

CLARIFICATION ON EMERGENCY ASSESSMENT

- On June 15, 2019 the Board sent out collection notices for members who remained delinquent in paying regular and special assessments.
- In response to that notice, we have collected \$5,465.83. That brings compliance to more than 3/4 of our members. That's important progress, and we thank everyone who stepped up.

- Some members refuse to pay and continue to question the process for the special assessment, claiming Davis Stirling requires a full membership vote for an assessment over 5%. However, Davis-Stirling makes an exception for emergency assessments which are required to prevent harm to the Association, if the cause could not be anticipated ahead of time and included in the budget.

- In our case, when the TCHA budget was prepared during February, and approved in March 2018, no lawsuit was yet pending and no lawyer had advised us to prepare for substantial costs. We had no basis for budgeting or seeking approval for additional funds for a lawsuit we didn't know about. The McKay lawsuit was not served until the last week in March, after the regular annual assessment invoices were sent to members.

- New counsel took over the case in May. After he reviewed the facts and issues, he advised us this was a serious claim with complex and disturbing facts and the initial costs to defend us would likely exceed \$100K over a few months. The case could not be slowed and we needed to defend against the plaintiff's claims without delay. We were rapidly running out of funds, and without funding, we would have no legal defense.

- Anyone who belittles the necessity of defending McKay's' claims is either uninformed or irresponsible. McKay's lawsuit alleges her private email account was hacked repeatedly after she resigned, scores of personal email messages, including sensitive, confidential health and legal consultations were allegedly invaded and downloaded by prior TCHA board members and/or their agents. If proven, those are criminal violations; they will likely make a very bad impression on any jury. Adding to her claimed injuries, a compilation of McKay's stolen private correspondence was then anonymously distributed around the community in October 2017, embarrassing and defaming her and others in the community. Not surprisingly, she is seeking punitive damages.

- We reviewed the complaint and evidence in this case with experienced litigators. Although we cannot disclose their advice, we can say that no lawyer who has reviewed this lawsuit has ever dismissed it as trivial or not serious. They have all acknowledged it would be expensive to litigate these claims.

- If the Board had not moved quickly to fund the Association's defense, to enable counsel to file an answer to the complaint and respond to plaintiff's discovery requests, we would be risking default, in which event she could prove her case unopposed, including the punitive damages claims. After conferring with legal counsel, the potential harm to all our members was obvious to us, and it was necessary to mobilize significant funding as quickly as possible to commence an effective defense.

- It is important to understand that there are two primary causes for the special litigation assessment. Prior board members or their agents invaded McKay's private email account after she had resigned and filed a state whistleblower claim. That's not imaginary, they recklessly distributed the evidence themselves. They allowed an associate or agent to disseminate her stolen data publicly. If those events had not occurred, there would be no lawsuit and no assessment needed. That should be obvious.

- Second, this lawsuit should have been fully covered from the beginning by our Association's insurance policies. No member-paid legal defense assessment should have been necessary. But the very same board that allegedly committed, or permitted, these alleged wrongful actions, also failed to promptly notify our insurers of McKay's claims in June 2017, even though she had put the board on notice that she was filing a legal complaint for retaliation with the labor commission and had publicly announced that she was consulting a lawyer about their other alleged wrong doing. That irresponsible failure to notify the insurers as required under the policy is why we were faced with the unexpected necessity of using member funds to address our urgent defense needs.

- Fortunately those funds were put to good use. We hired counsel not just to defend us, but also to force the insurers, belatedly, to assume our defense and stop further hemorrhaging of membership legal expenditures. The insurers provided legal counsel at their cost, investigated further, and then negotiated and paid for a settlement with McKay of all her claims against the Association, not just the lawsuit, but the Labor Commission complaint as well. We even won reimbursement of a portion of funds we had paid defense counsel before the insurers stepped in. We have kept our members fully informed on costs, issues and developments at every step of the way.
- As of today, nearly 80% of Association members have paid their special emergency assessments. Every member of the current Board promptly paid their share. Two directors owns multiple lots and therefore paid multiple assessments.

- You need to be aware that the HOA members who have complained the loudest on social media about the legal defense assessment, but who have not paid a dime themselves, include the very same prior board members, and their pals, whose misconduct allegedly caused the lawsuit. They are also the very same people who failed to secure insurance coverage, and whose acts and omissions forced us to resort to the assessment. They caused this expensive nightmare, and now they are the ones who are complaining about our remedial actions while contributing nothing..

- One further, painful irony. When the current board used the special assessment to hire lawyers who succeeded in compelling our insurers to reverse their denial of coverage, that didn't just benefit the Association as a whole. We also got the insurers to defend the same complaining prior board members who McKay sued personally as individual defendants. So the special litigation assessment levied by the current Board and paid by most of our members, is currently benefiting the individual director defendants to the tune of tens of thousands of dollars in legal defense cost savings . But instead of gratefully contributing their fair share along with all the rest of us, they are enjoying a free ride at the expense of the rest of Association members, while they noisily attack and mock the very board members who won them relief from their own personal legal defense costs which arose from their own misconduct. Shameless?

Unbudgeted expenditures prior board 2015-2017

ITEM	COST	BOARD VOTE?	ASSOCIATION APPROVAL	BENEFITS TO TCHA	BENEFITS TO OTHER PARTIES
Transfer of Road Reserve to former Unit 1	\$38,000	No record of vote	No vote	None	Former Unit 1 members received \$38K
Road Repairs for Unit 1, post secession	\$21,000	No record of vote	No vote	None	Road repairs for former unit 1 members (in addition to \$38K transfer)
Employee altercation after meeting: HOA investigation and attorney fees	\$14,200	No record of vote	No vote	None	Payment to lawyer and investigator
Indemnification of Todd's criminal defense cost	\$15,300	In executive session, June 2017?	No vote	None	Reimbursement to Brian Todd
Penalties for failure to file and pay taxes for three consecutive years	Approximately \$8000	Levied by IRS	No vote	None	US Treasury

Unbudgeted expenditures Current Board 2017-2019

ITEM	COST	BOARD VOTE?	ASSOCIATION APPROVAL	BENEFITS TO TCHA	BENEFITS TO OTHER PARTIES
Restoration of Road Reserve Funds reallocated for basic operations (Assessment, as required in bylaws)	\$70,000	Approved January 2018 and July 2018	No vote; payment by 77% of members thus far	Restoration of required Road Reserves used for operating costs	None
Unanticipated legal expenses urgently required to defend litigation, rectify loss of insurance coverage by prior board	\$140,000, Partly funded by special assessment of \$100,000	Emergency Special Assessment, July 2018	No vote; payment by 77% of members thus far.	<ol style="list-style-type: none"> 1. Defense against McKay lawsuit, Labor Commission Retaliation Complaint, Clayborn Cross Complaint. 2. Reversal of Insurer denial of coverage 3. Seven months of defense costs against McKay and Clayborn totally paid by insurance after corrected tender, estimated savings \$40,000-80,000 to date 4. Settlement of McKay claims against TCHA paid totally by insurers (amount confidential) 5. Dismissal of Labor Commission Complaint, estimated saving \$10,000 or more 6. Partial recovery from insurers of TCHA defense expense before tender accepted, \$23,000 	Fees paid for lawyer services