

# SHADOW OAKS STAR



OCTOBER 2009

## MANAGEMENT:

Anchor Community Management,  
Inc.

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## BILLING QUESTIONS:

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## WEB-PAGE:

anchorcommunitymgmt.com/  
shadowoaks.htm

## NEXT BOARD MEETING:

Thursday, Nov. 19, 7:00 pm



## QUESTIONS AND MYTHS ADDRESSED

### SPECIAL ASSESSMENT

#### *Myth:*

We received a special assessment because the HOA lost at court.

#### *Truth:*

The trial on the lawsuit has not yet started. Thus, there has not been any verdict.

#### *Myth:*

The special assessment is being used to fund the cost of defense (attorneys) for the HOA on the 528 building only.

#### *Truth:*

The special assessment will be used for the repairs to the 528 building. Those costs include, but may not be limited to, engineers, construction management and contractors to do the work. The defense attorney is being paid by Farmer's Insurance. The HOA attorney serves in an advisory capacity and those costs are an expense of the Association.

#### *Myth:*

My special assessment will be refunded to me once the HOA gets a loan.

#### *Truth:*

Unfortunately, the answer is no, because even if the HOA were able to obtain a loan, the loan would still have to be paid back and the only way to do that would be to special assess the owners.

As it stands, the HOA has not been able to obtain a loan because of the current and ongoing litigation against the HOA.

#### *Myth:*

I am only financially responsible for what happens in my building.

#### *Truth:*

Shadow Oaks is a condominium association. This means that ownership of the common areas is divided equally amongst all 80 owners. Legally, an owner cannot

separate his or her unit from all the other units in the condo development. In Shadow Oaks, all owners are assessed the same amount of monthly dues, and in this situation, the same amount for a special assessment.

#### *Question:*

What will happen if I cannot pay my special assessment?

#### *Answer:*

Special assessments are subject to the same collection process as regular assessments. This collection process could include late fees, interest, pre-lien and lien actions as well as further collection efforts by attorneys.

#### *Question:*

Do the plaintiffs have to also pay the special assessment?

#### *Answer:*

Yes.

### INSURANCE COVERAGE

#### *Myth:*

Farmer's Insurance will pick up the cost of the HOA defense for the new lawsuits.

#### *Truth:*

As it stands, Farmer's has not committed to paying for the defense for the new lawsuits, only for the original lawsuit in the 528 building. If Farmer's does not agree to defend the HOA with regard to the new lawsuits, the HOA will have to pay for the defense, including attorney and consultant fees, costs, etc., as well as any awarded judgments (if any). This will probably result in additional special assessments being levied to fund the defense and all of the associated costs.

#### *Myth:*

I have loss assessment insurance on my unit so my insurance company, not me, is on the hook to pay my special assessment.

#### *Truth:*

Each member is responsible to pay

the special assessment to the Association. Loss assessment insurance is between the member and their individual insurance company. Thus, the member is obligated to pay the special assessment regardless of the position taken by their insurance carrier.

Each insurance company has different requirements before they pay out on loss assessment policy. Owners who have this coverage should provide to their insurance company the info that was mailed to them by the management company regarding the special assessment. All of that paperwork is also available on the Shadow Oaks webpage which anyone can access by going to: [anchorcommunitymgt./ShadowOaks.htm](http://anchorcommunitymgt./ShadowOaks.htm). The management company does not have any other paperwork to provide besides what is on this webpage.

**Question:**

Can my insurance agent contact the management company directly for questions or more info?

**Truth:**

No. Your insurance company is not a member of the Association, you are. Therefore, all info to your insurance company must come from you or from the webpage. Calls from owners' insurance agents will not be returned by management.

**Question:**

Why isn't the insurance company paying for the repairs caused by the soils movement?

**Answer:**

Insurance companies typically exclude this type of coverage from their policies.

## LAWSUITS

**Myth:**

I heard that the only way to get something done is to sue the HOA. Then, the insurance company will cover it.

**Truth:**

History shows this not to be true.

Over the years there has been repair work performed in various areas of the community without the filing of lawsuits against the Association. The Board has consistently taken the position that if a member has a concern about their unit or building, that such concern should be put in writing, along with any photographs, reports, etc. for Board review, and if appropriate, Board action. Also, there is absolutely no guarantee that the Association's insurance company will in fact cover all or any of the claim.

**Myth:**

Since the 5480 building was repaired several years ago, we should go after the contractor who did the repair because it is obviously not holding up if we are being sued again.

**Truth:**

Foundation repairs were completed on half of the building several years ago. Although we did cosmetic repairs inside all of the units in this building, the injection grouting soils stabilization process was completed under 4 of the units. We do not have any evidence that the grouting work was not performed properly.

**Question:**

What will happen if the HOA loses in court?

**Answer:**

It depends ultimately on what the judgment entails. It is possible that the court could rule that the repair to the 528 building needs to be different in scope, and therefore potentially more expensive. Also, it would need to be determined what the insurance company will cover and what it won't. All of these factors could lead to another emergency special assessment.

**Question:**

Can't we hold the contractor who built Shadow Oaks responsible?

**Answer:**

The HOA sued the contractor several years ago for construction defects.

Once you've sued, settled, entered into a settlement agreement and release and collected, you cannot sue the contractor again.

**Question:**

Can't we hold the City or the County responsible for allowing the faulty construction?

**Answer:**

No, the City and County have immunity against this type of lawsuit.

**Question:**

What other buildings have owners who have filed lawsuits?

**Answer:**

One owner in the 578 building and 2 in the 5480 building.

## RESERVE FUND/LOAN

**Question:**

Why can't the Board pay for the repairs to the 528 building out of the reserve fund?

**Answer:**

The reserve fund is in existence to fund the expected repair and replacement of the various common area components within the HOA. If we fully liquidated the fund to pay for this repair, we would have no money left to pay for other things that will eventually need repair or replacement, such as the roof, the streets, decks, painting, and all other common area issues.

**Question:**

If we can't get a loan, why are we casting a loan vote?

**Answer:**

At some point in the future, we may be able to obtain a loan once the litigation is resolved.

**Note:**

Homeowners did approve a bank loan for the Association, by a vote of 54 in favor and 5 opposed.