

## CAI Delegation Meets with FHA Head

On November 17, 2011, CAI led a delegation to meet with Carol Galante, the Acting Commissioner of the Federal Housing Administration (FHA). The delegation included representatives from the National Association of Realtors and the National Association of Home Builders. The purpose of the meeting was to discuss ongoing concerns with the FHA condominium guidelines. The meeting was a follow up to CAI's [July 25](#) and [October 12](#) letters expressing concerns on new criteria found in FHA's Mortgagee Letter 2011-22.

CAI's concerns focused on three areas of FHA's condominium guidelines – the assessment delinquency criteria, the project certification requirements and fidelity insurance mandates for community association management companies. CAI also discussed our ongoing concern over the lack of transparency by FHA in the development of the condominium guidelines, which have no public vetting prior to their implementation. CAI also expressed concern about FHA's intent to disqualify associations with deed-based transfer fees from the FHA mortgage insurance program.

CAI pressed FHA for flexibility on the delinquency criteria for associations participating in the condominium insurance program. Current guidelines require that no more than 15 percent of condominium units can be 30 days late in the assessments. CAI noted this requirement is unreasonable and is forcing condominiums to be overly aggressive in assessment collections during a down economy. As a result, many state legislatures are taking steps to make it more difficult for associations to collect assessments. CAI's position is that FHA should measure assessment delinquencies on a 60 to 90 day basis.

CAI also argued that it is unfair to put the responsibility of collecting assessments from bank-owned properties on to the volunteer boards of associations. CAI noted that each bank that participates in the FHA condominium mortgage insurance program is getting a federal guarantee on each loan, in exchange for this subsidy; any bank participating in the FHA program should be required to show proof that it is paying assessments on condominium properties in its portfolio.

Second, CAI raised concerns over the new project certification requirement. Currently, the biggest obstacle for condominium participation in the FHA mortgage insurance program is this new certification requirement that must be signed by the association or its agent when submitting an application for approval. FHA requires that the submitting party certify that:

*The submitter has no knowledge of circumstances or conditions that might have an adverse effect on the project or cause a mortgage secured by a unit in the project to become delinquent (including, but not limited to: defects in construction; substantial disputes or dissatisfaction among the unit owners about the operation of the project of the owner's association; and disputes concerning unit owner's rights, privileges and obligations). The submitter understands and agrees that the submitter is under a continuing obligation to inform HUD if any material information compiled for the review and acceptance of this project is no longer true and correct.*

The penalty for violating this provision is \$1 million in fines or up to 30 years in prison. CAI communicated to Ms. Galante that this provision is viewed by our members as a poison pill and that few board members, attorneys or agents are willing to sign such certifications. Among the

concerns of CAI members is that the certification requirement is overly vague and requires the submitter to predict what, if any, disputes or conditions on the property might have a future impact on the borrower's ability to repay. CAI also noted the ongoing reporting requirement dramatically increases the expense for associations who use a project approval specialist or attorney for project approvals as it transforms the process from a single transaction, to an ongoing reporting relationship. Ms. Galante indicated that based on CAI's feedback and input from FHA-sponsored fall training programs FHA is working on a fix to this issue in the form of an update to the current mortgage letter.

Additionally, CAI brought up the issue of management company fidelity bonding. Section 2.1.9 of the FHA guidelines requires fidelity coverage for the theft of a community association's funds. That section imposes two different requirements: coverage for a theft committed by a board member of an association must be covered by fidelity insurance, and coverage for a theft committed by a management company hired by an association must be covered by a fidelity bond. Fidelity insurance and a fidelity bond are not synonymous. CAI's issue is the fidelity requirement imposes specific methods for achieving coverage of association funds from theft and that these methods are not consistent with current insurance industry practices or state law requirements.

FHA has already shifted its position on this issue based on CAI's July 25 letter. FHA now allows for the management company to be covered by the association policy provided the policy specifically names the management company as an insured. While this is a step in the right direction, CAI believes having the management company specifically named in the policy, rather than having a blanket provision to cover any managing entity, actually increases the risk of gaps in the coverage during periods when the managing agent transitions to a new firm. As with the project certification requirement, Ms. Galante indicated FHA is looking at potential revisions to this requirement.

Finally, Ms. Galante confirmed reports that FHA will be rejecting condominium projects where a deed-based transfer fee is in place. FHA's position is such fees violate provisions of federal regulations found in the Code of Federal Regulations Section 203.41(a)(3)(v). CAI noted that FHA's position has created a split in federal mortgage policy on deed-based transfer fees. Unlike the Federal Housing Finance Agency (FHFA), which conducted research and gathered public input before determining that deed-based transfer fees charged by community associations benefit homeowners, FHA's edict was based on an internal review of existing federal regulations. CAI noted that such an interpretation will mean that up to 49 percent of condominium associations will be automatically excluded from the FHA program. CAI believes this lack of financing will lead to a negative impact on FHA-insured properties in such communities. CAI inquired if FHA will be issuing a waiver of this determination until public input can be obtained. Ms. Galante indicated that this is not a likely approach FHA will take, but noted that FHA is examining regulatory or other methods to move more toward CAI and FHFA's position on this matter.

In short the dialogue with Ms. Galante was productive and will likely help to move FHA to address the issues discussed above. This progress is critical as is FHA's continued role in providing access to condominium mortgages. CAI will continue our dialogue with FHA and our work with Congress to ensure that, rather than a reactive dialogue, FHA proactively works with key stakeholders and partners in developing new guidelines in a public and transparent manner.