could be included in the budget

28 and performed. They are

- 29 ▪ Routine maintenance
- 30 ▪ Preventive maintenance
- 31 ▪ Emergency service maintenance
- 32 ▪ Requested or corrective maintenance
- 33 ▪ Scheduled replacement

34 Let's look at each one of these.

1 *Routine Maintenance*

2 Routine maintenance is recurring maintenance activity that is routinely scheduled and requires little oversight.
3 Examples include

- 4 ▪ Clean the pool
- 5 ▪ Mow the lawn
- 6 ▪ Wash the windows
- 7 ▪ Clean the lobby
- 8 ▪ Vacuum the hallway carpet

9 These costs are usually included in the operating budget.

10 *Preventive Maintenance*

11 Preventive maintenance is periodic work performed on property, machinery, or components to ensure proper
12 operation, avoid breakdowns, and prolong useful life of the machine.

13 Examples include

- 14 ▪ Clean the sewer lines
- 15 ▪ Service the elevators
- 16 ▪ Clean the air handlers
- 17 ▪ Clean and seal the roof

18 While the IRS considers preventive maintenance costs to be an operating expense, associations often budget
19 them as occurring less than annually in the reserve budget.

20 *Emergency Service Maintenance*

21 Emergency service maintenance is performed in response to emergencies or unpredicted problems and
22 breakdowns.

23 Examples include

- 24 ▪ Roof leaks
- 25 ▪ Pipes inside the wall burst
- 26 ▪ Emergency generator fuel tank leak
- 27 ▪ Storm damage

28 Depending on the extent and nature of the problem, the association may use operating or reserve funds, or
29 may special assess.

30 *Requested or Corrective Maintenance*

31 Requested maintenance is work that's requested by an owner, tenant, or board member. Corrective
32 maintenance is usually work that's identified during an inspection. The association schedules this work via a
33 work order or service request system.

34 Examples include

- 35 ▪ Removal of a wasp nest
- 36 ▪ Fix a leak (air conditioner or faucet)
- 37 ▪ Issues with the water tower

38 The association generally includes funds for corrective maintenance in its operating budget, and/or invoices an
39 owner when the repair is due to owner negligence, or the documents define the component as the responsibility
40 of the owner.

1 *Scheduled Replacement*

2 Scheduled replacement is maintenance work to replace or rehabilitate major components and systems.

3 Examples include

- 4 ▪ Concrete restoration
- 5 ▪ Seawall repair
- 6 ▪ Parking lot resurfacing

7 Generally, the association includes the costs of these items in its reserve budget. It also estimates the time in
8 which the item will need to be rehabbed, repaired, or replaced.

9 **Maintenance Recordkeeping System**

10 To adequately monitor building maintenance, the association should establish a system by which to schedule
11 and oversee required and requested maintenance activities. Such a system might include

- 12 ▪ Maintenance Schedule Calendars
- 13 ▪ Checklists
- 14 ▪ Work Orders
- 15 ▪ Progress Reports

16 In this section we also cover the CAM responsibilities regarding maintenance.

17 Let's look at each one of the system components.

18 *Maintenance Schedule Calendars*

19 The CAM and/or maintenance supervisor should set up two different maintenance schedules, such as

- 20 ▪ One that shows projects and work to be performed in the current year
- 21 ▪ One that shows multi-year projects

22 The manager may also wish to develop a calendar that shows major activities for the year, and a weekly
23 schedule that displays work performed on a routine basis, such as pest control.

24 *Checklist*

25 For routine work, the manager may develop a checklist, by which the staff or contractor keeps track of their
26 progress. A checklist works well for janitorial and grounds clean-up functions; however, the board may request
27 a written progress report for major projects or work.

28 *Work Orders*

29 The manager should establish a work order, or service delivery, system through which the association receives
30 and tracks requests for repairs. Computerized work order programs and pre-printed work order forms are
31 available from a variety of companies and through most office supply stores and property management supply
32 companies.

33 The work order process might go something like this:

- 34 ▪ One that shows projects and work to be performed in the current year
- 35 ▪ One that shows multi-year projects

36 **Work Order Process**

37 The work order process might go something like this:

- 38 ▪ The CAM (or other association personnel) receives a maintenance request from an owner.
- 39 ▪ He enters the information onto a maintenance request form. The information could include:
 - 40 ○ The date the request was received
 - 41 ○ The priority (e.g. "Urgent")
 - 42 ○ The name of the person who requested the work and contact info

- 1 ○ The area in which the work is to be done (e.g. billiard room, Unit #1112)
- 2 ○ The name of the staff or contractor to whom the work is assigned
- 3 ○ Any necessary materials and tools needed (e.g. drywall, paint, hammer)
- 4 ○ Schedule for the repair
- 5 ○ Amount of time estimated to complete the work
- 6 ○ If applicable, information regarding the fact that this item is part of a project that is currently under
- 7 way or will be addressed during an upcoming routine/preventative maintenance schedule
- 8 ▪ He gives the work order to the applicable staff member or contractor
- 9 ▪ When the job has been completed, the maintenance supervisor should inspect the work to ensure the
- 10 workmanship is good and complete, and mark his approval on the complete request form.
- 11 ▪ File the work order (in the association files and the unit file, if applicable)
- 12 ▪ If an owner requested the work, provide them with a copy of the complete work order. (We recommend
- 13 that the CAM keep the owner in the loop regarding the work order progress.)

14 *Progress Reports*

15 The association should require that contractors and staff periodically provide the association with reports that
16 detail requested and completed work. The CAM or maintenance supervisor normally oversees progress of the
17 work and reports to the board.

18 If the association has a maintenance supervisor, the CAM should periodically observe the progress and inspect
19 the completed job to ensure that all work was performed as required according to performance standards (if
20 the manager has those skills). The manager should periodically report to the board on maintenance activities.

21 *CAM Responsibilities*

22 The CAM may adjust schedules, completion dates, or work assignments based on the progress.

23 The manager is responsible for verifying that work and work practices comply with applicable laws and
24 documents.

25 If the manager observes a problem, such as unsafe work practices or a contractor is unable to meet the
26 schedule, the manager should investigate, meet with the appropriate parties, and take the necessary steps to
27 resolve the problem.

28 And, at all times, keep the board informed.

29 **Owner Required Repairs**

30 If an owner is responsible for the repair, the work order should document the cost of labor and materials, and
31 provide a basis for charge backs to the owner.

32 Many associations fail to do so, to the detriment of the other owners.

33 When the association pays to repair one owner's leaking condenser, it sets precedence.

34 How can it, in the future, tell another owner that the association will not cover the cost?

35 Furthermore, when an association maintenance employee spends time performing repairs for which the owner
36 is responsible, it takes away from maintaining the common elements.

37 Statute holds an owner responsible for repairs and maintenance of his unit and for any damages to common
38 elements or another owner's unit or property.

39 In some cases, associations can assess the owner for the damages.

1 ***Owner Responsibilities***

2 Many owner responsibilities are basic and simple, and are outlined in the association formal documents. They
3 could include:

- 4 ▪ Clean and oil window components
- 5 ▪ Check and adjust shutters to ensure they close properly²
- 6 ▪ Replace washers so faucets do not leak
- 7 ▪ Re-caulk tubs and showers, when necessary.

8 Remember to check the association documents for clarification on owner maintenance responsibilities. When
9 in doubt, consult the association’s attorney.

10 If these tasks are not performed routinely, the significant repercussions can include the following:

- 11 ▪ Blown-out windows during hurricanes
- 12 ▪ Leaks into common areas and units that could result in damage to common elements, personal
13 property, and a mold problem
- 14 ▪ Increased water usage and costs due to leaky faucets and toilets in units

15 We recommend that the association periodically remind owners of their maintenance and repair responsibilities.
16 The board may even want to conduct periodic inspections to identify owner required maintenance.

17 **Major and Minor Projects**

18 There are no industry standard definitions for major and minor projects. However, in surveying managers and
19 contractors, we have found that they distinguish a “major” project from a “minor” project through certain
20 characteristics.

21 ***Major Project***

22 A major project has the following characteristics

- 23 ▪ It exceeds a certain dollar value
- 24 ▪ It occurs over a period of days, weeks, or months
- 25 ▪ It creates an improvement to the property, such as a new water feature, sidewalks where none exist,
26 etc.
- 27 ▪ It prolongs the life of a structure or component through rehabilitation, repair, or replacement
- 28 ▪ It often requires a higher level of expertise, such as an engineer or architect, in the design and oversight
29 of the project.
- 30 ▪ It may also involve multiple trades or professional disciplines.

31 ***Major project examples***

32 Examples of major projects include

- 33 ▪ Replacement of the roof
- 34 ▪ Restoration of concrete
- 35 ▪ Replacement of balconies
- 36 ▪ Replacement or repair of expansion joints
- 37 ▪ Modernization of the elevators
- 38 ▪ Replacement of a fountain or water feature
- 39 ▪ Replacement of seawalls
- 40 ▪ Painting and waterproofing

2 Some association may maintain the shutters.

1 Based on specific requirements and the extent of the work, the following might also be considered as major
2 projects.

- 3 ▪ Replacement of flooring or wallpaper
- 4 ▪ Resurfacing the pool
- 5 ▪ Refurbishing the landscape
- 6 ▪ Resurfacing the parking lot and roadways
- 7 ▪ Cleaning up after a hurricane (Dependent on requirements and extent of the damage.)

8 *Minor Projects*

9 A minor project has the following characteristics

- 10 ▪ It is under a certain specified dollar amount
- 11 ▪ It can be completed with a specified short term period (e.g. hours, days.)
- 12 ▪ It usually involves only one, or perhaps two, disciplines (trades)
- 13 ▪ If frequently doesn't require oversight by a professional engineer or architect

14 *Minor Project Examples*

15 Examples of a minor project includes:

- 16 ▪ Repair of the roof
- 17 ▪ Repair potholes in roadways
- 18 ▪ Replace corroded doors in clubhouse
- 19 ▪ Repair of a fountain or water feature
- 20 ▪ Repair seawalls
- 21 ▪ Replace cracked tiles
- 22 ▪ Replace stand-alone air conditioner in guardhouse

23 **Problem Identification**

24 Association managers and boards identify problems in many ways, including the review, inspection, or
25 evaluation of the following:

- 26 ▪ Current condition of components
- 27 ▪ Repair histories of components
- 28 ▪ Continuing problems or emergencies
- 29 ▪ Damage due to hurricane or other disaster
- 30 ▪ Construction defects
- 31 ▪ Scheduled rehabilitation or replacements (deferred and/or capital maintenance)
- 32 ▪ Building code requirements

33 Other ways by which an association can identify and prevent problems include the performance of ...

- 34 ▪ Periodic property inspections
- 35 ▪ Regularly scheduled maintenance
- 36 ▪ A reserve study

37 Let's look at each of these in more detail.

1 *Periodic Property Inspections*

2 It's important for the CAM to conduct periodic property inspections, especially if the association doesn't have a
3 maintenance supervisor.

4 During the inspection, the manager should carry a checklist³ to record any issues he might find.

5 The inspection will most likely reveal small problems that can be easily corrected, such as informing the janitorial
6 crew to clean the hallways more thoroughly.

7 However, the inspection may reveal larger problems that may be more difficult to correct, such as a water leak
8 near the hot water heater.

9 The more familiar a manager and/or maintenance supervisor is with the property, the more quickly he will notice
10 and catch small problems before they become major ones.

11 *Regularly Scheduled Maintenance*

12 The manager should ensure that inspections and maintenance performed by outside vendors occurs regularly
13 as required by contract.

14 If the pool service vendor is properly performing his job, the manager should not learn that the pool heater
15 needs to be replaced when an irate owner complains about the cold water in the pool.

16 Another example is when residents in the lobby complain that the lobby is not cool enough, the manager should
17 determine if the A/C system is due for an overhaul or replacement.

18 Ensuring that maintenance occurs as regularly required will prolong the life of equipment and reduce cost of
19 repairs.

20 If you carry out the appropriate checks and follow through on required maintenance, it's less likely that a
21 component will fail suddenly and without notice.

22 In other words, you might be able to prevent that emergency phone call in the middle of the night!

23 *Reserve Study*

24 An association should schedule a reserve study in order to properly

- 25 ▪ Identify, schedule, and cost out replacement and/or repair of components
- 26 ▪ Identify defects in construction and cost out fixing those defects.⁴

27 In this section we cover each of these topics.

- 28 ▪ Purpose of a reserve study
- 29 ▪ The reserve study team
- 30 ▪ The annual reserve study

31 **Purpose**

32 A reserve study, in certain ways, is a report card to the owners, purchasers, lenders, and others regarding the
33 health of the association.

34 It reveals how the board is handling its responsibilities to protect, preserve, and enhance the property,
35 association, and assets.

36 A good reserve study will look not just at major components, such as elevators and roofs, but will also examine
37 every component of a system.

38 It then provides a plan for replacement of the system.

39 Simply, it presents a current snapshot of components and equipment, and predicts short- and long-term costs
40 to repair, replace, or rehab components.

3 Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read a copy of the Periodic Property Inspection Checklist.

4 In new buildings, at turnover, or where a project has been completed and defects in construction are suspected.

1 It will provide the board with guidance on how to fund the replacement of capital equipment and performance
2 of deferred maintenance over a period-of-time.

3 **The Reserve Study Team**

4 A reserve study team includes professionals who are qualified and experienced in examining building
5 components, determining maintenance requirements and component life cycles, and predicting costs for
6 maintenance repairs and major projects.

7 The following professionals are included:

- 8 ▪ A certified reserve study analyst
- 9 ▪ An engineer
- 10 ▪ A CPA
- 11 ▪ A CAM

12 In order to prepare a thorough report, the reserve study team performs the following activities:

- 13 ▪ Reviews the association documents
- 14 ▪ Determines maintenance responsibilities (between association and owners)
- 15 ▪ Identifies and analyzes physical components according to the following:
 - 16 ○ An inventory of common area items
 - 17 ○ Age and condition of components
 - 18 ○ Current maintenance requirements
 - 19 ○ Life cycles of and cost to repair or replace common area components
 - 20 ○ Preventive maintenance requirements and scheduling
 - 21 ○ Likely remaining useful life if properly maintained
 - 22 ○ Estimated cost of deferred maintenance
 - 23 ○ Estimated replacement/repair/rehab cost
- 24 ▪ Establish if/when the association should repair, replace, or rehab components
- 25 ▪ Present the financial needs per year, and/or a cash flow plan:
 - 26 ○ Estimate what the replacements will cost (in today's dollars)
 - 27 ○ Analyze financial resources needed to maintain the common elements over time
 - 28 ○ Examine current association financial condition
 - 29 ○ Recommend an appropriate strategy to maintain items/components now and to fund major
30 maintenance work in the future
 - 31 ○ Advise the board how to balance the size of the reserve fund against the deterioration of the
32 common elements

33 **Annual Reserve Study**

34 An association should update the study annually, to reflect changing conditions of components.

35 For instance, perhaps the team stated that the roof would not require replacement for another five years. Then,
36 during that time frame, a hurricane hit and drastically weakened the roof. The association would want to bring
37 in a specialist to examine the roof and, if necessary, immediately move to replace the roof.

ELEMENTS OF A MAJOR PROJECT

Once your association has identified a problem as a major project, the next step is to plan the project. By understanding all of the elements that go into a major project, you'll be better equipped to plan it.

In this section, we cover the following elements of a major project:

- Project management
- Florida Building Code (FBC) compliance
- Development of project documents
- Funding
- Notices to residents
- Permits
- Construction Lien Law
- Warranties

Project Management

All associations enter into contracts that use funds collected from owners. Therefore, the board has a fiduciary responsibility to ensure that the services are performed in accordance with the contract, at the agreed upon level, at a reasonable cost, and within the scheduled timeframes. To do this, the association should assign a project manager to make sure that all the elements of a major project are put together successfully.

Let's look at these subjects:

- Project manager responsibilities
- CAM as project manager
- Product manufacturer
- General contractor as project manager

Project Manager Overview

A project manager for a major project should have certain skills and qualifications. A few of those are listed here:

- Is a knowledgeable and recognized professional in the area of the project
- Thoroughly understands the scope of services
- Is able to monitor each phase of every project
- Understands the relationship between concurrent projects (if any) and can coordinate them to most effectively complete each project within the contractual schedule
- Is able to identify any product or workmanship that varies from the specifications, and implement a remedy
- Is authorized to evaluate any unanticipated issues while work is in progress and recommend corrective action
- Is capable of performing inspections, evaluating completed work, and approving contractual progress payments
- Can serve as a resource for the board on project issues

CAM as Project Manager

Many associations do not consider hiring a professional project manager (PM) to oversee its major projects because it assumes that it's CAM or maintenance supervisor can provide sufficient oversight, or it assumes that the project will just run itself.

This is a serious error in judgement.

1 If the board is considering appointing its CAM as the PM, it must be aware that management of a major project
2 is not a routine responsibility of its CAM.

3 The routine responsibility of its CAM is to oversee the day-to-day operations of the association, which can
4 consume between 40 to 60 hours a week of his time.

5 As the PM, the board might expect the following additional duties from its CAM:

- 6 ▪ Daily project coordination with members of the association
- 7 ▪ Accounting and bookkeeping of project expenses
- 8 ▪ Communication with on-site supervisors or other PMs regarding problems and issues that require
9 immediate attention

10 Before its final decision about appointing its CAM as the PM, the board must consider these questions:

- 11 ▪ Does its CAM have the necessary skills and qualifications to be a project manager? Does he have
12 sufficient time and resources to perform the functions of a PM while still maintaining good performance
13 as a CAM?

14 If the answer to either of these questions is “No,” then its CAM is not qualified to perform the additional burden
15 of managing the association’s major project.

16 If, however, the CAM is qualified and becomes the PM of a major project, he is obligated to delegate a portion
17 of his other duties to qualified staff. Additional qualified staff might be needed; the cost of which should be
18 included in the project budget.

19 In self-managed associations, it’s common for board or association members to be chosen to oversee certain
20 parts of the project, as well.

21 Appointing a CAM as a PM is not a good idea, simply for the reason that one of these jobs is likely to suffer.
22 Either the CAM will burn out from too many long, stressful hours thereby causing the daily operations of the
23 association to suffer; and/or he will not be able to manage the project successfully.

24 Especially in a major project, the board can’t “go cheap” by refusing to hire a qualified professional PM. The
25 board should make the correct decision as to who will manage its major project.

26 *Product Manufacturer Manager*

27 A product manufacturer will usually have regional field staff available to oversee certain portions of a project.

28 For instance, the roofing manufacturer assigns a field manager to oversee certain portions of the roof installation
29 to ensure that the roofing materials are applied in accordance with manufacturer specifications. This will
30 guarantee that the warranty is maintained

31 However, in almost every project, these representatives do not provide day-to- day services that would equate
32 to a project manager.

33 *General Contractor as Project Manager*

34 The association may also want to consider hiring a general contractor (GC) for all facets of the work.

35 If so, the GC is responsible for project management activities.

36 It’s likely that the GC is someone specifically trained in project coordination and management. The association
37 can expect an additional charge for this service.

38 While there are certain advantages to having a single GC who selects all other contractors, it provides the
39 association with fewer alternatives when a problem occurs with one of the projects.

40 The association must ensure that the GC is independent of the contractor(s) performing the actual work; he’s
41 responsible for the quality of work only.

42 Otherwise, if the GC is serving as the PM and managing the project, he has a conflict of interest. This could
43 result in project completion delays and increasing costs. Typically, a GC is hired as the PM when there are
44 multiple projects that the association is undertaking at one time.

1 **Florida Building Code (FBC) Compliance**

2 Another element of a major project for an association is Florida Building Code (FBC) compliance.

3 With that in mind, let's take a look at these subjects:

- 4 ▪ FBC history
- 5 ▪ Wind zones
- 6 ▪ Standardized training for building code officials
- 7 ▪ FBC Information systems
- 8 ▪ Current requirements
- 9 ▪ The FBC and the association
- 10 ▪ Sprinkler retrofit requirement
- 11 ▪ Summary

12 *Florida Building Code History*

13 In 1992, Hurricane Andrew, a Category 4 storm with wind gusts over 200 mph, ripped through South Florida, causing more than \$25 million in damage and the loss of over 130,000 homes.

15 Many professionals believed that much of the damage could have been prevented if stronger building codes had been in place and strictly enforced.

17 Therefore, in 1996, the Legislature established the Florida Building Codes Study Commission to examine the 400 plus local and county building code systems within Florida and to develop a single Florida Building Code.

19 As a result of these studies, the Legislature instituted a unified Florida Building Code to be used by all jurisdictions.

21 The Florida Building Code addresses local and regional conditions by allowing local jurisdictions to apply for more stringent codes when warranted.

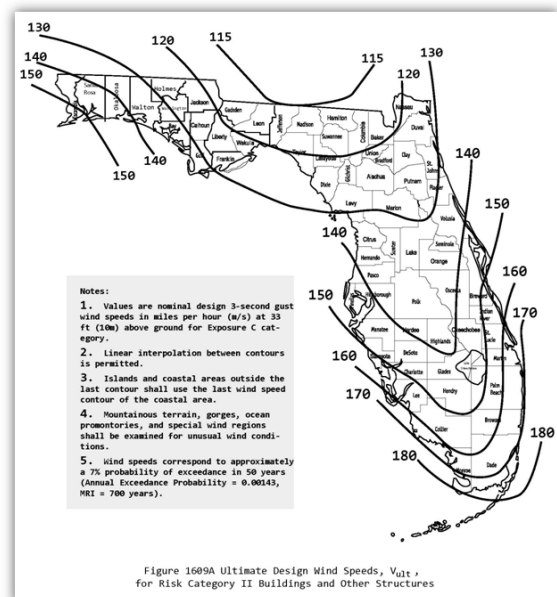
23 However, the Florida Building Commission must agree to the stronger code before the local jurisdiction can enforce it.

25 *Wind Zones*

26 Additionally, the FBC has Ultimate Design Wind Speed Maps that require certain building practices to better protect against windstorm damage.

29 They can be found in the FBC, Building Volume, Section 1609.

31 The FBC set minimum standards to ensure that buildings located in high intensity hurricane areas are able to withstand winds and windborne debris. Impact resistant glass or shutters must protect exterior glass, doors, and other building openings. Buildings must be constructed to withstand certain wind pressures that occur when a window breaks due to hurricane force winds.



1 The FBC adopted these five wind zones:

- 2 1. Wind Speed Zone: Winds calculated as per previous code; buildings must adhere to the American
3 Society of Civil Engineers, ASCE 7-95.
- 4 2. Special Protection Zones: Areas within 1,500 feet of coastal construction control line, or within 1,500
5 feet of the mean high tide line, whichever is less.
- 6 3. High Velocity Hurricane Zone (HVHZ): Encompasses Miami-Dade and Broward counties, which are
7 required to meet stricter construction and design measures as defined by ASCE 7-98.
- 8 4. Wind-Borne Debris Region Areas: Encompasses areas with winds in excess of 120 mph and/or areas
9 within one mile of the coast, where winds are 100 mph or greater. Buildings in such areas must be
10 designed to protect openings or withstand increases in internal pressure that will occur if a window or
11 door fails.
- 12 5. Panhandle Protection Provision Zone: Encompasses area from Franklin County to the Alabama line
13 and defines the wind-borne debris region as within one mile of the coast.

14 *Standardized Training for Building Code Officials*

15 The Florida Building Commission also noted significant discrepancies in local requirements for building code
16 officials and plans examiners. Because of this, it created standardized training and testing procedures that all
17 local building code officials must meet.

18 All licensed construction professionals must take a standard 4-hour "CORE" class on the Florida Building Code.

19 It also recommended to the Legislature that certain construction professionals be regulated. (Counties and
20 municipalities usually include a list of professionals who require a license or certification when permit
21 applications are requested.)

22 *FBC Information System*

23 The Florida Building Commission also recommended a statewide information system, into which all locales
24 would enter code violations and disciplinary actions on local and state licensed contractors.

25 This eliminates the problem of a contractor moving from one location to another to escape a history of poor
26 workmanship and/or code violations.

27 Contractors are licensed by the DBPR. A license can be verified through the DBPR system, and one can also
28 check for complaint information on a contractor. While local governments are encouraged to forward complaints
29 received by their building departments to the DBPR for inclusion in the statewide system, this often does not
30 occur. We recommend that you check potential contractors both on the DBPR website and the local government
31 website.

32 The Legislature required the Department of Business and Professional Regulations (DBPR) to create an
33 automated information tracking system for all licensing boards, through which local governments can report
34 and track problems with licensees, registrants, and certificate holders.

35 Local governments are still required to maintain records about contractors doing business in their area.

36 Not all local governments provide the DBPR with this information on contractors. We recommend that you verify
37 contractor certification and complaint data with both the DBPR and your local government

38 *Current Requirements*

39 The Florida Building Commission updates the Florida Building Code every three years, to reflect changes in
40 technology and to protect property and residents better.

41 The FBC requires all new buildings to comply with the most recent changes, and requires certain buildings
42 undergoing substantial rehabilitation or repair, or total replacement of certain components to meet the current
43 FBC requirements.

The FBC and the Association

Every community association must re-evaluate certain maintenance responsibilities in light of FBC compliance. Replacement of doors, windows, roofs, skylights, etc., must comply with the FBC requirements. Costs of replacing such components may be significantly higher, therefore, the association must consider this when budgeting for these components. For instance, if the association's roof must be replaced, it must meet the current Building Code, not the original code of the mid-1980s, 1990's, or even 2000's.

Sprinkler Retrofit Requirement

Florida statutes were amended to require existing high rises to retrofit with fire sprinklers and engineered life safety systems by 2019⁵.

The definition of "fire protection system" is ...

"Fire protection system" means a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. Such systems include, but are not limited to, water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems used for fire protection use. Such systems also include any overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, airlines, thermal systems used in connection with fire sprinkler systems, and tanks and pumps connected to fire sprinkler systems." F.S. 633.102(11)

An association can opt out of retrofit of the sprinklers if it obtains the written consent or personal vote of the majority of the total voting interest.

Additionally, a condominium/cooperative association must ensure that its audible fire alarm system is working.

Summary

In summary, an association must ensure that the major project complies with all building code requirements.

It may also be required to meet federal accessibility standards, such as ADA, for entry ramps, elevator panels, doors and windows, etc.

Presumably, the project manager, architect, or engineer hired to design the project is aware of and will ensure that contractors meet these requirements

Development of Plans, Specifications, and Bid Documents

Another element of a major project for an association is the development of the project documents, such as building plans, specifications, and bid documents.

Let's look at the following project document topics:

- Statute requirements
- Internal guidelines
- Requests for bids (RFBs)
- Minimum qualifications for bidders
- Bid packages
- Ranking and selection of qualified bidders
- Cost
- Due diligence chart
- Bid completion process

⁵ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the F.S. 718.112(2) for condominiums and F.S. 719.1055(5) for cooperatives.

- 1 ▪ Permits
- 2 ▪ Fee Schedule
- 3 ▪ Statutory Requirements

4 Major repairs, replacements, rehabilitation activities typically require or merit bids. Any activity performed by an
5 outside vendor should have a written agreement or contract between the vendor and association. We'll now
6 look at the bidding process.

7 In this section, we cover the statutory requirements for the following:

- 8 ▪ Bids
- 9 ▪ Vendors

10 *Bids*

11 Condominiums and cooperatives must, by statute, competitively bid any project that is 5% of the total budget,
12 including reserves⁶.

13 HOAs must, by statute, competitively bid any project that is 10% of the total budget, including reserves⁷.

14 To meet this requirement, the association must obtain at least two, but preferably three or more, bids for each
15 project.

16 *Vendor*

17 Associations have statutory requirements to hire external, licensed elevator service providers.

18 This is practical since its complex to operate and maintain elevators. When not properly maintained, an elevator
19 could fail and seriously injure or kill a resident.

20 Most associations do not have sufficient funds to hire trained professionals, such as pool contractors and pest
21 control providers both of which require licenses and/or certification.

22 Certain services may service specific licenses or certification for certain work performed, such as tree trimming.
23 Your association should check with the state and local authorities to ascertain if a specialty license or certificate
24 is required.

25 Clearly, roof replacement, concrete restoration, major masonry work, fire safety systems, etc., all require
26 licensed and/or certified professionals.

27 *Internal Guidelines*

28 Associations should establish internal guidelines, or parameters, for bidding out a contract.

29 Such parameters might be based on the following:

- 30 ▪ Any requirements of applicable statutes
- 31 ▪ Any conditions of governing documents
- 32 ▪ Pre-bid conference
- 33 ▪ Nature of project
- 34 ▪ Project schedule
- 35 ▪ Project budget
- 36 ▪ Complexity of service or repair

37 *Requests for Bids (RFBs)*

38 The Board should have specifications prepared by an appropriate professional for the work to be done.

⁶ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the F.S. 718.3026 - Condo Bid Requirements and F.S. 719.3026 - Coop Bid Requirements.

⁷ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the F.S. 720.3055 - HOA Bid Requirements.

1 The association may determine to break down the work into separate components. In such case, the project
2 manager or architect will prepare and issue Requests for Bid (RFBs) for each. (This is also known as Requests
3 for Proposal (RFPs).)

4 The RFB should state that the final payment is dependent on the following:

- 5 ▪ Acceptance by the association
- 6 ▪ Sign-off by the association attorney
- 7 ▪ Sign-off by the local government
- 8 ▪ Sign-off by the manufacturer's representative (where applicable)
- 9 ▪ Sign-off by the project manager, architect, or engineer

10 The RFB should provide most of the information required for the contract between the association and the
11 contractor(s) selected.

12 *Minimum Qualifications for Bidders*

13 The minimum qualifications for bidders (contractors) could include the following:

- 14 ▪ Contractor must ...
 - 15 ○ Be licensed and/or certified in the applicable specialty within Florida⁸
 - 16 ○ Have no outstanding complaints against his license
 - 17 ○ Have been in business a minimum of ten years, five of which are in Florida
 - 18 ○ Have experience working with community associations, and provide at least three references for
19 work within the past three years
 - 20 ○ Have general liability, vehicle, E&O, workers' compensation, and other required insurances at
21 coverage levels that are determined by the association's insurance agent
 - 22 ○ Put up bonds (performance⁹, and materials and labor¹⁰) or agree to a 15% retention and notarized
23 sign-offs by suppliers and subcontractors before receiving payment.
 - 24 ○ Agree to allow the association to approve subcontractors who will work on the property
 - 25 ○ Include start and completion schedules
 - 26 ○ Agree to submit invoices on a percentage completion schedule
 - 27 ○ Agree to a penalty that is to be charged for each day that the project completion is past the
28 scheduled date (bad weather days excluded)

29 *Permits*

30 All bids should state the estimated cost of the necessary permits separately from other job costs.

31 Associations should be allowed to pay the permit fees directly to the applicable municipality, if the association
32 wishes to do so.

33 The contractors must identify the person who is responsible for pulling the permits and dealing with local building
34 officials.

35 Although the project manager, architect, or engineer will provide onsite supervision to ensure the contractor
36 complies with the specifications, the local government will provide its own building inspectors to verify that the
37 work is in compliance with the permits, specifications, and building code. The building inspector only come to
38 inspect when the association completes certain contract points, such as the installation of the plumbing, or
39 electrical.

8 A legal requirement within Florida. Different counties and municipalities may have requirements in addition to those included in the FBC.

9 Performance bond is a bond that provides monies to complete a job, should the contractor be unable to do so.

10 Materials and labor bond is a bond that pays suppliers and subcontractors should the contractor fail to do so. Often, in lieu of this bond, an association might require affidavits from suppliers and subcontractors that attest to the fact that they have been paid amounts due to date before issuing a check to the contractor.

1 **Fee Schedule**

2 The project manager, architect, or engineer should
 3 provide a fee schedule for the contractor to
 4 complete for each job.

5 For example, a contractor who submits a bid to
 6 rehab the garage and balconies, will need to
 7 complete a fee schedule for the garage and a
 8 separate one for the balconies.

Budget Item	Quantity/Hours	Amount
Mobilization Cost		
Labor		
Materials:		
Drywall		
Flooring		
Other Costs		
Contingency		
Overhead		
Permit Fees		
Total:		

9 **Bid Packages**

10 If the association uses an architect, engineer, or
 11 other consultant to assist with the bid-and-award
 12 process, the consultant should receive all of the bid
 13 packages. The association should request that the
 14 consultant evaluate the proposals.

15 When each bid is received, it should be stamped with the date and time that it was received, and set aside for
 16 the board meeting at which time all packages will be presented.

17 Prior to the board meeting, the project manager, architect, or engineer should open each bid package, and
 18 determine if, on initial review, it appears to meet the bid requirements.

19 The board usually will request that this individual, along with the CAM, meet, review, and rank the bidders.

20 The maintenance supervisor/building engineer may also be involved, depending on the project and his degree
 21 of expertise

22 **Ranking and Selection of Qualified Bidders**

23 The project manager, architect, or engineer should set up a chart with which to evaluate each of the bidders for
 24 each project.

25 He should provide the CAM (and maintenance supervisor, if applicable) with an outline of how he believes the
 26 bid evaluation process should be handled.

27 See the example outline below.

28 **Bid Evaluation Process Outline**

- 29 ▪ Verify the bid
 - 30 ○ Verify that the bid conforms to the specifications and scope of work, including
 - 31 ○ The contractor meets the minimum qualifications
 - 32 ○ The information forms are properly completed
- 33 ▪ References
 - 34 ○ Confirm that the contractor has provided three references
 - 35 ○ The reference should be contacted by the evaluator.
 - 36 ○ The information provided by the reference should be noted exactly without personal interpretation
 - 37 ○ If clarifications are requested, the questions and the reference’s response should be noted.
- 38 ▪ Record the information
 - 39 ○ The evaluator should record all of the information received.

40 **Cost**

41 Cost, while not necessarily the deciding factor in the bid award process, is a critical piece of information.

42 The project manager, architect, or engineer will often disregard the very high and very low bids.

43 Let’s look at the reasons for this.

1 **High Bids**

2 A bid that is much higher than other bids might indicate a contractor who

- 3 ▪ Is unfamiliar with this type project
- 4 ▪ Provides an unreasonable profit margin
- 5 ▪ Is just disinterested in the project

6 **Low Bids**

7 A bid that is much **lower** than other bids may indicate a contractor who ...

- 8 ▪ Is unfamiliar with this type project
- 9 ▪ Quotes unreasonable cost projections that could lead to the following situations:
 - 10 ○ The contractor cannot complete the job.
 - 11 ○ The contractor plans to cut corners once he has the job.
 - 12 ○ The contractor plans to use change orders after the job as begun.

13 *Due Diligence Chart*

14 When the project manager, architect, or engineer completes his due diligence (i.e. evaluation of the bids
 15 received), he should prepare a chart that reflects all of the important information about the bidders to provide
 16 to the association. From this chart, the association will be able to make an informed decision on which contractor
 17 to hire for its major project.

Based on this chart,
 which company would
 you recommend to
 your association for a
 major roof project?



Simplified due diligence chart.

Bidder	Insurance	Experience	References	Project Cost
Alright Roofing	✓	12/10	Excellent	\$575,000
Becam Roofers	✓	15/5	Good	\$625,000
Golden Roofers	✓	12/7	Good	\$750,000
Roof-in-Time-Saves-9	✓	10/5	Fair	\$350,000
Savin Roof Corp.	x	10/5	Fair	\$550,000
Zach's Roof Company	✓	25/25	Excellent	\$565,000

Would you recommend Zach's Roof Company?
If so, I agree with you.



Zach's bid is neither the highest nor lowest, and they have all the right insurances, excellent references, and many years of experience.

Bidder	Insurance	Experience	References	Project Cost
Alright Roofing	✓	12/10	Excellent	\$575,000
Becam Roofers	✓	15/5	Good	\$625,000
Golden Roofers	✓	12/7	Good	\$750,000
Roof-in-Time-Saves-9	✓	10/5	Fair	\$350,000
Savin Roof Corp.	x	10/5	Fair	\$550,000
Zach's Roof Company	✓	25/25	Excellent	\$565,000

1 **Bid Completion Process**

2 The following steps are suggested in order to complete the bidding process.

- 3 ▪ Contractor selection
- 4 ▪ The Contract

5 **Contractor Selection**

6 To complete the bidding process, the board should select one or more bidders, based on the initial evaluation
7 by the project manager, to meet and interview.

8 The project manager should schedule such a meeting in which the board members can meet and interview
9 each prospective bidder.

10 During that meeting, the project manager should review expectations and objectives, payment schedules, and
11 all of the other terms of a possible contract.

12 Any rules, such as "Don't leave debris on the property at the end of the day," should be discussed with each
13 bidder.

14 Each contractor should respond to each concern in a manner that is satisfactory to the board.

15 All concerns and responses should be included in the board meeting minutes.

16 By the end of the meeting, the board should decide on the contractor with whom to proceed with the major
17 project.

18 **The Contract**

19 Based on the evaluation and the results of the board
20 meeting, the CAM should draft a motion for the board
21 to accept and enter into a contract with the selected
22 contractor. The motion could read, in part, as shown
23 below.

24 The motion might also include other relevant
25 information, such as the estimated start and
26 completion dates, and the project schedule.

27 At the board meeting, the directors should vote to
28 approve the motion. Then, all of the bids, contract terms,
29 bid negotiation sheets, and other pertinent information
30 should be sent to the association's attorney for review.

31 Once the attorney for each party has approved the
32 contract, the board should meet to approve the
33 contract. Thereafter, the president of the board, and a
34 principal of the selected contractor, should approve
35 and sign the contract.

36 **Note:** The board could vote to approve the contract and
37 give the president authority to negotiate, finalize,
38 and sign the contract, once reviewed and approved by
39 the association attorney.

Motion to Enter into a Contract

Based on a deliberative analysis of qualifications and costs, the board of directors for (name of association), does hereby authorize the project manager, (name and company name) to negotiate a contract with (name of selected contractor and company), at a cost not to exceed \$(cost of project), all, of which, are subject to approval of the association's attorney.



Motion to Enter into a Contract

Based on a deliberative analysis of qualifications and costs, the board of directors for **Ocean Shores Condominium**, does hereby authorize the project manager, **Erik Banner of EB and Associates**, to negotiate a contract with **Zach Carter of Zach's Roof Company**, at a cost not to exceed **\$565,000.00**, all, of which, are subject to approval of the association's attorney.

1 **Funding**

2 Another element of a major project for an association is the funding; deciding how to fund the project.

3 In this section we cover these topics related to funding:

- 4 ▪ Project accounts
- 5 ▪ Funding choices

6 *Project Accounts*

7 An association should maintain separate bank accounts for different major projects. It should not commingle
8 any special project funds with operating accounts.

9 If reserve monies are used, they should be transferred to the special account for the major project work. In fact,
10 loan funds, special assessment funds, and any monies collected specifically for this project should be placed
11 in this account.

12 The association should also consider having quarterly or monthly reviews by its accountant in order to properly
13 account for funds.

14 *Funding Choices*

15 An association has several choices with which to fund a major project, including the following:

- 16 ▪ Special assessment
- 17 ▪ Construction loan
- 18 ▪ Conventional loan
- 19 ▪ Small Business Administration (SBA)
- 20 ▪ Grants
- 21 ▪ Insurance
- 22 ▪ Reserves

23 Let's look at each of these options.

24 **Special Assessment**

25 A special assessment is different from the monthly maintenance payments assessed on each unit or parcel of
26 the association.

27 A special assessment is an amount of money that an association needs in order to pay for a major project or
28 an outstanding debt.

29 It may be levied either as a one-time lump-sum payment or as several payments that are spread over a period-
30 of-time, such as four payments due on the first day of each quarter (January 1, April 1, July 1, and October 1)
31 for a year.

32 Each unit or parcel is assessed its portion of the amount based on its percentage of ownership.

33 Whether to proceed with a special assessment or not is a financial and political decision for the board to make.


34 "Special Assessment" means any assessment levied against a unit owner other than the assessment required
35 by a budget adopted annually. F.S. 718.103(24)

Here are some issues to consider.

Can the owners afford to pay this assessment?

Has the board properly prepared the owners for a large assessment, through newsletters, meetings, and information letters from the CAM or president?

Remember, the more informed the owners are about association problems, the easier it will be for the board to sell them on the special assessment.



Another thing to consider is the association documents. Do they stipulate that a special assessment requires membership approval? What other requirements are listed?

Once the special assessment is agreed upon, you, as the CAM, may be responsible for preparing and distributing the special assessment invoices and other documents.

If that's the case, it's important that you submit the motion for the special assessment, with a budget to be reviewed and approved by the association's attorney. If the members must approve the special assessment, the attorney should approve the ballot language.

1 **Construction Loan**

2 Most banking institutions that service community associations offer construction loans for large projects. Loan
3 details could include the following:

- 4 ▪ Term is 12 to 24 months.
- 5 ▪ The association must apply for a line of credit, up to a specific amount. The association will be required
6 to submit a budget to the bank. (This amount might be the sum of the project contract, project manager's
7 fees, and attorney's fees.)
- 8 ▪ The bank origination fees (usually about 1% of the loan), are usually paid out of the proceeds.
- 9 ▪ The association must guarantee the loan usually by a special assessment passed for this purpose.
- 10 ▪ Loan approval times range from three weeks to several months.
- 11 ▪ Interest is usually prime plus 1%.

12 When the bank approves the construction loan, the association "draws down" the money it needs each month.

13 Usually, the bank requires that the contractor submit his invoices by using an AIA Application and Certification
14 for Payment¹¹. This is an industry-approved form for construction work. The engineer must sign off on all
15 invoices prior to submission. (More on payment to the contractor later.)

16 The association needs to collect sufficient special assessment funds to pay the interest on the construction
17 loan. Usually, the association pays interest only for the term of the construction loan, which balloons at the end
18 of the term. The association must then either pay the loan in full, or may negotiate with the bank for a
19 conventional loan.

20 It also needs to alert contractors that it is funding the work through a construction loan, and the bank may
21 require additional details with their invoices.

22 Depending on the bank, turnaround for approval of an invoice and release of funds can be from ten to 30 days.

¹¹ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read a sample of the AIA Application and Certification for Payment form.

1 **Conventional Loan**

2 Conventional loan details could include the following:

- 3 ▪ Term could be from five to 15 years.
- 4 ▪ If the association rolls a construction loan over into a conventional loan, most banks will waive a portion
- 5 of the origination fees.
- 6 ▪ Interest is usually prime plus 1% - 2%.
- 7 ▪ The association must secure the loan with a specific source of money (usually a line • item in the
- 8 operating budget).

9 **SBA Loan**

10 If the association can demonstrate that the repairs/rehab are due in part to hurricane damage, the association

11 may be eligible for a low interest Small Business Administration (SBA) loan. Details include the following:

- 12 ▪ Term could be up to 20 years.
- 13 ▪ Loan is structured to draw down the monies as needed.
- 14 ▪ It may be rolled over into a conventional loan once all of the projects are complete.
- 15 ▪ The association must secure the loan with a dedicated source of money
- 16 ▪ The SBA has strict record keeping requirements.

17 **Grants**

18 The association can try to obtain a grant through Federal Emergency Management Agency (FEMA) or through

19 the Florida Department of Agriculture and Community Affairs. Details include the following:

- 20 ▪ Grants are usually small (under \$50,000)
- 21 ▪ They are limited in use.
- 22 ▪ Damage must be the result of a declared disaster.

23 **Insurance**

24 If the damage is due to a peril that's covered under the insurance policy, such as a hurricane, the association's

25 insurance policy might pay for a portion (or all) of the repairs.

26 It may or may not choose to use a public adjuster to survey the damage to determine if it qualifies under the

27 association's insurance policies. A good public adjuster will hold an initial meeting with the association, review

28 pertinent documents, and ascertain if he believes the association has a claim.

29 If he doesn't think the association can prevail, he will inform them of this and advise they proceed in a different

30 direction.

31 If the public adjuster believes there is a valid claim, he will charge the association 10% of any monies it receives

32 from the association's insurance company.

33 That is, if the insurance company gives it no money, the public adjuster receives \$0. If the association receives

34 \$1 million, the public adjuster receives \$100,000.

35 The public adjuster will ...

- 36 ▪ Walk the property
- 37 ▪ Meet with the insurer's adjustors
- 38 ▪ Discuss damages and repair work with contractors and vendors
- 39 ▪ Seek expert opinions (for which the association may have to pay a small fee)
- 40 ▪ Take any other action he deems necessary to demonstrate that the claim is valid.

41 Note that this is a lengthy process. The association will need to seek alternative sources of funds in case it does

42 not prevail and to pay contractors while the insurance claim process is underway.

Reserves

If the association has set aside reserves for a capital expense (such as roofing), these monies can be used to fund the project in its entirety (funds being sufficient) or in part.

The owners of the association may also vote to use the funds for other project needs, as dictated by the association documents and applicable statutes.

Some associations, particularly HOAs, have "general" or "contingency" reserves. These are not really reserve funds, according to the definitions provided by the DBPR.

These funds could be applied to the capital project, possibly without a vote of the members. The CAM will need to check the documents, and may want an attorney's opinion before proceeding with this course of action.

Notices to Residents

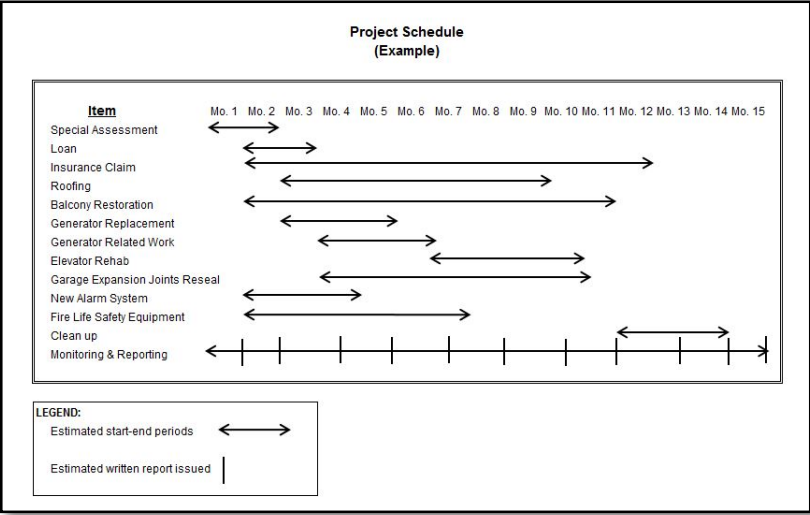
The CAM should send out notices to the members that the project is about to start, and advise them of any issues of which they should be aware, such as unavailability of parking spaces during certain periods or days.

The CAM should continue to issue these updates as necessary and according to the project schedule so that owners are kept informed of the progress of the project.

Weekly notices of work progress is advisable.

Informed owners tend to cooperate more fully with a project when they understand what is occurring.

Based on the schedule provided by the contractor, the CAM should send out notices to owners, in order to advise them or if/when vehicles need to be moved, when elevators will be down, etc.



Permits

Permits are an important element of a major project for an association.

In this section we cover these topics related to permits:

- Required permits
- Closing out permits

Required Permits

As discussed earlier, a contractor must "pull" permits as necessary from the local municipality for the project. This could include permits required by the county or the city in which the project is located.

In this part, let's discuss the following issues related to permitting;

- Application process
- Permit fees
- Building department process
- The permit
- Permit Process Flowchart
- Notice of Commencement (NOC) process
- Specialized permits

Application Process

The permit process starts with the contractor who submits the following to the building department of the applicable city and/or county:

- The permit application. The contractor completes the application but it must be signed by an association board member, usually the president.
- The detailed drawings (blueprints; plans). The plans of the project were most likely prepared by the architect and/or engineer.
- The permit fees. Generally, the association provides this payment.

Permit Fees

The following applies to permit fees:

- The requirements and cost vary from municipality to municipality.
- The cost is based on the specific type of construction.
- The cost is usually a percentage of the construction cost.

See the examples in the table below.

Work	Permit Fee Amount
Hot water heater replacement	\$200.00
Roof replacement	\$12,000.00

Building Department Process

The drawings are passed to the plans examiner within the building department, who carefully reviews all aspects of the drawings to ensure that all changes, modifications, and additions to the association’s building are consistent with the current Florida Building Code.

If the plans examiner finds a problem, he returns the drawings to the contractor or architect/engineer along with an explanation of the problems that need to be fixed before a permit can be issued. At that point, the project manager needs to meet with the architect/engineer to advise them of the rejection. Once the architect/engineer has corrected the plans, the contractor can resubmit them to the municipality.

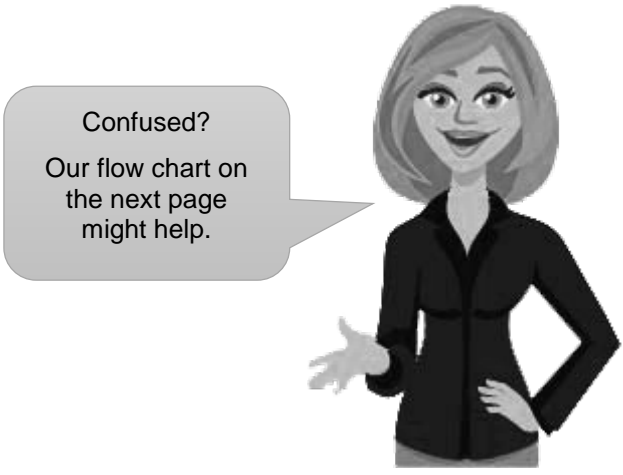
However, if the plans are in order, he approves them and issues a permit for the specified job.

The Permit

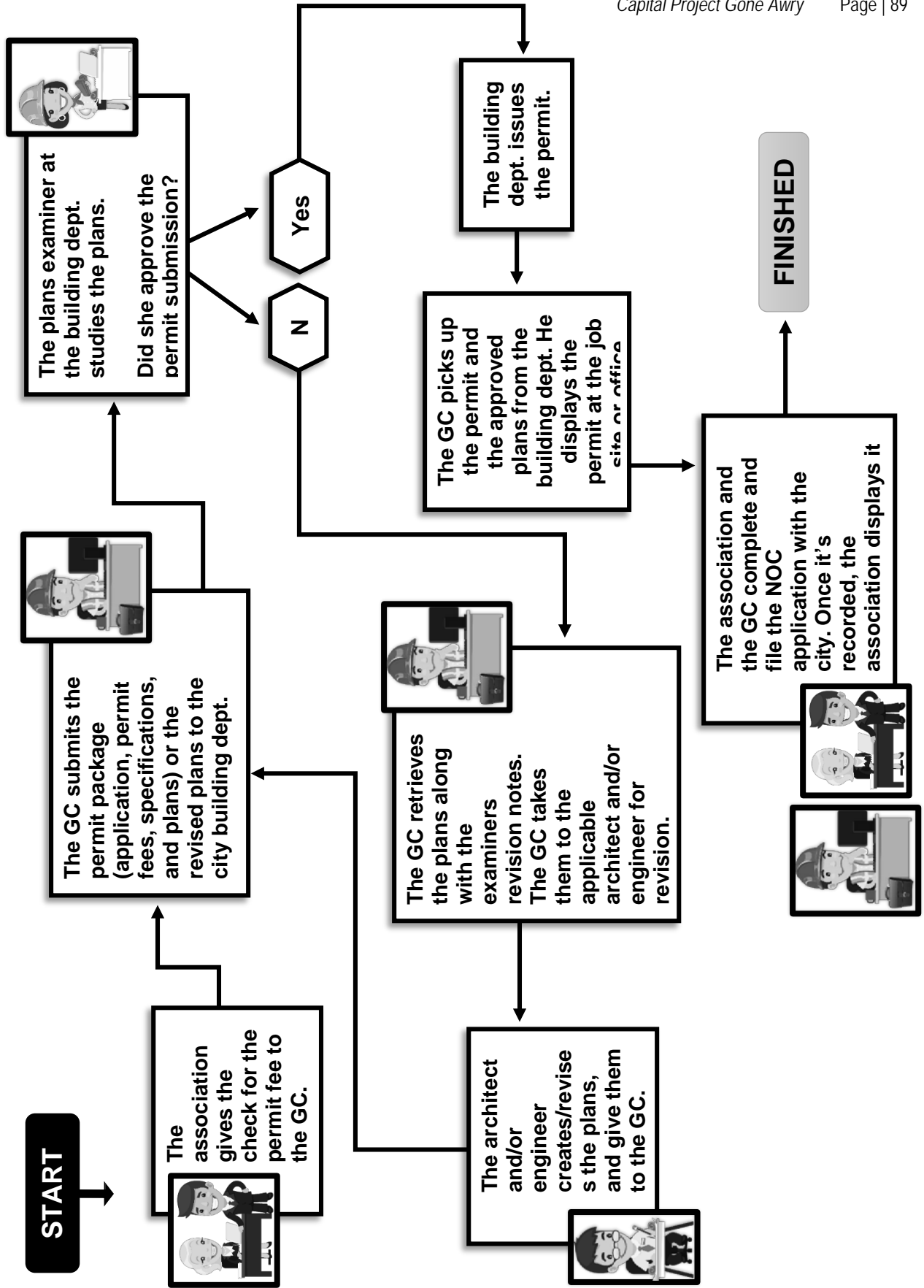
The building department notifies the contractor that the permit has been issued. He can pick up the permit and the approved drawings from the applicable building department at that time.

Usually, the municipality requires for all permits to be displayed prominently for the duration of the permitted construction.

Note: The contractor should NOT perform any work for which a permit is required but HAS NOT been issued!



THE PERMIT PROCESS



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NOC Process

Once a permit has been issued for the project the owner (the association) must file a Notice of Commencement (NOC) with the applicable municipality to be recorded.

713.13 Notice of commencement.

(1)(a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof.

In most cases, the general contractor will file the NOC for the owner¹².

Specialized Permits

If the association's major project includes work on docks, seawalls, or tree removal, specialized permits must be obtained. A few are listed in the table below.

Construction Type	Permitting Agency (Broward County)
Docks and Seawalls	Environmental Protection and Growth Management Department. Environmental Resource License Application Form
Parking Facility	Environmental Protection and Growth Management Department, Pollution Prevention, Remediation, and Air Quality Division
Tree Removal	Planning and Environmental Regulation Division, Tree Preservation Program

Closing out Permits

Once a project is complete, the local building inspector performs a final inspection. If the project has been properly constructed, the inspector signs off on the permit. Usually, he provides the contractor with a copy. When he returns to the office, he enters the permit approval and completion into the building department system.

We recommend that an association check the permits and project status to ensure that they appear as closed. Occasionally, an inspector may fail to enter the completion status. If not recorded properly, the association may need to have the project re-inspected and closed at a later date. This could include destructive inspections, such as tearing out a wall to examine electrical or plumbing work – with the expense of rebuilding the wall afterwards.

Contractor Payment

Paying the contractors who work on the project has its own procedure.

In this section, we cover the steps in the payment process, such as ...

- 29 ■ Contract provisions
- 30 ■ AIA Application for Payment form
- 31 ■ Approval process
- 32 ■ Payment

¹² Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read a sample of the F.S. 713.13 NOC and sample of the "NOC Form".

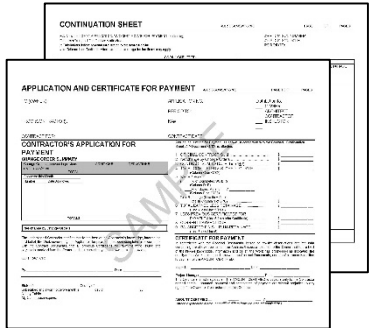
1 **Contract Provisions**

2 The contract between the general contractor and the association contains payment provisions. It usually calls
3 for the contractor to be paid when certain milestones have been reached in the construction, such as completion
4 of the electrical. Or, it might stipulate that payment be made on a periodic bases, such every 30 days.

5 In any case, we recommend that the association base it's payments on the achievement of certain objectives.
6 However, if the contract stipulates other payment terms, then please adhere to the contract.

7 The main contract should include the following provisions and information:

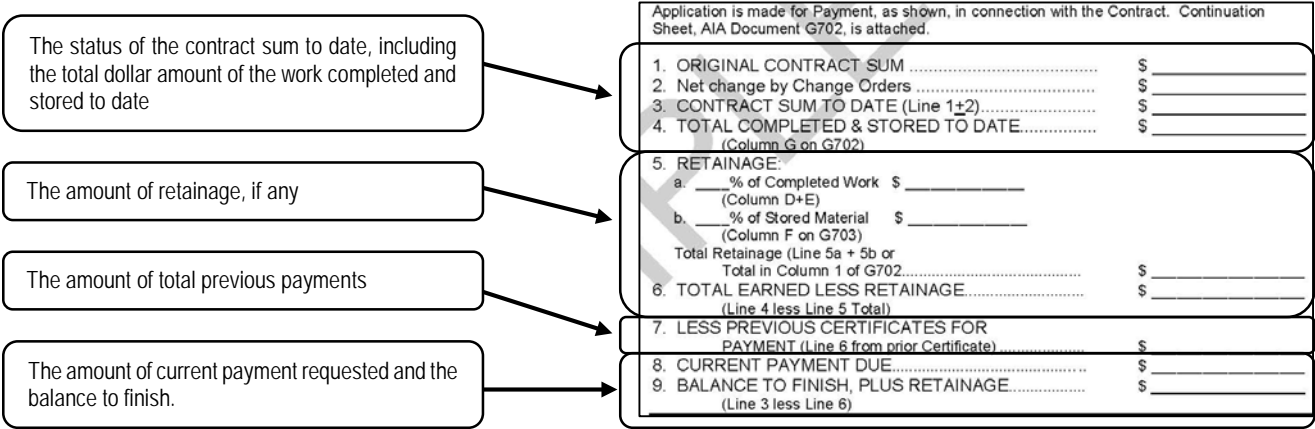
- 8 ▪ Lists the parties to the contract
- 9 ▪ Main contact person
- 10 ▪ Estimated contract sum
- 11 ▪ Retainage
- 12 ▪ Estimated project schedule
- 13 ▪ Insurance requirements
- 14 ▪ Payment terms
- 15 ▪ Billing requirements (e.g. the use of the applicable AIA forms)
- 16 ▪ Change order procedure
- 17 ▪ Late payment penalties
- 18 ▪ Procedure for weather and other delays
- 19 ▪ Warranties (general terms).S. 713.13(1)



20 **Application for Payment**

21 As discussed earlier, the contractor will submit an AIA Application and Certificate
22 for Payment (AIA form G702)¹³, which is the industry standard request for
23 payment. It should be accompanied by a second page, called the Continuation
24 Sheet, AIA form G703.

25 These forms provide convenient and complete forms on which the contractor can apply for payment and the
26 architect can certify that payment is due. The forms require the contractor to show the following:



27 AIA Document G702 serves as both the contractor's application and the architect's certification. Its use can
28 expedite payment and reduce the possibility of error. If the application is properly completed and acceptable to
29 the architect, the architect's signature certifies to the owner that a payment in the amount indicated is due to

¹³ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the AIA Application

1 the contractor. The form also allows the architect to certify an amount different than the amount applied for, with
 2 explanation provided by the architect.

CONTINUATION SHEET

AIA DOCUMENT G703 PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.
 In Tabulations below, amounts are stated to the nearest dollar.
 Use Column T on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER:
 APPLICATION DATE:
 PERIOD TO:

WORK COMPLETED									
A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D FROM PREVIOUS APPLICATION (D + E)	E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	H % (G + C)	I BALANCE TO FINISH (C - G)	J RETAINAGE

3 AIA Document G703 (Continuation Sheet) breaks the contract sum into portions of the work in accordance with
 4 a schedule of values prepared by the contractor as required by the general conditions.

5 **Payment Approval Process**

6 When the association receives the contractor's Application for Payment, the project manager reviews it. If it's
 7 correct, according to his inspections of the work, he approves and signs it.

8 He will also ensure that all required retainage has been subtracted from the invoice, and that all notarized
 9 waivers of lien for subcontractors and materialmen (discussed next) are attached.

10 He then forwards it to the CAM, who might review the AIA again, and compare it to the project budget.

11 **Payment Process**

12 Once the Application for Payment has been approved by the CAM, he authorizes issuance of a check to the
 13 contractor.

14 The check is drawn from the appropriate account, and signed by two authorized signatories of the board (usually
 15 the president and treasurer.)

16 The check is then given to the contractor.

17 The CAM should file a copy of the check and the authorized Application for Payment in the project file.

18 **Construction Lien Law**

19 Paying the contractors and other vendors is an essential element of an association's major project as we
 20 discussed earlier. An important element of paying the contractors is the Construction Lien Law as outlined in
 21 F.S. 713.

22 In this section, we cover the following topics to give you a general understanding of this law.

- 23 ▪ Overview
- 24 ▪ Definitions
- 25 ▪ Types of lienors and exemptions
- 26 ▪ Notices
- 27 ▪ Claim of lien
- 28 ▪ Waiver or release of lien
- 29 ▪ Payment disputes
- 30 ▪ Penalties

1 **Overview**

2 The association has a responsibility to pay not only the primary contractor, but also to ensure that the primary
3 contractor has paid subcontractors and suppliers (materialmen) hired by that contractor. It is for this reason that
4 the association requests a contractor to either post a labor or materials bond or provide notarized affidavits from
5 subcontractors and suppliers once they receive their portion of payments, prior to paying the primary contractor
6 upon receipt of each invoice (AIA Application for Payment).

7 The primary contractor must provide a notarized statement, along with each billing, from the subcontractors
8 and materialmen that the primary contractor has paid them in full to this date. (We'll talk about waivers and
9 releases a little later.)

10 The "Construction Lien Law," found in F.S. 713, entitles a contractor to certain relief if an entity fails to pay the
11 contractor for work performed. To be entitled to collections under the law, the contractor must have a valid
12 contract.

13 Moreover, we strongly recommend an association never enter into a contract that is not in writing, reviewed by
14 the association attorney, and executed by both parties.

15 Let's look at some of the elements of the Construction Lien Law.

16 **Definitions**

17 To understand the Construction Lien Law, it's helpful to understand the terms used in it. The definitions
18 contained in the law are outline in F.S. 713.01.

19 We define a few of the important terms here¹⁴.

- Claim of lien
- Contract
- Contractor
- Direct contract
- Lienor
- Materialman
- Owner
- Real property
- Subcontractor

20 **Claim of Lien**

21 Claim of lien means the claim recorded as provided in F.S. 713.08. *F.S. 713.01(3)*

22 713.08 Claim of lien. – *F.S. 713.08(1)(a)-(b)*

23 (1) For the purpose of perfecting her or his lien under this part, every lienor, including laborers and persons
24 in privity, shall record a claim of lien which state:

- 25 a. The name of the lienor and the address where notices or process under this part may be
26 serviced on the lienor.
- 27 b. The name of the person with whom the lienor contracted or by whom she or he was employed

28 **Contract**

29 Contract means an agreement for improving real property, written or unwritten, express or implied, and includes
30 extras or change orders. *F.S. 713.01(6)*

31 **Contractor**

32 Contractor means a person other than a materialman or laborer who enters into a contract with the owner of
33 real property for improving it, or who takes over from a contractor as so defined the entire remaining work under
34 such contract.

35 The term contractor includes an architect, landscape architect, or engineer who improves real property pursuant
36 to a design-build contract authorized by s. 489.103(16). *F.S. 713.01(8)*

¹⁴ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the F.S. 713 Construction Lien Law Definitions.

1 **Direct Contract**

2 Direct contract means a contract between the owner and any other person. *F.S. 713.01(9)*

3 **Lienor**

4 Lienor means a person who is:

- 5 ▪ A contractor
- 6 ▪ A subcontractor
- 7 ▪ A sub-subcontractor
- 8 ▪ A laborer
- 9 ▪ A materialman who contracts with the owner, a contractor, a subcontractor, or a sub-subcontractor
- 10 ▪ A professional lienor under s. 713.03; and who has a lien or prospective lien upon real property under
- 11 this part, and includes his or her successor in interest. No other person may have a lien under this part.
- 12 *F.S. 713.01(18)*

13 **Materialman**

14 Materialman means any person who furnishes materials under contract to the owner, contractor, subcontractor,
15 or sub subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for
16 specially fabricated materials, off the site of the improvement for the particular improvement, and who performs
17 no labor in the installation thereof. *F.S. 713.01(20)*

18 **Owner**

19 Owner means a person who is the owner of any legal or equitable interest in real property, which interest can
20 be sold by legal process, and who enters into a contract for the improvement of the real property. *F.S. 713.01(23)*

21 The term includes a condominium association pursuant to chapter 718 as to improvements made to association
22 property or common elements.

23 The term does not include any political subdivision, agency, or department of the state, a municipality, or other
24 governmental entity.

25 **Perfecting a Lien**

26 To perfect a lien means to take certain actions or follow certain procedures required by law in order to create a
27 security interest that's enforceable¹⁵.

28 **Privity**

29 In "privity" means a successive relationship to or mutual interest in the same property or rights, established by
30 law or legalized by contract.

31 **Real Property**

32 Real property means the land that is improved and the improvements thereon, including fixtures, except any
33 such property owned by the state or any county, municipality, school board, or governmental agency,
34 commission, or political subdivision. *F.S. 713.01(26)*

35 **Subcontractor**

36 Subcontractor means a person other than a materialman or laborer who enters into a contract with a contractor
37 or the performance of any part of such contractor's contract, including the removal of solid waste from the real
38 property. The term includes a temporary help firm as defined in s. 443.101. *F.S. 713.01(28)*

¹⁵ Yourdictionary.com

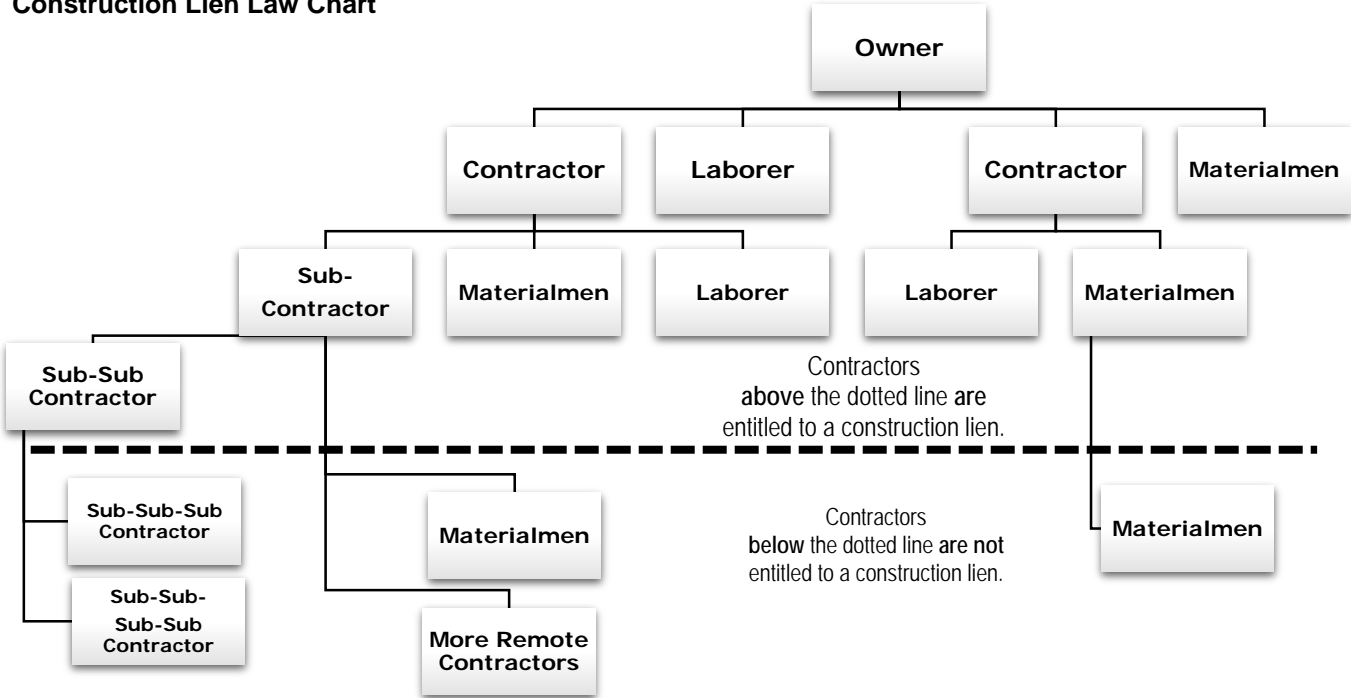
Types of Lienors and Exemptions

The types of lienors and certain exemptions as found in the Construction Lien Law are listed below.

- Architects, landscape architects, interior designers, engineers, surveyors, and mappers on contracts related to real property.
The lien is effective when recorded.
No notice to owner is required.
Persons who provide services or furnish materials for subdivision improvements, on contracts related to real property.
Persons who are in privity with an owner and perform labor or services, or furnish materials constituting an improvement or part thereof on contracts related to real property. (See privity in definition section.)
Persons who are not in privity with an owner and perform labor or services, or furnish materials constituting a part of an improvement under the direct contract of another person or entity on contracts related to real property.
(e.g. materialmen, suppliers, subcontractors)
Must file notice to owner to protect the lien right.
Any improvement for which the direct contract price is \$2,500 or less is exempt from all other provisions of the construction lien law except for the provisions providing the lien right to contractors and persons in privity with owner.
In any direct contract, the owner may require the contractor to furnish a payment bond (e.g. performance, payment for labor and materials).
Upon receipt of the bond, the owner is exempt from the other provisions of the lien law related to the direct contract. However, this will not exempt the owner from lien of contractor who furnishes the bond. If the bond is provided, it shall secure all liens subsequently accruing under construction lien law.
Notwithstanding any other provisions of the law, no lien may exist in favor of any contractor, subcontractor, or sub-subcontractor unless such person or entity is licensed as a contractor pursuant to the laws of the state and/or locale in which the work has occurred.

Below, we have a chart that will help you better understand who and when an entity is entitled to a construction lien.

Construction Lien Law Chart



1 *Notices*

2 Subcontractors, materialmen, and sub-subcontractors who are not “in privity” with the owner must, as a
3 condition to perfecting a lien and recording a claim of lien, serve a notice on the owner.

4 A sub-subcontractor or materialman to a subcontractor must file a notice on the contractor as a condition to
5 perfecting a lien and recording a claim of lien.

6 A materialman to a sub-subcontractor must serve notice on the owner and on the contractor as a condition to
7 perfecting a lien and recording a claim of lien.

8 A materialman to a sub-subcontractor must serve notice on the owner and on the subcontractor if the
9 materialman is aware of the name and address of the subcontractor.

10 A notice must be served regardless of the method of payment by the owner, whether proper or improper, and
11 does not give to the lienor serving the notice any priority over other lienors in the same category.

12 The failure to serve the notice, or to serve it in a timely manner, is a complete defense to the enforcement of
13 such liens. The notice itself is not a lien or encumbrance on the property. The vendor must file the lien for it to
14 be valid.

15 *Claim of Lien*

16 The vendor, subcontractor, or supplier may record a claim of lien at any time while the project is ongoing, or up
17 to 90 days after the final furnishings of labor or service or materials, or, if the supplier provided rental equipment,
18 within 90 days after the date the equipment was last on the job site.

19 So, the courts measure the time period for recording a claim of lien from the last day of providing labor, services,
20 or materials.

21 The claimant must file the lien in the county clerk’s office. If the property is located in multiple locales (for
22 instance – if it were Gulfstream Park, located in both Miami-Dade and Broward Counties), the claimant must
23 file the lien in both counties.

24 Note that the validity of the lien and right to record a lien are not invalidated by insolvency, death of the owner,
25 bankruptcy, or certain other conditions before it is recorded.

26 The claimant may amend the claim of lien during any time allowed for the recording of the lien, as long as the
27 amendment does not cause damage to any person who acted in good faith in reliance of the original claim.

28 If the claimant fails to serve the claim of lien before its recording or within 25 days after its recording, the claim
29 of lien may be voidable if it can be shown that the delay was prejudicial to a party reliable on the service of lien.

30 Construction liens are valid for 1 year after recordation, unless the claimant takes action through the courts to
31 enforce the lien.

32 The association or its agent may elect to shorten the prescribed time to enforce a lien by protesting the claim.

33 The claimant has 60 days after service of this notice to act, or the lien shall be extinguished.

34 Service of notices, claims of liens, affidavits, assignments, and other related instruments must be:

- 35 ▪ Delivered to the person, a partner or officer or business agent
- 36 ▪ Mailed to the above noted, by registered or certified mail. Certain limitations apply.
- 37 ▪ Posted on the premises

38 The clamant needs to serve only one director or officer, or the board’s agent.

39 Liens may be bonded or transferred. Certain conditions prevail when such liens are bonded or transferred.

40 Should a claimant bond or transfer a claim of lien, the association should contact its attorney.

1 *Waiver or Release of Lien*

2 When the association provides a payment to the primary contractor, it should require a notarized partial waiver
3 of lien from the contractor, subcontractors, and suppliers that attests to the fact that they have received payment
4 to date¹⁶.

5 Many attorneys have their preferred waiver(s) of lien. Many require the contractor, subcontractors, and suppliers
6 to have the statement notarized, and the attorney file the waivers with the clerk of the court. The association
7 should require all waivers of lien to be notarized.

8 At the time of final payment, the association should receive final waivers and releases of lien. Note that a lienor
9 who executes a lien waiver and release in exchange for a payment may condition the waiver and release on
10 the check clearing. However, in the absence of a payment bond protecting the association, at final payment the
11 association may withhold funds for work not satisfactorily completed.

12 *Payment Disputes*

13 The construction lien law has a specific process for handling contract disputes. While an association may
14 withhold funds for a bonafide dispute, it should contact its attorney for advice.

15 Once the association has identified a dispute that it cannot reconcile, all communications with the contractor
16 should occur through the association's attorney.

17 *Penalties*

18 The Construction Lien Law has strict penalties for misapplication of funds, with charges that range from a third-
19 degree felony to a first-degree felony.

20 As you can see, the construction lien law is extremely complex. The association should work closely with its
21 attorney during the contract, especially with any disputes with the contractor.

22 **Warranties**

23 The last element of a major project that we'll discuss is warranties.

24 A product or service warranty (also known as guarantee) is a promise, from a manufacturer or seller, to stand
25 behind the product or service. It is a statement about the integrity of the product and about the seller's
26 commitment to correct problems should the product or service fail. Consumers can ask the courts to enforce
27 warranties, whether they are express, implied, written, verbal, or given in any other way. Federal, state, and
28 local government entities establish the regulatory basis upon which warranties are judged. The Federal Trade
29 Commission (FTC) is the ultimate arbiter of warranty law in the United States.¹⁷

30 Although a warranty is, in its simplest form, an element of a contract, some warranties run with a product so
31 that a manufacturer makes the warranty to a consumer with which the manufacturer has no direct contractual
32 relationship.

33 A warranty may be expressed or implied, depending on whether the warranty is explicitly provided (typically
34 written) and the jurisdiction.

35 A warranty may also state that a particular fact is true at one point-in-time or that the fact will be continued into
36 the future (e.g. a "promissory" or continuing warranty).

37 The most common kind of warranty on goods is a warranty that the product is free from defects in materials
38 and workmanship. This simply promises that the manufacturer properly constructed the product, out of proper
39 materials. This implies that the product will perform as well as such products customarily do.

40 It is common for these to be limited warranties, limiting the time the buyer has to make a claim.

41 For example: a typical flat roof warranty may limit labor to five years and materials to 15 years.

¹⁶ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the "Release of Lien" form can be found in the appendix.

¹⁷ Definitions.uslegal.com

PART II

1 **CAPITAL PROJECT GONE AWRY**

2 Outline

3 Now that we have an overview of the association’s responsibilities, and the elements of a major project, let’s
4 look at an association’s capital project and how it went wrong. Throughout this next section, you’ll be presented
5 with the facts of our story and several questions and answers regarding them.

6 The following topics are covered in this section.

- The association
- The project
- The planning stage
- The proposal
- The contract
- The unexpected problems
- The unexpected costs
- The project completion
- The owners have their say

7 **The Association**

8 This story is about Casa del Ray, a homeowners’ association (HOA) in South Florida.

9 The association has 425 homes, a budget of \$1.2 million, and \$175,000 surplus from the previous fiscal year.
10 It refers to this surplus as a “contingency reserve.”

11 The association’s board has worked together well for the last several years.

12 When the current board was first elected, it heard many complaints about special assessments and reserve
13 accounts. The directors found the complaints to be very distressing. After considering the situation, it decided
14 to avoid special assessments and to end funding for the reserve accounts.

15 The basic philosophy of the board is to minimize owner involvement, avoid conflict, and keep maintenance fees
16 affordable to everyone, even owners who experience financial problems.

17 **Note:** After each section, we’ll look at relevant questions and answers about the Casa del Ray story.

18 *The Association Q&A 1*

19 The board’s primary responsibilities are to preserve, maintain, and enhance the property, its value, and the
20 association assets.

21 The basic philosophy of the board is to minimize owner involvement, avoid conflict, and keep maintenance fees
22 affordable to everyone, even owners who experience financial problems.

23 **How does the board’s current philosophy impact its primary responsibilities?**

- 24 1. Discouraging or excluding members from participation in board decisions often results in the following:
- 25 a. Failure to identify problems
 - 26 b. Loss of potential alternative remedies to existing problems
 - 27 c. Opposition to required projects
 - 28 d. Conflict within the community
- 29 2. Keeping assessments affordable for owners who have financial problems might result in one or more
30 of these situations:
- 31 a. Failure to effectively perform preventive and routine maintenance
 - 32 b. Property becomes run down
 - 33 c. Accelerates equipment failures and increases repair and replacement costs
 - 34 d. Failure to have adequate reserves for major projects and emergencies
 - 35 e. Impacts on ability to borrow money
 - 36 f. Damages reputation among realtors
 - 37 g. Reduces property values

1 **The Project**

2 The front entrance to the association property has a cascading water feature that is in a state of severe disrepair.

3 *The Complaints*

4 **Directors and owners frequently complain to the CAM, Jose Nunez.**

- 5 ▪ The entrance fountain is an eyesore!
- 6 ▪ I can see the cracks and discoloration!
- 7 ▪ It's leaking all over the place!
- 8 ▪ The water has destroyed the pavers!
- 9 ▪ All of the plants are dying!
- 10 ▪ The Initial Discussion

One day, Rupert Vargas, president of the board, comes into Jose's office.

Rupert (left): Hello, Jose. I have consulted with some of the directors about the problems at the entrance to our property. We want to replace the water feature, landscaping, and drive pavers. Immediately!

Jose (right): Rupert, I can understand how you came to this conclusion; however, those projects are not in this year's budget, and our reserve account does not have sufficient funds for a major project right now.

Rupert (left): Well, in that case, we can break the project into three separate ones; the water feature, the pavers, and the landscaping. That way, individually, none of them will cost over \$50,000.

Jose (right): Please remember that the association's attorney advised the board that the documents require approval of a majority of the membership for a capital project that costs \$50,000 or more.

Rupert (left): You know, Jose, we've been making changes like these for many years before you joined us. No one has ever complained about having a vote for a material alteration before! As the president, I'm going forward with planning this project, with or without your cooperation!

Jose (right): Ok, but let me remind you that a new water feature and modified landscaping could constitute a material alteration. So, according to the documents, as explained by our attorney, you would need a two-thirds membership vote of approval to proceed.

11 *The Project Q&A 2*

12 A board often views the governing documents as an impediment to its ability to accomplish its objectives.

13 **In the case of Case del Ray, what constitutes a "single" project?**

- 14 ▪ If the governing documents clearly define "project," then there should not be an issue. However, most governing documents do not clearly define what constitutes a single project.
- 16 ▪ Therefore, the issue of whether it is a single or multiple project may be more of a matter of perception, or if one project clearly impacts upon another, structurally, and/or visually.
- 17
- 18 ▪ If an element can be replaced or repaired without having a negative impact on the other elements, then it might be considered as a separate project.
- 19
- 20 ▪ The board must also be cognizant of how it refers to project(s). In this case, if the board refers to the elements as "the front entrance" project, then each element, regardless of how it is bid, may be viewed as part of a single project.
- 21
- 22

1 **Is it proper for a board to divide a capital project into components to avoid a vote of the membership?**

- 2 ▪ In this scenario, since the projects are related both visually and structurally, it may be prudent for the
3 board to treat the three elements as a single project, and submit it to a vote of the membership. This
4 may avoid conflict in the community, as well as a potential lawsuit (or, if Casa del Ray were a
5 condominium or cooperative, a complaint to the DBPR).
- 6 ▪ However, managers know that it can be difficult or impossible to obtain the required vote of the owners.
7 In this case, if the board cannot obtain the necessary vote, at minimum, it must repair the leakage and
8 repair the damaged roadway and pavers. It would not address the aesthetics of the community.

9 **Would this be a violation of Casa del Ray's governing documents?**

- 10 ▪ If the board, regardless of the relationship of the elements to one another, chooses to merge them into
11 one project for bidding and/or project management purposes, it may be viewed by the owners (and by
12 the courts if it becomes subject to a lawsuit) as a violation of the association's documents.

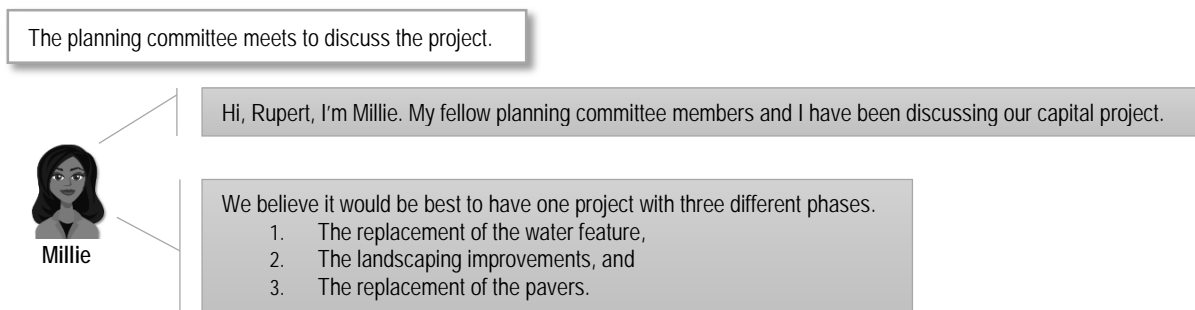
13 **Would this be a violation of the HOA Act (F.S. 720)¹⁸?**

- 14 ▪ The HOA Act does not define "project" or identify when several elements become a single project. It
15 requires an association to solicit bids for a project that exceeds 10% of the annual budget, including
16 any annual contributions to reserves. In Casa del Ray, this would include any project over \$120,000.
- 17 ▪ The DBPR may have arbitration decisions for condominium and/or cooperatives that defines "project."
18 There may also be court cases that clarify when several elements must be viewed as a single project.
19 When in doubt, check with your association attorney.

20 **The Planning Stage**



21 **One Project - Three Phases**



¹⁸ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the F.S. 720.3055.

1 *The Project Drawings*

Tom presents the water feature designs to the planning committee.




Millie

Oh! These are very nice. The committee likes your designs!

But, we disagree with you. We want to minimize the owners involvement with the project. Plus, we don't want to pay for a landscape architect!

I have three professional designs of the new water feature for your consideration. I recommend that you give the owners an opportunity to review each of the designs and provide you with their feedback.


You'll notice that these designs do not include the landscaping. That's because I suggest that you hire a landscape architect to provide you with formal plans and bid specifications.



Tom

2 *Owner Involvement Discussion*

After the meeting, Rupert discusses Tom's suggestions with Jose, the CAM.




Rupert

Jose, Tom gave us three fountain designs. He told us that we should give the owners an opportunity to see the designs and give us their feedback.

But the committee disagrees! We don't want to encourage owner participation and we don't want the expense of a landscape architect!


Rupert, Tom's right! The owners should have the opportunity to be involved. Hiring a landscape architect is absolutely the right thing to do!



Jose

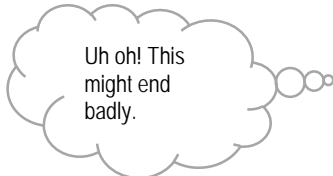
3 *The Initial Discussion*

Rupert totally disagrees with Jose.



Rupert

Jose, you need to tell Tom that we appreciate his input, but we no longer need for him to volunteer his services! We'll take it from here.



Uh oh! This might end badly.



Jose

4 *The Planning Stage Q&A 3*

5 Now let's look at some questions that can help us understand what the members of Casa del Ray could have
6 done better.

7 Q&A 3.1: What process should the board have used to evaluate the need for repair and/or replacement to the
8 front entrance?

- 9 1. Identification process
- 10 ▪ The board observed problems with the fountain, pavers, and landscaping. Once the front entrance
11 became a "pet peeve" of the President, he persuaded other directors that it needed immediate
12 action. Millie, the landscaping chair, bought in because she loves to do landscaping, and this would
13 provide her with a new landscaping "canvas." Recall that, since other directors had complained
14 about the front entrance, a remake was a natural progression. This is a common psychological
15 phenomenon for board members seeking to find meaning through board participation. Directors in
16 general want to do things to improve the community.
- 17 ▪ This raises the question of what constitutes a want versus a need. The leaking fountain clearly
18 requires a repair. It is a need. However, based on the motivation of the directors, the planned
19 modernization project is a want. If the board had obtained a professional evaluation of the front

entrance problems and the professionals recommended replacement rather than repair, then the project would have become a need.

- Alternatively, if a significant number of owners had demanded a total renovation of the front entrance, it could have then constituted a need.
- Characterizing a project as a need or a want is important, because funding a need is more easily justified, while spending considerable sums on a want could be subject to legitimate criticism. Let's keep in mind that the board needs to be prepared to justify their actions, especially if large sums of the association's funds are to be committed.

2. What should the board have done?

The president should have directed Jose to do the following:

- a. Obtain professional recommendations on the feasibility and cost of repairing the fountain versus replacing it.
- b. Consult with the association landscaper to determine if the landscaping needs to be replaced and the cost.
- c. Obtain separate estimates for the replacement of the damage pavers and for the replacement of all of the pavers.
- d. Involve the owners!

3. The planning committee

The board appropriately created a committee on the project, but there were several things that could've been done better¹⁹

- a. The committee's decision to divide the project into three separate projects was premature. The committee should've obtained input from several contractors before recommending how the project should've been handled.
- b. The goals should've included getting a comparison of repair versus replacement costs.
- c. By adding owners to the committee, the following benefits could've been realized:
 - 1) Owners with expertise in these areas could provide valuable insight.
 - 2) Owner committee members might have influence with other residents, which could result in greater support from the membership.

The potential modernization of the front entryway affects all of the owners. It could change the "feel" of the community.

An attractive upgrade to the existing entryway could foster improved curb appeal, thus influencing resale prices.

Owners want and should have input, especially to create a shared vision.

Rather than discourage owners from participating, the board should have welcomed and promoted their involvement.

Q&A 3.2: Remember Tom, the architect? How could the board and/or committee have used Tom's skills more effectively?

- He should've been a member of the planning committee from the beginning. That way, he would've had a vote, and could've helped during the entire project.
- The committee could've presented his drawings to owners in order to solicit a "favored" vision.
- The board could've asked Tom to draw specifications for the experts who will formulate designs necessary for bidding out each aspect of the project.
- Tom could've assisted in monitoring the projects, once underway. This could've reduced the monitoring burden on the manager.


But the board did none of these. Instead, it alienated Tom, one of its most valuable assets.

¹⁹ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read a recommended process under "capital Projects Process Checklist"

- 1 Q&A 3.3: Are professionally drawn specifications required for every capital project? If not, when should an
 2 association use such specifications?
- 3 ▪ Professionally drawn specifications are not always required for a capital project; therefore, each project
 4 should be evaluated separately to determine if formal specifications are necessary. For instance, the
 5 repairs to the fountain may not require professional drawings; however, if the building code requires
 6 specifications, the association must comply.
 - 7 ▪ If the board intends to bid out the project to ensure it has “apples-to-apples” bids, it must have written
 8 specifications.
 - 9 ▪ If the project exceeds the 10% budget threshold in the HOA Act it must have specifications for the
 10 required bids. [F.S. 720.3055(1)]
 - 11 ▪ The board could create a policy that requires professional specifications for any project in excess of a
 12 certain amount.
 - 13 ▪ Landscape replacement only requires detailed specifications if required by the state or local
 14 government.

15 **The Proposal**

Over the next few months, Casa del Ray is in the process of getting and approving bids. Let's catch up.



Rupert


Jose, here's a brochure from Silver Landscape Design. They do landscape and water feature designs. Please check them out.

Later that day ...

Rupert, I found that Silver Landscape Design has been in business for two months and is a DBA for another landscaping company that has been in business for eight years. Also, the comments I found online range from "good landscaper" to "horrendous work!"

Later again that day ...

Rupert, I have set up a meeting with you: Bob St. Clair, the Silver Landscape president; and Ryan Patchouli, his landscape designer.




Jose

Interesting. Please set up a meeting with them.

16 *The Designs*

Later that week, Rupert met with Bob and Ryan.



Rupert

Hello, Bob. Hello, Ryan. Thanks for meeting with me on such short notice. I'd like your firm to draft designs for a new water feature and landscaping for the entrance to the Casa del Ray property.


Good to meet you, Rupert. We'd be happy to draft designs for you.

Later that day ...

Glad to meet you, Rupert. Yes, we can draft the designs for you.

Jose, while they're doing that, please get proposals from our pool company, Keep it Kleen, and our landscaper, Shrubs R Us.

Yes, sir. I'll get right on that!



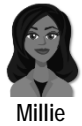
Bob

Ryan

Jose

1 *The Planning Committee*

When the proposals from Keep it Kleen and Shrubs R Us were received, the planning committee met to review them.



Millie

This is crazy!! \$85,000 for a new water feature? \$65,000 for the landscaping? The prices in these proposals are totally unacceptable! The committee should reject both of them!

Yes, you're absolutely right! We should reject both of these proposals. Let's meet with Silver Landscape to see what they can do for us.



2 *The Bid Acceptance*

After meeting with Silver Landscape, and holding three committee meetings (attended only by directors), the committee accepted the Silver Landscape proposal.



Millie

Hi, Bob. Thank you for your proposal. The association accepts your bid to build a new water feature and replace the existing landscaping at the entrance of the Case del Ray property. We agree to the total cost of \$118,000.00.

Thanks, Millie. We look forward to working with you.



Jose

Hi, Bob. Let me ask you, will the association need to pull permits for the water feature and landscaping?



Bob

Hi, Jose. No, the association will not need to pull permits. Since the water feature uses low voltage electrical, permits aren't required.

3 *The CAM Speaks UP*

During the next board meeting and prior to the vote on the Silver Landscape proposal, Jose feels the need to, once again, advise the board ...



Jose

Please let me strongly recommend that you, the board, get a landscape architect to draw up formal plans with bid specifications based on Silver Landscape's design in order to get "apples-to-apples" proposals for the project from different contractors! We should pay Silver just for its design work.

Also, it looks likely that the project will exceed 10% of our annual budget of \$1.2 million. In that case and according to F.S. 720, as explained by our attorney on past projects, we are required to get competitive bids for this project.


Remember, our attorney has also advised us that since this project will exceed \$50,000, the governing documents dictate that we get membership approval before proceeding! And, I believe he stated that a material alteration requires membership approval as well!

I recommend that the board hire a project manager, an engineer or architect, who can oversee the project and ensure that the selected contractor adheres to the formal specifications, once approved by the building department. And, before the board signs any contract, the association attorney should review it to confirm that the association is properly protected.



1 **The Board's Reaction**


The board meeting continues...



Rupert

Jose, that's enough! You know that we specifically requested and received competitive bids from our Pool Company and landscaper. Therefore, in my opinion, we have satisfied the competitive bid requirements.


Furthermore, the cost of the project, \$118,000, is less than 10% of our \$1.2 million annual budget. Our first water feature, which you say is a "material alteration," was completed without a membership vote! So, I don't see any reason to change now!



Jose

2 **The Vote**

The board members are angry with Jose for asking such questions at their board meeting.




Rupert


Jose, by a vote of 3 to 2, the board has voted that you are not to be involved in this project from this point on.

Furthermore, we have voted to accept Silver Landscape's proposal for \$118,000, pending approval by the association's attorney. And, we elect Millie, the planning committee chair, to assume management of the project immediately!

WHAT????



Jose



Millie

Wow! Thanks, guys! I'll make a wonderful project manager!

3 **The Proposal Q&A 4**

4 Now let's look at the Q&A to see what the board members of Casa del Ray could have done differently.

5 **Q&A 4.1: Was Silver Landscape Design properly vetted²⁰?**

6 The following items should be included when vetting contractors:

- 7 1. Check the entity status (e.g. corporation, partnership, sole proprietor).
- 8 2. Determine how long it's been in business.
- 9 3. Determine the ownership and officers of the contractor's company and their relationship to the
- 10 contractor's representative, and if there's any relationship to the association's directors, officers, or
- 11 manager.
- 12 4. Determine if it's functioning as a DBA (doing business as).
- 13 5. Obtain copies of current licenses for the company and for any professional employees.
- 14 6. Verify the licenses with the appropriate agencies (e.g. DBPR).
- 15 7. Check for complaints that may have been filed with those agencies.
- 16 8. Obtain insurance certificates for liability and workers' compensation.
- 17 9. Obtain and check references.
- 18 10. View online reviews, if available.
- 19 11. Visit current and completed job sites.

²⁰ To "vet" is to make a careful and critical examination of someone or something. (Synonyms: check, examine, scrutinize, investigate, and inspect)

1 Q&A 4.2; The proposal from Silver Landscape Design was accepted by the Casa del Ray board. Was this a
2 good and appropriate choice?

3 Remember, Silver Landscape is a DBA for another landscaping company, and has only been in business for
4 two months! To the board's knowledge, this company doesn't have experience with building water features.
5 These factors alone should've disqualified the company from even bidding.

6 So, "No," this was not a good and appropriate choice.

7 Q&A 4.3; Did the Casa del Ray board properly bid out the project?

8 The board did not develop formal bid specifications for the water feature or the landscaping and, therefore, did
9 not properly request bids for the project.

10 The bids they received were not "apples-to-apples," or "like-for-like."

11 So, based on this information, "No," the association did not properly bid out the project.

12 The Contract

13 Upon receipt of the contract between Silver Landscape and the association from the attorney, Jose notices that
14 there are no dimensional specifications in the drawings, and it doesn't state the need to pull permits. So, even
15 though Jose was relieved of responsibility for the project, he still has a responsibility to the association. So,
16 Jose places a call to the building department. He doesn't mention the name of his HOA and just gives a general
17 description of the project.



Jose

Hello, building department? My HOA is thinking about replacing a water feature and the landscaping around it. I'm wondering, will we need to pull permits for a project like this?



Carla

Hi Jose. I'm Carla at the building department. From what I understand about the project, permits definitely need to be pulled for the structural, electrical, and plumbing components.

18 The Contract Q&A 5

19 Has Jose handled his responsibilities to the association's board properly?

20 Yes, Jose handled his responsibilities to the association properly.

21 Let's review his actions so far.

- 22 1. Jose obtained the background information on Silver Landscape Design.
- 23 2. He obtained the proposals from the other contractors.
- 24 3. He recommended that the board obtain formal plans, specification, and bids.
- 25 4. Jose informed the board of the HOA statute regarding bids.
- 26 5. He recommended legal review of the contract.
- 27 6. He suggested that the association hire a professional project manager.
- 28 7. He informed the president, Rupert, and the other directors of the proper procedure for performing this
29 major capital project.
- 30 8. He alerted them to the voting requirements for a material alteration.
- 31 9. He expressed his concerns that the board was going down the wrong path, which could have negative
32 consequences.
- 33 10. He knowingly acted against the wishes of the president and other board members, who were not open
34 to opposition or dissent.

1 *The Contract Q&A 6*

2 Let's look at some other questions regarding aspects of this project.

3 **Q&A 6.1: What is the attorney's responsibility regarding the contract between the association and the**
4 **contractor?**

5 The attorney should review the contract to ensure that it meets the requirements of the HOA Act and other
6 federal, state, and local laws. He should also make sure that it contains all required legal provisions to protect
7 the association.

8 **Q&A 6.2: What should the contract include to protect the association from any deficiencies identified after**
9 **completion of the contract?**

10 The contract should include warranties and guarantees from both the primary contractor and the materialmen
11 that supplies the plant materials, irrigation lines, pumps, rocks, concrete, pavers, etc. for the project.

12 **Q&A 6.3: Did the board get a good deal on this contract?**

13 The association has no way of telling if it received a good or bad deal. Without formal specifications and
14 comparable bids, including warranties and guarantees (not just price), the association cannot adequately judge
15 the contract it received.

16 **Q&A 6.4: When and how do permits need to be obtained for this project?**

- 17 1. The contractor (or association) must obtain permits prior to the beginning of the project.
- 18 2. The contractor submits the plans and specifications to the city building department, along with the
19 applicable fees (usually paid by the association).
- 20 3. Once the plans are approved, the city issues the permit.
- 21 4. Then the owner (association) must sign a Notice of Commencement (NOC), which the contractor will
22 file and record with the local government.
- 23 5. Once recorded with the city, the association must display a certified copy of the NOC and permits
24 prominently on the property. (The association may choose to display them in the association office
25 rather than on the jobsite to prevent loss or damage.

26 *Remember the Permit Process Flowchart in Part I*

27 **Q&A 6.5: Who should determine if the contract work is properly performed?**

28 The project manager, if qualified to evaluate the work, should determine if the work is correctly performed. Most
29 CAMs and maintenance supervisors are not qualified to judge this.

30 Additionally, the building inspector will evaluate if the work has been performed in accordance with the approved
31 plans and permits.

32 **Q&A 6.6: How is the contractor's invoice for payment processed?**

- 33 1. The contractor issues the invoice for the project by using AIA Form G702²¹, "Application and
34 Certification for Payment," and AIA Form #G703, "Continuation Sheet." These forms show the work
35 that has been completed to date and the work remaining.
- 36 2. The partial releases of lien from all subcontractors and suppliers (materialmen) who performed work
37 through the date of the invoice must be included with the invoice. The releases must state that they
38 have been paid in full by the contractor up to the date of the invoice. Releases should be notarized.
- 39 3. The project manager reviews the application for payment, compares it to his inspection reports of the
40 work performed up to the date of the invoice, and notes any discrepancies. Once any discrepancies
41 are resolved, he approves the invoice and forwards it to the CAM.
- 42 4. The CAM reviews the invoice against the projected payment schedule and the completion schedule.
43 After he reviews and approves the invoice, he authorizes payment.

²¹ Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read the AIA Application and Certificate for Payment.

- 1 5. Once the payment check is issued, two authorized signors (usually directors) should sign the check. It
- 2 is then sent to the contractor. A copy of the signed check is attached to the application for payment and
- 3 stored in the project file.

4 **Q&A 6.7: What could happen if the releases of lien are not received, and the subcontractors or suppliers were**

5 **not paid by the contractor?**

6 The association should require that subcontractors and suppliers provide partial releases of lien each time an

7 invoice (that includes their services) is issued. The contractor's application for payment should not be approved

8 or paid until all applicable releases of lien are received.

9 If the association pays the contractor, without receiving the releases, the association might be held liable for

10 paying the subcontractors and suppliers who have not received payment. Please refer to Construction Lien Law

11 in Part I for details regarding the rights of subcontractors and suppliers to recover the amounts owed them by

12 the contractor²².

13 The Unexpected Problems

The project is underway, but despite being told by the board to keep out of the project, Jose and Elio Vega, the maintenance supervisor, go to the construction site to take a look.



Jose

Elio! Do you see what I see? There are plumbing lines obstructing irrigation lines, the pumps are leaking, and the base of the water feature is a plastic liner, not the gunite it's supposed to be!

Yes, Jose. But do you see what I see? The liner is already leaking all over the place. And look at two of the queen palms! They are definitely not doing well! We should tell Rupert and Millie right away!



Elio

Jose tells Rupert and Millie about the construction site problems. Millie contacts Bob of Silver Landscape.



Millie

Hello, Bob. My CAM and maintenance supervisor visited your construction site today.

Oh, yeah? Were they impressed?

Hardly! They reported problems with the pumps and liner for the water feature leaking! Even the queen palms are already dying!



Bob

Really? That's too bad. I promise, Millie, everything will be fixed.

14 Unexpected Costs

Jose received a change order from Silver Landscape Design.



Jose

Rupert, I just received this change order in the amount of \$3,000 from Silver Landscape. It's the cost and labor relocating and adding new irrigation lines. When added to the original bid of \$118,000, this \$3,000 puts the project at \$121,000 which is over 10% of our annual budget of \$1.2 million.

And I expect the legal fees for reviewing the contract to be an additional \$3,000. Phew! Well, I guess there's nothing we can do, so I'll sign and the association will pay the change order. Please prepare a check for \$3,000. Once the work is finished, we'll give Silver Landscape the check.



Rupert

²² Please visit our website at www.goldcoastschools.com, click on Student Resources, select Downloads and Links, and click on CAM Continuing Education found under CAM Downloads to read a sample of the "Release of Lien" form can be found in the appendix

1 **The Unexpected Costs Q&A 7**

2 **Q&A 7.1: What is a change order?**

3 A change order is a revision to the existing contract.

4 **Q&A 7.2: When might a change order occur?**

5 A change order occurs when there is a discovery of conditions that result in an expansion of the original scope
6 of work, and an increase to the original project cost.

7 It must be submitted by the contractor to the association in writing. Many contractors have a standard change
8 order form that they use. The association must agree to the change order.

9 **Q&A 7.3: How does the association pay the added project cost introduced by the change order?**

10 The association should have included a contingency in the project for potential change orders. If the association
11 had not anticipated or funded change orders, it may have to special assess or borrow the necessary funds.

12 All major projects should include a contingency fund, from 5 to 20%, depending on the complexity of the project.

13 The association should ensure that the special assessment or loan includes the contingency.

14 Having to pass a second or third special assessment for change orders is politically difficult.

15 **The Project Completion**

Once the repairs have been made and the project completed by the contractor, Jose receives Silver Landscape's final invoice.



Jose

Millie, I just received Silver Landscapes final invoice. But we can't approve it until we get the releases of lien from Bob, his subcontractors, and suppliers. Can you please work on getting those for me?

Yes, of course, Jose. I'll contact Bob right away.



Millie

Later that day ...

Hi, Bob. We can't give you your final payment until you submit final releases of lien from you, your subs, and suppliers.



Bob

That might be a problem, Millie. I haven't been able to contact my landscape designer, so I won't be able to get you his release. Isn't there something else we can do?

After consulting with the association's attorney, Rupert directs Jose to accept a statement from Silver Landscape.



Jose

Thanks, Bob. Let me just read your signed statement, "Silver Landscape Design accepts full responsibility for any costs incurred by the association resulting from the failure of Silver Landscape to obtain the release from the landscape designer." Ok, that's good. Here's your final check.

Thanks, Jose. We appreciate your business.



Bob

Oh, and by the way, Bob. One of the newly planted palms is dead.

So sorry, Jose. I'll take care of that.

Bob promises but doesn't say when he'll replace the palm.

1 *The Project Completion Q&A 8*

2 Q&A 8.1: How does the association know when the project is completed?

3 For the project to be considered complete, the following must occur:

- 4 a. The project manager has signed off that the contractor has performed the scope of work to her
5 satisfaction, including change orders and punch list items.
- 6 b. All warranties have been received by the association.
- 7 c. The contractor, subcontractors, and materialmen have signed lien releases for payment in full.
- 8 d. All permits have been closed out by the contractor or subcontractors with the local building department.
- 9 e. The attorney has reviewed the project manager's report, lien releases, and warranties and agreed, in
10 writing, that they are satisfactory.
- 11 f. The association has paid all parties in full. This includes retained funds, once it verifies that all subs
12 have been paid (with released liens).
- 13 g. The local building department has performed the final inspection, approved the work, and closed out
14 all permits.

15 Q&A 8.2: What warranties and/or guarantees should this project include? From whom does the association 16 receive the warranties? How do we determine the quality or value of the warranty?

17 The warranty is as good as the company issuing it. If a company goes bankrupt, the warranty becomes
18 worthless. If it sells out to another company, the successor company may or may not honor the warranty.

19 Usually, the successor company takes on the liabilities of the original company, which would include warranties
20 and guarantees.

21 Note that the company may still be in business but refuse to honor the warranty, thus precipitating a lawsuit.

22 Q&A 8.3: What is a punch list? Should Casa del Ray have done a punch list on this project?

23 A punch list is a list of items that the contractor (or subs) must complete before the project is deemed completed.

24 The punch list includes items directly required by or related to the contract, such leaks in the fountain, or
25 discoloration of the rocks. It also includes damages to association property caused by the contractor, such as
26 damages plants, and broken irrigation lines.

27 This may also include damages to owner property caused by the contractor or subs.

28 Q&A 8.4: How should the association handle the "missing" subcontractor?

29 This is a legal issue. The association should not pay the retention or the contractor for the subcontractor's work,
30 unless and until the attorney approves the payment. This must be referred to the association attorney. Typically,
31 the contractor would not be paid for the sub's work. A smart contractor would obtain releases upon completion
32 of work by, and payment to, each subcontractor, to protect his interests.

33 However, the association attorney may be able to develop a release that the contractor signs, that protects the
34 association from having to pay the contractor from the sub's work, and the, should the sub appear, pay the sub
35 as well.

36 **The Owners have their Say**

37 During the project, Jose and the board members received numerous comments and questions from the owners.
38 Some members loved the new water feature. Others hated it, and were frustrated and angry that, once again,
39 the board had excluded them from participation. Tom Durant was particularly critical, stating that the board had
40 not solicited competitive bids nor hired a professional project manager.

41 As election time grew near, Tom formed a slate of candidates seeking to replace the current board. Rupert and
42 Millie, in particular, become the target of angry owners and the community becomes embroiled in conflict.
43 Rupert and Millie, under relentless attack, decide not to run for re-election.

44 And, oh yes, the water feature is leaking again.

1 *The Owners have their Say Q&A 9*

2 **Why is it important to a project to include the members input? What are the consequences of not**
 3 **involving the members? How can a board keep members involved in, and informed about, association**
 4 **projects?**

5 A capital project generally modifies or improves the association property. It may also correct deficiencies, such
 6 as leaking fountains, or deteriorating roofs.

7 These projects are costly. Members want to know that the money they contribute is spent well and maintains,
 8 improves, or enhances the community.

9 Furthermore, members want to be assured that there are warranties and guarantees to protect them, should
 10 there be deficiencies in the project. Member support for major modifications and improvements usually helps in
 11 collection of special assessments. If members are enthusiastic about a capital project, they are more likely to
 12 endure inconveniences during the project – such as large dumpsters and necessary project materials blocking
 13 parking spaces, or required movement of cars, or delays due to a closed entryway gate during construction.

14 The board can keep members involved through frequent meetings, newsletter updates, online information, and
 15 manually distributed and posted notices, as needed.

16 **SUMMARY**

17 The most important responsibility of a community association is to preserve, maintain, and enhance the
 18 property, its value, and the association assets. Well maintained property and assets

- 19 ▪ Sustain property values and enhance “curb appeal”
- 20 ▪ Result in less accidents and insurance claims, thus lowering insurance
- 21 ▪ Help keep assessments lower

22 This sometimes involves major repairs, replacements, and rehabilitation to various components of the
 23 association.

24 Once the association identifies a need for major repairs or rehabilitation, it should seek professional assistance
 25 in drawing up specifications and obtaining bids from contractors. A professional can also assist the association
 26 in obtaining necessary governmental permits and adhering to government requirements.

27 The professional will also know which contractors require governmental licensure or certification, and assure
 28 that these are current.

29 The association should use the professional to help monitor and coordinate the major project, although the
 30 manager will need to provide some daily oversight.

31 Managing a major project is very complicated, and the association should ensure that it keeps its attorney
 32 informed as the project proceeds.

33 Construction lien law requires payment to vendors in a certain manner, which, if not followed, can result in liens
 34 against owners.

35 The association should carefully consider funding alternatives for major projects, and select the funding method
 36 that best serves its owners and the association in the long run. The association should maintain separate
 37 accounts for each major project and not commingle funds with either operating or reserve accounts.

38 Lastly, during the major project work, the association should ensure that it communicates with owners about
 39 any problems, issues, changes, and other important project related issues.

40 The project can move forward with understanding and support of the owners and residents. The objective is to
 41 complete the project on time, within budget, and with the least possible stress to residents.

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CAPITAL PROJECT GONE AWRY FINAL EXAM

Use the answer sheet on page 159 to indicate your responses

1. **Which statement is true regarding a well-maintained property and assets?**
 - a. It results in more accidents.
 - b. It reduces property values.
 - c. It helps to keep assessments lower.
 - d. It increases insurance premiums.

2. **Which statement best describes routine maintenance?**
 - a. It is periodic maintenance performed on property, machinery, or components to ensure proper operation, to avoid breakdowns and to prolong the useful life.
 - b. It is work requested by an owner, a tenant, the board, or identified during a routine inspection of the property.
 - c. It is recurring maintenance activities, usually routinely scheduled, and requiring little oversight.
 - d. It responds to emergencies or unpredicted problems and breakdowns.

3. **How do a CAM and/or board identify maintenance problems?**
 - a. When they encounter continuing problems or emergencies with equipment
 - b. When neighboring associations have similar component problems in their associations
 - c. Based upon the number of owner complaints per month
 - d. When they have a persistence number of use restriction violations

4. **Which statement is true regarding a reserve study?**
 - a. It is limited to estimating capital replacement requirements.
 - b. It must be performed by an engineer.
 - c. It establishes if and/or when the association should repair, replace, or rehab components.
 - d. It is only useful to develop the reserve schedule for the association.

5. **Which statement best describes the elements of a project?**
 - a. Professional opinions of the extent of problems and methods of repair and/or replacement
 - b. Owners' collective opinion of the association's capital needs
 - c. Maintenance supervisor's sketches of repairs or rehab needed
 - d. Money available for a specific repair in the reserves

6. **Which of the following statements best describes the Florida Building Code in relation to community associations?**
 - a. It requires all community associations to have reserves for glass and shutters, unless waived by the owners at a duly called and quorumed meeting.
 - b. It requires certain buildings undergoing substantial rehabilitation or repair, or total replacement of certain components to meet the current building code requirements.
 - c. It exempts existing buildings from retrofitting their buildings with sprinklers or engineered life safety systems, by a vote of majority of the owners present in person or by proxy at a duly called and quorumed meeting.
 - d. It requires all community associations to make repairs and replacements consistent with the building code in place when the association was constructed.

7. **Which of the following parameters should a board establish when bidding out work?**
 - a. Requirements only of community association statutes
 - b. Any conditions of governing documents
 - c. Whether maintenance employees can do the repairs as part of routine maintenance
 - d. Opinion of owners as to when the repairs need to be undertaken

8. **What does RFB stand for?**
 - a. Reference formula bonding
 - b. Request for bid
 - c. Rational fund basis
 - d. Rate for bonding

9. What is a performance bond?

- a. A bond demanded by the bank, to assure payment of a construction loan in case of default by the association.
- b. A bond set aside by the contractor to pay subcontractors and suppliers, should the contractor fail to do so.
- c. A bond set aside by the contractor to complete a job, should the contractor be unable to do so.
- d. A bond, provided by the condominium to the contractor, which demonstrates good faith payment for work to be performed.

10. Upon what should the final payment to contractors be dependent?

- a. Acceptance by the association, and sign-off by the local government
- b. Sign-off only by the manufacturer's representative (where appropriate)
- c. Sign-off only by the project manager
- d. Majority vote of the owners

11. What should the association consider when determining which contractor to choose for a project?

- a. The low bidder
- b. Past performance
- c. Only contractors whose bids conform to the required specifications and scope of service should be considered.
- d. Number of years doing a specific type of contracting

12. What could be included in the funding sources available for major projects?

- a. Loans from owners
- b. Loans from FEMA
- c. Grants from local government
- d. Construction loans

13. Which statement best describes a building permit?

- a. It is based upon a verbal statement of the condominium of work to be done.
- b. It requires the submission of detailed plans and drawings of work to be performed.
- c. Once issued, it allows work to proceed immediately.
- d. It is not required if the contractor obtains a Notice to Commence instead.

14. Which statement best describes the construction lien law?

- a. It allows certain construction professionals to file liens against the association before signing the contract.
- b. It grants certain professionals and contractors the right to a claim of lien, to be recorded only if the association fails to pay 50% of the contract amount.
- c. It is very complex, and an association should work closely with its attorney during construction projects to ensure they follow all required procedures related to liens and claims of lien.
- d. It applies only to the primary contractor and excludes subcontractors and supplies.

15. How should service of notices, claims of liens, affidavits, assignments, and other related instruments be delivered?

- a. Directly to the person, a partner or officer or business agent
- b. Mailed to the above noted, by registered or certified mail, with certain limitations.
- c. Posted on the premises
- d. Any or all of the above

16. Select the statement that best describes a project manager.

- a. A project manager should always be a member of the board of directors.
- b. A project manager should be accredited through the National Conference of Construction Managers.
- c. A project manager should be licensed by the Florida Board of Project Managers.
- d. A project manager should understand the relationship between concurrent projects and coordinate them to complete effectively each project.

17. Which statement accurately describes the accounting information on a major project?

- a. Accounting information should be combined with operating fund records.
- b. Accounting information should be merged with reserves, as major projects are similar to reserves.
- c. Accounting information should be maintained separately.
- d. Accounting information should be maintained by the contractor.

18. When must an HOA solicit formal bids for a project?

- a. When it is 5% or more of the budget, excluding reserves
- b. When it is 5% or more of the budget, including reserves
- c. When it is 10% or more of the budget, excluding reserves
- d. When it is 10% or more of the budget, including reserves

19. When is an owner responsible for a repair?

- a. When the problem occurred in the owner's unit and affected common elements
- b. When the problem occurred in a common element adjacent to the owner's unit
- c. When the problem affects a limited common element used only by the owner's unit
- d. When the problem occurred near the owner's parking space

20. Why does an association employ a CAM?

- a. To identify any product or workmanship that varies from the scope of work in a major project
- b. To operate and oversee the day-to-day responsibilities of the association
- c. To perform inspections and pre-approve contractual progress payments in major projects
- d. To ensure major project components are installed in accordance with manufacturer specifications

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