

# Public Policies

# Public Policies



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2010 Public Policies of Community Associations Institute

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## *Community Associations Institute*

Founded in 1973, Community Associations Institute (CAI) is the national voice for an estimated 60 million people who live in more than 305,000 community associations of all sizes and architectural types throughout the United States. Community associations include condominium associations, homeowner associations, cooperatives and planned communities.

CAI is dedicated to fostering vibrant, responsive, competent community associations that promote harmony, community and responsible leadership. CAI advances excellence through a variety of education programs, professional designations, research, networking and referral opportunities, publications, and advocacy before legislative bodies, regulatory bodies, and the courts.

In addition to individual homeowners, CAI's multidisciplinary membership encompasses community association managers and management firms, attorneys, accountants, engineers, builders/developers, and other providers of professional products and services for homeowners and their associations. CAI represents this extensive constituency on a range of issues including taxation, bankruptcy, insurance, private property rights, telecommunications, fair housing, electric utility deregulation, and community association manager credentialing. CAI's over 30,000 members participate actively in the public policy process through more than 60 local, regional and state chapters and 33 state Legislative Action Committees.

For additional information, please contact CAI's Government & Public Affairs Department by phone (703-548-8600), fax (703-684-1581) or e-mail ([g&pa@caionline.org](mailto:g&pa@caionline.org)).



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## COMMUNITY ASSOCIATIONS INSTITUTE

### PROCEDURES FOR THE ADOPTION OF PUBLIC POLICIES

To ensure a consistent and timely method for the adoption of public policies by CAI, and to promote the continued development of topical and timely public policies, the following procedures shall be followed:

1. Any member, chapter, Legislative Action Committee, other committee, council, task force, or staff of CAI may request the adoption of a public policy by submitting to the Government & Public Affairs Committee (G&PAC), directed to the designated staff member, a draft of the desired proposed policy or amendment and a statement of purpose detailing the basis and need for CAI to adopt the requested policy or amendment.
2. The Government & Public Affairs staff member and the chair of the G&PAC shall identify those committees or task forces from which input on the requested policy would be appropriate and will request input from those committees and task forces. Each such committee or task force is invited to submit written comments to the G&PAC. Those comments shall include a recommendation to the G&PAC on the course of action to take, including whether the proposed policy or amendment should be published for comment by CAI's members prior to final action being taken on the request.
  1. The G&PAC staff person shall assemble comments and transmit those comments with the request for the proposed policy or amendment to the members of the G&PAC. The request for a proposed policy or amendment shall be an agenda item for the next scheduled meeting of the G&PAC. At that meeting, the Committee shall (1) consider whether the proposed policy or amendment should be published for comment by the CAI membership; (2) consider whether the proposed policy or amendment as recommended by the appropriate committee or taskforce should be acted upon at that time; or (3) to vote on whether to approve the proposed policy or amendment. If it is determined that the proposed policy or amendment should be published for comment by the membership of CAI or additional work is needed to shape the proposed policy or amendment, the proposal will be placed on the agenda and reconsidered at the next meeting of the G&PAC.
  2. The draft approved by the Committee will be submitted to the Board of Trustees for consideration. The Board of Trustees may adopt the proposed policy or amendment as recommended or with modifications, disapprove the proposed policy or amendment, or return the proposal to the G&PAC with comments or suggested modifications. The Board of Trustees may, in such cases as it deems appropriate:
    - a. Conduct a public hearing, or hearings, at the ensuing conference to obtain input from the membership; or
    - b. Publish a draft of the proposed public policy in one or more of CAI's publications and invite comment on the proposal.
  3. Upon approval by the Board of Trustees, the final draft of the public policy and background statement shall be formatted to be consistent with existing public policies in the *Public Policy Manual* and disseminated.
  4. The Board of Trustees may, in its discretion, waive or modify any of the foregoing steps in order to expedite the consideration and adoption of a public policy if expedited review is determined necessary, appropriate or in the best interest of CAI.

**Amended by the Board of Trustees, March 3, 2010**  
**Adopted by the Board of Trustees, October 1, 1994**

# **Community Associations Institute**

## **SUMMARY OF PUBLIC POLICIES**

### **AESTHETICS AS AN ECONOMIC ISSUE**

CAI opposes any and all attempts at the federal, state and local levels to enact laws or regulations that ignore or negate the economic importance of aesthetic controls.

### **ALTERNATIVE DISPUTE RESOLUTION MECHANISMS**

CAI recognizes the need for and supports the use of alternative dispute resolution mechanisms to resolve disputes arising in community associations in appropriate cases.

### **ASSESSMENT INCREASE LIMITATIONS**

CAI supports the elimination of any requirement that community association documents prohibit the increase of assessments by the board of directors above a fixed percentage without approval of a vote of owners.

### **COMMUNITY ASSOCIATION BUDGETS AND RESERVES**

CAI believes it is imperative for all community associations to adopt and use a financial planning and budget process which accurately reflects projected annual operating costs and long-term capital or major expenses (“reserves”) and results in a balanced budget. CAI believes that the developer and developer-controlled board should prepare and disclose the initial budget to assure accurate estimation of projected operating costs and reserves. CAI also supports full and open disclosure to owners and the opportunity for participation by owners in the development of the budget. Further, CAI opposes laws which would mandate how community associations fund and maintain reserves.

### **COMMUNITY ASSOCIATION MANAGER CREDENTIALING**

CAI encourages the national certification of community association managers. In states that propose mandatory regulation of community association managers, CAI will support a regulatory system that incorporates adequate protections for homeowners, mandatory education and testing on fundamental management knowledge, standards of conduct and appropriate insurance requirements. CAI opposes the licensing of community association managers as real estate brokers, agents or property managers.

### **COMMUNITY ASSOCIATION MEMBERS' AND RESIDENTS' BILL OF RIGHTS**

CAI supports a balance of the rights of an individual owner in a community association with the need for effective management of the affairs of the association for the benefit of all the owners. Reasonable association procedures which empower the board of directors and staff of the community association to perform their obligations efficiently must take into account the rights of an individual owner to privacy, enjoyment of his or her home and full participation in the community association

## **COMMUNITY ASSOCIATION TAXATION**

CAI supports the elimination of the residential requirements of Code Section 528; the gross revenue of 60% test of Code Section 528; the 90% expenditure test of Code Section 528; the flat 30% tax rate of Code Section 528 and replacement with an average marginal tax rate, paid by individual taxpayers.

## **DISCLOSURE BEFORE SALES IN COMMUNITY ASSOCIATIONS**

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.

## **DISPLAY OF THE AMERICAN FLAG**

CAI strongly supports the elimination of community association restrictions that prohibit the display of a reasonably sized, removable American flag from a resident's exclusive use or limited common element areas, so long as the flag is displayed in accordance with the Federal Flag Code, 36 U.S.C. Sections 171-178, as amended. CAI further believes that community associations – not a state law – are best suited to determine the appropriate size, placement and installation of a flagpole.

## **EFFECTIVE COLLECTION OF COMMUNITY ASSOCIATION ASSESSMENTS**

CAI supports effective, fair and reasonable collection methods, including lien rights and due process protections, and opposes government limitations on their efforts. CAI also supports reasonable procedures to accommodate unit owners experiencing temporary financial difficulties.

## **ENVIRONMENTAL QUALITY**

CAI strongly supports protection of the health and well-being of all individuals residing or working in common-interest communities by increasing sensitivity to environmental quality; and environmental quality in common-interest communities and remediation of environmental pollution, including harmful substances contained in building materials and landfills.

## **FAIR DEBT COLLECTION PRACTICES ACT**

CAI supports legislative, regulatory or judicial actions to establish that community association assessments are not "consumer debt" as defined by the Fair Debt Collection Practices Act or similar state statutes.

## **FAIR HOUSING**

CAI supports the right of all individuals to be free from illegal discrimination on the basis of race, creed, color, sex, national origin, familial status or handicap. CAI also supports the right of community associations to enforce their covenants, by-laws and rules provided they do not illegally discriminate against any protected class. CAI will progressively pursue fair and reasonable interpretations and administration of, or changes to, Fair Housing Acts and related

legislation and regulations.

## **FAIRNESS IN FEDERAL DISASTER RELIEF**

Community Associations Institute (CAI) supports a legislative or regulatory change to the Robert T. Stafford Disaster Relief and Emergency Assistance Act so that community associations are eligible for federal assistance following a disaster, including but not limited to debris removal and cleanup.

## **FEDERAL HOME LOAN MORTGAGE CORPORATION PROPOSED EARTHQUAKE REQUIREMENTS FOR CERTAIN CONDOMINIUMS IN CALIFORNIA**

CAI supports a one-year delay in implementation of the Federal Home Loan Mortgage Corporation (Freddie Mac) Bulletin No. 95-2 and the appointment of an industry task force to develop better ways to protect Freddie Mac's interests without adverse impact on the availability of financing for condominium housing.

## **FINANCING AVAILABILITY FOR COMMUNITY ASSOCIATION UNITS OR LOTS**

CAI urges the promotion by federal lending-related agencies and the secondary market to promote the availability of adequate financing programs for community association housing. CAI supports the development of consistent national legal and underwriting standards for community associations, and reciprocal approval of community associations by federal agencies and the secondary mortgage market and urges federal lending-related agencies and the secondary market to promote the availability of financing for community association housing.

## **FLOOD INSURANCE**

CAI believes that flood insurance should be available to all community associations, either through primary carriers or through a federally supported program. Such coverage should be made available at rates that are appropriate to the risk without a coinsurance requirement and on a basis that recognizes the ownership structure of the community association involved. Such insurance coverage shall be provided in a manner that is fitting for the exposure faced by the association that distinguishes between the insurance responsibilities of the association and the individual residents and/or owners, and in accordance with the insurance responsibilities of the individual community associations, whether they are condominiums, cooperatives, homeowners associations, or PUDs.

CAI urges the insurance industry to be responsive to the flood insurance needs of community associations by providing the necessary coverage based on need, risk, and the practical considerations of community associations, both in general and as an optional alternative to government provided flood insurance under the National Flood Insurance Program (NFIP). At the same time CAI urges FEMA to review the terms, conditions, zone maps, and rating structure of the flood insurance coverage it provides community associations, under the NFIP, and revise them as necessary, to reflect the need, risk, financial and practical considerations of community associations.

## **GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS**

CAI supports effective state legislation—when it is deemed necessary for consumer protection, conversion limitations, protections for ongoing operations or other additions to existing statutes or common law, to ensure that community association housing is developed and maintained consistently with legitimate public policy objectives and standards that protect individual consumers, balancing the legitimate rights of the development industry. Local legislation concerning the creation or governance of community associations is antithetical to a balanced, well-considered weighing of all issues and interests affecting community associations, encourages a patchwork of regulations within an individual state and is, therefore, better dealt with at the state level.

## **CONSERVATION, SUSTAINABILITY & GREEN ISSUES**

CAI supports environmental and energy efficiency policies that recognize and respect the governance and contractual obligations of community association residents as the best mechanism to enact sustainable environmental policies.

## **HOME-BASED BUSINESSES IN COMMUNITY ASSOCIATIONS**

CAI recognizes and supports the rights of residential common-interest communities to regulate the nature of commercial activities within their communities, including the option to choose whether or not individual residences can be used as home-based businesses. CAI encourages associations that regulate commercial activities to restrict only those activities that the associations have reasonably determined have an adverse effect on the community and to permit childcare facilities, home office use and other home-based businesses that do not have an adverse effect. CAI supports the amendment of covenants to allow home-based businesses that do not have an adverse impact on the community. CAI opposes legislation that would supersede any covenant restrictions on home-based commercial activities.

## **HOMEOWNER INVOLVEMENT IN COMMUNITY ASSOCIATIONS**

CAI believes in direct homeowner involvement and participation in community associations and should be encouraged throughout the developmental process and operational phases of community associations.

## **INSURANCE TRUSTEE ENDORSEMENT REQUIREMENT**

CAI encourages the secondary mortgage market to implement the addition of an Insurance Trustee endorsement requirement for community association property insurance policies for new projects in order to provide protection to the assets of the community association in the event of a major catastrophe, and opposes naming Freddie Mac or other secondary mortgage market entity as a loss payee on a community association insurance policy.

## **LIABILITY OF COMMUNITY ASSOCIATION VOLUNTEERS**

CAI supports legislative protections against unwarranted legal liability for volunteers serving as members of a community association board of directors or committee, to enable them to make responsible judgments without fear of personal loss interfering with the judgment or decision making process. CAI further supports indemnification of community association volunteers and

the provision of directors and officer's insurance coverage as a common expense.

### **LIMITED LIEN PRIORITY FOR COMMUNITY ASSOCIATION ASSESSMENTS**

CAI supports a six-month priority lien over the first mortgage for regularly paid assessments and modification of any laws restricting lending institutions from making loans which are subject to the community association assessment lien priority.

### **LOCAL TAXATION AND PUBLIC SERVICES FOR COMMUNITY ASSOCIATIONS**

CAI believes that common interest communities should not be taxed for municipal services not provided. Separate assessment and taxation of common property is unjust double taxation. Homeowners should be allowed to deduct association assessments attributable to the performance of public functions.

### **PRIVATE PROPERTY PROTECTION**

CAI supports protections that enable property owners to challenge and resolve efforts to take common property. CAI opposes legislative, regulatory or judicial actions that would limit or restrict the ability and rights of community associations to maintain control over association common property.

### **QUALITY CONSTRUCTION AND RIGHTS OF ASSOCIATIONS AND BUILDERS IN THE EVENT OF DEFECTS**

CAI believes that builders and construction professionals should deliver a product made with quality workmanship and free from defects. CAI also recognizes that homeowners must be reasonable in their expectations of the quality of construction of their homes. CAI supports legislation and regulations concerning construction defects that adequately balance the rights and responsibilities of community associations, their boards and homeowners, and of builders and construction professionals.

### **REASONABLE OCCUPANCY STANDARDS**

CAI supports the right of community associations to establish reasonable occupancy standards. CAI opposes the implementation and enforcement of the Federal Fair Housing Act in a way that treats reasonable occupancy standards as discrimination on the basis of familial status. Under no circumstances should an occupancy standard of two persons per bedroom plus infants constitute discrimination under the Federal Fair Housing Amendments Act.

### **RENTERS IN COMMUNITY ASSOCIATIONS**

CAI supports a balanced approach to the treatment of tenants in community associations, while protecting traditional property rights, including reasonable regulation of transient occupancy, tenant compliance with association standards, and the integration of tenants into the community on an equal basis.

## **RULES DEVELOPMENT AND ENFORCEMENT**

CAI supports legally sound, fair and equitable rules development and enforcement procedures in community associations.

## **SUPPORT FOR THE UNIFORM ACTS**

CAI supports and recommends consideration and adoption of the one or more of the Uniform Community Association Acts by all states. In those states where it is not appropriate, practical or possible to adopt one or more of these uniform acts in their entirety, the Institute supports and recommends consideration of appropriate portions of these laws.

## **TELECOMMUNICATIONS**

CAI supports the growth of competition in the telecommunications and video programming marketplace among telephony, cable, satellite, television broadcast, wireless cable, and other providers so that community association residents will have access to advanced, innovative services. However, CAI opposes governmental regulation that would require community associations to permit telecommunications providers, video programming providers or individual association residents to install equipment or wiring on common property without prior association approval and control. CAI also opposes any federal or state initiatives that would limit a community association's ability to enter into telecommunications or video programming contracts.

## **TRANSITION OF COMMUNITY ASSOCIATION CONTROL FROM THE DEVELOPER TO HOMEOWNERS**

CAI recognizes that successful transition is the responsibility of the developer, through continuing training, education programs, and homeowner involvement in association governance.

## **VETERANS ADMINISTRATION GUARANTEEING LOANS SECURED BY SHARES OF STOCK IN A HOUSING COOPERATIVE**

CAI supports and urges that Congress amend 38 U.S.C. 1810, to allow the same veteran's benefits to a housing cooperative purchaser as it does to a purchaser of condominium housing.

# AESTHETICS AS AN ECONOMIC ISSUE

## Policy

*Community Associations Institute (CAI) recognizes the strong relationship between aesthetics and economic value, and strongly supports the fundamental and contractual right of common-interest communities to determine the degree of aesthetics controls that are reasonable and appropriate for their community. Furthermore we acknowledge that community associations have different and varied needs and standards, affecting appearance, attractiveness and quality of life – all impacting on the economic value of the communities' individual properties.*

*It is the Public Policy of CAI that aesthetics have an actual economic impact upon the value, valuation, intended lifestyle, and expectations of owner/members of community associations, condominiums, planned unit developments, and master community associations – all of which are organized as nonprofit corporations and governed by legally recorded documents and elected boards of directors.*

*CAI opposes any and all attempts at the federal, state, and local levels to enact laws or regulations that ignore or negate the economic importance of aesthetic controls in enabling the intent of the effects of such legislation. We consider the negation of aesthetic regulations an economic taking. CAI further encourages all of its constituent organizations, member organizations, and the individual members of any of these to actively support the economic imperatives of aesthetic controls when interfacing with any government body and its members whenever those bodies and their members are considering any legislation impinging on the orderly governance of aesthetic issues.*

## Background

Recent trends in legislative bodies from the federal government, state legislatures and local governments show an increasing amount of legislation which proposes to negate Covenants Conditions & Restrictions (CC&Rs) and other legal contracts between homeowners and their homeowners associations. This legislation takes many forms, from federal antennae regulations and solar hot water heaters to motorcycle exclusions and flag display. Possible future topics might be skylights, lawn statuary (e.g. pink flamingos), derelict cars, and banners.

For instance, the U.S. House of Representatives Commerce Committee report pertaining to Section 207 (104-204) of the 1996 Telecommunications Act has language essentially directing that aesthetic considerations could not be considered with respect to the private contracts entered into when a citizen selects to purchase a home in any development governed by CC&Rs and other previously legal private restrictions on the subject of TV antennas. The CC&Rs, etc., form the basis for setting the lifestyle in the community.

The community lifestyle is often an overriding consideration in the purchase of a residence. Often a prime consideration in this contract (acceptance of CC&Rs) is the aesthetic look of the community. In general, the value of the home (property) is proportional to the attractiveness of the neighborhood in which it is sited. A property in a decaying neighborhood generally depreciates, while one in an appealing neighborhood generally appreciates.

Thus, congressional action manifested in the 1996 Telecommunications Act puts aesthetic controls, and thus the property values on a slippery slope of devaluation in opposition to the contract (CC&Rs), freely entered into with the expectation of an enhanced lifestyle and appreciating property value.

Every effort on all legislative levels – starting with Congress and filtering down through the states, counties, special districts and cities – must be made to NOT encroach on the property valuation by countermanding freely entered into contractual CC&Rs and lifestyle of the community. At the same time community associations should enact reasonable aesthetic regulations that affect the desire of the community at large while not unduly discouraging the desire for individual expression.

**Adopted by the Board of Trustees, October 25, 1997**

# ALTERNATIVE DISPUTE RESOLUTION

## Policy

*Community Associations Institute (CAI) recognizes the need for and supports the use of alternative dispute resolution mechanisms to resolve disputes arising in community associations in appropriate cases.*

## Background

Alternative Dispute Resolution (ADR) is viewed as a substitute vehicle to settle disputes outside of the traditional courtroom setting. There are several different procedures that fall under the definition of ADR from mediation to court-mandated binding arbitration. It is understood that conflicts will arise and that there are different vehicles to help resolve these conflicts. Many have embraced alternative dispute resolution, for it gives both parties involved in the dispute a method for resolving the dispute outside of the traditional courtroom. Community associations should whenever possible and whenever appropriate resort to this type of conflict resolution process, for it usually helps contain the heavy cost of resolving the dispute. ADR is viewed as a legitimate resource for many and an option to avoid costly litigation in the traditional forum. It is respected by both state legislatures and state courts.

It is also understood that ADR may not be the ideal option for resolving a dispute but if possible should be used if it does not compromise the rights of the community association. CAI recognizes that the financial costs and emotional investments required by litigation may be a burden on and detriment to community associations and owners. CAI encourages the use of mediation and arbitration to resolve disputes involving the use of common property and common elements, the use of dwellings, and in architectural rules and regulations. CAI further encourages continuing education programs to assist its members in understanding the benefits and limitations of alternative dispute resolution mechanisms.

**Adopted by the Board of Trustees, May 6, 1989**

**Reviewed by the Public Policy Committee, October 6, 1993**

**Reaffirmed by the Board of Trustees, October 9, 1993**

**Amended Approved by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# ASSESSMENT INCREASE LIMITATIONS

## Policy

*Community Associations Institute (CAI) supports the elimination of any requirement that community association documents prohibit the increase of assessments by the Board of Directors above a fixed percentage without approval of a vote of owners.*

## Background

The Veteran's Administration and other regulatory authorities require that documents for community associations prohibit the increase of assessments by the Board of Directors above a fixed percentage without approval by a vote of the owners.

Assessment increases should be based upon the directors' prudent estimate of the funds necessary to meet anticipated expenses which must be paid for the benefit of their owners pursuant to their fiduciary duties. In some cases, the association must pay essential, unavoidable, anticipated expenses to fulfill its statutory and legal duty to maintain the community, whether or not the members may so choose.

Assessment increase limitations on a percentage basis are arbitrary and not necessarily related to the reality of a given community.

**Adopted by the Executive Committee, April 10, 1983**

**Amended by the Board of Trustees, October 7, 1983**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

# COMMUNITY ASSOCIATION BUDGETS AND RESERVES

## Policy

*Community Associations Institute (CAI) believes it is imperative that all community associations adopt and use a financial planning and budget process that accurately reflects projected annual operating costs and long-term capital or major expenses (“reserves”) that results in a balanced budget.*

*CAI believes that developer and developer-controlled boards should prepare and disclose initial budgets to assure accurate estimation of projected operating costs and reserves. CAI also supports full and open disclosure to owners and the opportunity for participation by owners in the development of budgets.*

*Although CAI believes community associations should be encouraged to fund and maintain reserves, CAI opposes laws which would mandate how community associations fund and maintain reserves. CAI believes that the method and manner of funding reserves are best addressed by the members of the community association and its elected board of directors.*

## Background

Community associations are responsible for substantial activities involving maintenance, services, repair and replacement of facilities and equipment, and rules enforcement. Depending upon the extent of association activities and facilities, the costs of carrying out these activities are collected annually from owners through association assessments. These assessments are determined during the annual budget process. Special services or amenities may be funded through user fees. Sound financial management and administration of these services require a careful and prudent approach to the development of a budget that ensures necessary funds are available for the operation and replacement of facilities. Particularly challenging to the developer-controlled board of the association is the development and adoption of the initial budget. This is due to the lack of prior activity of the association against which to compare or judge the adequacy of the initial proposed budget.

Community association boards are obligated to maintain common property and facilities and must be prepared to maintain common property and facilities and repair and replace facilities and equipment as necessary. The replacement of major facilities involves considerable cost that must come from existing cash resources, operating assessments, special assessments or loans at the time such replacement or repairs are needed. Due to the potential costs of future major repair and replacement, concern exists about the ability of the association and its owners to meet those costs exclusively through assessments, special assessments or loans.

*Developers should:*

- Use the services of an independent professional to prepare the budget or, at a minimum, review and offer recommendations for changes to the budget to help assure accuracy. The independent professional should have no financial involvement with the developer and should have prior community association budgeting experience. Additionally, the professional should rely upon his or her expertise in budget preparation and review. A developer who lacks the necessary expertise should seek professional assistance.
- Organize the association as an entity with the authority to borrow.
- Formulate the association budget and ensure that resultant assessment fee levels are not adjusted or amended as a result of marketing or sales considerations.
- Ensure that the initial budget, budget presentation, and reserves analysis reflect not only annual

operating considerations, but initial funding of reserves accounts established for future repair and replacement of capital facilities and equipment.

All associations should consider and adopt a formal policy for meeting substantial future repair and replacement obligations. Associations should fund, in whole or in part, reserve accounts based upon replacement cost estimates and annual contributions necessary to assure that all or a substantial portion of those funds are available when needed. Reserves should never be established solely as a fixed percentage of the operating budget or of the value of the improvements.

While all associations should plan for meeting their substantial future repair and replacement financial obligations, the form of any plan should be tailored to the individual association and its members. Different methods of reserve funding analysis should be appropriate for different associations. For example, some associations may be faced with tax liabilities associated with the funding of reserves for certain components. Community associations with substantial limited use areas, whose maintenance is paid for by the owners using those areas, may treat those maintenance costs differently. The amount that members of one association are willing and able to pay for assessments that cover unfunded repair and replacement reserves will differ from amounts of other associations. The ability or the attractiveness of borrowing for long-term capital or major expenses will also differ. CAI opposes laws that do not allow community associations and their members to determine the appropriate level and method of funding for reserves for long-term capital or major expenses.

CAI shall encourage and educate lenders with an understanding of the credit worthiness of associations, adequate instruments for securing loans, and the opportunity to extend credit for the repair, expansion or replacement of improvements.

**Adopted by the Board of Trustees, April 10, 1983**  
**Amended and Approved by the Public Policy Committee, 1993**  
**Approved by the Board of Trustees, October 9, 1993**  
**Amended and Approved by the Public Policy Committee, May 11, 1996**  
**Approved by the Board of Trustees, May 11, 1996**  
**Amended and Approved by the Public Policy Committee, October 22, 1997**  
**Approved by the Public Affairs Council, October 22, 1997**  
**Amended and Approved by the Public Policy Committee, April 22, 1998**  
**Approved by the Public Affairs Council, April 22, 1998**  
**Approved by the Board of Trustees, April 25, 1998**

# COMMUNITY ASSOCIATION MANAGER CREDENTIALING

## Policy

*Community Associations Institute (CAI) encourages the national certification of community association managers. In states that propose mandatory regulation of community association managers, CAI will support a regulatory system that incorporates adequate protections for homeowners, mandatory education and testing on fundamental management knowledge, standards of conduct and appropriate insurance requirements. CAI opposes the regulation of community association managers as real estate brokers, agents or property managers.*

*To ensure adequate consumer protection and to obtain CAI support for the adoption of legislation regulating community association managers, the following provisions must be included in the legislation:*

### **1. Require an Objective Examination Which Tests Community Association Management Knowledge**

*If community association managers are to be regulated, they must be tested on their knowledge of community association management, not a different profession's body of knowledge or an exam based solely on state-specific law.*

*It is preferred that states use the examination for the Certified Manager of Community Associations (CMCA®) credential as the objective examination.*

*For states that want to test state-specific law, a separate section can be added to the CMCA examination.*

*If states reject the CMCA examination option, there must be an independent community association management examination based upon a role delineation study and standards of reliability and validity.*

*Adding community association management questions to a property management or real estate brokerage examination is unacceptable.*

### **2. Contain an Appropriate Definition of a Community Association Manager**

*If the term "community association manager" is not included or defined properly in legislation, community association managers may be required to become real estate brokers, property managers, or members of other professions.*

*"Community Association Managers" must be distinguished from brokers and property managers in any legislation*

*The ideal definition is included in CAI's model legislation.*

### **3. Require Relevant Community Association Management Education as a Prerequisite to Sitting for the Examination**

*Some type of community association management coursework must be required before any manager takes the examination.*

*Preferably, this educational requirement will be the M-100.*

*A general course in the fundamental issues of community association management is the minimum requirement.*

*A real estate brokerage course or a property management course is not acceptable.*

### **4. Require Relevant Continuing Education Requirements**

*Continuing education must be mandated.*

*The continuing education requirements must specifically relate to community association management or topics that assist in a manager's professional development (e.g., accounting, office administration and public administration).*

*At least some portion of the continuing education must cover state-specific law governing the operation of community associations.*

**5. Adherence to Basic Standards of Professional Conduct and an Enforcement Mechanism for the Standards**

*Community association managers must be required to follow professional standards.*

*The Standards of Professional Conduct created by the National Board of Certification for Community Association Managers (NBC-CAM) may be used as the foundation for a state's standards. However, the elements of the standards must be incorporated into any state ethical code.*

*There must be some type of enforcement of the ethical standards. Due process provisions must also be present in the provision. (Note: State procedures must provide at least the minimum due process provided by NBC-CAM's enforcement procedures.)*

**6. Any Governance Board Must Primarily Consist of Community Association Managers.**

*If a state creates governing boards to govern professional regulatory programs, a board created to oversee the regulation of community association managers must consist primarily of community association managers.*

*Any community association manager regulatory program should be administered by an entity that regulates occupations.*

*Unless a separate regulation and separate governing board are created, the Real Estate Commission of a particular state should not govern the community association manager regulatory program.*

**7. Contain Separate Program Administration if Regulated by an Existing State Agency that Regulates Other Professionals**

*The community association manager regulatory program must be administered by an entity that regulates occupations.*

*Unless a separate regulation and separate governing board are created, the Real Estate Commission of a particular state should not govern the community association manager regulatory program.*

**To enhance consumer protections, CAI strongly encourages legislation that contains the following provisions:**

**Grandfather Provisions**

*Grandfather provisions typically permit community association managers currently practicing in the state to become licensed and/or regulated without having to take the prerequisite educational course or the examination.*

*If a grandfather provision is present in the legislation and is contingent upon community association managers having already obtained a particular credential or designation from a trade association or other entity, an analysis should be done on all pertinent designation and credentialing programs sponsored by other associations or entities. All designations and credentials that have substantially similar requirement should be included in the legislation.*

*CAI strongly supports a grandfather provision. However, the absence of such a provision will not prohibit CAI/LACs from supporting the legislation.*

***The following provisions are deemed to be unacceptable provisions in legislation that regulates community association managers. In the event one or more provisions are present in the legislation, CAI/LACs will not support the legislation:***

***1. Requirement that community association managers work under a real estate broker***

*Legislation may distinguish community association managers from property managers and real estate brokers. However, requiring community association managers to work under real estate brokers or property managers is inappropriate.*

*Real estate brokers and property managers do not have the proper experience or education to manage or mentor community association managers.*

*Community association management is a profession that is separate and distinct from any other type of real estate activity.*

***2. Requirement that Community Association Managers Obtain a “Property Management” License***

*A property management license ignores the distinction between property managers and community association managers.*

*Community association managers obtaining this license will not obtain the necessary education to manage community associations, since community associations will be only one of the several subjects required for a property management license.*

***3. Real Estate Education Requirements***

*Community association management and real estate brokerage require different knowledge and skill sets.*

*Requiring community association managers to take real estate educational courses eliminates the distinction between the two professions and inadequately prepares managers for community association management.*

***4. Requirement for Community Association Managers to be licensed as Real Estate Brokers***

*Brokers and community association managers perform different job functions that require vastly different knowledge.*

*Requiring community association managers to become brokers does not prepare managers for the daily tasks of operating community associations.*

***5. Allowing real estate brokers to manage community associations without appropriate training, education and regulation.***

***6. No Experience Requirement***

*The community association manager license, credential, certificate, or any other designation mandated by the legislation should be granted to those entering the profession. There should be no prerequisite license, such as a real estate salesperson’s license.*

**Background**

CAI supports the protection of homeowners and community associations through increasing professionalism, the training of community association managers, and appropriate insurance coverage. CAI also supports the national certification program sponsored by the National Board of Certification for Community Association Managers (NBC-CAM).

State legislatures have attempted on several occasions to regulate community association managers. Past legislation has attempted to license community association managers as real estate brokers, salespersons, or property managers. By definition, property managers perform facilities management and leasing services – not community association management. Community association managers perform different job functions, requiring different knowledge than that required of real estate brokers, agents or property managers. Any regulation of community association managers as brokers, agents or property managers does not provide community association residents the assurance that these managers have the knowledge and skills required for professional community association management. While licensure of real estate brokers, agents or property managers protects consumers in sales transactions, it does not protect consumers during the ongoing management and operation of community associations.

In response to these initiatives, CAI has developed a national certification program designed specifically for community association managers. The national certification program, administered by NBC-CAM, grants the Certified Manager of Community Associations (CMCA®) credential to those candidates who demonstrate fundamental knowledge in the specific principles of community association management. By obtaining the CMCA credential, managers provide assurance to association boards, members, residents, employers, management firms, legislators and regulators that they meet the standard of knowledge required of entry-level community association managers. The national certification program also provides the assurance that a certified manager is committed to act professionally and continue his or her professional education.

The national certification program provides many of the same requirements as state licensure. The program requires prerequisite education; a comprehensive examination of entry-level knowledge that was developed based upon rigorous standards set forth by the National Organization for Competency Assurance; required adherence to Standards of Professional Conduct; enforcement of those Standards; and continuing education requirements – without requiring a state to create a new regulatory bureaucracy to administer a licensure program. Therefore, states do not have to license or otherwise regulate community association managers. States should accept NBC-CAM's national certification program in lieu of state licensure.

**Adopted by the Board of Trustees, October 1, 1994**

**Amended and Approved by the Manager Credentialing Legislative Task Force, April 22, 1998**

**Approved by the Public Affairs Council, April 22, 1998**

**Approved by the Board of Trustees, April 25, 1998**

**Amended and Approved by the Government & Public Affairs Committee, October 17, 2001**

**Adopted by the Board of Trustees, October 19, 2001**

# COMMUNITY ASSOCIATION MEMBERS' & COMMUNITY ASSOCIATIONS' RIGHTS AND RESPONSIBILITIES

## Policy

*Community Associations Institute (CAI) supports a balance of the rights of an individual owner in a community association with the need for effective management of the affairs of the association for the benefit of all owners. Reasonable association procedures which empower the board of directors and staff of the community association to perform their obligations efficiently must take into account the rights of an individual owner to privacy, enjoyment of his or her home, and full participation in the community association.*

### Preamble:

Community Associations Institute is dedicated to fostering responsive, competent community associations that promote harmony, community, and responsible leadership. To this end, community association members and associations have rights and responsibilities that should be recognized in order to promote positive and thriving communities. The rights and responsibilities of each party are set forth below in the core areas of *Governance*, *Building Community*, and *Business Administration*.

## **BUILDING COMMUNITY**

### Community Association Members

#### **Right To:**

Live in a responsive, competent, and harmonious community association governed by a reasonable, empathetic and impartial board of directors that treats each member with respect.

#### **Responsible For:**

- Complying with the governing documents of the community.
- Responding to association-initiated surveys and providing personal insight to help the board establish and implement the association's vision and priorities.
- Volunteering to serve on association committees and on the board with a sense of goodwill and without any conflicts of interest.
- Endeavoring to continuously learn about their community association and to provide constructive input to promote the positive evolution of the community.
- Being informed about issues of concern.
- Reporting all maintenance problems.
- Notifying the board or manager regarding possible employee misbehavior as well as good work, and respecting the relationships between the board and its employees and contractors, and the manager and its employees and contractors.
- Being aware of the contents of the governing documents, and understanding and adhering to their provisions.
- Damage to the community's common areas caused or proximately caused by the member, the actions of family, guests and tenants.
- Being a good neighbor and honoring others' rights to peaceful enjoyment of their homes and common area.
- Maintenance of unit and exclusive use common area, as defined in the governing documents.

## **Association**

### **Right To:**

- Receive goodwill and participation from members to ensure that members live in a responsive, competent, and harmonious community association.
- Have board members be treated with respect as neighbors and as volunteers who have committed personal time for the betterment of the community.
- Seek and receive assistance through community volunteers.

### **Responsible For:**

- Including community building in their short-and long-term goals and planning.
- Fostering a sense of community spirit and encouraging participation in the community.
- Encouraging the establishment of committees whose purpose is to build a sense of community.
- Encouraging all members to have a stake in upholding the governing documents of the community.
- Acting as a facilitator and regarding organizational power as a temporary stewardship.
- Creating ongoing systems to welcome and orient new residents, including both owners and renters.
- Encouraging community activities, programs, and events geared toward openness, fun, and friendship.
- Operating in a professional manner and being responsive to the community's needs.
- Ensuring that community association rules and regulations represent a balance between the needs and obligations of the community and those of the individual.
- Dedicating themselves to continuous learning about and improvement of their association's operations.
  - Providing an open forum for member input which may be during board meetings or at such other times as best facilitates communications between members and the association.

## **GOVERNANCE**

### **Community Association Member**

#### **Right To:**

- Be treated fairly and honestly by board members.
- Obtain all association fiscal information (excluding information concerning a particular owner or individual employee).
- Quiet enjoyment of residence and common facilities for their intended purpose in accordance with the association's rules and regulations.
- Participate in the process of governance through attending meetings of members, participating in the election of board members, serving on a committee, or running for a seat on the board.
- Have access to association records as specified in governing documents and state law.
- Attend board meetings in whatever manner such meetings are being held (in person or via electronic or telephonic means).
- Learn about board actions, and have access to all approved minutes of the association (other than executive board minutes).
- Live in a home free of conditions within the control of the association that materially interfere with peace, comfort or health.
- Expect all board members to be fully informed and knowledgeable in the association's business matters and the contents of the governing documents, to expect them to seek professional advice when appropriate, and to carry out their fiduciary duties with reasonably prudent business judgment.

Have legible copies of all governing documents of their community.

**Responsible For:**

- Participating in member activities, i.e. attending member meetings, serving on committees and participating in other activities which assist the board in governance or enhance the community.
- Participating directly in the governance by casting votes or sending proxies for every election or ballot.
- Respecting the roles of all participants in community governance, and recognizing and honoring those differences of opinion.
- Notifying board of directors when covenant violations are observed or discrepancies in governing documents are noted.

**Association**

**Right To:**

- Exercise the authority given to the association under the governing documents and the state laws in which the association is located.
- Make and enforce necessary rules and regulations as authorized in the governing documents.
- Set assessments, according to the governing documents and state laws, to provide for the maintenance and improvement of the common areas.
- Expect all owners to be aware of, and abide by, the provisions of the governing documents, and to expect all owners to abide by the governing documents and to carry out their responsibilities.
- Carry out its duties through the duly elected or appointed board, free of unwarranted interference or threats.

**Responsible For:**

- Carrying out the duties of the association through a duly elected or appointed board.
- Holding effective, efficient board meetings open for owners' attendance (excluding executive sessions).
- Providing members with access to corporate records (excluding those which infringe upon the privacy of other owners).
- Suggesting and presenting amendments to the governing documents for the owners' approval.
- Enacting reasonable, enforceable rules and notifying owners in a timely fashion of scheduled consideration or new or amended rules before adoption, diligently enforcing such rules in a non-arbitrary manner, and holding fair and impartial hearings for alleged violations.
- Conducting open, fair and honest elections.
- Diligently ensuring each board member fulfills his or her fiduciary duties.
- Obtaining insurance coverage as is required by the governing documents or which the board deems reasonable, including director and officer liability insurance.
- Not unlawfully interfering with an owner's access or peaceful enjoyment of the residence.

**BUSINESS ADMINISTRATION**

**Community Association Members**

**Right To:**

- Be apprised of and have available the business processes affecting homeowners, such as recreation

class sign-up, hall rental, design permit applications, complaints, suggestions, etc. in a user friendly process and format.

Have copies of proceedings of the board made available upon request, and receiving communications via media such as newsletters, closed circuit television and Internet.

Have an appeals process for decisions made that affect the members, either individually or collectively.

Have business decisions of the community association made which uphold a member's resale value of their ownership and do not lessen the other benefits of owning a home in the community association.

**Responsible For:**

Being aware of the overall direction and condition of the association from a business standpoint, and provide input and personal involvement when and where appropriate.

Understanding the tremendous responsibilities of the community association board and that business decisions are based on a variety of viewpoints and legal limitations and requirements.

Making timely payments of assessments of all types, fines, and other charges levied by association.

Keeping the association aware of their current address.

**Association**

**Right To:**

Be treated with respect when acting in good faith to make decisions in the best interests of the community association members and the association.

Conduct business of the association as prescribed by state and local laws, and association documents.

Exercise appropriate business judgment in matters not addressed or directed by state or local laws, or association documents.

Diligently collect all monies due from members.

**Responsible For:**

Acting and making decisions that are ethical and fair, and are for the benefit of the association as a whole, with latitude to make exceptions where warranted on an individual basis.

Providing for the maintenance of the association's assets, including common areas (grounds and facilities) and finances, by planning and implementing necessary insurance coverage, reserve studies and the resultant necessary reserves, and financial and management audits and reviews.

Ensuring proceedings are efficient and effective in conducting the business of the association, such that decisions are sound and decisive, based on information/data and professional advice where expertise is not available on the board or staff.

Making decisions that minimize the exposure of the association to liability and exercising reasonable business judgment in decision-making.

**Adopted by the Board of Trustees, March 29, 1985**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 10, 1993**

**New Policy Substituted by the Government & Public Affairs Committee on October 23, 2002**

**Adopted by the Board of Trustees on October 25, 2002**

# COMMUNITY ASSOCIATION TAXATION

## Policy

*Community Associations Institute (CAI) supports:*

- 1) Elimination of the residential requirements of Code Section 528;*
- 2) Elimination of the gross revenue of 60% test of Code Section 528;*
- 3) Elimination of the 90% expenditure test of Code Section 528;*
- 4) Elimination of the flat 30% tax rate of Code Section 528 and replacement with an average marginal tax rate, paid by individual taxpayers.*

## Background

The present tax situation for homeowner association is unique within the area of tax law. It is the only organization that may annually choose which of two forms it wishes to file. As a result, gross inequities, unintended results and a level of complexity have befuddled tax preparers nationwide. The tax law should be simplified and an element of fairness applied.

When Section 528 for homeowner associations was added to the Code, the Conference Committee report recommended a tax rate of 46% of the 1120-H tax return. This rate was subsequently modified to 30%, based on the concept that it was appropriate for an average taxpayer qualifying as a homeowner. Even when the Tax Reform Act of 1986 reduced the maximum tax rate for individuals to 28%, no relief was extended to homeowner associations. They continued to pay 2% more than the maximum rate, and likely 8.5% more than the average rate paid by many individual homeowners. Thus, for years, associations utilizing this filing method have been penalized by the inequities of the tax code.

Also, the residential qualification criteria of 90% of expenditures for exempt function purposes eliminates many associations who would like to take advantage of the provisions of Code Section 528.

For example, there may be two associations sitting side-by-side that operate identically in every respect except that one provides valet and housekeeping services to its members. The association who provides these additional services will likely not meet the 90% test, while the other will. Though these services will probably not generate additional taxable income, the association is penalized and unable to utilize this form.

Should member activities result in a net loss, it must be carried forward to future years and may not be offset against the taxable income or non-member income of the association. If, on the other hand, there is a membership income net, it is taxable to the association unless the provisions of Revenue Ruling 70-604 are followed. These provisions are the subject of great controversy among community associations, their accountants and attorneys.

Congress and the Internal Revenue Service have clearly created a quagmire that is consuming vast amounts of effort, resources and energy, resulting in confusion throughout the industry. It is time for Congress to readdress the issues and correct these ongoing problems.

**Adopted by the Board of Trustees, October 26, 1986**  
**Amended by the Public Policy Committee, October 6, 1993**  
**Approved by the Board of Trustees, October 9, 1993**  
**Amended by the Public Policy Committee, May 8, 1996**  
**Approved by the Board of Trustees, May 11, 1996**

# **DISCLOSURE BEFORE SALES IN COMMUNITY ASSOCIATIONS**

## **Policy**

*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 supports mandating disclosure documents/resale certificates for all ownership transfers of homes or units in a community association to ensure that the association is notified of every pending sale and that the transferee is aware of the obligations with respect to the property*

*It is the Public Policy of CAI that state legislatures should mandate disclosure to potential buyers of homes or units in community associations by providing copies of the following information:*

- 1) Amount of current monthly assessments, maintenance fees and other charges for common expenses;*
- 2) Amount of approved special assessments;*
- 3) Association governing documents;*
- 4) Amount of reserve and capital funds available and committed to current or pending projects;*
- 5) Reserve study, if any;*
- 6) Current operating and reserve budgets and year-to-date financial statement;*
- 7) Insurance certificates indicating association-provided coverage;*
- 8) Pending litigation excluding routine assessment collections;*
- 9) Outstanding judgments against the association;*
- 10) Any amounts the current owner owes the association;*
- 11) Notice of any association alleged and uncured violation pertaining to the home/unit;*
- 12) Fees relating to the transfer of ownership or other transactions;*
- 13) A statement of the remedies available to the association as a result of non-payment;*
- 14) Current collection policy;*
- 15) Notice of any restrictions related to the leasing of a unit;*
- 16) List of association amenities;*
- 17) Contact information for the association;*

*CAI recognizes that the preparer of the disclosure documents/resale certificates incurs expenses relating to the preparation and production of such documents and supports the right of the preparer to charge a reasonable fee for such transactions.*

## **Background**

The Community Associations Institute (CAI) recognizes that buying a home or unit in a condominium, cooperative or planned unit development should be a positive event, but can be a stressful and confusing time for the buyer.

CAI believes that full disclosure is an essential tool to ensure that the consumer is aware of all relevant data that may impact the decision to purchase a home or unit in the community association. Resale certificates will also educate the consumer about rights and obligations as an owner of a home or unit in a community association.

Additionally, while community associations are obligated to maintain a roster of current owners, it is often impossible to track sales because of the voluntary nature of resale certificates. The association may not be aware that a new owner has taken possession of a home or unit until months or perhaps years later. Mandating the submission of resale certificates will enable associations to be alerted to ownership changes in a timely manner.

Frequently an association's management company serves to fulfill the requests for document production related to the sale of a property. Such requests may come several months in advance or with short notice. Preparers incur labor and material costs for such production and must attest to the accuracy of the information. As such, preparers should be allowed to charge a reasonable fee for the liability risk incurred by affirming the correctness of the information as well as the preparation and production of disclosure documents/resale certificates. Although most disclosures are of a routine nature, there may be transactions or circumstances that justify additional charges. Such fees, at the discretion of the association or its agent, may be required in advance of production to ensure costs incurred to the association are properly allocated to the parties to the transaction and in a timely manner. If the resale package is demanded without reasonable notice, an expedited charge may be warranted.

**Adopted by the Board of Trustees, March 3, 2010**

# DISPLAY OF THE AMERICAN FLAG

## Policy

*Community Associations Institute (CAI) strongly supports the elimination of community association restrictions that prohibit the display of a reasonably sized, removable American flag from a resident's exclusive use or limited common element areas, so long as the flag is displayed in accordance with the Federal Flag Code, 36 U.S.C. Sections 171-178, as amended. CAI further believes that community associations – not a state law – are best suited to determine the appropriate size, placement and installation of a flagpole.*

### Background

CAI strongly believes that all Americans should have the opportunity to display the U.S. flag to demonstrate their patriotism and support of our country. Communities shall be reasonable and allow the public display of our nation's most sacred emblem. To that end, CAI has supported numerous bills to overturn anti-flag rules, and in the fall of 2001, initiated *Operation Old Glory!* that recommended all associations review their rules on flag display with respect to reasonableness.

While CAI applauds efforts by associations and state legislatures to promote the flying of the American flag, we do not feel it is sensible to eliminate all mechanisms for consideration and approval of the size, placement or installation of a **flagpole**. Although flagpoles may be appropriate for some associations, they are clearly not appropriate for *all* community associations. An association, not state law, is the best mechanism for making a determination on height and placement parameters for a flagpole. Further, the association's architectural review process can best determine if the installation and location of a flagpole may threaten the community's health or safety.

A number of states including Arizona, Florida and South Carolina have passed legislation that aligns with CAI policy by acknowledging that all residents must be allowed to fly a flag from their home and by permitting reasonable regulations regarding the installation and placement of a permanent flagpole. These states recognize that flagpoles, like any permanent fixture, should be reviewed by an association's architectural review committee prior to construction.

CAI will support proposals that strike any restrictive covenant in a deed, homeowners' association documents, rental agreement, lease, or contract that may preclude the display of one portable, removable United States flag on the property. However, the flag must be displayed in a respectful manner, consistent with 36 U.S.C. Sections 171-178, as amended. In cases where the flagpole becomes an issue, CAI will support language that 1) requires an association to adopt reasonable rules and regulations regarding the placement and manner of display of the American flag; and 2) prevents an outright prohibition on flagpoles.

**Approved by the Government & Public Affairs Committee, October 23, 2002**

**Adopted by the Board of Trustees, October 26, 2002**

# **EFFECTIVE COLLECTION OF COMMUNITY ASSOCIATION ASSESSMENTS**

## **Policy**

*Community Associations Institute (CAI) supports the creation and continuation of effective methods to ensure efficient, economic and successful community association collection procedures. CAI opposes the enactment of governmental limitations on effective collection of assessments, fees and other charges of community associations. CAI supports laws strengthening such collection methods and lien rights by associations, provided collection methods are undertaken in a fair and reasonable manner, giving the affected owners notice, the opportunity to be heard, and other due process protections. CAI also supports reasonable procedures to accommodate unit owners experiencing difficulties meeting their assessment obligations.*

### **Background**

Like a local government's dependence on tax revenues, the financial viability of most community associations depends on their ability to collect assessments to meet their continuing expenses (some of which are for functions that serve public health and welfare requirements).

Community associations require the revenue from these assessments to maintain common areas, buildings and facilities at community benefit, to provide community services as mandated in their governing documents, and to fulfill their fiduciary responsibilities to members.

Community associations must be able to collect promptly and efficiently their budgetary obligations from delinquent owners by avoiding expensive litigation and to minimize the burden on remaining owners of the common expenses during a long period of time for collection.

State or local governments, by statute, ordinance or regulation, may jeopardize the ability of community associations to adopt reasonable and necessary collection procedures to adequately fund the association to pursue recalcitrant, delinquent owners or to effectively have a strong lien against the owner's units.

In times of difficulties, illness, loss of employment or other economic problems, CAI advocates flexibility and compassion in the application of collection policies and procedures.

**Adopted by the Executive Committee, April 10, 1983**  
**Amended by the Public Policy Committee, October 6, 1993**  
**Approved by the Board of Trustees, October 9, 1993**

# ENVIRONMENTAL QUALITY

## Policy

*Community Associations Institute (CAI) strongly supports protection of the health and well-being of those who reside or work in common-interest communities by increasing sensitivity to environmental quality. CAI supports environmental quality in common-interest communities and remediation of environmental pollution, including harmful substances contained in building materials and landfills.*

*CAI further supports legislation that considers the financial burden of environmental regulations on owners and occupants of property and the unique characteristics of community associations. Their ownership patterns, financial capabilities and operational characteristics must be considered as legislative and regulatory decisions are made.*

## Background

In recent years, public sensitivity to the impact of environmental conditions has increased dramatically. Concern over the health hazards of building materials such as asbestos, insecticides such as chlordane, ozone in the atmosphere, and natural ground materials such as radon is increasing. Various governmental entities such as the Environmental Protection Agency have addressed questions relating to the quality of air and water through actions like the Clean Water Act. How common-interest communities should and can recognize and address these and similar issues are of concern to CAI.

Community associations, whether commercial or residential, recognize the importance of the quality of the environment in which they exist. That environment includes the air, water and ground around the association buildings, as well as the chemicals applied to the building in its construction and its maintenance. The possibility of detrimental impact on the health and well-being of the occupants is of major concern to these associations. Also of concern is the financial burden created by a mandate, whether it arises from a regulatory body or from a practical decision, to remove any contaminants to the environment. Additionally, the location, expense and identification of alternative mechanisms for maintenance and processing are of concern.

CAI strongly endorses the concept that all materials used in the construction of a building be as low in harmful substances as is reasonably possible. CAI further endorses the concept that the municipalities within which they are located take all reasonable and mandated means to reduce, eliminate and control environmental contaminants in the air, in the water and in chemicals used on the property.

Appropriate efforts should be made to inform and educate those groups, including management firms, and individuals, such as maintenance personnel, who have to deal with the environmental factors affecting community associations. Knowledge and understanding of what must be done, and by whom, is essential. CAI also recognizes that legislative and regulatory bodies, in their endeavors to eliminate environmental contaminants, may impose extraordinary financial burdens on the owners and/or occupants of the properties in question. Homeowners may be unfairly burdened by the costs of removing certain kinds of building contaminants. Like all taxpayers, occupants of common interest communities are also required to participate, through taxing procedures, in the costs which municipalities must assume to protect their water and air. We urge careful consideration of this problem and its recognition in the development of programs designed to improve environmental impact. Special funding programs, such as long-term loans and support funds, should be included in any market programs.

**Adopted by the Executive Committee, September 28, 1988**  
**Reviewed by the Public Policy Committee, October 6, 1993**  
**Reaffirmed by the Board of Trustees, October 9, 1993**

# FAIR DEBT COLLECTION PRACTICES ACT

## Policy

*Community Associations Institute (CAI) supports taking legislative, regulatory or judicial action to establish that community association assessments are not “consumer debt” as defined by the Fair Debt Collection Practices Act or similar state statutes in circuits that have not already defined them as such but also acknowledge that they are considered “consumer debt” and should act accordingly.*

### Background

The Fair Debt Collection Practices Act (FDCPA) was enacted in 1979 to deter unscrupulous creditors from using harassment techniques to recover debt. The Act proscribes the type of activities debt collectors may undertake and requires certain disclosures to consumers. Compliance by community association practitioners has been mostly voluntary in the past, though recently many circuit courts have found that community association assessments do indeed fall under the FDCPA definition of debt, therefore making compliance necessary.

It is imperative those attorneys, management companies and others recognize this new trend and that precautions be taken to prevent violating the act in circuits that have ruled that community association assessments do indeed fall into the category of consumer debt. The courts have held in several cases that the association fees satisfied the “personal, family or household” requirement of a debt under the FDCPA. These circuits include the 4<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>, which encompass the following states: Maryland, Arizona, Virginia, Illinois, Indiana, Wisconsin, California, Utah, Wyoming, Colorado, New Mexico, Kansas and Oklahoma. Thus, individuals who collect assessments on behalf of homeowner associations in the affected states are considered debt collectors for purposes of compliance with the Act. The penalties for violation can often be punitive in nature. There are community associations that are not located in these circuits that may be affected in the future.

To combat such rulings, it is necessary to restore consensus that community association assessments do not fall within the FDCPA’s definition of debt.

**Approved by the Public Policy Committee, April 22, 1998**

**Approved by the Public Affairs Council, April 22, 1998**

**Approved by the Board of Trustees, April 25, 1998**

**Amended and Approved by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# FAIR HOUSING

## Policy

*Community Associations Institute (CAI) supports the right of all individuals to be free from illegal discrimination on the basis of race, creed, color, sex, national origin, familial status or handicap. CAI also supports the right of community associations to enforce their covenants, by-laws and rules, provided they do not illegally discriminate against any protected class.*

*CAI will progressively pursue fair and reasonable interpretations and administration of, or changes to, Fair Housing Acts and related legislation and regulations.*

### **Background**

In 1966, Congress adopted the Federal Fair Housing Act to prohibit discrimination on the basis of race, color, religion, sex or national origin. In 1989, Congress amended the Act by adding handicap and familial status to the list of classes protected from discrimination.

CAI is concerned with illegal discrimination in housing and the availability of adequate and appropriate housing for all age groups.

Furthermore, CAI is concerned about the availability of housing accessible to disabled individuals, and supports improvements which make residential dwellings and surrounding areas readily accessible and usable by disabled people.

On occasion, enforcement and implementation of the Federal Fair Housing Act has unreasonably burdened community associations. For instance, the Department of Housing and Urban Development's (HUD) regulations regarding housing for older persons was onerous and difficult to understand. Community associations were unsure whether they maintained sufficient facilities and programs for older persons to qualify as senior housing. CAI supported regulations and legislation simplifying and ultimately eliminating the requirement that community associations maintain special facilities and programs to qualify as housing for older persons. HUD also took the position that community associations could maintain reasonable occupancy restrictions without violating the Federal Fair Housing Act. Later, without notice to the public, HUD prosecuted discrimination claims based on occupancy restrictions that were reasonable, but higher than those permitted under state law. CAI supported legislation allowing community associations to maintain reasonable occupancy restrictions. CAI will continue to work for other fair and reasonable interpretations of, and changes to, the Federal Fair Housing Act.

**Adopted by the Board of Trustees, October 29, 1988**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

**Amended by the Public Policy Committee, October 28, 1998**

**Approved by the Government & Public Affairs Council, October 28, 1998**

**Approved by the Board of Trustees, October 31, 1998**

# FAIRNESS IN FEDERAL DISASTER RELIEF

## *Policy*

*Community Associations Institute (CAI) supports a legislative or regulatory change to the Robert T. Stafford Disaster Relief and Emergency Assistance Act so that community associations are eligible for federal assistance following a disaster, including but not limited to debris removal and cleanup.*

### **Background**

When disasters strike and the President declares a region to be a disaster area, the Federal Emergency Management Agency (FEMA) comes in to provide assistance, which may include debris cleanup and financial aid to eligible individuals and communities. However, existing FEMA policy specifically excludes community association roads from receiving federal assistance for debris cleanup. Moreover, there has never been a thorough vetting by legislators or regulators on how to classify community association roads.

At the core of this issue is the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the “Stafford Act”, 42 U.S.C. 5121-5206 and Related Authorities) which governs FEMA. The Stafford Act allows for financial assistance to states, counties, municipalities, as well as eligible “private nonprofit facilities,” which are defined as entities that “provide essential services of a government nature to the general public.” Currently, community association roads do not meet the requirements to be deemed “essential” and, therefore, are not included on FEMA’s list of eligible private nonprofit facilities.

Also, the Stafford Act gives the President the discretion to 1) use of Federal departments, agencies and instrumentalities to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and 2) make grants to any state or local government or owner or operator of a private nonprofit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters. But, in practice, assistance is not extended to community associations.

This policy has cost community associations millions of dollars over the years, despite the fact that, a) community association residents pay the same federal taxes as non-association residents and are equally in need of help as any other community after a disaster strikes, and b) most association roads, like any other municipal or county roads, are used by the local police, fire department, paramedics, school buses, and open to the public.

The Stafford Act was passed to “alleviate the suffering and damage which result from disasters” by “providing Federal assistance programs for both public and private losses sustained in disasters.” Regardless of whether HOAs are viewed as public or private, the government has a duty not to exclude 1 in 6 homeowners from help in a time of need.

**Approved by the Government & Public Affairs Committee, October 27, 2004**  
**Adopted by the Board of Trustees, October 30, 2004**

# **FEDERAL HOME LOAN MORTGAGE CORPORATION PROPOSED EARTHQUAKE REQUIREMENTS FOR CERTAIN CONDOMINIUMS IN CALIFORNIA**

## **Policy**

*Community Associations Institute (CAI) supports a one-year delay in implementation of the Federal Home Loan Mortgage Corporation (Freddie Mac) Bulletin No. 95-2 and the appointment of an industry task force to develop better ways to protect Freddie Mac's interests without adverse impact on the availability of financing for condominium housing.*

### **Background**

Dedicated to the protection, preservation and enhancement of community association housing, CAI has become aware of a policy adopted by the Federal Home Loan Mortgage Corporation (Freddie Mac) as set forth in their Bulletin No. 95-2, to require property mortgages secured by condominiums located in zip code areas rated as "high" and some located in "moderate" risk for earthquakes to be insured against earthquake damage or destruction.

While CAI recognizes and appreciates Freddie Mac's desire to protect its mortgage loans and its determination not to be the "insurer of last resort" of property damaged on a mass scale by earthquakes, CAI believes that the implementation as outlined in Bulletin No. 95-2 will be devastating not only to condominiums but to other residential communities with homeowners' associations and to individual owners in these communities. It will also detrimentally affect builders, real estate agencies, bankers and others who depend on this housing industry.

CAI believes implementation of such a policy will place an increased demand on other participants in the secondary mortgage market, which they may be unable or unwilling to meet. CAI is also concerned that this action by Freddie Mac will set a precedent for similar action by other secondary mortgage market lending institutions.

CAI believes that other solutions are or may be available to address Freddie Mac's concerns, such as mandatory natural disaster insurance coverage for residential mortgages on a nationwide basis, the creation of stricter construction standards and/or better enforcement of existing standards, and the availability of separate structural and contents insurance coverage.

CAI therefore urges Freddie Mac to consider a postponement for at least one year of its projected July 1, 1995, implementation date of the requirement for earthquake insurance and pre-funded deductibles under Bulletin No. 95-2. CAI also supports and encourages efforts by Freddie Mac and other involved parties to seek solutions to the problem which are acceptable to condominium owners, community associations, casualty insurers, mortgage lenders and mortgage purchasers. CAI further volunteers its cooperation and assistance to create and participate in this industry-wide partnership.

**Adopted by the Executive Committee, June 12, 1995**

# **FINANCING AVAILABILITY FOR COMMUNITY ASSOCIATION UNITS OR LOTS**

## **Policy**

*Community Associations Institute (CAI) urges federal lending-related agencies and the secondary market to promote the availability of adequate financing programs for community association housing. CAI supports the development of consistent national legal and underwriting standards for community associations and reciprocal approval of community associations by federal agencies and the secondary mortgage market. To achieve these objectives:*

- There should be reciprocal approval of community associations by federal agencies and the secondary mortgage market.*
- Adoption of uniform state legislation will facilitate the development of national financing programs.*
- Improved state enabling legislation or the adoption of uniform state enabling legislation should be pursued to enhance the feasibility and development of national financing programs, and that uniform regulations and standards by state housing finance agencies and other secondary mortgage markets should also be pursued.*

## **Background**

In recent years, community association homeownership has evolved to play an increasingly significant role in meeting housing needs of Americans. However, for any form of housing to realize its full potential for growth and utilization, the full range of traditional sources of financing of development and sales, such as Veterans Administration loan guarantees and Federal Housing Administration mortgage insurance, must be available to community association developments.

The relative newness and sudden growth of community associations, however, has meant that adequate public and private sector financing mechanisms have not always been as available or as flexible to this form of housing as it is for traditional single-family housing.

**Adopted by the Executive Committee, April 10, 1983**  
**Amended and approved by the Board of Trustees, May 1, 1993**  
**Amended by the Public Policy Committee, October 6, 1993**  
**Approved by the Board of Trustees, October 9, 1993**

# FLOOD INSURANCE

## Policy

*Community Associations Institute (CAI) believes that flood insurance should be available to all community associations, either through primary carriers or through a federally supported program. Such coverage should be made available at rates appropriate to the risk without a coinsurance requirement and on a basis that recognizes the ownership structure of the community association involved.*

*Such insurance coverage should be provided in a manner that is fitting for the exposure faced by the association, that distinguishes between the insurance responsibilities of the association and the individual residents and/or owners, and in accordance with the insurance responsibilities of the individual community associations, whether they be condominiums, cooperatives, homeowners associations or PUDs.*

*CAI urges the insurance industry to be responsive to the flood insurance needs of community associations by providing the necessary coverage based on need, risk and the practical considerations of community associations, both in general and as an optional alternative to government-provided flood insurance under the National Flood Insurance Program (NFIP).*

*At the same time CAI urges the Federal Emergency Management Agency (FEMA) to continue to review the terms, conditions, zone maps, and rating structure of the flood insurance coverage it provides community associations, under the NFIP, and to revise them as necessary to reflect the need, risk and financial and practical considerations of community associations.*

## Background

A significant number of community associations have an exposure to loss from the perils of flood, heavy rains, surface water, back ups of sewers and drains, and other water sources. The losses are often catastrophic in nature and impact both the association property and that of the unit owners. These exposures exist whether or not the property is located in a “hazard zone” as designated by FEMA. Many associations have endeavored to protect themselves against these perils through the purchase of insurance, as well as by employing various risk management techniques.

The degree of flood risk to association buildings depends on the design, value and location of the buildings. The risk and related loss that occurs from flooding events impacts both the association property and that of the unit owner.

In 1968, Congress created the National Flood Insurance Program (NFIP), both to fill a void due to the general unavailability of flood insurance for residential property and to encourage new construction in areas subject to flooding to be built more safely, thereby lowering the risk and exposure of life and property. The rates charged for new construction reflected the risk while rates charged older buildings reflected a Congressionally-mandated subsidy. The premiums collected for the newer buildings have paid for the limited losses to those buildings and related program expenses while the premiums for the subsidized, older buildings have been inadequate to pay for such losses and expenses.

The NFIP has largely had to rely on two factors to sell its policies: the Federal requirement that mortgage loans on buildings in high flood hazard areas had to have flood insurance and efforts to convince the public at risk to purchase the coverage. Insurance agents have been educated and encouraged to sell the

coverage. Although these efforts have resulted in over four million buildings and households being protected, the overall success has been limited, since most buildings at risk are still not covered by flood insurance.

Before the mid 1980s, the private insurance industry made flood insurance available as needed to serve the needs of community associations. In the mid-1980s, the industry reduced the amount of flood coverage offered in areas of both high and moderate risk. The resulting void caused FEMA to respond to requests for flood insurance by revising its coverage and by designing flood insurance products to address the void in the marketplace. FEMA's unique condominium coverage became available in 1989.

In 1994, FEMA revised its flood coverage for community associations with the Residential Condominium Building Association Policy (RCBAP) form, addressing a number of needs of such associations. For example, FEMA changed the coverage for condominiums from actual cash value to replacement cost, introduced a co-insurance clause to encourage the purchase of insurance-to-value, and adjusted its rates and building clauses to reflect more accurately risk and insurance-to-value. These rates were intended to make the program actuarially sound.

The insurance to value and co-insurance provisions have resulted in associations feeling as if they have been forced to purchase more coverage than they believe they need for the risk to which their buildings are exposed. The purchase of "full limits" is necessary to avoid suffering co-insurance penalties at the time of a loss. The insurance-to-value limits of coverage are significantly higher (sometimes 50 to 100 times) than the limits of coverage many associations purchased in the 1980s. Since the rates were not reduced commensurately, these higher amounts of coverage have resulted in flood insurance premiums that are many times the amounts the same associations paid in the 1980s.

Associations are concerned that the NFIP rates do not accurately reflect the risk to the association buildings, nor the insurance-to-value resulting from the higher amounts required to be purchased. Many believe that their exposure is less so that their allowable purchased limits should be less. Associations also believe that FEMA has not explored the full range of rate, building classification, deductible and coverage options that may be both available and appropriate for flood insurance for community associations. Furthermore, the rates are sufficiently high in "non-hazard" areas that many who have a remote risk of loss no longer believe that they can not afford to purchase the coverage. Since the inception of the RCBAP policies and related unit owner policies, complaints have been rampant. In addition to concerns about rates and pricing; apparent errors in classifying properties and in applying appropriate rates have been cited. Mortgage brokers need more education in how to apply the rules accurately and equitably.

It is in the interest of community associations, and thus CAI, to examine the nature of the coverage provided, the need for such coverage, and the possible areas of modification. The information gathered should be transmitted to FEMA with a strong recommendation for appropriate modification of the NFIP. Furthermore, CAI could act as a facilitator and participant in discussion with private insurance carriers and FEMA to study what participation they could assume.

**Approved by the Board of Trustees, endorsing instructions from the Public Policy Committee that staff and appropriate committee members make revisions to the background information per discussion at the committee meeting, October 31, 1998**

**Approved by the Board of Trustees, May 3, 2002**

# GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute supports effective state legislation—when it is deemed necessary for consumer protection, conversion limitations, protections for ongoing operations or other additions to existing statutes or common law to ensure that community association housing is developed and maintained consistent with legitimate public policy objectives and standards that protect individual consumers, balancing the legitimate rights of the development industry.*

*Local legislation concerning the creation or governance of community associations is antithetical to a balanced, well-considered assessment of all issues and interests affecting community associations. It also encourages a patchwork of regulations within an individual state and is, therefore, better dealt with at the state level.*

## Background

Due to the growth and popularity of the community association form of homeownership, there has been considerable activity at the state and local level regarding legislative and regulatory proposals to control and oversee this process. There have also been proposals at the Congressional level to establish national regulatory procedures and requirements. As a result of the substantial increase in the number of developments and consumers affected by these various forms of ownership, states and localities have pursued legislative and regulatory proposals not only to provide for consumer protection and the achievement of public policy objectives in the sales and development process, but in recent times to regulate the ongoing operations of community associations as well.

State legislation should:

- Provide for full and fair protection of the consumer, including existing residents in conversion projects, through the disclosure of all material facts relating to the development, operation and ownership of such housing.
- Be comprehensive in its coverage of the material aspects of the development and operation of this housing form.
- Provide adequate standards to promote the operational viability of the community association.
- Promote reasonable flexibility in the development process.
- Reflect an equitable balance between the interest and needs of housing developers and consumers.
- Not arbitrarily preclude or inhibit the development of any form of community association housing.

CAI believes that the above objectives are best achieved by state governments and not by or through legislative or regulatory procedures at the federal level or at the local government level. The likely diversity of legislative policies adopted by local governments would unnecessarily inhibit the developmental process across local jurisdictional lines, while enactments at the federal level would be too broad in scope to achieve these goals and fail to reflect and respond to the unique character and needs of

local markets.

State Legislative Action Committees (LACs) and CAI chapter legislative committees should strongly discourage all local legislative efforts with respect to the creation or governance of common interest communities, and may engage in local legislative efforts only under the following circumstances:

1. The existing law in a particular state provides that local land use regulations supersede state statutes in controlling the creation or governance of common interest communities.

OR

Local legislative initiative is clearly inevitable due to circumstances particular to that locality, and therefore, as a practical matter, control over the creation and governance of common interest communities occurs at the local municipal or county level.

OR

Existing land use or other county regulations or municipal ordinances specifically control the creation or governance of common interest communities.

AND

2. The actions by the LAC or chapter legislative committees will not weaken statewide legislative efforts with respect to the creation or governance of common interest communities.

AND

3. Support for the particular local legislative effort does not contravene any other CAI Public Policy OR support will further a CAI Public Policy.

AND

4. Actions by a chapter legislative committee (as distinguished from a LAC) are approved by the state LAC executive committee and chapter board of directors.

It is the policy of CAI to recommend that when state governments amend their basic community association development laws they consider the need for updated and comprehensive legislation to regulate the development of community association housing consistent with the above goals. Moreover, in undertaking such review, state governments are urged to consider and give favorable treatment to one or more of the Uniform Community Association Acts.

**Adopted by the Executive Committee, April 10, 1993**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

**Amended by the Public Policy Committee, May 8, 1996**

**Amended by the Public Policy Committee, October 9, 1996**

**Approved by the Public Affairs Council, October 9, 1996**

**Amended by the Public Policy Committee, October 22, 1997**

**Amended and Approved by the Public Affairs Council, October 22, 1997**

**Amended and Approved by the Board of Trustees, October 25, 1997**

# CONSERVATION, SUSTAINABILITY & GREEN ISSUES

## Policy

*CAI supports environmental and energy efficiency policies that recognize and respect the governance and contractual obligations of community association residents as the best mechanism to enact sustainable environmental policies.*

*CAI supports efforts by state legislatures to empower community associations to build consensus-based solutions regarding environmental initiatives, and opposes government and interest group efforts to override community policy or deed restrictions on single interest issues.*

### Background

Community Associations are the outgrowth of smart land use planning. Community associations, which include condominiums, planned communities and cooperatives, represent a comprehensive approach to housing that encompasses individual lots or units as well as common areas such as parks, conservation/natural habitats and parks and recreational facilities. These amenities usually are supported and maintained by the residents of the community, enabling state and local authorities to focus their resources on other uses.

Conservation issues also benefit from the governance process within community associations. Deed restrictions, bylaws and rules provide a basis for implementation, enforcement and maintenance of policies and projects to address community concerns. This process provides a democratic forum for individuals in the community to collectively develop a range of solutions to meet the needs and values of the community. Fostering such diversity of approaches provides neighborhood-level laboratories to develop a range of sustainable solutions. Such local decision-making should be respected and incentivized.

**Adopted by the Board of Trustees, March 3, 2010**

# HOME-BASED BUSINESSES IN COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) recognizes and supports the rights of residential common-interest communities to regulate the nature of commercial activities within their communities, including the option to choose whether individual residences can be used as home-based businesses.*

*CAI encourages associations that regulate commercial activities to restrict only those activities that the associations have reasonably determined have an adverse effect on the community and to permit childcare facilities, home office use and other home-based businesses that do not have adverse effects.*

*CAI supports the amendment of covenants to allow home-based businesses that do not have an adverse impact on the community. CAI opposes legislation that would supersede any covenant restrictions on home-based commercial activities.*

## Background

### *Childcare Facilities*

Common-interest communities, particularly condominiums, are increasingly faced with conflicts between the need for the care of young children outside the home but within a residential setting and the rights of association unit owners who feel negatively impacted by childcare facilities within their communities because they do not need or wish to provide such care within their associations. Although the need for childcare is increasing, the rights of property owners continue to require protection without the threat created by encroaching upon the owner's personal environment. The threat of setting a precedent, which will lead to further invasion of the rights of the individual, is of equal concern.

Society has traditionally perceived that the best site for the care of children is the home, as the healthiest and safest development occurs in that environment. With society's increasing need for care for children outside their own homes, an increasing number of families are seeking assistance with the care of children. Some of that care is provided by public entities, while other care is provided by an individual's employer. Nonetheless, a growing number of children are cared for within a private residential setting.

When that private residential setting is within a common-interest community, particularly a condominium unit, questions are raised relating to the definition of childcare as residential or commercial use, the rights and expectations of property owners, payment for incurred costs, and the demands of satisfying the "public good." The possible negative impact of such purchase of insurance for private childcare in a residential setting can be particularly critical, since documents, state law and the secondary mortgage market mandate the insurance. The impact of traffic, noise, confusion and wear and tear on facilities should also be recognized and addressed.

### *Home Office Use*

Home computers, internet access and e-mail are commonplace and allow business to be conducted from home.

Approximately 100,000 home-based businesses are established each month. By some estimates, as many as 40 million people work out of their homes. As computer access increases, the number of home-based businesses is expected to grow even more dramatically. This is exacerbated by local and state

governments that enact zoning ordinances and other laws to encourage home-based business.

However, many community associations are governed by covenants which place restrictions or outright bans on home-based business. Therefore, increased conflict between homeowners operating home-based businesses and association boards seeking to enforce the covenants that restrict business activity is sure to increase.

Most associations do not object to businesses that do not adversely affect the residential character of the community, even where a covenant prohibits all business activity. However, few associations have adopted a home-based business policy that establishes a limit on permitted business activity.

Adopting a policy on home-based business will provide homeowners with guidelines as to which business activities are allowed. In addition, a policy will make it easier for the board to enforce the covenants against truly objectionable business activity.

**Adopted by the Board of Trustees, April 25, 1998**

# HOMEOWNER INVOLVEMENT IN COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) believes that direct and active homeowner involvement and participation in community associations and with the board of directors shall be promoted throughout all phases of development of a community association. The board of directors should actively encourage homeowners to participate in committees and other aspects of the association.*

### Background

It is inherent in the legal documents and conceptual framework of community associations that the association exists to assure that business, governance and community responsibilities are carried out. The association, through a governing body selected by the owners; acts on behalf of the owners to carry out these responsibilities. A workable, effective and responsive governance process is necessary for the association to achieve its mission. The association's organization and structure should encourage homeowner involvement and participation. For that involvement to be effective and successful, the following must be established:

- The governing structure must be explicitly defined, with the rules and responsibilities and authority of the board, committees and agents clearly delineated.
- Organizational goals which respond to the needs of all owners must be established and these goals must be reviewed and reevaluated on a periodic basis.
- An open communications process must be maintained on a continuous basis and should encourage information flow between the board, committees and individual residents.
- A committee process should be established to assure an opportunity for effective owner participation in meaningful activities and decisions to support the governance process.

**Adopted by the Board of Trustees, April 8, 1983**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

**Amended and Approved by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# INSURANCE TRUSTEE ENDORSEMENT REQUIREMENT

## Policy

*Community Associations Institute (CAI) encourages the secondary mortgage market to implement the addition of an insurance trustee endorsement requirement for community association property insurance policies for new projects to provide protection to the assets of the community association in the event of a major catastrophe. CAI opposes naming Freddie Mac or other secondary mortgage market entity as a loss payee on a community association insurance policy.*

### Background

In response to concerns expressed by Freddie Mac, CAI's Insurance and Risk Management Committee has studied what steps are reasonable and appropriate to satisfy both Freddie Mac's interest, and that of the secondary mortgage market, in having insurance proceeds appropriately applied and the association's interests in the restoration of property after a major catastrophe. CAI, an organization dedicated to the protection, preservation and enhancement of community association housing, recognizes and appreciates Freddie Mac's desire to protect its mortgage loans and its determination not to be the "insurer of last resort" of property damaged on a mass scale by major catastrophes such as earthquakes, floods, volcanic eruptions, fires, and other physical calamities. CAI also believes that the remedies suggested by Freddie Mac, such as being named as a loss payee on each association policy, will detrimentally affect residential communities and other groups involved with such communities and fail to recognize the fundamental nature and structure of community associations. In addition, such remedies will not be tolerated by the insurance industry and will result in a dramatic reduction in the availability of private insurance for community associations.

Historically, Freddie Mac, for example, has sought to be named as a "loss payee" on community association policies to assure that a Freddie Mac representative controls the expenditure of insurance proceeds, either to rebuild a property, or at that representative's choice, to pay down the mortgage investment made by Freddie Mac. Such a mechanism is an anathema to community associations and to their current insurers.

After several years of study and analysis, CAI's Insurance and Risk Management Committee believes that a reasonable compromise can be found in the naming of an insurance trustee for property policies held by condominiums, cooperatives, and planned communities that insure on a blanket basis. Such trustees are currently required in certain states and in certain CC&Rs and can be charged with and expected to adjust any loss in accordance with the CC&Rs of the particular association. CAI endorses and supports the concept that an insurance trustee be named for each association. In most circumstances, that trustee can be the Board of Directors or Managers itself. When the loss exceeds 10% of the insurable replacement cost or \$1,000,000, whichever is greater, the association must select an independent trustee.

CAI therefore urges the secondary mortgage market to consider naming an insurance trustee as a mechanism that appropriately protects its interests while also providing community associations with the control that is responsive to their interests. Such a mechanism is viewed as likely to be acceptable to the insurance industry segments that are involved with community associations and, thus, should facilitate the continued availability of insurance to all residential community associations. CAI encourages members of the insurance industry to support and cooperate with this approach to solve a mutual problem.

CAI further recommends to the insurance industry that the cost of this insurance trustee clause be an extension of coverage as long as the community association does not use a public adjuster. CAI also

recommends that the insurance trustee have a meaningful role in property reconstruction and that any fees charged be capped at some reasonable amount. CAI also volunteers its assistance and expertise to the development of appropriate policy language to achieve this goal and to persuade insurers to use and accept such an endorsement.

**Approved by the Insurance & Risk Management Professionals Committee, May 3, 2000**

**Amended and approved by the Government & Public Affairs Council (with instructions that staff make appropriate grammatical, stylistic or other non-substantive changes to the policy subsequent to action by the Board of Trustees), May 3, 2000**

**Approved by the Board of Trustees (with the understanding that staff will make appropriate grammatical, stylistic or other non-substantive changes to the policy), May 6, 2000**

# LIABILITY OF COMMUNITY ASSOCIATION VOLUNTEERS

## Policy

*Community Associations Institute (CAI) supports legislative protections against unwarranted exposure to liability for volunteers serving as members of a community association board of directors or committee, to enable them to make responsible judgments without fear of personal loss interfering with their judgment or decision-making process. CAI further supports indemnification of community association volunteer directors and committee members and the provision of directors and officer's insurance coverage as a common expense.*

### Introduction

Community associations are unable to operate without effective leadership. That leadership is supplied, in most cases, by volunteer members of the association who are elected to serve on the board of directors and committees. Needless to say, such persons place themselves in extraordinarily responsible and difficult positions, ones in which they endeavor to act for the benefit of the other members of the community and for the community as a whole.

Frequently, the actions which are, or should, be taken for the maximum protection of, and improvement to, the community will be unsatisfactory to other members, and thus may generate a negative response from one or more members. Fear of reprisal in such instances can limit a director's willingness to act appropriately. Thus, it is in the best interests of the community association to encourage any mechanism which will allow volunteer directors and committee members within common interest communities to act with the highest measure of responsibility and objectivity. Such mechanisms include protection which can be afforded by association governing documents, by insurance programs, and by the law.

It is not the intent of CAI that protection be provided to those volunteer directors and committee members whose acts or omissions are willful, wanton or grossly negligent.

### Background

Traditionally, members of the boards of directors serve at the pleasure of the members of the association, and without compensation. These volunteers give of their personal time and energies frequently, at personal financial expense and exposure of their personal assets to claims, for the betterment of the members and proper governance of the association as a whole.

The defense of claims against volunteer directors and committee members merely spreads the cost of any defense and resulting damages to all members of the association. Additionally, many associations have elected to provide to the association and its volunteer directors and committee members the protection afforded by a directors and officers liability policy. In recognition of the weaknesses and inconsistencies of many such policy forms, CAI, in conjunction with certain insurance carriers, has developed a broad and responsive directors and officers liability insurance program for community associations.

In recent years, various legislative bodies have recognized the potential damage to the "volunteer system" in their respective states and, indeed, nationally by the failure to afford volunteers, who discharge their duties in good faith for the greater good of the community, some effective form of immunity. Thus, many

state legislatures, as well as the federal government, have sought to provide protection through statutory immunities from damage judgments against such volunteer directors and committee members in situations where their acts or omissions do not constitute gross negligence, illegal, willful or wanton misconduct, and are not activities outside the realm of the association's purposes, functions and duties or the scope of the directors' or committee members' duties.

**Adopted by the Board of Trustees, April 11, 1987**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

**Amended and Approved by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# **LIMITED LIEN PRIORITY FOR COMMUNITY ASSOCIATION ASSESSMENTS**

## **Policy**

- 1. Community Associations Institute (CAI) believes community associations should be provided with a six-month assessment lien priority over the lien of a first mortgage or deed of trust.**
- 2. This should apply only to monthly or periodic common expense assessments made by an association pursuant to an annual operating budget that would have become due in the absence of acceleration together with reasonable attorneys' fees to collect this amount, and not to fines, penalties, late charges or special assessments imposed by the association**

**CAI also supports modification of any laws or secondary mortgage market guidelines restricting or discouraging lending institutions from making loans that are subject to the community association assessment lien priority.**

### **Background**

Throughout the United States, community associations with statutory or covenanted rights to assess their members for the insurance, maintenance, management or upkeep of property operated for the common benefit and enjoyment of their members have been bearing an ever-increasing burden of expenses and obligations historically paid for and performed by units of local governments.

While liens for real estate taxes and other governmental charges against a unit have priority over a first mortgage or deed of trust, absent legislative authorization, community housing association assessments have no such priority, even though the association serves a quasi-governmental function and the association continues to preserve the value of the lender's mortgage security by maintaining and insuring the building(s).

In the absence of an association assessment lien priority, non-defaulting unit owners are forced to pay for the maintenance and upkeep of units being held by foreclosing lenders. Aside from the obvious unfairness of this situation, severe hardships are thereby imposed upon non-defaulting unit owners, many of whom are already budgeted at a high percentage of their take home pay toward the cost of shelter.

In areas of the economy where multiple defaults are not uncommon, the resulting budget increases and/or special assessments community associations are compelled to make upon their non-defaulting unit owners to cover the shortfall caused by the defaulting owners has, in turn, pushed a number of such unit owners into default.

Lenders holding mortgages on both defaulting and non-defaulting units have a vested interest in insuring that associations have the wherewithal to continue to maintain the common and shared areas of developments during foreclosure proceedings as the provision of insurance, maintenance and security services is essential to the preservation of the value of their mortgage security interests.

Recognizing the hardships and dangers inherent in this situation, while being at the same time cognizant of the need to protect the integrity of the mortgage lending process, the National Conference of Commissioners on Uniform State Laws has provided for a limited six-month association lien priority over

the lien of a first mortgage or deed of trust in its Uniform Condominium Act and related Acts. This six month lien priority was provided with the express consent of advisors to the Conference from the Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

**Adopted by the Executive Committee, April 10, 1983**

**Amended By the Board of Trustees, October 7, 1983**

**Reviewed by the Public Policy Committee, October 6, 1993**

**Reaffirmed by the Board of Trustees, October 9, 1993**

# LOCAL TAXATION AND PUBLIC SERVICES FOR COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) supports the following policies:*

- 1. Property taxes imposed on homeowners of community association housing should be imposed on the same terms and conditions as those imposed on other homeowners. Separate assessment and taxation of the common property of a community association is unjust double taxation.*
- 2. The provision of public services to homeowners in community associations should be equal to services provided to all other homeowners. Otherwise, (a) public service providers should compensate community association homeowners for the cost of services not provided or, (b) Congress and the state legislatures should permit homeowners to deduct that portion of their community association assessments properly attributable to the association's performance of public functions, or to receive a credit equal to that amount.*

## Background

Throughout the United States, community associations with statutory or covenanted rights to assess their members for the maintenance, management or upkeep of property operated for the common benefit and enjoyment of their members have been bearing an ever-increasing burden of expenses and obligations historically paid for and performed by units of local governments.

The unique character of the community association form of ownership has frequently resulted in the value of common area improvements being improperly assessed and taxed twice: first to the community association and second to the individual association unit owners whose unit values reflect their exclusive right, together with the other members of their association, to make use of recreational buildings, swimming pools, tennis courts and similar common-area improvements.

Newly created community associations are increasingly required to provide their members with what have historically been considered "municipal" services. Association members must then typically pay the same local taxes as other neighboring homeowners even though trash collection, road and sidewalks maintenance and repair, street lighting, disposal of sewage, storm, flood and erosion control systems, shade and ornamental tree maintenance, security patrols for crime, disorder and public safety and other forms of public services are not made available to them.

Notwithstanding the obvious privatization of public services, community association members are doubly disadvantaged by not being able to deduct the portion of their association maintenance assessments attributable to public functions from their income for income tax purposes, as they can for municipal taxes.

There should be recognition that, apart from the homes themselves, common property in condominium and homeowner association developments has no value or, at best, a nominal value for property tax purposes. Since the title dedication of that property is to the exclusive benefit of the association homes, the value of the homes includes the value of the open space and improvements. Thus, any portion of the services provided for private benefit – such as maintenance, insurance and replacement of private buildings or portions of buildings occupied exclusively by members of the association, recreational facilities whose use is restricted to members of the association, and maintenance of restricted grounds and

accessory support areas such as parking lots and garages restricted to members of the associations should be excluded.

**Adopted by the Board of Trustees, October 29, 1988**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

**Amended by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# **PRIVATE PROPERTY PROTECTION**

## **Policy**

*Community Associations Institute (CAI) supports protections that enable property owners to challenge and resolve efforts to take common or private property. CAI opposes legislative or judicial actions that would limit or restrict the ability and rights of community associations to maintain control over association common property.*

### **Background**

The U.S. Supreme Court has addressed the issue of the Takings Clause of the Fifth Amendment of the U.S. Constitution through several court cases by proclaiming a two-part test. The test's first prong is when a court must determine whether a governmental regulation substantially advances a legitimate state interest. The second prong is where a court must determine whether the government regulation has deprived the property owner of all economically viable use of his property. The Supreme Court has adopted and urges the use of this test when determining cases of private property protection. The Takings Clause of the Fifth Amendment states, "Nor shall private property be taken for public use, without just compensation." Protection of private property rights embodies an essential part of our constitutional form of government.

CAI recognizes the need for homeowners and community associations to rely on the standard handed down by the Supreme Court in private property disputes. CAI opposes legislative and judicial actions that would limit or restrict community associations' right or ability to maintain control over association common property.

**Adopted by the Board of Trustees, October 25, 1997**

**Approved by the Government & Public Affairs Committee, October 17, 2001**

**Approved by the Board of Trustees, May 3, 2002**

# QUALITY CONSTRUCTION AND RIGHTS OF ASSOCIATIONS AND BUILDERS IN THE EVENT OF DEFECTS

## Policy

*Community Associations Institute (CAI) believes that builders and construction professionals should deliver a product made with quality workmanship and free from defects. CAI also recognizes that homeowners must be reasonable in their expectations of the quality of construction of their homes. CAI supports legislation and regulations concerning construction defects that adequately balance the rights and responsibilities of community associations, their boards and homeowners and of builders and construction professionals, in the following ways:*

### *The Opportunity to Cure*

*Builders and construction professionals should be given an opportunity to present a reasonable plan to repair defective construction, and an association must have the opportunity to accept or reject the plan. Nothing should preclude an association from taking emergency measures to correct any defect that poses an immediate health or safety risk.*

### *Homeowner Involvement*

*Like any other aspect of community association operations, an open communications process that assures the flow of information among the board, committees, and the individual homeowners must be established. If the community association brings a claim for construction defects, it has the responsibility to communicate to homeowners the nature of the defects, the remedies sought, the timing of the claims process, and the anticipated fees and expenses to be incurred.*

### *Alternative Dispute Resolution*

*Either party should be allowed to request use of an alternative dispute resolution (ADR) method, as long as it is performed in a reasonable timeframe and under terms that satisfy all parties. CAI recognizes the need for and supports the use of fair ADR mechanisms to resolve disputes arising in community associations in appropriate cases.*

### *Right to Recovery*

*To enable the association and its homeowners to be in the position they would have been if no defects had existed, the association should have the right to make claims for defects affecting common elements or other components for which the association has repair or maintenance responsibilities, and to utilize alternate dispute resolution and opportunities to cure. Should an association take emergency measures to correct a defect that poses an immediate health or safety risk, such action should not preclude an association's right to recovery, provided that evidence of the defect is preserved. The prevailing party should be allowed to recover costs and attorney's fees.*

### *The Association's Right to Bring Claims*

*When the association has the right to make claims (except during the period of developer control), the board of directors, as the elected representative body of all homeowners, should be allowed to make claims without homeowner approval. An individual homeowner should not have the right to make a claim for defects in common elements, but should have the right to make a claim for defects in his or her unit or personal property. Developers, builders and construction professionals should not be able to avoid their obligation to remedy defects by maintaining control of the association beyond the time permitted by law to make claims for defects. CAI opposes legislative incentives that would encourage the use of less than acceptable repairs to defects.*

## Background

CAI understands that most builders and construction professionals provide quality workmanship and deliver homes free from defects. Still, there are cases where defects exist.

CAI believes that the best way to minimize construction defects is to improve oversight, inspections and other quality control processes during the initial planning and building phases. Nonetheless, when defects are discovered, associations should allow builders and construction professional's reasonable time to repair the defect prior to filing a lawsuit. Litigation should be the last resort.

In many states, homebuilders, construction professionals, trial attorneys and others have introduced legislation to change the way associations may pursue construction defect claims against a builder or developer. Some of these bills have also added procedural requirements with which a community association must comply prior to filing a lawsuit relative to construction defects, including consent from a majority of owners before filing suit. Proponents of such proposals claim that these types of provisions ensure that only meritorious lawsuits are filed. However, CAI contends that it is the fiduciary duty of boards of directors to make decisions about maintenance of property as provided in the governing documents, including decisions to file suit.

Recognizing that CAI's diverse membership is affected in different ways by construction defect issues, this policy attempts to balance the interests and needs of our members and to provide an equitable approach to construction defect legislation and regulations. CAI believes advocates from either perspective must balance their approach and embrace the best interests of community associations as a whole.

**Approved by the Government & Public Affairs Committee, October 29, 2003**

**Adopted by the Board of Trustees, October 31, 2003**

# REASONABLE OCCUPANCY STANDARDS

## Policy

*Community Associations Institute (CAI) supports the right of community associations to establish reasonable occupancy standards. CAI opposes the implementation and enforcement of the Federal Fair Housing Act in a way that treats reasonable occupancy standards as discrimination on the basis of familial status. Under no circumstances should an occupancy standard of two persons per bedroom plus infants constitute discrimination under the Federal Fair Housing Amendments Act.*

## Background

The Federal Fair Housing Amendments Act (“FHAA”) prohibits discrimination on the basis of familial status. Familial status discrimination is discrimination against families with minor children. When adopting regulations implementing the FHAA, the Department of Housing and Urban Development (“HUD”) stated:

*[T]here is no basis to conclude that Congress intended that an owner or manager of dwellings would be unable in any way to restrict the number of occupants who could reside in a dwelling. Thus, the Department believes that in appropriate circumstances, owners and managers may develop and implement reasonable occupancy requirements based on factors such as the number and size of sleeping areas or bedrooms and the overall size of the dwelling unit.*

Despite these statements, HUD and others have sought to expand the impact of the FHAA to prohibit reasonable occupancy standards. In some cases, occupancy restrictions of five persons were challenged on the basis of familial status discrimination. This position is directly contrary to HUD’s initial position that reasonable occupancy requirements are valid.

As a result of the position of HUD and others, individuals are unable to determine which occupancy restrictions will be permitted. The Ninth Circuit Court of Appeals in *Pfaff v. United States* stated:

*We are most troubled that in this especially complex area of the law, in which private individuals may be subject to heavy-handed enforcement proceedings, the Secretary [of HUD] has done so little to enlighten the public as to what she expects of them. HUD should spare a thought for the law-abiding property owner, because the familial status amendment presents particularly difficult questions of compliance...If HUD finds the line-drawing questions difficult, imagine the position of [the law abiding property owner]. . . . We also express our hope that HUD will avoid such incidents in the future by providing the public with guidance adequate to enable honest people to comply with the 1988 Fair Housing Amendments Act. [Citations and footnotes omitted.]*

Like the law abiding property owner, community associations also have difficulty determining what occupancy restrictions are permitted under the FHAA. As a result, Congress has considered legislation that would reiterate the ability of owners and managers of property to impose reasonable occupancy restrictions. In addition, the legislation would expressly provide that under no circumstances should an occupancy standard of two persons per bedroom plus infants constitute discrimination under the FHAA. CAI believes that this legislation, if adopted, would protect the interests of families while allowing community associations to regulate reasonably the use of residences and common property.

**Approved by the Public Policy Committee, April 22, 1998**  
**Amended and Approved by the Public Affairs Council, April 22, 1998**  
**Adopted by the Board of Trustees, April 25, 1998**

# RENTERS IN COMMUNITY ASSOCIATIONS

## Policy

*Community Associations Institute (CAI) supports a balanced approach to the treatment of tenants in community associations, while protecting traditional property rights, including reasonable regulation of transient occupancy, tenant compliance with association standards, and the integration of tenants into the community on an equal basis.*

### Background

The presence of renters in investor-owned units in primary residential community association developments is a very sensitive, complex and controversial issue. Some feel that non-owners will not respect association rules and regulations or exercise the same degree of care in use of community property. Moreover, as the proportion of renters to owner occupants increases, there is concern that the property values of the community will be adversely affected and that the available pool of talent to draw upon for participation in the governance process will be diminished to unacceptable levels.

The following constraints on rental housing within association communities should be considered:

- Including within the legal documents a requirement for a minimum lease period to limit the use of units on a transitory rental basis in a primary residential development (non-resort).
- Requiring investor-owners to use standard recommended association-developed lease terms which incorporate provisions setting forth the responsibilities of both the investor-owner and the tenant to comply with the legal documents and rules of the association, and which details the rights of the association to bring eviction proceedings for recurrent or substantial noncompliance with such rules and regulations after notice to the landlord with the opportunity to cure the default.
- Establishing as a policy of the association that tenants will be treated as equals within the community and afforded every opportunity to function as productive, contributing members of the community, including receiving information materials such as newsletters, the opportunity to attend meetings of the association and its committees and the opportunity to serve on such committees.
- Requiring owners to notify the association when the tenancy is changed and provide the association with the name of the new tenants and their other occupants and a receipt from the tenant of the documents, rules and other information the association may reasonably require, necessary to the operation of the association.

The use of the community association housing for rental occupancy is both natural and inevitable as a result of the normal process of sales and re-sales that occur in any form of housing. Owners, as a result of individual investment objectives, employment changes or personal preference make individual determinations as to the desirability of retaining unit ownership for purposes of rental housing. The challenge to associations is to balance the need for establishing reasonable limits on the proportion of rental units within the community and controls on the tenants' behavior while, on the other hand, not adversely affecting the owner's property rights and meeting the objectives for participation and involvement.

**Adopted by the Board of Trustees, April 8, 1983**

**Amended by the Public Policy Committee, October 6, 1993**  
**Approved by the Board of Trustees, October 9, 1993**

# **RULES DEVELOPMENT AND ENFORCEMENT**

## **Policy**

*Community Associations Institute (CAI) supports legally sound, fair and equitable rules development and enforcement procedures in community associations, according to the following principles:*

- 1) All rules and regulations should be based upon proper legal authority as contained in applicable legislation, court precedent and the governing documents of the community.*
- 2) Rules and regulations should be adopted solely to serve legitimate needs of the community, taking into consideration the personal and property interests of the homeowners.*
- 3) Homeowners should be afforded the opportunity to review and comment upon proposed rules and regulations prior to their adoption by the governing body and duly adopted rules and regulations should be regularly communicated in writing to members and residents.*
- 4) The community's enforcement process should make adequate accommodation for due process requirements.*
- 5) The governing body should enforce all rules and regulations in a consistent, even-handed manner with common sense and compassion*

## **Background**

The community association form of housing results in unique legal and social inter-dependence among property owners and residents. The characteristics of shared property ownership and mutual governing responsibilities create the need for rules and regulations dealing with both property rights and standards of personal conduct. The long-term operation and social success of a community association is heavily dependent upon a rules-making and rules-enforcement process which operates in the best interest of the community, enjoys the consent and support of community members and ensures fair and consistent treatment of all members. The rules enforcement process, as with governments, must be open in all respects and the rules process must be soundly based on legal authority and legal principles and practices as guided both by statute and court decisions.

**Adopted by the Board of Trustees, April 8, 1983**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

# **SUPPORT FOR THE UNIFORM ACTS**

## **Policy**

*Community Associations Institute (CAI) supports and recommends consideration and adoption of the one or more of the Uniform Community Association Acts by all states. In those states where it is not appropriate, practical or possible to adopt one or more of these uniform acts in their entirety, CAI supports and recommends consideration of appropriate portions of these laws.*

### **Background**

Since the original condominium statutes in the United States were drafted in the 1960s, we have had more than 20 years of experience in the development and operation of common-interest communities. This experience has shown that the early statutes, although thoughtfully drafted and the product of the best thought of their time, did not deal adequately and completely with many of the issues that we encounter in the development and operation of common-interest communities.

CAI recognizes that, in many states, adoption of Uniform Community Associations Acts in their entirety or in part is not possible because of other considerations of state law and the need for practical political compromise in the legislative process.

CAI recognizes that, in many states it is the widely held belief that while condominiums ought to be regulated by a comprehensive statutory scheme, other forms of community associations, such as cooperatives and planned unit developments (PUDs), should be governed by other statutory regulations and the common law.

CAI recognizes and believes that the individual CAI chapters and legislative action committees in various states are in the best position to determine what legislation can be passed in those states. As a result, CAI provides substantial latitude to them to determine which legislation to support in their states, as long as it is not inconsistent with other CAI policies.

**Adopted by the Board of Trustees, October 9, 1993**

# TELECOMMUNICATIONS

## Policy

*Community Associations Institute (CAI) supports the growth of competition in the telecommunications and video programming marketplace among telephone, cable, satellite, television broadcast, wireless cable, and other providers so community association residents have access to advanced, innovative services. However, CAI opposes governmental regulation that would require community associations to permit telecommunications providers, video programming providers or individual association residents to install equipment or wiring on common property without prior association approval and control. CAI also opposes any federal or state initiatives that would limit a community association's ability to enter into telecommunications or video programming contracts.*

### Background

Community associations support a fully competitive telecommunications and video programming marketplace. By free and open competition, community association residents, acting through their elected boards, are able to select the most cost effective and innovative providers to serve their communities.

There have been many recent federal and state efforts to increase competition between franchise cable and newer telecommunications and video programming providers. Some of these efforts will require community associations to permit any individual association resident or service provider to install equipment or wiring on common property. If adopted, these proposals would violate the Fifth Amendment of the U.S. Constitution, damage common property, and create conflicts among association residents. CAI opposes any such forced entry legislative or regulatory proposals.

Some governmental entities have also proposed limitations on the rights of community associations to enter into certain telecommunications and video programming contracts. Limitations on these rights would inhibit the ability of community associations to negotiate for the most competitive and cost effective services for their residents. Therefore, CAI opposes any initiatives that would limit community association contract rights.

As competition in the telecommunications and video programming marketplace continues to increase, new technologies will emerge that increase access to services without infringing on community association common property or contract rights. Federal and state governments should support initiatives that would promote the development of such technologies.

**Approved by the Public Policy Committee, April 22, 1998**

**Approved by the Public Affairs Council, April 22, 1998**

**Adopted by the Board of Trustees, April 25, 1998**

# **TRANSITION OF COMMUNITY ASSOCIATION CONTROL FROM THE DEVELOPER TO HOMEOWNERS**

## **Policy**

*Community Associations Institute (CAI) recognizes that successful transition is the responsibility of the developer. This can be accomplished through (1) continuing training and education programs for homeowners, (2) homeowner participation and involvement in association governance, (3) ongoing communication with residents, and (4) maintenance of the association as a legal entity, with its own separate records, funds and operations.*

### **Background**

In the life of every community association there is a time at which the control of the association is transferred from the developer to the owners. At the outset, the developer creates the association and initiates association operations and governance. At the conclusion, owners are in complete control of the association and have full responsibility for continued governance. A smooth and productive transition is one in which the interests of both the developer and the owners, collectively, are served to assure successful completion of the development and sales process, while at the same time assuring that the association operation functions effectively and successfully with appropriate leadership throughout. Successful transition takes careful planning and necessarily involves training and education of the owners so they are prepared to assume this responsibility as the developer hands it over to them.

CAI recommends several techniques which the developer should employ:

- Establish training programs early in the sales process to educate owners about their rights and responsibilities and the principles of community association governance.
- Provide opportunities for homeowners to have meaningful participation and involvement in the governance of the association well in advance of the actual transfer of majority control. Conduct open and continuous communication with residents to make them aware of issues and concerns relating to the governance of their association.
- From the inception, operate the association as a legal entity, with its own records, funds and operations, distinctly separate from the activities of the developer, and make such records readily available to the association and its members.
- Wherever public services funded through homeowner property taxation is not available to owners in community association developments, some system of credits, reimbursement or pro rata reduction in the tax imposed upon owners in such situations should be provided.

**Adopted by CAI Board of Trustees, April 8, 1983**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

# **VETERANS ADMINISTRATION GUARANTEERING LOANS SECURED BY SHARES OF STOCK IN A HOUSING COOPERATIVE**

## **Policy**

*Community Associations Institute (CAI) supports and urges that Congress amend 38 U.S.C. 1810 to add a new paragraph (a) (8) to read, "To purchase a unit in a housing cooperative by purchasing interest in that cooperative, if such development or project is approved by the Administrator under criteria which the Administrator shall prescribe in regulations."*

*The above language is consistent with the language authorizing the Veterans Administration (VA) to guarantee loans for a condominium housing unit. Therefore, the above language will extend the same veterans benefits to a person who chooses a cooperative housing unit.*

### **Background**

The VA has assisted many former servicemen and servicewomen buy a home by guaranteeing the loan on the home. The Federal legislation for Veterans Benefits provides, at 38 U.S.C. et seq., and particularly at paragraph 1810 of the guarantees provisions, for homes. The loans are guaranteed for the purposes of purchasing a dwelling, farm, farm residence or a unit in a condominium, and to improve a dwelling or farm residence.

Therefore, a veteran can buy a single-family detached home, townhouse, farm residence or condominium unit and have the loan guaranteed. However, the veteran is denied veterans benefits if he or she chooses to purchase a cooperative housing unit. FHA insures mortgages secured by shares of stock in a housing cooperative under § 203 (n) of the National Housing Act. The Federal Home Loan Bank Board permits Federally Chartered Savings and Loan Associations to lend funds for the purchase of stock in a housing cooperative. The Federal National Mortgage Association, in its Charter by Congress, is authorized to purchase loans secured by stock in a housing cooperative.

**Adopted by the Board of Trustees, April 1, 1984**

**Amended by the Public Policy Committee, October 6, 1993**

**Approved by the Board of Trustees, October 9, 1993**

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