



2020 End of Session Report for North Carolina

Pool Opening Immunity, 'Statement of Unpaid Assessments' Fee Cap, COVID Claims Immunity & Condo Act Technical Corrections

Community Association Pools Limited Immunity Bill Passed

The NC Senate has passed HB 902, a bill to mandate that owners and operators of community pools and their agents shall not be liable in any claim or action seeking damages for injury or death resulting from transmission of COVID-19 alleged to have resulted from the reopening of the community pool in accordance with applicable executive orders of the Governor. The immunity provided will not apply to claims for injury or death resulting from gross negligence, wanton conduct, or intentional wrongdoing.

CAI-NC Chapter president Hope Carmichael, Esq. and fellow of the College of Community Association Lawyers (CCAL), provided testimony related to the challenges faced by many community associations in operating their pools in the current environment.

Ultimately this bill passed the NC House and Senate as [House Bill 902](#) and will become law when signed by the Governor. (The relevant language begins on page 10.)

Real Estate Closing Fees/Statement of Unpaid Assessments: House Bill 905 Passed

Late last night, language was inserted in an unrelated bill to amend Chapters 47C and 47F, Section 3-102-12 to amend allowing 'reasonable' charges for Statements of Unpaid Assessment (sometimes wrongly referred to as 'closing' or 'transfer fees') as follows:

Impose reasonable charges in connection with the preparation of statements of unpaid assessments, which must be furnished within 10 business days after receipt of the request, in an amount not to exceed two hundred dollars (\$200.00) per statement or request, and an additional expedite fee in an amount not to exceed one hundred dollars (\$100.00) if the request is made within 48 hours of closing, all of which charges may be collected by the association, its managers, or its agents.

[House Bill 905](#), which contains the above language, passed both the House and Senate last night and will become law when signed by the Governor. (The relevant language begins on page 7.)

Since circumstances among CAI's thousands of members vary widely, CAI's public policy does not favor legislatively imposed fee caps. CAI and the NC Legislative Action Committee (NC-LAC)'s policy has recognized that the preparer of the disclosure documents/resale certificates incurs expenses relating to the preparation and production of such documents and has supported the right of the preparer to charge a reasonable fee for such transactions.

Through CAI's lobbyists, the NC-LAC learned of an effort by others to establish a maximum fee cap in North Carolina for Statement of Unpaid Assessments. As soon as CAI became aware of this legislative push, we worked very hard to negotiate a compromise and were successful.

While CAI remains opposed to legislatively mandated rates, CAI is pleased that the NC-LAC's input was considered and believes that the maximum amount adopted by the Legislature is in a range many CAI members will feel is acceptable. By way of background, approximately 11 other states have similar maximum fee rates and \$200 (with a \$100 expedite fees) is consistent with the range other states have imposed. For example, the maximum in Virginia is \$164, Maryland \$250, Connecticut \$125 and Florida \$250. Because details and requirements vary greatly, specific comparisons are difficult.

CAI believes that homeowners should be informed about association matters that may impact their decision to purchase a home/unit and will educate them about their personal rights and responsibilities with regard to the community association. Disclosure documents/resale certificates are invaluable consumer information tools because it is vital that buyers know what they are buying. Disclosure documents/resale certificates should be mandated by state statute to ensure that every buyer is aware of essential information relating to his new home or unit and the community association.

CAI continues to support mandating disclosure documents/resale certificates for all ownership transfer.

'An Act to Provide Limited Immunity from Liability for Claims Based on Transmission of COVID-19' - Passed

On Tuesday the NC General Assembly passed House Bill 118, which applies broadly to businesses, nonprofits and individuals, including planned community and condominium associations. The bill is currently on the Governor's desk and will become law either when signed by Governor Cooper or after the expiration of 10 days by operation of law. ***After the effective date, associations will not be liable as a result of ordinary negligence in any claim brought by someone who claims to have contracted COVID-19 while on HOA or condominium common areas.***

Speaking to NC senators June 10 in support of limited liability for owners associations, CAI-NC President Hope Carmichael told legislators: "CAI has confirmed with multiple insurance carriers the common policy exclusion in HOA insurance policies for claims related to COVID-19. Volunteer boards of directors across NC are trying to make the best possible decisions for their communities. But these volunteers are faced with the tough choice of denying members access to their commonly owned amenities or risking what could be devastating legal costs to defend potential claims, even if the boards are following all of the recommended guidance for opening their pools and facilities."

House Bill 118 gives some reassurance for associations in light of the growing awareness that general liability and directors & officers insurance policies almost universally exclude coverage for claims arising from pandemic, virus and disease. However, associations should be aware that gross negligence, willful or wanton conduct or intentional wrongdoing would still subject an HOA to potential liability. This might include a reckless disregard for following local and state guidance on reopening swimming pools or other amenities, so it's important to be diligent about compliance with all state and local Executive Orders and decrees. The law will require an association to "provide reasonable notice of actions taken to reduce the transmission of COVID-19 on the premises." Once that notice is provided, the association will not be liable for the failure of individuals to follow the rules or guidance called for in the notice. This provision in the law makes the posting and publication of detailed rules and guidelines extremely important in the association's liability protection.

Condo Act Technical Updates/Corrections Bill Passed

[House Bill 920](#) makes numerous changes to the NC Condominium Act most of which are technical and being done at the request of title companies. Of particular interest to CAI members, the bill addresses developer control periods, ambiguities resolution and adjusts various provisions of the NC Condominium Act to conform with to the NC Planned Community Act. While CAI did not take a position on this bill, because it was seen as primarily of a technical nature, the content is seen as favorable to our members.

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