DEVELOPER CAN USE WORKING FUND CONTRIBUTIONS TO OFFSET ITS FINANCIAL OBLIGATIONS TO A HOMEOWNER ASSOCIATION

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It is common practice for developers to collect working fund contributions or initial contributions upon the sale of homes in communities operated by homeowner associations. The amount of working fund contributions or initial contributions can be either a specific dollar amount or an amount equal to 2-3 months of association assessments. In a recent opinion, a Florida appellate court ruled that such contributions may be used by the developer to offset the developer's deficit funding obligation to the homeowner association.

In Valencia Reserve Homeowners Association, Inc. v. Boynton Beach Associates, XIX, LLLP, the homeowner association brought an action against the developer seeking to recover in excess of $800,000 representing a working fund contribution that was collected by the developer from each purchaser of a home in the community. Each purchaser paid a working fund contribution in an amount equal to 3 months assessments at the time of closing on a home. The association argued that Chapter 720, Florida Statutes, prohibited the developer from keeping the funds and that such funds were required to be paid to the association. The court ruled, however, that nothing in Chapter 720, Florida Statutes, prohibits the developer from using the funds to offset its deficit funding obligation to the association, and that the declaration governing the community expressly permitted the funds to be used to pay or offset the association's operating expenses.

The court's ruling upholds the common practice of developers to impose working fund or initial contributions. The use of such funds, and whether the funds can be retained by the association, depends on how the governing documents are written. In the context of a condominium association, as opposed to a homeowner association, Chapter 718, Florida Statutes, Florida's Condominium Act, expressly prohibits the use of such contributions to pay operating costs of the condominium association.

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