

“Assessment Period” Report
(esp. as related to an annual assessment raise notice)
5/13/18

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Question: Regarding the BOD's authority, per CCRs Article IV section 3, to raise the annual assessment rate up to 10% per year, what constitutes proper notice and implementation to the membership about such a raise?

Potential Answer (according to this author and two independent attorneys): notice is 30 days in advance of June 1 in order to make the increase implementable in the coming new June 1 fiscal year assessment billing. In order to properly support the April 6, 2018 10% assessment raise made by the BOD, two independent attorneys were individually hired by separate association members who also concurred with this interpretation.

- See one interpretation at <http://assuredcomputer.com/kirk/crandall1.pdf>
- See the other interpretation at <http://assuredcomputer.com/kirk/richard2.pdf>

Explanation:

Starting with the Bylaws, Article VII:

- Section 2: “It shall be the duty of the Board of Directors to do, in their discretion...”
- Section 2(c): “as more fully provided in the Declaration, to do as follows:”
- Section 2(c)(i): “fix the amount of the annual assessment against each Lot at least (30) days in advance of each annual assessment period;”
- Section 2(c)(ii): “send written notice of each assessment to every Owner subject thereto at least (30) days in advance of each annual assessment period;”

The critical operative phrase in the language above is “annual assessment period”; what/when is the “annual assessment period”? Is it a calendar year (January 1 – December 31) or some other one year period starting and stopping on other dates than the calendar year?

The phrase “assessment period” is not directly defined in any 9MR governing document so we are left trying to derive its inferred meaning. At Bylaws Article XI, Section 2 it states, “... in the case of any conflict between the Declaration [CCRs] and these Bylaws, the Declaration shall control”, so we will give higher precedent to the CCRs as we discover forward here.

First, what *is* an “assessment”? We can all likely understand that a “period” is a defined length of time but what is an assessment? Depending on the context within which it is used, “assessment” can mean different things. Within the context of the CCRs, the inferred meaning of the word “assessment” can be seen throughout each of the 11 sections in Article IV as being a monetary '*charge*' that is due and payable. So we could rephrase it and look at it like this: what is the annual charge period? When is the charge made?

- Regarding when the annual monetary charge is made, there is only one¹ section in the CCRs that gives an indication about this: Article IV, Section 9 states that the “Due Dates of Annual Assessments” is “...the first day of July for each calendar year.”

So that is Key Observation #1: Holding the thought that July 1 is the annual assessment *due* date, and given that the assessments are annual and therefore the assessment period is (1) year long, this suggests the “annual assessment period” - ie. the point at which the assessment charge is made – starts some time before July 1.

Please note now that, as both independent attorneys indicated in their interpretations, the meaning of the word “assessment” is a *fiscal* issue; ie. it is related to fiscal actions and use.

Now take notice of Bylaws Article XV: “The fiscal year of the Association shall be a calendar year, unless determined otherwise by the Board of Directors.” In the official archives of the HOA there is no official record of the date the BOD changed the fiscal year of the Association from calendar to the current fiscal year of June 1 – May 31, but it is clear from official accounting records, tax records, and at least one BOD consent agenda² that the fiscal year has been June 1 – May 31 since at least 2008. Also, many prior BOD members and current Association members recall this same fiscal period had existed for many years prior to that. These facts amount to the legal demonstration of the fiscal year of the Association indeed being June 1 – May 31; in law this is referred to as “promulgation”. **This is Key Observation #2:** the fiscal year of the Association is June 1 – May 31.

Now combine Key Observation #1 (inferring the annual assessment period starts some time before July 1) and Key Observation #2 (fiscal year of from June 1 – May 31): the “annual assessment period” is interpreted as being June 1 – May 31.

So using the annual assessment period starting on June 1, now refer again to Bylaws Section 2(c)(i): “fix the amount of the annual assessment against each Lot at least (30) days in advance of each annual assessment period;”, and Bylaws Section 2(c)(ii): “send written notice of each assessment to every Owner subject thereto at least (30) days in advance of each annual assessment period;”. This means that the BOD is required to send notices of annual assessment increases and also notice of the annual assessment rate at least (30) days prior to June 1, which is May 1 or May 2, depending on how you count 30 days backward from June 1.

1 It has been argued by some association members that CCRs Article IV Section 3 infers that the annual assessment period is established as starting on January 1. This author argues that that interpretation is incorrect, that the context within which that section assigns a connection of the date January 1 and the annual assessment has nothing to do with a period or when the charge is made. It is regarding when/if the annual assessment amount can be increased beyond \$100.00 per year. January 1 is a specific moment in time, the 'strike' of January 1; there is either *before* or *after* January 1, not 'between two dates which is a year'. Before “...January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner the maximum annual assessment shall be \$100 per Lot.” So that means before that specific moment in time the maximum annual assessment cannot be more than \$100.00. Then the section immediately goes on to state, “Thereafter, from and after January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner, the annual assessments may be increased...”. The word “from” is the inclusion of the day January 1, because *after* is January 2 and forward. So without the word “from” installed in the sentence, January one is lost without existence, per se. The word “from” is not a set-up of two points between which is a year; it is just a definition of a single moment in time and what comes either before or after it relative to the *amount* that the annual assessment can be. This section is in no reference to a period of time or an assessment period, therefore irrelevant to the definition of the phrase “annual assessment period”.

2 May 5, 2012 BOD annual consent agenda at item #9 (seen at <http://assuredcomputer.com/kirk/conag5.5.12.pdf>), the proposed raise in annual assessment by then-BOD member Jess Wright was associated with the annual billing, being June 1.