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## Dues Allocations

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**Anne Creaser** <annecreaser@gmail.com>

Fri, Oct 13, 2023 at 1:21 PM

To: Wayne Willis <wayne@willisdomain.com>

Cc: LM HOA Board <board@lasmananitascondos.com>, LM HOA Advisors <advisors@lasmananitascondos.com>

I may respond later in more detail but with lawyers it can depend what you ask and what you do with the answer.

Eg. Are we knuckling under and assessing in an unfair way because of a low risk item? In other words shifting a monetary burden for a limited \$ return? Lawyers don't suffer the results.

The risk of not collecting for 1 delinquent unit over 10-20 years is there but is low. Its low because amenities get withheld and other avenues actually work better. Meanwhile the overpayment occurring likely outweighs the one event in 20 years of uncollected dues. We aren't the only property operating a hybrid out of fairness.

A "Unit" in phase 1 is defined as Residential. Garages and commercial units are separately defined. We are assessing Units. The bonafide "expenses" of garages could be separately budgeted.

The issue in Phases 2 and 3 aren't so pronounced as Schaible only monkeyed with indiviso percentages to benefit his own unit in Ph1.

It is very bad to stick Phase 1 with that cost. Further Ph1 indirectly subsidized Phase 3 for years by not assessing developer units (built and unbuilt) (*those you refer to as "effectively common area" clearly already veering off the regime path*).

The prior Boards were quite transparent when we shifted to the current method, because previously garages weren't assessed at all so it had to be disclosed. We were comfortable describing how it works whenever asked.

So - yes the board can take a propeller-headed, rectilinear approach to all things but if you pull on that thread your world will unravel.

Updating dues method is best properly done by exploring modifying our regimes. Ideally to sq meters. Gabriel did not say that couldn't be done. Ph3 modified its regime once already. In the meantime, we shouldn't be penalized by the dolts of 20 years ago.

Anne

Sent from my iPhone

On Oct 13, 2023, at 11:56 AM, Wayne Willis <wayne@willisdomain.com> wrote:

Anne, I know you'll be disappointed in our decision, but the Board felt unequivocally that we should bite the bullet and conform to the law and the Regime Declarations now that they are clear to us: We'll allocate dues across Units+Garages and not Units alone, and use indiviso percentages as the basis for the allocation.

In our last meeting, you presented the arguments for keeping the Units-only status quo. Frankly, they may be "more fair" than U+G allocations. My heartburn was having no authority. After you left, I observed that, as a political matter, we are asking for a lot of change (big dues increase, CM argument, pets, etc.) and that we might be better off putting our heads back in the sand and let the "Documentation Committee" surface the issue in its work and deal with the change next year.

The Board had a strong, unambiguous and unanimous reaction: If we are to live our values of "integrity" and "transparency," we had to act now. To do less would be disingenuous at best.

Anticipating some pushback from the Assembly, I wanted to double-check that I heard Gabriel correctly the first time. (I don't want to stand up in front of everyone and say this is legally REQUIRED and later learn there was some wiggle room.) So, I asked Gabriel by email to double-check and triple-check. (See email at the bottom of this thread.)

His response is clear and unequivocal ... and he lays out the rationale for all three decisions we made:

- a) allocate across Units+Garages,
- b) use indivisos, and
- c) use the two-decimal indivisos.

Now pretty much anyone can understand and audit the dues allocation spreadsheet. We have X units and Y garages in the Regime. Each has an indiviso specified in their deed and in the Regime Declaration. The indivisos add to 100%. Some of them are "**non-chargeable**" (a term I'm going to use from now on in this context) either because they are

- a) effectively common property (e.g., pool bar in Phase I, gym),
- b) unbuilt units (e.g., building 5 in Phase III) or
- c) used by the HOA (e.g., the 4 garages in Phase III).

Darrell, I don't see any gaps in Gabriel's reasoning; I welcome your L-eagle eye.

The final Dues spreadsheet and the pdf I'll use are [in this folder](#). I spot-checked everything on Wednesday -- albeit not in the best personal condition. I welcome your doing the same.

BTW, one implication of this decision is to collapse the reserve accounts into one account per regime -- plus "Common Reserves" to buffer HOA surpluses and deficits and to fund capital projects for common assets per the Cross-Sharing Agreement. Technically, the Common Reserves account is owned/allocated to the 3 Reserves for the 3 Phases, but keeping it segregated allows more visibility and easier understanding.

Another implication of this decision is that we won't need to ask for a special assessment just for the garages. Those garage reserve accounts will merge into what we used to call the "building reserves" and what we'll now collectively call "Regime Reserves" (as opposed to Common Reserves)

It's been a long road, but I think we are in a really good place. I plan to communicate this in a blog post (which I'll run by you), a very short "blurb" for the cover memo going out to the Owners early next week (ditto) and maybe a "zoom huddle" with the Vigilance Committees to answer their questions. I might ask Mark Miller to participate, too, from the Financial Advisory Committee.

Thanks again for your help and patience with all this. Please look for an email with the Cover Memo (and the blurb about Dues) and turn that around quickly. I'll try to get that to you by tomorrow.

w

----- Forwarded message -----

From: **Gabriel Dixon** <[gabriel@loscaboslawgroup.com](mailto:gabriel@loscaboslawgroup.com)>

Date: Thu, Oct 12, 2023 at 3:15 PM

Subject: Re: Dues Allocations

To: Wayne Willis <[wayne@willisdomain.com](mailto:wayne@willisdomain.com)>

Hola Wayne,

Sorry for the late reply. I am in northern Baja with zero cell signal. I have internet but it's not the best so its a bit hard to look at the condominium incorporation documents.

**Budget Allocation based on indiviso percentages:**

With regards to Phase I, article 44 states:

"ARTICLE 44.- Each condominium owner is obliged to contribute to the common expenses of maintenance of the COMMON AREAS and common services, as well as to the administration expenses, in proportion to its percentage of undivided ownership, as stated in the DESCRIPTIVE MEMORY."

With regards to Phase II and III, article 14.2 states:

"14.2. All Contributions payable by the Condominium Owners shall be proportional to the interest they have in the Condominium represented by their Condominium Unit and described in the Condominium Property Regime."

The garages in my opinion are private units, they have a cadaster code, have an appointed indiviso percentage within the condominium, can be sold independently, etc. The descriptive memory in each of the condo regimes includes the garages and assigns an ownership percentage to them as it does to all private units. Without the garages undivided ownership percentage and including only the indiviso for residences these would not add up to 100%.

I can certainly understand that it may not be fair for a garage to pay the same as a unit if they do not use electricity, water, they require less maintenance, etc., but unfortunately, the rules and regulations are poorly drafted and do not separate the contributions to be paid by the Residential Units and the Garage units. If we do not use the indiviso, then how would the maintenance of the garages be calculated? There is nothing in the documents that would clearly suggest that these can be calculated differently or should be exempt from paying HOA fees.

With regards to the decimal percentage matter, does the final amount to be paid by each homeowner vary significantly if you use 4 decimals instead of the 2 decimal points as stated in the incorporation documents or how does it make it "more fair"? The indiviso percentages result from adding the total square meters of all of the private units in the condominium (that would be 100%) and dividing by the total square meters of each private unit. I would suggest using the numbers as specified in the incorporation documents as those will need to be presented to a judge in case that we want to enforce collection of HOA fees from a delinquent homeowner. I don't think the case would be necessarily dismissed if we've used 4 decimal points for the calculation of the ownership percentages/HOA Fees instead of the 2 that are specified in the incorporation document but unless it makes a big difference I don't think the risk is worth it.

If you would like, we can try and get on a whatsapp call to further discuss (not sure how the audio quality will be). Otherwise I will be back in Cabo Saturday and can get on a phone call early Monday morning.

Best,

**Gabriel Dixon, Esq.**

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On Wed, Oct 11, 2023 at 6:35 PM Wayne Willis <[wayne@willisdomain.com](mailto:wayne@willisdomain.com)> wrote:

I want to be 100% sure that our Regime Declarations require us to allocate general assessments for annual budget/operations by indiviso percentages ... without any question.

The Declarations specify the indiviso percentages to two decimal places, e.g, my unit 3403 is 3.13% and my garage is 0.33%. That's what it says on my deed. I assume everyone's deed also includes their indiviso percentage.

In an effort to "be fair," Anne allocated things to four decimal places, proportionate to square meters. While logical, I don't think there is any authority for the HOA to do that.

Also, Anne has ONLY included Units in the allocation, not Units+Garages. She has a logic as to why that's fair, and that view may be justified. But, again, I don't think there is any authority for doing that.

**Hot questions for you -- by EOW, please.**

Do the Regime declarations **require** us to use all indivisos (Units+Garages) in our allocation of dues to individual Owners?

-- if so, must we use the two-decimal place version on the deeds? Is there any authority for allocating over 4 decimal places instead (based on M2)?

-- is there any compelling legal justification for allocating dues pro rata over Units only, rather than Units+Garages?

**If I say, "Folks, the dues are calculated according to the legal requirements of the Regime documentation, which uses the indivisos you can see in your deeds for both your unit and your garage(s) if you have any. We have no legal latitude to do anything else, and this will be the way we go from here." Is that accurate?**

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