

Public Policies

Public Policies



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2011 Public Policies of Community Associations Institute

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6402 Arlington Boulevard, Suite 500

Falls Church, VA 22042

Ph: 703.970.9220

Web site: www.caionline.org

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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 (703.970.9220), fax (703.970.9558) or e-mail (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

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 LICENSING POLICY

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

The overall appearance of any common interest community has an economic impact on property values. When communities look old, poorly maintained or without a unified scheme in architecture, color or landscaping, property values of individual owners' properties as well as the whole community suffer. When aesthetics of any one development look clean, well maintained, properly proportioned and part of an overall design or compatible color scheme, owner expectations are met and property values are sustained and improved. In fact, independent studies have shown that real estate values generally appreciate in a common interest community when compared with properties not located within such a community.

In order to maintain an attractive and valuable “curbside appeal,” common interest communities must control aesthetic interests of the development. Aesthetic control extends to the design and maintenance of all improvements existing on the footprint of the development, including, but not limited to: siding, fences, landscaping, lighting and even buildings housing units as well as lots, where applicable, all of which are visible throughout the community.

Governing documents obligate the association to “maintain” the property. Sometimes governing documents also expressly provide aesthetic controls within the declaration, restricting fence styles or paint color choices. Where governing documents are generalized or even silent on aesthetics, many communities craft policy resolutions to address details and procedures relating to architecture, landscaping and other aesthetic interests. When communities fail to construct or consistently enforce aesthetic policy, the result is usually property that lacks visual coherence due to poorly contemplated and executed aesthetic schemes. The results can be devastating for owner lifestyle and property value.

RECOMMENDATION:

CAI strongly supports community-crafted aesthetic controls, in accordance with governing documents or supplemental thereto, and opposes any and all attempts by federal, state and local government to interfere, ignore or negate the contractual obligation between associations and its members permitting and requiring the association to maintain aesthetics that meet lifestyle expectations of the collective ownership, match a standard of cleanliness and maintenance and are part of a larger, unified aesthetic scheme. Architectural or design review committees should include professionals or seek advice from CAI business partners on a regular basis.

Adopted by the Board of Trustees, October 25, 1997

Amended by the Government and Public Affairs Committee on March 25, 2011

Adopted by the Board of Trustees, May 4, 2011

ALTERNATIVE DISPUTE RESOLUTION

Policy

Alternative Dispute Resolution (“ADR”) is statutorily required in many states. Even where ADR is not required by law, Community Associations Institute (CAI) advocates that communities adopt policy resolutions to offer ADR for housing-related disputes between individual unit owners as well as between owners and the Association.

Alternative Dispute Resolution (ADR) is viewed as a preferable option to litigation for the settling of housing-related disputes within a community. Subject to jurisdictional differences, qualified housing disputes may constitute everything from interpretation and enforcement of the governing documents and rules, allegations of improper maintenance or infringement of owners’ rights. Communities may choose to exempt from ADR those arguments between owners/and or residents that are wholly unrelated to the property or its administration. Frequently, ADR is also not required in connection with collection of delinquent assessments or general interpretation of governing documents where a complainant owner is suffering no particular, individualized harm.

There are several different procedures that fall under the definition of ADR, from mediation to court-mandated, binding arbitration. Even where statutes generally require ADR and/or governing documents establish some form of ADR, most boards of directors (“boards”) have wide discretion to choose precisely how to implement the ADR within their particular community. Some boards choose mediation or arbitration and others have committees that conduct a hearing process. Some communities rely on programs offered through the municipality or through a private entity, such as the Better Business Bureau. Determining the method of ADR may depend on the issues or parties involved or in the resources readily available to a particular community.

RECOMMENDATION

Recognizing that no one community is the same and with a genuine interest in making the ADR procedure accessible to all owners, CAI encourages community association board members to design ADR procedures most appropriate for the particular community’s needs towards resolving disputes, subject only to the law of the state and requirements contained within the community’s governing documents.

CAI advocates that communities adopt policy resolutions pertaining to ADR. Boards may craft resolutions that further elaborate on those ADR procedures already established by statute or the governing documents to lend further guidance and transparency to the ADR process. Several methods of ADR may be offered, such as mediation or binding or non-binding arbitration. Communities are encouraged to establish ADR committees that are independent from the board and utilize only neutral parties for conducting mediation or arbitration. Always mindful of due process considerations, the policies should provide for a reasonable period of time within which to resolve disputes and for ADR sessions to be held in mutually convenient locations for all parties. If the method of ADR selected requires payment of a fee, the resolution should address how the costs will be allocated between the parties and in all cases, the costs should not be prohibitive for owners to meaningfully participate in the procedure. Finally, CAI recommends that resolutions clearly distinguish any matters that typically would not be considered for ADR.

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

Adopted by the Board of Trustees, March, 2011

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 LICENSING POLICY AND MODEL LEGISLATION

Policy

INTRODUCTION

Community Associations Institute (CAI) encourages the self-regulation of the community management profession through professional certification and designation programs developed by industry professionals for the profession.

CAI endorsed credentials for individual community managers include:

- Certified Manager of Community Associations® (CMCA) administered by the National Board of Certification for Community Association Managers (NBC-CAM)
- Association Management Specialist® (AMS)
- Professional Community Association Manager® (PCAM)

CAI endorsed accreditation for management companies includes:

- Accredited Association Management Company® (AAMC)

In states that either propose or begin discussions related to mandatory regulation of community association managers, CAI will support a regulatory system that includes the following:

- Adequate protections for homeowners living in community associations;
- Mandatory education and testing on fundamental knowledge of community association management and operations;
- Definition and enforcement of standards of professional and ethical conduct; and,
- Appropriate insurance requirements.

CAI will support a regulatory system that provides legal recognition of the community association management profession and provides assurances to the public that individuals representing themselves as being involved in the profession have met minimum qualifications for education and/or experience as a community association manager.

CAI *prefers* the licensure of individual community association manager practitioners as opposed to licensure of management companies.

The CAI Manager Licensing Public Policy and Model Legislation propose two acceptable models: licensure under a professional regulatory department within the state; or, privatization of the licensure program.

I. COMPONENTS OF MODEL LEGISLATION – LICENSURE UNDER A PROFESSIONAL REGULATORY DEPARTMENT

To ensure adequate consumer protection and appropriate representation of the community association management profession and to obtain CAI support for the adoption of legislation regulating community association managers, the following provisions must be included in the legislation.

A. DEFINITIONS

“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. Sample definitions include:
 - An individual who, in an advisory capacity, for compensation or in expectation of compensation, whether acting as an independent contractor to, employee of, general manager or executive director of, or agent of a common interest development, provides management or financial services, negotiates an agreement to provide management or financial services, or represents himself or herself to act in the capacity of providing management or financial services to a common interest development.
 - An individual who may be a partner in a partnership in the capacity to advise and direct the activity of a licensee, or who acts as a principal on behalf of a company that provides management or financial services to a common interest development.
 - An individual operating under a fictitious business name that provides management or financial services to a common interest development.
 - An individual who agrees to provide management or financial services to a common interest development.
 - A supervisor of an individual who provides management or financial services to a common interest development.

“Board”

- Board means the Community Association Manager Regulatory Board.

B. Qualifications

- a. Require an objective examination that tests community association management knowledge.
- b. If community association managers are to be regulated, they must be tested on their knowledge of community association management, not a different professions' body of knowledge or an examination based solely on state-specific law; the state shall recognize Certified Manager of Community Associations® (CMCA) examination as the objective examination.
- c. For states that want to test state-specific law, a separate section can be added to the CMCA examination.
- d. Require relevant community association management education as a prerequisite to sit for the examination; this educational requirement will be CAI’s M-100: The Essentials of Community Association Management course.

C. Require Relevant Continuing Education Requirements

- a. Continuing education must be mandated.
- b. 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).
- c. At least some portion of the continuing education must cover state-specific law governing the operation of community associations.

D. Standards of Professional and Ethical Conduct and Disciplinary Authority

- a. Community association managers must be required to follow professional and ethical standards.

- b. The Standards of Professional Conduct created by the National Board of Certification for Community Association Managers (NBC-CAM) shall be used as the foundation for a state's standards.
- c. There must be some form of enforcement of the ethical standards. Due process provisions must also be present in the provision.

E. Regulatory Board

- a. A governance board shall be appointed to oversee the regulatory program (unless privatization model is utilized).
- b. The legislation shall create a governance board whose members are appointed by the Governor with the specific role of developing and interpreting the regulations of the community association manager regulatory program.
- c. The governance board must consist primarily of community association managers.
- d. Any community association manager regulatory program should be administered by an entity or state department that regulates professions and/or occupations.
- e. The Real Estate Commission of a particular state should not govern the community association manager regulatory program.

Responsibility of the Board shall include:

- a. Promulgation and interpretation of all rules and regulations reasonable and necessary to implement the provisions of the legislation;
- b. Review, approval and rejections of applications for licensure, renewal and reinstatement;
- c. Issuance of licenses;
- d. Denial, suspension, revocation or other discipline of a licensee;
- e. Disciplinary authority, rule promulgation, interpretation and enforcement;
- f. Determination of fees associated with the licensure program; and,
- g. Meet on a regular basis to provide proper rule promulgation and interpretation.

F. Grandfather Provisions

A grandfather provision permits 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 certain criteria are met. Criteria should include recognition of experience or professional credentials.

- Hold an active Professional Community Association Manager ® (PCAM) designation from Community Associations Institute (CAI).
- Hold an active Association Management Specialist® (AMS) from Community Associations Institute (CAI).
- Hold an active Certified Manager of Community Associations® (CMCA) from National Board of Certification of Community Association Managers (NBC-CAM).
- Has successfully completed CAI's M:100 Course: Essentials of Community Association Management and have at least five years of experience as a community association manager, with at least 12 months of the experience immediately preceding application for the license.

G. Exemptions from Licensure

Except as otherwise provided, licensure requirements shall not apply to:

- a. A licensed practicing attorney acting solely as an incident to the practice of law;

- b. A licensed practicing certified public accountant acting solely as an incident to the practice of accounting;
- c. Any person acting as a receiver, trustee in bankruptcy, administrator, executor or guardian acting under a court order or under the authority of a will or a trust instrument; or,
- d. A declarant.

H. Fidelity Bonds and Segregation of Accounts.

No licensee shall control, collect, have access to or disburse funds of a community association unless, at all times during which the licensee collects, has access to or disburses such funds, there is in effect, a fidelity bond complying with the provisions of this section.

a. The fidelity bond referred to in this section shall be written by an insurance company authorized to write such bonds in the state and except as provided by subsection (b) of this section and shall cover the licensee by either or both his management company or the community association client. The fidelity bond referred to in this section shall be written by an insurance company authorized to write such bonds and except as provided by subsection (b) of this section and shall cover the licensee by either or both the licensee's management company or the community association client. Optional coverage known as a crime insurance policy, where available and applicable, may be obtained by the licensee, the licensee's management company or the community association client

b. A licensee who provides community association management services for more than one community association shall maintain separate, segregated accounts for each community association. Such funds shall not, in any event, be commingled with the licensee's or firm's funds or with the funds of any other community association. The maintenance of such accounts by the licensee shall be custodial and such accounts shall be in the name of the respective community association.

I. Annual Report for Common Interest Development Communities (optional component to track community associations in the state).

The Board shall develop the regulations regarding the information required in the Annual Report and related fees. The declarant or common interest development community shall file an annual report in a form and at such time as prescribed by regulations of the Board. The filing of the annual report required by this section shall commence with the declarant when development of the association begins and through the life of the common interest development community.

II. PRIVATIZATION MODEL

Privatization model legislation shall include a definition of a community association manager, exemptions from licensure and name of the required professional credentials in order to do business as a community manager in the state. There will be no fees, no regulations and no government created oversight board. The Act will state that community association managers in the state must comply with one of the following:

- Hold an active Professional Community Association Manager ® (PCAM) designation from Community Associations Institute (CAI).
- Hold an active Association Management Specialist® (AMS) from Community Associations Institute (CAI).
- Hold an active Certified Manager of Community Associations® (CMCA) from National Board of Certification of Community Association Managers (NBC-CAM).

UNACCEPTABLE PROVISIONS

The following provisions have been deemed unacceptable provisions in legislation that regulates community association managers. In the event one or more provisions are present in the legislation, CAI will not support the legislation:

1. Registration of community association managers or community association management companies. Registration creates an official list of persons. Registration presumes the existence of the right to engage in activity and makes it illegal to practice in a regulated occupation without being registered. It does not assure the public of qualified practitioners.
2. 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.
3. 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.
4. Requirement that community association managers obtain a “real estate” license or obtain “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.
5. Allowing real estate brokers and agents to manage community associations without appropriate training, education and regulation.

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 – CMCA, sponsored by 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 additional/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.

The CMCA 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 Commission for Certifying Agencies (NCCA); required

adherence to CMCA Standards of Professional Conduct; enforcement of those Standards; and continuing education requirements. The CMCA program allows the state to have licensed professionals without requiring the 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.

CAI MANAGER CREDENTIALING/LICENSING PUBLIC POLICY ACTIVITY HISTORY

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

Amended by the Government & Public Affairs Committee, March 25, 2011

Adopted by the Board of Trustees, May 4, 2011

RIGHTS AND RESPONSIBILITIES FOR BETTER COMMUNITIES

POLICY

Every community has its own history, personality, attributes and challenges, but all associations share common characteristics and core principles. Good associations preserve the character of their communities, protect property values and meet the established expectations of property owners and homeowners. Great associations also cultivate a true sense of community, promote active homeowner involvement and create a culture of informed consensus. The principles below can serve as an important guidepost for board and committee members, community managers, homeowners and property owners and non-owner residents:

RECOMMENDATION

Homeowners have the right to:

1. A responsive and competent community association.
2. Honest, fair and respectful treatment by community leaders and managers.
3. Participate in governing the community association by attending meetings, serving on committees and standing for election.
4. Access appropriate association books and records.
5. Prudent expenditure of fees and other assessments.
6. Live in a community where the property is maintained according to established standards.
7. Fair treatment regarding financial and other association obligations, including the opportunity to discuss payment plans and options with the association before foreclosure is initiated.
8. Receive all documents that address rules and regulations governing the community association—if not prior to purchase and settlement by a real estate agent or attorney, then upon joining the community.
9. Appeal to appropriate community leaders those decisions affecting non-routine financial responsibilities or property rights.

Homeowners have the responsibility to:

1. Read and comply with the governing documents of the community.
2. Maintain their property according to established standards.
3. Treat association leaders honestly and with respect.

4. Vote in community elections and on other issues.
5. Pay association assessments and charges on time.
6. Contact association leaders or managers, if necessary, to discuss financial obligations and alternative payment arrangements.
7. Request reconsideration of material decisions that personally affect them.
8. Provide current contact information to association leaders or managers to help ensure they receive information from the community.
9. Ensure that those who reside on their property (e.g., tenants, relatives and friends) adhere to all rules and regulations.

Community leaders have the right to:

1. Expect owners and non-owner residents to meet their financial obligations to the community.
2. Expect residents to know and comply with the rules and regulations of the community and to stay informed by reading materials provided by the association.
3. Respectful and honest treatment from residents.
4. Conduct meetings in a positive and constructive atmosphere.
5. Receive support and constructive input from owners and non-owner residents.
6. Personal privacy at home and during leisure time in the community.
7. Take advantage of educational opportunities (e.g., publications, training workshops) that are directly related to their responsibilities, and as approved by the association.

Community leaders have the responsibility to:

1. Fulfill their fiduciary duties to the community and exercise discretion in a manner they reasonably believe to be in the best interests of the community.
2. Exercise sound business judgment and follow established management practices.
3. Balance the needs and obligations of the community as a whole with those of individual homeowners and residents.
4. Understand the association's governing documents and become educated with respect to applicable state and local laws, and to manage the community association accordingly.
5. Establish committees or use other methods to obtain input from owners and non-owner residents.
6. Conduct open, fair and well-publicized elections.
7. Welcome and educate new members of the community—owners and non-owner residents alike.

8. Encourage input from residents on issues affecting them personally and the community as a whole.
9. Encourage events that foster neighborliness and a sense of community.
10. Conduct business in a transparent manner. Only use executive sessions under circumstances permitted in the association's governing documents, permitted by local or state law or as necessary for the conduct of sensitive and/or confidential business matters.
11. Allow homeowners access to appropriate community records when requested.
12. Collect all monies due from owners and non-owner residents.
13. Devise appropriate and reasonable arrangements, when needed and as feasible, to facilitate the ability of individual homeowners to meet their financial obligations to the community.
14. Provide a process residents can use to appeal decisions affecting their non-routine financial responsibilities or property rights—where permitted by law and the association's governing documents.
15. Initiate foreclosure proceedings only as a measure of last resort.
16. Make covenants, conditions and restrictions as understandable as possible, adding clarifying "lay" language or supplementary materials when drafting or revising the documents.
17. Provide complete and timely disclosure of personal and financial conflicts of interest related to the actions of community leaders, e.g., officers, the board and committees. (Community associations may want to develop a code of ethics.)

Approved by the Government & Public Affairs Committee, September 20, 2011
Adopted by the Board of Trustees, October 13, 2011

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) encourages the creation and continuation of effective methods to ensure efficient, economic and successful association collection procedures. CAI opposes the enactment of overreaching governmental limitations on effective collection of assessments, fees and other charges of community associations. CAI supports laws that strengthen such collection methods, 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.

The financial viability of any community association ultimately depends on its ability to collect assessments to meet continuing expenses. Governing documents include language that each owner, by acceptance of deed or other conveyance of property, is deemed to covenant and agree to pay to the association the annual assessments. This obligation to pay assessments is vital to the community association's viability and integrity, and boards of directors ("boards") have a fiduciary obligation to ensure the timely collection of assessments. Boards use these assessments to maintain common areas, buildings and amenities, to support the overall administration of the association and to provide community services to owners. The overall health and welfare of the association is wholly dependant on timely collection of owners' assessments.

Where delinquencies are high in a community, the association suffers. Other owners are forced to pick up the financial shortfall and bear the burden, both in time and resources, in attempting to collect from delinquent owners. Additionally, high delinquencies in a community may conflict with federal lending criteria, thereby jeopardizing an owner's ability to secure financing with lenders or to attract new buyers. Further, communities that experience high delinquencies are typically unable to maintain healthy reserves for capital improvements and the physical appearance, soundness and integrity of the common elements. Community associations must be able to collect promptly and efficiently from delinquent owners in order to meet their budgetary obligations each month. The goal is to avoid expensive litigation and other collection expenses over a long period of time, and to minimize the burden of increased common expenses on remaining owners.

CAI opposes the intervention of federal, state or local governments, by statute, ordinance or regulation, in collection or oversight of collection of assessments from owners. Community associations are creations of contract. Any kind of governmental involvement in the collections of associations interferes with the contractual covenants and undermines the association as a private entity. Further, governmental interference, however minimal, may compromise the ability of community associations to successfully collect from delinquent owners in the most practical and efficient manner. Additional expenses and delays for the association may also result. Finally, CAI contends that individual associations, and not the government, are in the best position to manage their own communities. Self-management is consistent with the rights and responsibilities included within community association governing declarations as well as with the expectations of owners who purchased in a particular community.

RECOMMENDATION

While many states already require community associations to create and distribute a board-approved collection policy, such a requirement is not yet mandated in each state. To assist in compliance with regular collection procedures, CAI recommends that every association establish a collection policy

that is adopted by its board of directors, reviewed by the community association's attorney and distributed annually to its owners. The policy must be subject to the provisions of the governing documents and comply with all applicable laws of the jurisdiction. Whether or not the association has adopted a formal collection procedure, CAI recommends that no delinquency be foreclosed without an affirmative vote of the community association's governing board. This ensures fairness to all parties by requiring the board to be satisfied that foreclosure is justified.

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

Approved by the Board of Trustees, March, 2011

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 4th, 7th, 9th and 10th, 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, color, religion, sex, familial status, national origin or disability. Although sexual orientation has not been included in the federal Fair Housing Act at this time, seventeen states and some local ordinances do protect this status. CAI also supports the right of community associations to enforce their covenants, bylaws and rules, provided they do not illegally discriminate against any protected class.

CAI encourages fair and reasonable interpretations and administration of, or changes to, fair housing acts and related legislation and regulations.

In 1968, Congress adopted the Federal Fair Housing Act to prohibit discrimination based on race, color, religion, sex or national origin. In 1988, Congress amended the Act by adding handicap and familial status to the list of classes protected from discrimination. Almost all states have enacted similar or identical statutes. The 1988 law provides exceptions from familial discrimination claims for valid housing-for-older-persons communities. The Housing for Older Persons Act [HOPA] signed into law by President Clinton in 1995 amended the housing-for-older-persons exemption from familial-status discrimination claims. It modified one of the 1988 Amendments Act requirements while continuing to require that at least 80 percent of the housing units be occupied by at least one person 55 years of age or older. A further requirement for facilities or communities claiming the exemption is a biennial age verification. HOPA may provide a 'good faith reliance defense or exemption against monetary damages' with respect to claims of familial discrimination.

Additionally, the Equal Credit Opportunity Act, which may apply to community associations, prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, because an applicant receives income from a public assistance program, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.

CAI rejects illegal discrimination in housing and favors the availability of adequate and appropriate housing for all age groups. Furthermore, CAI is concerned about the availability of housing accessible to disabled individuals. CAI supports improvements that make residential dwellings and surrounding areas readily accessible and usable by disabled people, while recognizing that in certain instances the law requires the disabled person making a request for a modification to the common areas to be responsible for the cost of the modification.-

In HUD's advisory documentation it has indicated that occupancy restrictions that are consistent with building code requirements will, generally, be considered non-discriminatory. Other occupancy restrictions are subject to a case-by-case analysis that considers the restriction on an "as applied" basis to the then current facts, leaving the association with the burden of demonstrating the reasonableness of the restriction. In any matter involving the possibility of a discrimination claim, the association should seek legal counsel to respond appropriately and to minimize unforeseen consequences.

RECOMMENDATION

CAI supports 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. While reasonable occupancy restrictions impact housing issues, that is only one consideration that community associations should address. Community associations are encouraged to consider each of the following:

- Familiarity with local and state requirements, in addition to federal law, surrounding fair housing matters is necessary since they may impose additional standards.
- The association, its governing board and management must be educated on the potential ramifications of fair housing law violations, including the awarding of punitive damages and legal fees to successful third parties, which damages and fees are generally not covered by insurance.
- Board members and management must be sensitive to those matters that may constitute discrimination, even if they otherwise seem normal or customary. Matters as simple as selective rules enforcement, adopting and enforcing rules that disproportionately impact on children without a well documented safety or public welfare basis, or suggesting that a family with children would be more “comfortable” in a different community, may all result in successful claims of discrimination.
- Before posting age-related signs on fitness or other equipment, the association must confirm with the equipment manufacturer that age-related concerns in the use of the equipment are valid.
- When a “reasonable accommodation” is requested by a disabled person, before dismissing the request as unfounded or dismissing the person who requested it as “not disabled,” the association must seek appropriate professional guidance inasmuch as the case law interpreting the obligation to provide such accommodations is lengthy and complex and the failure to honor a legitimate request may have serious consequences.
- When rendering decisions concerning reasonable accommodations, reasonable modifications of the common elements or discrimination based on familial status or other grounds, the governing board must factor in the impact of an adverse proceeding and judgment on its resources.
- If the association manages a qualified age-restricted community, in order to maintain its qualified status, it must have procedures in place to provide for a biennial age verification process in accordance with the regulations of the U.S. Department of Housing and Urban Development

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

Amended by the Government and Public Affairs Committee on March 25, 2011

Adopted by the Board of Trustees, May 4, 2011

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) enters 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.

It should be noted that the Stafford Act actually gives the President the discretion to 1) use 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 may be 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 community associations are viewed as public or private, the government has a duty not to exclude assistance in their time of need to the 62 million homeowners who live in common interest communities.

RECOMMENDATION

CAI in conjunction with the state Legislative Action Committees are urged to continue to advocate that community associations should be eligible and entitled to federal assistance in the wake of a disaster. This can be accomplished by classifying community association roads as essential under FEMA or, alternatively, implementing regular policies that would direct the President’s authority under the Stafford Act to provide relief to communities suffering a disaster.

Approved by the Government & Public Affairs Committee, October 27, 2004
Adopted by the Board of Trustees, October 30, 2004
Approved by the Govt. & Public Affairs Committee, September 20, 2011
Adopted by the Board of Trustees, October 13, 2011

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 commercial activities within their communities. This includes the right to restrict those commercial activities that are conducted from within individual homes constituting home-based businesses if the commercial nature of the activity is obvious to others in the community and otherwise inconsistent with usual residential living.

Individuals are entitled to reasonably enjoy the use and privacy of their individual homes. Certain types of home-based occupations allow individuals to pursue a livelihood and are not apparent to others outside of the home, therefore causing no adverse affect whatsoever on the community. In order to distinguish objectively between those discrete home-based businesses that should be permitted and those that should be prohibited, CAI suggests that Boards of Directors (“boards”) do not focus on the nature of the business conducted (as long as legal). Rather, boards are encouraged to analyze several factors to determine whether the business is apparent beyond the four corners of the home, examples:

- i) Is the owner/resident exhibiting signage or any other commercial display?
- ii) Are clients regularly visiting the home?
- iii) Is the owner/resident using the gate services or concierge or otherwise draining private resources of the community for personal business?
- iv) Does the unit draw excessive traffic to its proximity?
- v) Is the unit producing irregular noises or odors?
- vi) Generally, is the use of the unit inconsistent with typical residential living?
- vii) Is the business conducted consistent with local zoning or regulatory requirements?

RECOMMENDATION

CAI encourages associations to adopt use restrictions pertaining to home-based businesses that are reasonable and flexible and applied uniformly according to objective criteria, which are set forth in the governing documents or rules and regulations.

Consider the following type of language as a guide:

“Homes shall be used only as private single-family residences and such other uses as may be permitted under federal, state or municipal statutes or ordinances. An owner or occupant residing in a home may conduct discrete business activities within the home so long as the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the home; the business activity does not involve regular visitation to the home or door-to-door solicitation of community residents; and the business activity is consistent with the residential character of the community; and does not violate these Use Restrictions. Examples of discrete business activities include, but are not limited to, electronic communication, literary, artistic or craft activities or possible childcare arrangements. The board may in its sole discretion restrict any business activities that it determines reasonably interfere with the enjoyment of the residential purpose of the community association.”

Adopted by the Board of Trustees, April 25, 1998

Approved by the Board of Trustees, March, 2011

PROTECTION FOR COMMUNITY ASSOCIATION VOLUNTEERS

Policy

Community Associations Institute supports statutory protections against unwarranted exposure to liability for volunteers serving on an association board of directors or authorized committee. Responsible judgments can be made without fear of personal loss interfering with that judgment or decision-making process. CAI further supports indemnification of community association volunteer directors and members of authorized committees by providing directors' and officers' insurance coverage as a budgeted, common association expense.

This immunity is desirable where the volunteer's acts or omissions do not constitute gross negligence, illegal, willful or wanton misconduct, and the activities are within the realm of the association's purposes, functions and duties or the scope of the volunteer's duties.

In addition to these protections, perhaps the best protection for boards of directors, in particular, is to govern fairly, responsibly and successfully. Toward that goal, it is recommended that boards adopt the Community Association Governance Guidelines, and adhere to the Model Code of Ethics both developed by CAI's Center for Community Association Volunteers. State and even local laws vary widely so astute boards consult regularly with their legal counsel to ensure they are in compliance.

RECOMMENDATION

CAI and the Center for Community Association Volunteers developed the Community Association Governance Guidelines to help community association boards govern fairly, responsibly and successfully. Embracing these 12 basic principles can help any association board increase harmony, reduce conflict and build a stronger, more successful community.

COMMUNITY ASSOCIATION GOVERNANCE GUIDELINES:

1. **Annual meetings.** Conduct at least one membership meeting annually, providing at least two weeks notice to homeowners and more than two weeks if specified in the governing documents or dictated by state statute.
2. **Assessments.** Collect assessments and other fees from homeowners in a timely and equitable manner and in accordance with state statutes and board-approved procedures.
3. **Communication.** Provide at least one form of regular communication with residents, and use it to report substantive actions taken by the board.
4. **Conflicts of interest.** Disclose all personal and financial conflicts of interest before assuming a board position and, once on the board, before participating in any board decisions.

5. **Elections.** Hold fair and open elections in strict conformance with governing documents, giving all candidates an equal opportunity to express their views and permitting each candidate to have a representative observe the vote-counting process.
6. **Financial transparency.** Share critical information and rationale with residents about budgets, reserve funding, special assessments and other issues that could impact their financial obligations to the association. Give members an opportunity—before final decisions are made—to ask questions of a representative who is fully familiar with these financial issues.
7. **Foreclosure.** Initiate lien and foreclosure proceedings only as a last step in a well-defined debt-collection procedure—and only after other, less-disruptive measures have failed to resolve a serious delinquency issue in a specified period of time.
8. **Governance and the law.** Govern and manage the community in accordance with all applicable laws and regulations. Conduct reviews of governing documents to ensure legal compliance and to determine whether amendments are necessary.
9. **Grievances and appeals.** Allow residents to bring grievances before the board or a board-appointed committee, and follow well-publicized procedures that provide residents the opportunity to correct violations, and to appeal any fine or sanction that is imposed.
10. **Records.** Allow homeowners reasonable access to appropriate community records, including annual budgets and board meeting minutes.
11. **Reserve funding.** Account for anticipated long-term expenditures as part of the annual budget-development process, commissioning a reserve study when professional expertise is warranted.
12. **Rules.** Enforce all rules, including architectural guidelines, uniformly, but only after seeking compliance on a voluntary basis. Distribute proposals for new rules and guidelines to all homeowners and non-owner residents. Advise them when the board will consider new rules and encourage input. Once adopted, new rules and effective dates should be distributed to every owner and resident.

Note: Laws governing common-interest communities vary considerably from state to state. Association boards should consult with attorneys to ensure their association is governed in accordance with all federal, state and local laws and regulations.

MODEL CODE OF ETHICS

CAI's Center for Community Association Volunteers developed the Model Code of Ethics for Community Association Board Members to encourage the thoughtful consideration of ethical standards for community leaders. The model code is not meant to address every potential ethical dilemma, but is offered as a basic framework that can be modified and adopted by any common-interest community.

Board members should:

1. Strive at all times to serve the best interests of the association as a whole regardless of their personal interests.
2. Use sound judgment to make the best possible business decisions for the association, taking into consideration all available information, circumstances and resources.
3. Act within the boundaries of their authority as defined by law and the governing documents of the association.
4. Provide opportunities for residents to comment on decisions facing the association.
5. Perform their duties without bias for or against any individual or group of owners or non-owner residents.
6. Disclose personal or professional relationships with any company or individual who has or is seeking to have a business relationship with the association.
7. Conduct open, fair and well-publicized elections.
8. Always speak with one voice, supporting all duly-adopted board decisions—even if the board member was in the minority regarding actions that may not have obtained unanimous consent.

Board members should not:

1. Reveal confidential information provided by contractors or share information with those bidding or association contracts unless specifically authorized by the board.
2. Make unauthorized promises to a contractor or bidder.
3. Advocate or support any action or activity that violates a law or regulatory requirement.

4. Use their positions or decision-making authority for personal gain or to seek advantage over another owner or non-owner resident.
5. Spend unauthorized association funds for their own personal use or benefit.
6. Accept any gifts—directly or indirectly—from owners, residents, contractors or suppliers.
7. Misrepresent known facts in any issue involving association business.
8. Divulge personal information about any association owner, resident or employee that was obtained in the performance of board duties.
9. Make personal attacks on colleagues, staff or residents.
10. Harass, threaten or attempt through any means to control or instill fear in any board member, owner, resident, employee or contractor.
11. Reveal to any owner, resident or other third party the discussions, decisions and comments made at any meeting of the board properly closed or held in executive session.

Approved by the Government & Public Affairs Committee, September 20, 2011
Adopted by the Board of Trustees. October 13, 2011

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

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 governmental taking of 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 Fifth Amendment of the United States Constitution is applicable to the states through the Fourteenth Amendment. 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.

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.

RECOMMENDATION:

CAI recognizes the need for property owners 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. Legislative Action Committees, when involved, are encouraged to communicate with CAI’s Government and Public Affairs department and legal counsel to protect private property interests.

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

Approved by the Government & Public Affairs Committee, September 20, 2011

Adopted by the Board of Trustees, October 13, 2011

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

Community Associations Institute
6402 Arlington Boulevard, Suite 500
Falls church, VA 22042
703.970.9220
www.caionline.org

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6402 Arlington Boulevard, Suite 500
Falls church, VA 22042
703.970.9220
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