

## Trying to figure out assessment charges

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*Q. In our community's declaration, the Board has the power to specifically assess as it deems appropriate, in its sole discretion under "Specific Assessment." However, "Special Assessments" require the affirmative vote of two-thirds of HOA members.*

*Our Board has passed several large assessments to pay for a fence around the entire community. However, they deliberately refer to them as "Specific Assessments" to mean they are assessing everyone "specifically for the fence" and they did not need to get owners approval for it.*

*I interpret "specific assessment" to mean the Board has the power to equitably assess expenses to certain or specific lot(s) in proportion to the benefits. It does not mean an assessment for specific expenses. I believe the fence project is a special assessment that required proper voting. Can the Board charge this expense to the homeowners as a "specific assessment" without homeowner approval?*

The N.C. Planned Community Act does not define (nor does it even mention) specific or special assessments. It refers only to "assessments."

It would be impossible to give you a definitive answer without referring to your Declaration of Covenants, Conditions and Restrictions and/or your HOA's bylaws to determine how those terms are defined, and what the approval process is for each.

Speaking in general terms, "specific" assessments are for expenses that benefit one or more lots, but not the entire community.

The Board usually has the discretion on levying these assessments against the affected lots, often without approval of the owners, but the owners usually have to be given prior notice and the opportunity to be heard before the Board.

We usually will see these types of assessments for things like performing repairs or maintenance on a home that the homeowner has neglected, which results in an eyesore for the community and a threat to the value of nearby homes. We also see specific assessments against lot owners to pay for damage inflicted on HOA common areas by the owners of that lot.

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"Special Assessments" are usually for expenses that benefit the entire neighborhood. Usually, though not always, they require a vote of the HOA members that is somewhat higher than a majority - as in your case, which you say is two-thirds.

If you feel that your board has imposed a special assessment without obtaining the necessary homeowner consent, you should request a meeting with the board. If the Board ignores you, and you are convinced that the process was handled improperly, you can file a lawsuit against the Association seeking a declaratory judgment that the assessments are invalid. Litigation should be your last resort.

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