



CAI'S COLLEGE OF COMMUNITY ASSOCIATION LAWYERS PRESENTS

Law Seminar

Legislative Update Part I & Part II

January 14-15, 2011
9:30 – 10 AM

Presenter(s):
J. David Ramsey, Esq.



CAI LAC Advocacy Highlights

State Legislation

Overview



- CAI Legislative Action Committees
- Legislative Highlights from 2010
 - Today – State Legislative Highlights
 - Tomorrow – Federal Legislative/Activities Update

CAI LACs



411 Volunteers, 32 States plus DC & Federal Government

Advocacy Highlights



- Hot Issues for 2010
 - Manager Licensing
 - Limited Priority/Super Lien
 - Ombudsman
 - Private Transfer Fees
 - Uniform Acts
 - Bill of Rights
 - Other

Assessment Delinquencies



- 63% of CAI member communities report bank owned properties
- 51% of communities reported that they have from 1 to 5 REO properties
- 19% reported having 10 or more REO properties
- 72% of bank owned-properties are not paying assessments.

Limited Priority/Super Lien



- **Passed**
 - **New Hampshire:** HB 1340 provides that certain condominium liens for unpaid monthly common expenses may be granted priority over the first mortgage and may form the basis for a foreclosure sale initiated by the unit owners' association. The bill was supported by the LAC and was signed into law. The law will apply to all new mortgages dated January 1, 2011 and later.
- **Not Passed:**
 - **Georgia:** Draft bill would have established lien as superior to mortgage in an amount equal to one-half (1/2) of the common expense assessments that came due during the twelve (12) months immediately preceding the date of the foreclosure
 - **Maine:** LD 961 LAC sought 6 month priority lien, bank opposition resulted in 60 month option escrow
 - **Maryland:** H.B. 842 and S.B. 29 – LAC sought 6 month assessment priority. Bank lobby amended to mandatory escrow controlled by association paying 3% interest.
 - **Ohio H.B. 408** – Six month priority assessment lien.

Ombudsman



- **Colorado:** H.B. 1278 - creates an HOA Information & Resource Center and a registry within the CO Division of Real Estate. Enacted
- **Connecticut:** S.B. 129 - establishes an Office of Condominium Ombudsman within the Department of Consumer Protection. Defeated

Private Transfer Fees



- **Hawaii:** H.B. 2288 – prohibits real property deed restrictions or other covenants running with the land from requiring transferees to pay fees for the future transfer of the property. Bill enacted.
- **Pennsylvania:** S.B. 1481 – prohibits the use of certain private transfer fees in the sale of real property, LAC successfully lobbied to exclude association fees, however the bill did not pass.
- **North Carolina:** SB 63, would have prohibited any fees related to the issuance of estoppel letters or other fees that homeowners associations or management companies might charge for work performed as part of a transfer of ownership. Lobbying efforts were successful on the LACs part in removing these prohibitions
- **Utah:** SB 161 – Voids all deed-based transfer fees, except “reinvestment fees”

UNIFORM PROPERTY ACTS



- **Colorado:** H.B. 1290 – allows a small common interest community to exempt itself from most of the provisions of the "Colorado Common Interest Ownership Act" (CCIOA).
- **Connecticut:** Public Act 10-186 – amends the Connecticut Common Interest Ownership Act.
- **Minnesota Common Interest Ownership Act** – Amendments
- **Ohio:** S.B. 187 –Passed Planned Community Act.
- **Vermont:** H.B. 689 – Vermont's Common Interest Ownership Act.

Bill of Rights



- **Colorado S.B. 45** – enacts the "Home Owner Protection Act of 2010."
- **Massachusetts H.B. 3569** – an act regulating homeowners in common interest areas.
- **Missouri H.B. 2407** – establishes the Uniform Common Interest Owners Bill of Rights Act.

Other Bills of Interest



- MD – SB 212
 - ***Freedom of Speech Bill***
 - Bill would have prohibited associations from regulating “noncommercial” signs, posters, flags, banners, “peaceful assembly”, or engaging on constitutionally protected activity.
 - Would require associations to provide entry (including gated communities or secured buildings) to any person for any ‘non-commercial activity.’”
 - Bill passed out of committee and was defeated by only four votes
 - Attempt by ACLU to “remedy” *Twin Rivers* decision

Other Bills of Interest



- SC – SB 30 Reprise
- Bill would:
 - Require each community association to register with the state with and to pay a mandatory registration fee
 - Override each association's governing documents in favor of generalized provisions that would have interfered with well established contract law
 - Establish a dispute resolution process under the Department of Consumer Affairs that would have positioned Consumer Affairs as the advocate for the homeowner as well as the adjudicating body for the dispute
 - Render illegal duly authorized provisions of an association’s governing documents to collect a Capital Improvement Assessment
 - Stay any enforcement provisions of association’s governing documents until the Department of Consumer Affairs rendered a decision on any complaint filed by a property owner living in a community association
- Bill died in committee, but also sidetracked other state legislative priorities

Other Bills of Interest



- CA – AB 1726 Quorum legislation
- Legislation would give HOA's the ability to reduce quorum requirements for board elections.
- No Quorum on 1st Ballot?
 - 2nd Ballot = 40% for quorum
 - 3rd Ballot = 33% for quorum
- The LAC served as a sponsor of the bill, which was eventually vetoed by the governor.

Other Bills of Interest



- **Virginia:** HB 1100
- Response to accident within master planned community.
- Provides immunity from liability for associations in certain circumstances

2011



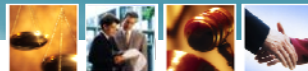
- Looking Ahead
 - Private Transfer Fees
 - Bills already in: PA, WA, VA, NJ
 - Collections/Foreclosures
 - Manager licensing efforts
 - Environmental legislation



Legislative Update Part II: Federal Affairs

Andrew S. Fortin, Esq.

Overview



- Federal Legislative Issues
 - ❖ Dodd-Frank Act
 - ❖ Health Care reform
 - ❖ The Personal Data Privacy and Security Act
 - ❖ Private Transfer Fee Legislation
- Federal Regulatory Issues
 - ❖ Mortgage Underwriting/Insurance
 - ❖ FHFA Private Transfer Fee Guidance
 - ❖ FTC Red Flag Rule
 - ❖ White House Mortgage RFI



Federal Legislative Issues

Legislative Issues



- **Dodd Frank Act**
 - Major Wall Street reform bill
 - Included risk retention amendment
 - Major overhaul of mortgage system
 - Qualified Residential Mortgages
 - GOP opposition to law will complicate and slow implementation

Legislative Issues



- **Health Care reform**

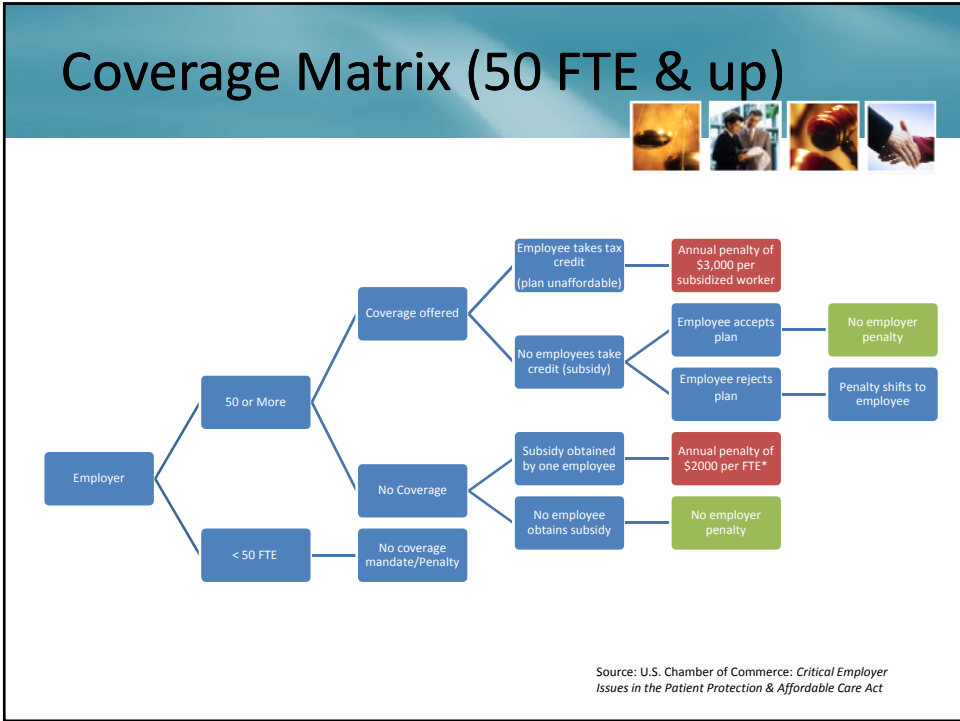
- Successful passage of *The* priority for the Democrat Party since Roosevelt
- The law makes many consumer- friendly changes to health insurance,
- Mandates that individuals obtain health insurance or face fines, and requires certain employers to provide health care insurance for their employees.
- The provisions of the law will be implemented in phases between 2010 and 2018.

Legislative Issues



- **Health Care Reform Cont.**

- Law passed was complex and difficult to understand
- Dems had zero messaging or guidance on impact
- Immediately retreated

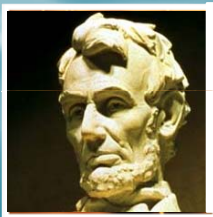


- ## Legislative Issues
- **The Personal Data Privacy and Security Act (S. 1490)**
 - Attempt to addresses issues of data privacy in three substantive areas.
 - Act would create:
 - A set of federal crimes and penalties for violation of the regulations adopted by the act.
 - Nationwide set of regulations for Data Brokers. T
 - Federal regulations to govern the collection of and protection of consumer personally identifiable information (PII).
 - Did not pass

Private Transfer Fee Legislation



- Legislative fight on PFTs
- Two Bills
 - HR 6332 – Homebuyer Enhanced Fee Disclosure Act
Rep. Gingery (GA)
 - HR 6260 - Homeowner Equity Protection Act of 2010 Rep.
Maxine Waters
- Bills failed to gain traction
 - Thanks in part to CAI SC-LAC
- New Majority makes action unlikely.
- NOTE: Touch and Concern Panel – 3-4:15 PM Today



Federal Regulatory Issues

Mortgage Underwriting/Insurance



- ❖ Mortgage Underwriting/Insurance
- ❖ FHFA Private Transfer Fee Guidance
- ❖ FTC Red Flag Rule
- ❖ White House Mortgage RFI

FHA Condo Guidelines



- Evolving Issues
 - Criteria
 - Inconsistent application of criteria
- January 2011 Mtg.
- CAI Actions in 2010
- What to expect in 2011

FHFA Private Transfer Fee Guidance



- Issued in August
- Would “De-Fund’ mortgages w DBTFs
- Concern about private transfers
- Community association fees included
 - Would “red-line” up to 11 million units in community associations
- Pushed for by ALTA and NAR
- Advice from NAR – Just change your deed!
- Status

FTC Red Flag Rule



- (FTC) Red Flag effective at the end of 2010.
- The Red Flag rule requires that *financial institutions* and *creditors* develop, implement and administer a written identity theft prevention program to identify and flag potential theft of consumer data related to certain covered accounts.
- Although associations were not the target of the regulation, some may fall under its requirements. CAI produced a [template policy](#) for communities to adopt if needed.

White House Mortgage RFI



- CAI called on the Administration to take a second look at current mortgage criteria for purchases in community associations to ensure that they adequately reflect fair measurements of financial health and risk
- CAI also cautioned against a rush to wind- down critical institutions such as Fannie Mae and Freddie Mac, without a full discussion on how the government can ensure the market benefits provided by such organizations can continue, but with mitigated risk for future bailouts by taxpayers.

What to expect in 2011



- QRM rule promulgation
- Ongoing FHA guidance issues
- GSE reform