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MORTGAGE MODIFICATION LEGISLATION DIES IN SENATE

Senate Language Recognized CAI Concerns

The Senate voted 45 to 51 on April 30, 2009 to reject a proposal to allow homeowners to petition a bankruptcy court to rewrite their mortgage obligations. Proponents of the legislation argued that the record number of foreclosures and their drag on housing prices could be mitigated by creating a process to keep delinquent homeowners in their properties by using the courts to modify their payment to a certain percentage of their income. Opponents countered that the legislation would increase lending costs and reward purchasers who borrowed too much money or entered into nonconventional interest-only or 100% financed mortgages.

The legislation had passed out of the U.S. House of Representatives in March as H.R. 1106. CAI had strong reservations about the House version of the legislation. The broad definition of which payments would be subject to revision by the courts was poorly defined and, as written, could have allowed judges to modify a homeowner's obligation to the community association. Concerns were also raised about the treatment of past-due association assessments/liens and the requirement that debtors, like an association, make regular legal filings to protect their collection rights while a homeowner was in a modification program. These concerns were taken to the U.S. Senate and outlined in a [letter](#) to Senator Durbin, sponsor of the Senate legislation.

In the Senate, the Durbin version of the bill addressed many of the concerns raised by CAI. The Senate language limited modification authority to mortgages and required those mortgages to meet certain eligibility criteria. Additionally, association liens and assessments would not have fallen under the modification authority. These changes are in large part the result of the engagement, through letters and phone calls, by CAI members across the country. Although the changes to the legislation addressed the concerns of CAI, banks, credit unions and financial and business institutions continued to oppose the bill.

What CAI and its members were able to achieve was recognition by Senate leaders of the unique role community associations play in the housing markets and how the assessments paid by homeowners serve to maintain property values, meet established homeowner expectations and lower burdens on state and local governments. Additional benefits to associations and homeowners will come from the explicit recognition that

assessments need to be considered as a factor in determining a sustainable payment for homeowners.

As housing issues are likely to linger, debate will continue on foreclosures and foreclosure alternatives. CAI will continue to work to engage key Congressional leaders on the unique, critical and positive benefits common-interest communities provide to 60 million homeowners, local housing markets, municipalities and the nation at large.