



January 6, 2012

Mr. John Walsh  
Acting Comptroller  
Office of the Comptroller of the Currency  
250 E Street, SW  
Mail Stop 2-3  
Washington, D.C. 20219

***RE: OCC Bulletin 2011-49***

Dear Acting Comptroller Walsh:

On behalf of Community Associations Institute (CAI),<sup>1</sup> I write to express the appreciation of the millions of homeowners living in community associations who routinely incur additional housing costs due to the failure of national banks and servicers to fulfill contractual obligations as property owners. Across the country, community associations have been forced to increase monthly assessments and reduce homeowner services due to the failure of national banks and servicers to promptly take title to foreclosed properties, remit timely payment of association assessments, adequately maintain properties and act as responsible property owners.

***Community Association Model of Housing***

As noted in prior correspondence, the community association model of housing has become a valued option for millions of American homeowners. The attraction of community associations has led to the development of the legal, land use and contractual instruments to support community associations, both domestically and internationally. From California to Florida and Australia to Dubai, homeowners are

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<sup>1</sup> CAI is the only national organization dedicated to fostering competent, well-governed community associations that are home to approximately one in every five American households. For nearly 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's 30,000 members include community association volunteer leaders, professional managers, community management firms, and other professionals and companies that provide products and services to community associations.

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choosing the benefits that come from sharing certain common expenses as a means to promote greater enjoyment of their real property than would be otherwise achievable. By sharing certain costs, homeowners have greater financial stability, access to amenities and can help retain the value of their property. To ensure all homeowners continue to have access to these and other benefits, all property owners in a community association agree to pay assessments. In general, association assessments are lien-based and non-payment of assessments can lead to penalties and, in certain extreme cases, foreclosure.

Poor underwriting and mortgage credit decisions of lenders, coupled with the general inability of the mortgage servicing industry to manage contractual obligations, has caused great harm to the community association model of housing and millions of homeowners. As the financial crisis has slowly migrated to a foreclosure crisis, lenders and servicers have ignored obligations to community associations under Fannie Mae Servicing Guidelines, Freddie Mac Seller/Servicer Guidelines and U.S. Department of Housing and Urban Development regulations. Disregard of obligations under these guidelines or other private pooling and servicing agreements have caused community association property owners to finance property preservation and protection costs that are the responsibility of lenders and servicers.

#### ***Lender/Servicer Failures Pervasive and Consequential***

In general, Fannie Mae, Freddie Mac and the Federal Housing Administration require that servicers or mortgagees preserve and protect the value of collateral during the foreclosure process and in certain circumstances until a property has been sold or title conveyed to the Department of Housing and Urban Development. National banks, acting either as lender or servicer, routinely disregard these obligations increasing litigation risk, lowering the value of collateral and damaging the institution's reputation. Failure to protect and preserve collateral not only increases final disposition costs, in many instances, it shifts the burden of these costs to other homeowners, community associations and municipalities.

Data from CAI member surveys demonstrate that the burden of maintaining real estate owned or properties in foreclosure is increasingly falling on homeowners and community associations. On December 8, 2011, CAI released results of a nationwide survey of community managers revealing that associations receive timely payment of assessments from less than 30 percent of bank-owned properties. These data match CAI's 2010 survey findings that show a similar lack of timely assessment payments by lenders and servicers.

The impact on homeowners in community associations is acute. Associations are increasing regular assessments, voting for special assessments, deferring critical maintenance projects and reducing contributions to reserve funds as means to account for short-falls in revenue and

increased costs. These actions, which are necessary to ensure continuance of critical association functions, increase housing costs for homeowners at a time when the federal government is actively seeking means to reduce monthly mortgage obligations through mortgage modification programs and mortgage rate and term refinances. Further, these actions contribute to the decline in value of collateral, which ultimately will increase losses for the lender, servicer and federal government. CAI members strongly believe that federal financial regulators have a compelling safety and soundness interest in ensuring that lenders and servicers fulfill contractual obligations to notify community associations when a foreclosure is initiated and completed; to notify community associations when property records are updated to reflect bank ownership; and to compel lenders and servicers to meet all other requirements of property ownership under relevant law and contract, including timely payment of assessments.

### ***Community Associations and Municipalities Acting to Preserve Legal Rights***

The result of failure by lenders and servicers to adequately preserve and protect properties is a growing willingness on the part of community associations and municipalities to engage in litigation to seek judgments on assessment arrearages or to seize properties. While recent actions by Chicago and Las Vegas have received wide coverage in the press, the existing state-based statutory framework governing community associations provides a legal mechanism for associations to seize properties where lenders and servicers have failed to fulfill contractual obligations.

Failure of these entities to pay mandatory association assessments places a substantial burden on the more than one in five homeowners living in a community association across the U.S. Absent corrective action on the part of lenders and servicers, community associations will continue to seize properties and seek other redress for payment of bad debt and other costs in short sale and other property disposal scenarios.

CAI's members reject the notion that community association residents can be coerced or expected to fund property maintenance and asset protection that is by contract a responsibility of another party. This is harmful to homeowner interests and creates unnecessary economic hardships and instability in communities. Federal financial regulators can improve the safety and soundness of regulatees and lessen the negative impact of foreclosures in community associations by requiring that lenders and servicers fulfill their contractual obligations.

OCC Bulletin 2011-49 is an appropriate first step toward addressing what is a widespread crisis for community associations and municipalities. CAI members encourage the OCC to require federally-chartered financial institutions under its supervision to demonstrate compliance with

Bulletin 2011-49 in the examination process and that servicers under the Comptroller's jurisdiction comply with these standards as well.

On behalf of CAI's membership, I express our appreciation for the OCC's recognition that management of real estate owned and properties in foreclosure is a critical issue. If CAI can be of service in this matter or provide additional information, please contact me or Mr. Andrew S. Fortin, Esq., CAI's vice president of government and public affairs, at (703) 970-9224.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Skiba". The signature is written in a cursive style with a large, sweeping initial "T".

Thomas M. Skiba, CAE  
Chief Executive Officer