

# Public Policies



*Public Policies*, is published by Community Associations Institute (CAI). It is provided as a free download at [www.caionline.org](http://www.caionline.org).

Unlimited reproduction of this material is permitted for educational purposes only, provided no changes are made to the text. All other uses including offering copies of this document in whole or in part for sale are prohibited.

ISBN: 978-1-59618-015-4

2019 Public Policies of Community Associations Institute

©2012, 2016, 2018, 2019 Community Associations Institute (CAI)

6402 Arlington Boulevard, Suite 500

Falls Church, VA 22042

(703) 970-9220

[www.caionline.org](http://www.caionline.org)

Public policies are subject to change and may be amended from time to time. Please check the CAI website for the latest updates or additions.

## ***Community Associations Institute***

Founded in 1973, Community Associations Institute (CAI) is the national voice for an estimated 70 million people who live in more than 345,000 community associations of all sizes and architectural types throughout the United States. Community associations include condominium associations, homeowner associations, cooperatives and planned communities.

CAI has an international presence with chapters in Canada, South Africa and the United Arab Emirates, plus relationships with housing leaders in a number of other countries, including: Australia, Brazil, Germany, Japan, Spain and the United Kingdom. The public policies contained within this document apply solely to the United States domestic chapters.

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 nearly 40,000 members participate actively in the public policy process through 63 local, regional and state chapters and 35 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 [government@caionline.org](mailto:government@caionline.org).

## CONTENTS

PROCEDURES FOR THE ADOPTION OF PUBLIC POLICIES .....	1
POLICY SUMMARIES .....	3
AESTHETICS AS AN ECONOMIC ISSUE POLICY .....	14
ALTERNATIVE DISPUTE RESOLUTION POLICY .....	15
AMENDMENT PROCESS TO REMOVE DISCRIMINATORY RESTRICTIVE COVENANTS POLICY.....	17
ASSESSMENT INCREASE LIMITATIONS POLICY .....	19
BOARD MEMBER EDUCATION POLICY .....	20
BUDGETS AND RESERVES POLICY .....	22
CONSERVATION, SUSTAINABILITY, AND GREEN ISSUES POLICY .....	23
DISCLOSURE BEFORE SALES POLICY .....	24
DISPLAY OF THE AMERICAN FLAG POLICY .....	26
EFFECTIVE COLLECTION OF ASSESSMENTS POLICY .....	28
ELECTRIC VEHICLE CHARGING STATIONS POLICY .....	30
ENVIRONMENTAL QUALITY POLICY .....	33
FAIR DEBT COLLECTION PRACTICES ACT POLICY.....	34
FAIR HOUSING POLICY.....	38
FAIRNESS IN FEDERAL DISASTER RELIEF POLICY .....	40
FEDERAL TAXIATION OF COMMUNITY ASSOCIATIONS .....	42
FINANCING AVAILABILITY FOR COMMUNITY ASSOCIATION UNITS OR LOTS POLICY .....	46
FLOOD INSURANCE POLICY.....	47
FORECLOSURES BY COMMUNITY ASSOCIATIONS TO COLLECT DELINQUENT ASSESSMENTS POLICY .....	50
GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS POLICY .....	52
HOME-BASED BUSINESSES IN COMMUNITY ASSOCIATIONS POLICY.....	54
INSURANCE TRUSTEE ENDORSEMENT REQUIREMENT POLICY.....	56
LIEN PRIORITY FOR COMMUNITY ASSOCIATION ASSESSMENTS POLICY.....	58
LOCAL TAXATION AND PUBLIC SERVICES FOR COMMUNITY ASSOCIATIONS POLICY .....	60
MANAGER LICENSING AND MODEL LEGISLATION POLICY .....	62
MARKETABLE RECORD TITLE POLICY .....	69
MORTGAGE INTEREST DEDUCTION POLICY .....	71
PRIVATE PROPERTY PROTECTION POLICY .....	72
PROTECTION FOR COMMUNITY ASSOCIATION VOLUNTEERS POLICY .....	73

PROTECTION OF COMMUNITY ASSOCIATION CLAIMS IN CONSTRUCTION DEFECT LEGISLATION POLICY.....	76
PETS AND ASSISTANCE ANIMALS PUBLIC POLICY .....	79
REASONABLE OCCUPANCY STANDARDS POLICY .....	82
RIGHTS AND RESPONSIBILITIES FOR BETTER COMMUNITIES POLICY .....	83
RISK MANAGEMENT AND INSURANCE POLICY .....	85
RULES DEVELOPMENT AND ENFORCEMENT POLICY .....	88
SHORT-TERM (VACATION) RENTALS POLICY .....	89
SUPPORT FOR THE UNIFORM ACTS POLICY .....	91
SUSTAINABLE LANDSCAPE PRACTICES POLICY .....	92
TELECOMMUNICATIONS POLICY .....	94
TENANTS IN COMMUNITY ASSOCIATIONS POLICY .....	96
THIRD-PARTY LENDER FORECLOSURES POLICY .....	98
TRANSITION OF COMMUNITY ASSOCIATION CONTROL FROM THE DEVELOPER TO HOMEOWNERS POLICY.....	100

## 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.
3. 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.
4. 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.
5. 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.
6. 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**



# Public Policy Summaries



## **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.

## **AMENDMENT PROCESS TO REMOVE DISCRIMINATORY RESTRICTIVE COVENANTS**

CAI supports a process by which a governing board of a community association may remove antiquated and unenforceable discriminatory restrictions contained in covenants without a vote of the owners. CAI advocates the adoption of state legislation that provides for a process to allow for the removal of restrictions deemed to be discriminatory under the federal Fair Housing Act and/or state anti-discrimination laws.

## **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.

## **BOARD MEMBER EDUCATION**

CAI supports education and training that will enable board members to understand their responsibilities and fulfill their fiduciary duty to a community association. CAI encourages boards to receive education in ethics and leadership, financials and reserves, insurance and risk management, rules creation and enforcement, meetings and elections, communication, conflict resolution and community building. State mandated education requirements should focus on incentives to encourage boards to utilize existing industry tools to achieve goals rather than creating new processes and burdens.

## **BUDGETS AND RESERVES**

The CAI Reserve Plan and Funding Public Policy is currently under review. For information about Best Practices for community associations to consider, download the Foundation for Community Association Research Reserve Funding and Management Best Practice Report.

## **CONSERVATION, SUSTAINABILITY, AND 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.

## **DISCLOSURE BEFORE SALES**

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.





## **DISPLAY OF THE AMERICAN FLAG**

CAI strongly supports the elimination of community association restrictions that prohibit the display of a reasonably sized flagpole and reasonable 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, 4 U.S.C. Sections 5-10, as amended. CAI further believes that community associations – not a state law – are best suited to determine appropriate size, placement and installation of a flagpole.

## **EFFECTIVE COLLECTION OF ASSESSMENTS**

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.

## **ELECTRIC VEHICLE CHARGING STATIONS**

CAI supports legislation that recognizes the core principle of self-governance and co-ownership of common property and the community association housing model. As each association is unique, legislation should allow the community to determine the most efficient, fair, and effective method to provide electric vehicle charging stations. Legislation or policy must respect the financial capability of associations to provide for the stations and allow associations to equitably allocate the cost of the charging stations to those who benefit.

## **ENVIRONMENTAL QUALITY**

CAI encourages all homeowner associations to actively participate in ensuring environmental quality in communities. In this interest, CAI abides by three fundamental principles: Collaboration with neighbors is the best way to develop sustainable, consensus-driven decisions; Respecting property rights and honoring private agreements between homeowners associations and homeowners compatible with sustainable environmental practices; and Vigilant consideration of our actions will minimize our environmental footprint.

## **FAIR DEBT COLLECTION PRACTICES ACT**

CAI supports legislation that, in addition to the exempting of community associations from existing provisions of Fair Debt Collection Practices Act (FDCPA), also exempts community association attorneys from the requirements of the Fair Debt Collection Practices Act (FDCPA) and any similar state laws that govern the collection of consumer debts and codifies the determination by the majority of federal court decisions that community managers are not debt collectors. Further, CAI believes that the state and federal court systems and state licensing requirements already govern the conduct of attorneys and are effective in regulating association attorneys who perform debt collection services.

## **FAIR HOUSING**

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.

## **FAIRNESS IN FEDERAL DISASTER RELIEF**

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 TAXATION OF COMMUNITY ASSOCIATIONS**

CAI supports rational and consistent classification of community associations under the IRS code, including condominiums, cooperatives and homeowners associations. CAI supports the premise that interest income earned on reserve accounts be recognized and treated as a patronage activity and now be subject to taxation.

## **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.

## **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.

## **FORECLOSURES BY COMMUNITY ASSOCIATIONS TO COLLECT DELINQUENT ASSESSMENTS**

CAI endorses legislation that provides a fair and equitable foreclosure process that protects homeowners, property values, and the financial health of community associations by ensuring foreclosures by community associations are completed in a timely and reasonable manner.

CAI supports the right of community associations to both judicially and non-judicially foreclose units and lots for the purpose of collecting delinquent assessments and minimizing future delinquent assessments.

## **GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS**

CAI believes governance should occur at the lowest possible level. Legislatures and regulatory agencies should acknowledge the right of self-determination by owners who elect volunteers and have a vested interest in their own communities. CAI recommends that state LACs support legislation that is necessary for the overall welfare of community associations. CAI encourages state governments to give favorable treatment to the Uniform Community Association Acts. Further, LACs are encouraged to engage and consult CAI's Government and Public Affairs department to ensure coordination and support of proposed legislation.

## **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. 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.

## **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. CAI opposes any federal agency involved with the approvals or any other secondary mortgage entity as a loss payee on a community association insurance policy.

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

CAI endorses legislation that provides community associations with an assessment lien priority equal to the amount of assessments that are due over the term of the lien of the first mortgage or deed of trust. Community association liens, including the portion that enjoys priority over the lien of a first mortgage or deed of trust, should be perpetually renewable. A single claim of priority should not preclude subsequent applications of future liens for a property in a community association. The lien provided for should apply only to monthly or periodic common expense assessments made by an association in accordance with its annual operating budget, together with reasonable attorneys' fees and other costs of collection to recover this amount. CAI also supports the 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.

## **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.

## **MANAGER LICENSING AND MODEL LEGISLATION**

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.

## **MARKETABLE RECORD TITLE**

CAI supports legislation that permits the recorded governing documents of community associations to be enforceable in perpetuity, including restrictions on the nature of the community even where there is no community association.

## **MORTGAGE INTEREST DEDUCTION**

CAI supports a vibrant real estate market and financially affordable and attractive communities. CAI also supports efforts that permit as many citizens as possible to utilize the mortgage interest deduction to make homeownership a reality. It is a tool that has worked to maintain property values and as an incentive to real estate sales. Allied organizations have joined with CAI to support the continuance of this policy. Among them are the National Association of Home Builders, National Association of Realtors, the Mortgage Bankers Association and the Coalition for Sensible Housing Policy representing consumer and industry groups.

## **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.

## **PROTECTION FOR COMMUNITY ASSOCIATION VOLUNTEERS**

CAI supports statutory protections against unwarranted exposure to liability for volunteers serving on a community association board of directors or authorized committee. Reasonable judgements can be made without fear of personal loss interfering with that judgement 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.

## **PROTECTION OF ASSOCIATION CLAIMS IN CONSTRUCTION DEFECT LEGISLATION**

CAI believes builders that construct homes and common elements for purchase by consumers must be required to deliver a product that is free from material defects and exhibits good workmanship. Builders rely on design professionals and subcontractors (hereafter referred to as Construction Affiliates) to deliver homes and common elements that meet those standards.

CAI also recognizes the importance that homeowners have reasonable 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 governing boards, homeowners, builders and construction affiliates.

## **PETS AND ASSISTANCE ANIMALS**

CAI recognizes and supports the rights of residential community associations to regulate and adopt their own rules pertaining to pets and assistance animals living in their communities. CAI also recognizes the rights of individuals with disabilities to receive the assistance they need and supports state and federal law guaranteeing such rights.

## **REASONABLE OCCUPANCY STANDARDS**

CAI supports the right of community associations to establish reasonable occupancy standards. This support does not condone or encourage discrimination against owners based upon familial status or other protected class. In the absence of any bright line rule being adopted by the Department of Housing and Urban Development, an occupancy limit of two persons per bedroom plus infants is typically an acceptable limitation. CAI remains concerned that with no bright line rule community associations are at risk for claims of discrimination under the Federal Fair Housing Amendments Act.

## **RIGHTS AND RESPONSIBILITIES FOR BETTER COMMUNITIES**

CAI believes 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.

## **RISK MANAGEMENT AND INSURANCE**

CAI believes that an effective risk management program can best be achieved if associations and their governing boards work with recognized community association professionals. CAI further believes that a comprehensive association insurance program must focus on meeting a broad range of legal and lender requirements while recognizing that the governing board is the trustee of the owners in insurance matters. This program (collectively, risk management and insurance) requires that risks of loss be fully evaluated and that funding for such loss (whether by commercial insurance or self-insurance) must be completely analyzed.

## **RULES DEVELOPMENT AND ENFORCEMENT**

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

## **SHORT-TERM (VACATION) RENTALS**

CAI supports short-term rental regulation that is consistent with the association's governing documents, federal, state and local law and serves to protect and preserve the ability of community association homeowners to manage their affairs.

## **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.

## **SUSTAINABLE LANDSCAPE PRACTICES**

CAI supports the ability for communities to establish rules that govern landscaping practices for common areas and exclusive use property. CAI supports communities adopting best practices recommended for sustainable landscaping and encourages association boards to fairly evaluate

homeowners' requests to convert to or utilize sustainable landscaping on their exclusive use property while protecting an association's assets.

## **TELECOMMUNICATIONS**

CAI supports the growth of competition in the telecommunications and video programming marketplace among telephone, cable, satellite, television broadcast, wireless, fiber optics and other providers so community association residents have access to advanced, innovative services. Contracts binding owners regarding telecommunications' installations should be determined only after the association has transitioned from the developer control to the owners, while recognizing that the cost of initial developer-contracted installations of telecommunications wiring or other capital assets should be amortized over a commercially reasonable time frame. 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 an owner-controlled community association's ability to enter into telecommunications or video programming contracts. CAI further supports regulation that prohibits anti-consumer provisions in vendor service contracts.

## **TENANTS IN COMMUNITY ASSOCIATIONS**

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

## **THIRD PARTY LENDER FORECLOSURES**

The Community Associations Institute (CAI) endorses legislation that provides a fair and equitable foreclosure process by third party lenders that protect homeowners, property values, and the financial health of community associations.

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

CAI recognizes that a successful transition is the responsibility of the owner-controlled Board charged with the fiduciary duty to investigate and assess both the finances and the physical development of the property after the developer has transferred title to the real property as well as association control.



# Public Policies



## **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**

Community Associations Institute (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**

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

**Adopted by the Board of Trustees, March 2011**

# AMENDMENT PROCESS TO REMOVE DISCRIMINATORY RESTRICTIVE COVENANTS POLICY

## POLICY

Community Associations Institute (CAI) supports a process by which a governing board of a community association may remove antiquated and unenforceable discriminatory restrictions contained in covenants without a vote of the owners. CAI advocates the adoption of state legislation that provides for a process to allow for the removal of restrictions deemed to be discriminatory under the federal Fair Housing Act and/or state anti-discrimination laws.

## BACKGROUND

In 1968, Congress passed the Fair Housing Act ("FHA") to prohibit private parties from setting discriminatory terms and conditions on the sale or use of property by making the practice of writing racial covenants into deeds illegal. Despite being deemed illegal by the FHA, that law did not provide for a method of removing discriminatory provisions from deeds and governing documents and thus remain as a blot on housing documents such as plats, deeds, and homeowner association bylaws. These discriminatory covenants are unenforceable and may cause unnecessary emotional distress to members of the community. Learn more about CAI's Fair Housing Policy here: <https://www.caionline.org/Advocacy/PublicPolicies/Pages/Fair-Housing.aspx>

## RECOMMENDATION

CAI supports legislation that authorizes a simple process whereby a governing board of a community association can remove antiquated, illegal, and unenforceable covenant restrictions deemed to be discriminatory under federal Fair Housing Act and/or state anti-discrimination laws. CAI supports complementary legislation that would mandate the removal of discriminatory restrictions upon receipt of an individual owner's petition to the governing board of a community association or a court to remove discriminatory restrictions.

## MODEL LANGUAGE

Some states have statutes that explicitly allow community associations an expeditious and tenable process to remove discriminatory restrictive covenants. However, if a state does not have a statute allowing modifications of unenforceable restrictive covenant language, CAI supports the following model language:

A restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property on the basis of race, color, national origin, religion, sex, familial status, or prohibits maintaining a trained guide dog or assistance animal because the individual is blind, deaf or has a physical disability, is void and has no legal effect, except a limitation of use for religious purposes as permitted under the Federal Fair Housing Act or state law.

### CORRECTIVE ACTIONS BY AMENDMENT

(a) A homeowners' or property owners' association, cooperative corporation, condominium association, or planned community acting through a majority vote of its full board membership, may amend the association's governing documents for the purpose of removing any restriction, covenant, or condition, that prohibits or limits the conveyance, encumbrance, rental, occupancy, or use of real property on the basis of race, color, national origin, religion, sex, familial status or maintains a trained guide dog or assistance animal because the individual has a disability recognized under the Fair Housing Act (42 U.S.C. 3601 et seq. or [insert citation to state anti-discrimination law].

(b) If the board of a homeowners' or property owners' association, condominium association, or planned community, receives a written request by a member of the association that the board exercise its amending authority under subsection (a), the board shall, within a reasonable time not to exceed 90 days, investigate any claim of an unenforceable covenant and if determined to be unlawfully discriminatory shall cause the provision to be removed, as provided under this section.

(c) Removal of a restriction, covenant, or condition pursuant to subparagraphs (a) or (b) above will not require approval of the owners, notwithstanding any provision of the governing documents to the contrary.

(d) An amendment under subsection (a) may be executed by any board officer.

### PROPERTY DEED CHANGE

(a) If a deed or other instrument contains a provision that is prohibited as discriminatory under state or federal law, the owner, occupant, or tenant of the property that is subject to the provision or any member of the board of a homeowners' or property owners' association that would have a right to enforce such a

provision may bring an action in the [insert court having jurisdiction] to have the provision stricken from the records of the register of deeds.

(b) An action under this section must be brought as an in rem, declaratory judgment action and the title of the action must include a description of the property. The owners of record of the property or any part of the property described in a deed containing an unlawful discriminatory provision are necessary parties to the action.

(c) If the court finds that any provisions of the deed or instrument are prohibited under this act, it shall enter an order striking the provisions from the records of the public recording office and direct that the order striking the provisions be notated on the deed or other instrument for the property described.

(d) Any reversionary clauses or other provisions intended to penalize the violation of a discriminatory provision in a deed or other instrument that is authorized to be removed under this law shall be void and unenforceable.

**Adopted by the Board of Trustees, February 27, 2020**

## **ASSESSMENT INCREASE LIMITATIONS POLICY**

Community Associations Institute (CAI) supports a community association's board of directors' discretion on assessment increases and favors governing documents that do not restrict a board's ability to raise assessments.

### **BACKGROUND**

Traditionally, the U.S. Department of Veterans Affairs and other regulatory authorities have required that governing documents for community associations prohibit the increase of assessments (also known as common charges or common expenses) by the board of directors above a fixed percentage without approval by a vote of the owners.

Despite this, CAI does not favor these restrictions. Assessments, by definition, mean all of those expenses of administration, maintenance, repair and replacement of the common elements or common property, as well as other necessary expenses. Accordingly, many statute and most governing documents provide express authority to the board, in its sole discretion, to determine the amount of money for assessments. Assessments' increases should be based upon a board of directors' prudent estimate of the funds necessary to meet anticipated expenses for the benefit of its association. The board, not a third-party public or governmental agency, has the fiduciary obligation and is in the most informed position to manage the finances of its own private community. Finally, a board decision to raise assessments also directly impacts each director who is also an owner responsible for the increased fees.

When governing documents restrict the board's ability to raise assessments, this may compromise the effective administration, maintenance, repair and replacement of the property, causing the project to fall into disrepair or ruin. The restrictions may also hamper the community's ability to find other means of financing, such as borrowing. As a result, individuals may experience loss of property value, making units unmarketable. A board cannot fulfill its fiduciary obligation if it does not possess the unhindered discretion to raise assessment fees in accordance with its community's particular needs and to meet its statutory and legal duties. Ultimately, owners have the power to influence the financial direction of an association through the election process.

### **RECOMMENDATION**

CAI recommends that members actively lobby to uphold express language in statutes and governing documents empowering boards to raise assessments without subjecting that authority to an owners' vote or otherwise restricting this discretion in any way.

**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**

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

**Approved by the Government & Public Affairs Committee, December 13, 2011**

**Adopted by the Board of Trustees, January 26, 2012**

## BOARD MEMBER EDUCATION POLICY

The education of members of governing boards of community associations concerning their roles and responsibilities is essential to a well-functioning community. As a result, Community Associations Institute (CAI) finds education of governing board members to be critically important. A community association volunteer leader is a board or committee member of a condominium, housing cooperative, townhome or homeowner association, or planned community.

Community associations require the time of volunteers to serve on boards. While CAI realizes the importance of education for all governing board members, state mandated requirements deserve careful evaluation by legislative action committees. Any state mandated education requirement should focus on incentives and tools to encourage boards to utilize existing industry tools to achieve educational goals rather than create new processes or burdens.

CAI's model for Board Member training:

1. Within 90 days after being elected or appointed to the board of a community association, each newly elected or appointed board member should certify in writing to the secretary of the association that he or she has read the association's declaration, articles of incorporation, bylaws, governing documents, rules and current written policies; that he or she will work to uphold the documents and policies; and that he or she will uphold their fiduciary responsibility to the association's members. The secretary should retain board members written certification for inspection by the members for 5 years after the board member's election. Failure by any board member to have such written certification does not affect the validity of any board action.
2. Board members should engage in training to increase their level of knowledge, professionalism, competence and effectiveness as leaders of community associations. CAI encourages boards to receive education in the following areas: ethics and leadership, financials and reserves, insurance and risk management, rules creation and enforcement, meetings and elections, and communication, conflict resolution, and community building.
3. Board and committee members' should attest, and renew annually, to comply with \*CAI's Model Code for Ethics for Community Association Board Members.
4. Community association boards of directors should approve a resolution, renewed annually, to adopt and comply with \*CAI's Community Association Governance Guidelines and \*CAI's Rights and Responsibilities for Better Communities, and fund training programs and membership in CAI for the community association board that provides information for community association governance. Remain current on relevant news and information related to community association governance.

### BACKGROUND

Virtually every association-governed community has a governing board elected by homeowners in that community. While community managers and other professionals often provide critical support to associations, it is volunteers—elected by their co-owners or appointed by the developer—who



ultimately are responsible for preserving the community, meeting expectations of neighbors and protecting property values.

An estimated two million homeowners serve on community association boards. Countless others serve on committees that deal with architectural issues, financial and budgetary issues, landscaping, and recreational amenities. In all cases, their roles can help achieve the mission of CAI which is to foster vibrant, responsible, efficient and harmonious community associations.

With few exceptions, community association board members serve for altruistic reasons, and they serve with the best interests of their communities in mind. The law imposes a level of care and loyalty, owed by board members to their associations. It is vital that board members receive proper education and training in order to understand their obligations and fulfill their fiduciary duty to the association.

Community associations exist because they offer choices, lifestyles, services, amenities and efficiencies that people value, and the best associations offer a comforting sense of real community. Yet, with all the inherent advantages, associations face complicated issues, none more common than the challenge of balancing the best interests of the community as a whole, with the preferences of individual residents. Managing this critical and delicate balance is the essence of good association governance.

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 established expectations of homeowners. Great associations also cultivate a true sense of community, promote active homeowner involvement and create a culture of informed consensus. The ideas and guidance conveyed in this policy speak to these core values and can - with commitment - inspire effective, enlightened leadership and a responsible, engaged citizenship.

**Approved by the Government and Public Affairs Committee, July 12, 2016**  
**Adopted by CAI Board of Trustees, August 18, 2016**

## **BUDGETS AND RESERVES POLICY**

The CAI Reserve Plan and Funding Public Policy is currently under review. For information about Best Practices for community associations to consider, download the Foundation for Community Association Research Reserve Funding and Management Best Practice Report.

## **CONSERVATION, SUSTAINABILITY, AND GREEN ISSUES POLICY**

Community Associations Institute (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**

## DISCLOSURE BEFORE SALES POLICY

Community Associations Institute (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**

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

In this instance, Community Associations Institute (CAI) strongly supports the elimination of community association restrictions that prohibit the display of a reasonably sized flagpole and 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, 4 U.S.C Sections 5-10, 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.

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. A community association board of directors should 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 entity for making a determination on height and placement parameters for a flagpole. Even though the height and placement of a flagpole may seem reasonable to one homeowner, the neighbors may not agree. The biggest issue that many homeowners face is the noise from the halyard hardware blowing against the poles. Accordingly, CAI believes the association's architectural review process is the best avenue to take when determining if the installation and location of a flagpole may threaten the community's health or safety. Local governmental ordinances may also refer to flagpole restrictions in residential areas.

A number of states 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.

### RECOMMENDATION

CAI supports proposals that strike any restrictive covenant in a deed, homeowner's association documents, rental agreement, leaser 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 4 U.S.C Sections 5-10, 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. If legislative action is imminent, please contact the CAI Government & Public Affairs Department for model legislation.

**Approved by the Government & Public Affairs Committee, October 23, 2002**  
**Adopted by the Board of Trustees, October 26, 2002**  
**Approved by the Government & Public Affairs Committee, December 13, 2011**  
**Adopted by the Board of Trustees, January 26, 2012**

## EFFECTIVE COLLECTION OF 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 dependent 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**

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

**Adopted by the Board of Trustees, March 2011**

# **ELECTRIC VEHICLE CHARGING STATIONS POLICY**

## **POLICY**

CAI supports legislation that recognizes the core principle of self-governance and co-ownership of common property and the community association housing model. As each association is unique, legislation should allow the community to determine the most efficient, fair, and effective method to provide electric vehicle charging stations. Legislation or policy must respect the financial capability of associations to provide for the stations and allow associations to equitably allocate the cost of the charging stations to those who benefit.

## **ABOUT THE COMMUNITY ASSOCIATION HOUSING MODEL**

While community associations come in many forms and sizes, all associations share three basic characteristics: (1) membership in the association is mandatory and automatic for all property owners; (2) certain legal documents bind all owners to defined land-use requirements administered by the community association; and (3) all property owners pay mandatory lien-based assessments that fund association operations.

The community association housing model is actively supported by local government as it permits the transfer of many municipal costs to the association and homeowners. Today, many community associations deliver services that once were the exclusive province of local government usually funded by government-levied property taxes.

Community associations are governed by a board of directors or trustees comprised of owners and residents elected by their neighbors. This board guides the association in providing governance and other critical services for the community.

## **BACKGROUND**

The decrease in cost and the increase in options of electric vehicles as well as world-wide, aggressive public policy goals to limit carbon dioxide emissions means electric vehicles are becoming increasingly popular. States and local governing bodies have invested in vehicle fleets and the development of public infrastructure to support the growth of electric vehicles. Demand driven by popularity and policy, means more homeowners in community associations will have a need to charge their electric vehicle

Many newly developed commercial and residential properties, including condominiums, are installing charging stations. States are also considering laws that prohibit community associations from preventing the installation of stations.

## **PARKING SPACES IN A COMMUNITY ASSOCIATION**

Each community association is unique, so the allocation or ownership of the parking areas differs from one form to another and even within the same form.

Homeowners Associations and Planned Communities. Parking in community associations is complicated. In a homeowner's association or planned community, an owner may own their garage, carport, or

driveway as exclusive use property. Associations having parking spaces that are deeded or permanently assigned need to be treated differently.

Condominium and Housing Cooperatives. Parking in condominiums may be general common elements or exclusive-use property. This means parking spaces may or may not be assigned or deeded. In some instances, governing boards are without legal authority to assign a space to an owner of an electric vehicle or have the ability to designate the type of vehicle that may park in a particular space.

## **INSTALLATION AND MAINTENANCE**

Since ownership of parking spaces vary, the position of authority for installation needs to be considered. For example, if the governing documents provide for the permanent assignment of a parking space, and a unit owner's parking space is unsuitable for the installation of a charging station governing boards will, where permitted under the governing documents, be faced with coordinating new assignments with at least one other unit owner whose assigned space is more suitable.

Communities with owners of deeded or assigned parking spaces that are not enclosed will typically vet and adopt a rule regarding the application for installation of charging stations that are free-standing. In these instances, associations may require prior approval, compliance with location and aesthetic placement, addressing issues related to costs of installation, maintenance, repair and removal. Additionally, the governing board may, where authorized, be required to grant easements to a utility company to run power to the charging station.

Associations with unit owners living with disabilities and who require accessible parking will need to comply with related fair housing laws.

Challenges with liability exist in the installation and in the use and maintenance of charging stations. Associations whose parking lot is a general common element or whose electricity is allocated, instead of sub-metered, could be burdened with the financial expense to provide the power to charge vehicles. General maintenance of the charging station and the liability of damages done to property or persons due to negligence if the unit is damaged is a responsibility that should be borne by the unit owner and not the association.

## **RECOMMENDATION**

CAI supports legislation which recognizes the core principle of self-governance and co-ownership of common property of the community association housing model. CAI supports legislation that permits the association to enact reasonable rules and regulations concerning the costs, installation, maintenance, and removal of a charging station.

CAI supports legislation or other public policies that incentivize associations to provide for electric vehicle charging, but allows for the unique needs and the ability of each association to best determine the most efficient method to provide for these needs. Legislation or policy must respect the financial capability of associations to provide for charging stations and allow associations to equitably allocate costs of charging stations to those who benefit.

CAI supports legislation that permits a governing board or an architectural committee to review a written request by a unit owner for the installation of a charging station at a regularly occurring meeting or through the association's normal approval process. CAI supports legislation that permits the association to impose reasonable charges to recover the costs of the review and permitting of the station. Further, CAI supports legislation that renders the benefitted unit owners responsible for all costs associated with the installation, use, maintenance and removal of the charging station.

See Oregon Statute 100.627 for samples of language.

**Approved by the Government and Public Affairs Committee – December 11, 2018**

**Adopted by the Board of Trustees, January 23, 2019.**

## ENVIRONMENTAL QUALITY POLICY

Community Associations Institute (CAI) encourages all homeowner associations to actively participate in ensuring environmental quality in communities. In this interest, CAI abides by three fundamental principles:

Collaboration with neighbors is the best way to develop sustainable, consensus-driven decisions.

Respecting property rights and honoring private agreements between homeowners associations and homeowners compatible with sustainable environmental practices.

Vigilant consideration of our actions will minimize our environmental footprint.

### BACKGROUND

Environmental considerations exist in all facets of community living, from choices individual homeowners make with their own unit appliances to larger community-wide initiatives for drainage, electricity or building with environmentally friendly building materials. Associations are also interested in and affected by larger environmental issues beyond their own gates---at the municipal, state and federal level. Locally, associations occupy acres of land and constitute hundreds of voting citizens in any municipality. The environmental history of the association's own property as well as neighboring properties have a direct impact on association living. Further, there are numerous federal and state statutes and regulations directing quality of air, water and soil. The Environmental Protection Agency ("EPA"), and in some jurisdictions, local and state agencies, often work with municipalities to ensure compliance and achieve remediation, where necessary. To avoid being subjected to undesirable or extremely costly governmental decisions concerning the environment, associations must be aware, educated and an active participant in environmental quality management.

### RECOMMENDATION

CAI recommends that associations craft policy resolutions to guide owners in energy efficiency and to inspire confidence among owners that the association is also utilizing sustainable technologies and "going green" with its own community projects. Associations are encouraged to be aware of environmental initiatives and to continually educate its own members with updates. CAI encourages owners to become actively involved within the municipality where environmental initiatives are likely to impact the association's best environmental and financial interests. Finally, CAI encourages associations to tap the abundance of resources within CAI (state and national). CAI's website includes links and articles, fact sheets and legislative updates on a wide variety of environmental concerns.

**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**

**Amended and approved by the Government and Public Affairs Committee, June 14, 2012**

**Adopted by the Board of Trustees, August 23, 2012**

# FAIR DEBT COLLECTION PRACTICES ACT POLICY

## POLICY

CAI supports legislation that, in addition to the exempting of community associations from existing provisions of Fair Debt Collection Practices Act (FDCPA), also exempts community association attorneys from the requirements of the Fair Debt Collection Practices Act (FDCPA) and any similar state laws that govern the collection of consumer debts and codifies the determination by the majority of federal court decisions that community managers are not debt collectors. Further, CAI believes that the state and federal court systems and state licensing requirements already govern the conduct of attorneys and are effective in regulating association attorneys who perform debt collection services. Regulation under the FDCPA and any similar state laws that govern the collection of consumer debts is duplicative and overly burdensome. Attorneys are also subject to various state laws that require the notice to certain third parties of the existence of an assessment debt, such as lenders, which violates the literal provisions of the FDCPA, thereby placing community association attorneys in a position of being unable to fully represent the interests of community associations without fear of claims under the FDCPA.

## ABOUT THE COMMUNITY ASSOCIATION HOUSING MODEL

While community associations come in many forms and sizes, all associations share three basic characteristics: (1) membership in the association is mandatory and automatic for all property owners; (2) certain legal documents bind all owners to defined land-use requirements administered by the community association; and (3) all property owners pay mandatory lien-based assessments that fund association operations.

The community association housing model is actively supported by local government as it permits the transfer of many municipal costs to the association and homeowners. Today, many community associations deliver services that once were the exclusive province of local government usually funded by government-levied property taxes.

Community associations are governed by a board of directors or trustees comprised of owners and residents elected by their neighbors. This board guides the association in providing governance and other critical services for the community.

## BACKGROUND

The Fair Debt Collection Practices Act (FDCPA) was enacted in 1977 to deter unscrupulous debt collectors from using harassment techniques to recover debt. The Congressional findings and declarations of the purpose for the FDCPA, as enacted in 1977, are set forth in 15 U.S.C.A. § 1692 as follows:

§ 802. Congressional findings and declarations of purpose

(a) **Abusive practices**

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

**(b) Inadequacy of laws**

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

**(c) Available non-abusive collection methods**

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

**(d) Interstate commerce**

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

**(e) Purposes**

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to ensure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

Community associations and managers are generally exempt from the requirements of the FDCPA since the law does not apply to the collection of debt by a creditor. In most instances, the collection of assessments by an association attorney is ancillary to the other professional services provided by attorneys to associations. In the overwhelming majority of reported cases in which association attorneys have been found to have violated the requirements of the FDCPA, the violations have been found to be procedural or technical, thereby visiting no actual damages upon the assessment-debtor that were sought to be cured by the FDCPA and state law.

In weighing the cost versus the benefit of subjecting community association attorneys to the requirements of the FDCPA for the collection of assessment debt, the scale weighs heavily in favor of removing the unnecessary increase in the cost of assessment collection borne by the assessment-debtor or the association as the result of the FDCPA and state laws, which is then passed on to the unit owners who otherwise are current in their payment of assessments.

Inasmuch as the collection of assessments due to community associations is commonly unopposed by the debtor and, by state law or the terms of an association's governing documents is added to the amount due from the debtor, the additional requirements imposed for association assessment debt by

the FDCPA and similar state laws causes a material increase in the amount due from the assessment-debtor thereby making the ability of the debtor to pay the debt more onerous.

Community associations rely on the collection of assessments to effectively preserve, repair, or maintain the property owned by the owners in common. Delay in the ability to collect assessments has a significant negative impact on the ability of an association to undertake the maintenance, repair and replacement work that is essential to maintaining a safe and attractive community. The failure of one or more owners to pay an assessment creates a debt to other owners and places an unjustified financial strain on other owners. Local governments throughout the United States have increasingly shifted the burden of maintaining improvements that were historically maintained by local government to community associations. As a result, making the collection of assessments more burdensome may also result in an association's inability to maintain improvements that are vital to the community and for emergency services.

Accordingly, community association assessments are now more akin to local governmental taxes rather than consumer debt. Taxes are not considered "consumer debt" under the FDCPA. Common expense assessments serve the same function as taxes due local governments. Association assessments represent the financial obligation borne by the community as a whole for services that benefit the general welfare of all owners, including snow plowing of streets, maintaining storm water management systems, fire hydrants, utilities, sidewalk repairs, recreational facilities, and the like, as do governmental entities.

## **RECOMMENDATION**

CAI recommends that owners become educated as to their responsibilities, if any, to the FDCPA and state law, as it evolves and as it is interpreted in the case law in various jurisdictions and comply with the same. CAI opposes duplicative legislation at the state level that imposes state penalties for violations that are already incorporated within the FDCPA. CAI supports legislation that accomplishes any of the following:

1. The exemption of association attorneys and community managers from the FDCPA or any similar state laws that impose unduly burdensome requirements in collecting monies owed to community associations.
2. The elimination of penalties and attorneys' fees for technical or procedural violations that cause no damages to a debtor.
3. The elimination of community association assessments as "consumer debt" under the FDCPA or any similar state laws.

Although courts have interpreted the language of the FDCPA to include assessment debt as consumer debt, CAI urges its members to educate legislators on a continuing basis concerning the similarity of assessment debt to local governmental taxes and ultimately seek the statutory removal of association assessments as consumer debt under all relevant consumer debt protection laws.

**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**  
**Amended and Approved by the Government & Public Affairs Committee, October 17, 2001**  
**Adopted by the Board of Trustees, May 3, 2002**  
**Approved by the Government & Public Affairs Committee, December 13, 2011**  
**Adopted by the Board of Trustees, January 26, 2012**  
**Approved by the Government & Public Affairs Committee April 23, 2019**  
**Adopted by the Board of Trustees May 15, 2019**

## 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**

**Adopted 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**

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

**Adopted 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, is 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**

# FEDERAL TAXATION OF COMMUNITY ASSOCIATIONS

Community Associations Institute (CAI) supports rational and consistent classification of community associations under the IRS Code, including condominiums, cooperatives and homeowners associations. CAI supports the premise that interest income earned on reserve accounts be recognized and treated as a patronage activity and not be subject to taxation.

Specifically, CAI supports these initiatives:

- **Technical correction to Internal Revenue Code (IRC) Section 528 - Form 1120-H**  
CAI supports two minor technical corrections to IRC Section 528 that would provide full ownership associations with the same benefits presently provided to timeshare associations only. This would result in virtually all full ownership associations being able to qualify to file Form 1120-H and enjoy the protections built into IRC Section 528.
- **Proper application of Subchapter T (IRC Sections 1381 – 1388) – Form 1120-C**  
CAI supports the application of Subchapter T for all associations—not just those designated as cooperatives. This would provide associations with the benefits of Subchapter T; the primary benefit being that interest income on reserves is considered patronage income<sup>1</sup> and is not subject to taxation.
- **Proper application by IRS of IRC Section 501(c)(4) – Form 990**  
CAI supports the promotion of reasonable, fair and consistent application of tax law for associations attempting to gain tax exemption, and exempt associations involved in tax audits or tax litigation challenging exempt status. Associations filing Form 990 enjoy the benefit that interest income on reserves is not considered taxable income, and that there are virtually no tax risks associated with Form 990.

## BACKGROUND

While Congress had previously passed amendments to the Tax Code that benefits timeshares, it has failed to amend the tax code to provide equivalent assistance to associations other than timeshares. Full ownership associations are, by far, a larger group as compared to timeshares. The recommended CAI position is to support two minor technical corrections to IRC Section 528 that would provide full ownership associations with the same benefits presently provided to timeshare associations only.

In 2007 Congress modified IRC Section 216 for Cooperative Housing Corporations, allowing virtually all housing cooperatives to qualify under that section. This has resulted in an approximately 90 percent

---

Page | 42 <sup>1</sup> **Note: Definition of 'Patronage Dividend' – A dividend or distribution that a co-operative pays to its members or investors. Patronage dividends are given based on a proportion of profit made by the business. Once this amount is figured out the dividend is calculated according to how much each member has used the co-op's services. Tax rules view these profits essentially as an overcharge, which can be returned to patrons and deducted from the co-op's taxable income.**

reduction in the number of private letters<sup>1</sup> rulings requested on behalf of cooperatives, since cooperatives have not had to seek qualification from the IRS.

#### Proper application of Subchapter T (IRC Sections 1381 – 1388)

The many citations below, when considered together, support the position that homeowners associations may be subject to Subchapter T as cooperatives, and establishes that interest income from reserves is considered a patronage activity and not subject to taxation.

Subchapter T was added to the Internal Revenue Code in 1962 to recognize a special type of entity; not a for-profit organization, not an exempt nonprofit organization, but something in between; an organization formed primarily by a group of individuals or companies known as patrons to conduct business amongst themselves without profit motive. The organizations were given the label of “cooperative organizations.”

IRC Section 61 states “gross income means all income from whatever source derived” unless specifically exempted by another section of the Code. Congress recognized that no such exemption existed for cooperatives, so enacted Subchapter T that provided for organizations operating on a cooperative basis. Subchapter T exempted the “patronage” income from taxation, and taxed only net “non-patronage” income.

Several tax court cases and revenue rulings have provided insight into the intent and application of Subchapter T of the Internal Revenue Code. These cases, all occurring after introduction of IRC Sections 277 and 528, clarify that associations may avail themselves of the benefits of Subchapter T.

Tax Court case *Concord Consumers Housing Cooperative vs. Commissioner* held that “The application of Subchapter T is not elective on the part of [Taxpayer] . . .” and “If this petitioner [taxpayer] was being operated on a cooperative basis, within the meaning of section 1381(a) (2), then the provisions of Subchapter T attach, and petitioner’s liability is to be determined under those provisions as a matter of law.” *Thwaites Terrace House Owners Corporation v. Commissioner* and *Trump Village Section 3, Inc. v. Commissioner* both concurred with this result. The Courts stated that Subchapter T both precedes and preempts the more general Section 277. IRS acquiesced with Action on Decision 1995-011.

*Puget Sound Plywood, Inc. v. Commissioner* established the three elements of operating on a cooperative basis to be (1) subordination of capital, (2) democratic control, and (3) sharing in fruits and excesses of their cooperative endeavor. Most community associations, notwithstanding the type of association, meet these three criteria.

*Cotter and Company and Subsidiaries, Appellant v. the United States, Appellee*, established that any integrally intertwined activities are considered patronage activities. *Thwaites Terrace, Trump Village Section 3* established that maintaining reserve accounts is an integrally intertwined activity and that related interest income is considered patronage income.

Revenue Ruling 75-371 stated that “However, a condominium management corporation may operate in such a manner as to qualify for the benefits of Subchapter T (sections 1381 through 1388) of the Code, thereby permitting the corporation to accumulate funds for reasonable business needs.”

Because so few associations presently take advantage of this position, the recommended CAI position is to educate CAI members about this tax position, which is rarely used, to promote its use. The two primary benefits to associations are elimination of tax on reserves’ interest income and a significant decrease in tax exposures that exist on Form 1120.

Proper application by IRS of IRC Section 501(c) (4)

IRS has relatively consistently adopted positions contrary to law applicable to this narrow section of tax law in the course of tax audits and the exemption application process. IRS written training materials and in-house training courses exhibit a bias against homeowners associations attempting to qualify under this Section by addressing only one of the three methods in which an association may qualify for exemption.

Treasury Regulations establish that the association must “serve a community”<sup>2</sup> (a term that is not defined in the Code or subsequent rulings) in order to qualify as a social welfare organization under IRC Section 501(c) (4). The IRS has a single interpretation of this, which is that the association must grant unrestricted access to the public to all association owned and maintained amenities. This is the only position presented in IRS training material and training programs. That position, unfortunately, ignores other factors established in court cases and various revenue rulings where an association MAY restrict access:

- The association itself may constitute a “community”
- The association may occupy a geographic area generally recognized as a governmental entity

Because IRS recognizes only the unrestricted access test above in its written internal training material, IRS agents routinely inform associations that they may not qualify if they restrict access of the general public to any association facilities. IRS training materials attempt to establish a “bright line” test where none exists. This biased training material is not in accordance with law or the IRS’s own revenue rulings, and has resulted in significantly raising the cost to associations of attempting to gain exempt status by forcing many of them into an expensive appeals process.

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

---

Page | 44 <sup>2</sup> Note: Treasury Regulation 1.501© (4) - 1 – Describes “Social Welfare” Organizations. Appendix 5k. Describing social welfare organizations as (I) in general. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.



**Amended and approved by the Government and Public Affairs Committee, July 9, 2013**  
**Adopted by the Board of Trustees, August 15, 2013**

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

Community Associations Institute (CAI) urges federal lending-related agencies and the secondary mortgage 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.
- Underwriting standards for lending in community associations should be based on industry recognized best practices.
- Development of agency regulations governing lending in community associations should be done in a transparent manner with public notice and comment.
- 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.

### **RECOMMENDATION**

Community association homeownership plays a 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 the Department of Veterans Affairs loan guarantees and Federal Housing Administration mortgage insurance, must be available to community association developments.

As community association housing represents more than twenty percent of all housing in the United States, regulatory and legislative efforts governing lending criteria to individuals or for housing in community associations should be informed by the unique, common ownership arrangements. Transparent and open rules or regulatory procedures that include public notice and comment are the best mechanism to ensure any rule adopted is based on the best information available to regulators.

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

**Amended and adopted by the Board of Trustees, May 1, 1993**

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

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

**Approved by the Govt. & Public Affairs Committee, May 4, 2011**

**Adopted by the Board of Trustees, January 22, 2013**

## **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, backups 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 cannot 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.

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

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

## **FORECLOSURES BY COMMUNITY ASSOCIATIONS TO COLLECT DELINQUENT ASSESSMENTS POLICY**

Community Associations Institute (CAI) endorses legislation that provides a fair and equitable foreclosure process that protects homeowners, property values, and the financial health of community associations by ensuring foreclosures by community associations are completed in a timely and reasonable manner.

CAI supports the right of community associations to both judicially and non-judicially foreclose units and lots for the purpose of collecting delinquent assessments and minimizing future delinquent assessments.

CAI supports and advocates for a fair and equitable foreclosure process by community associations that: (1) provides timely notice to owners and gives owners a reasonable opportunity to cure any default prior to foreclosure, (2) allows a reasonable amount of time for owners to cure a default as the foreclosure proceeds, (3) promotes reasonable expenses and costs of the foreclosure process, and (4) provides notice to all other lien holders of record (or required by law) so that lien holders have the right to either exercise their right to foreclose or participate in the process.

To ensure legal and timely foreclosure, governmental housing finance regulations should preserve lien priority for association assessments to protect the financial stability of both homeowners and associations. Mortgage servicing standards specific to housing in a community association must be improved so that a property in foreclosure by the community association is continually maintained by the owner of record or the mortgage holder/servicer, with association assessments being paid in a timely manner as well.

Lenders that acquire property by foreclosure must preserve, protect, maintain, and insure such properties according to all applicable association requirements at all times, including during any period of abandonment or vacancy. Lenders should also provide the association with a single point of contact to facilitate prompt response and curative action for all violations of the community association's covenants and rules and regulations, including deed restrictions pertaining to use the lot or unit.

CAI endorses legislation that provides community associations with an assessment lien priority as defined in the Uniform Common Interest Ownership Act.

### **BACKGROUND**

Countless Americans lose their homes when lending institutions are unable to collect mortgage payments. The decision of a community association to foreclose on a homeowner must be considered critically. CAI supports the use of foreclosure after other reasonable attempts have been made to compel owners to fulfill their obligations to the association.

Unlike mortgage lenders most community associations are not able to reject purchasers based on credit worthiness. They must accept purchasers that may become debtors notwithstanding the ability to pay.

This, along with other factors, may lead to situations where units and lots are sold to people who either cannot or choose not to pay assessments.

The failure to pay assessments in community associations leads to a particularly unfair result because the expenses of the association must be paid regardless of the delinquency. This effectively means that other owners in the community pay the delinquent owner's share of the expenses while the delinquent owner (and that owner's lender) continues to benefit from the maintenance of values realized as a result of those expenses. Moreover, numerous delinquencies may materially impact the financial condition of the community association and result in a reduction in the value of all homes in the community. In short, delinquencies must be addressed to minimize this unfairness and the potentially cumulative negative effects from nonpaying owners.

Associations need the discretion to determine the most effective collection technique for a particular delinquency, which may include payment plans, lawsuits, foreclosures, or other lawful collection methods. Notwithstanding various methods of collection, judicial and non-judicial foreclosures are necessary and cost-effective methods of collecting assessments.

Importantly, due to debtor rights laws in some states foreclosures may be the only available tool to effectively recover delinquent assessments. This is particularly applicable to abandoned homes and homes occupied by owners who intend to stay as long as possible without paying any assessments. In addition, this is exacerbated when a lender fails for a protracted period of time to foreclose a mortgage in default and there is insufficient equity to satisfy the association's lien.

For these reasons, CAI supports the right of community associations to initiate foreclosure proceedings to collect delinquent assessments so long as those proceedings provide fair and equitable notices, procedures and opportunities for the owner to cure and for other lien holders to exercise their right or participate in the foreclosure process to the extent the law provides.

**Approved by the Government & Public Affairs Committee, April 14, 2015**

**Adopted by the Board of Trustees, October 26, 2016**

# GOVERNMENT REGULATION OF COMMUNITY ASSOCIATIONS POLICY

Governance should occur at the lowest possible level. Legislatures and regulatory agencies should acknowledge the right of self-determination by owners who elect volunteers and have a vested interest in their own communities. Community Associations Institute (CAI) recommends that state LACs support legislation that is necessary for the overall welfare of community associations. CAI encourages state governments to give favorable treatment to the Uniform Community Association Acts. Further, LACs are encouraged to engage and consult CAI's Government and Public Affairs department to ensure coordination and support of proposed legislation.

As a result of the substantial increase in the number and variety of residential, commercial and mixed-use developments and an increasing number of consumers affected by various forms of ownership, government at local, state and federal levels is actively pursuing legislative and regulatory measures to create, control and oversee community associations.

CAI believes that state governmental regulations are often targeted to solve the perceived failings in a few community associations. Such regulations paint all common interest communities with the same broad brush often creating an unnecessary, intrusive burden on the overwhelming majority of community associations that are administering their duties and providing services to their owner-members in an efficient, customer friendly and cost-conscious manner.

Governance should be allowed to occur at the lowest possible level, and legislative bodies and regulatory agencies should acknowledge the right of self-determination by owners who elect willing and able volunteers who typically have a substantial vested interest in their own communities.

State Legislative Action Committees, typically composed of experienced and knowledgeable association practitioners and association volunteers, are in the best position to discover and offer improved statutory language or new legislation. Identifying legislators to sponsor change and educating homeowner advocates that are willing to testify on the impacts of proposed legislation are additional keys to improved results.

Therefore, CAI does support effective and tailored legislation on the local, state or federal level when necessary or consistent with the values and overall welfare of community associations. The key is to determine, on an individual basis, when a legislative proposal is helpful or harmful in light of practical and economic realities. Equally important is to ensure that CAI maintains a harmonious and uniformly recognized public policy that serves all its members, and helps eliminate "patchwork legislation" across multiple jurisdictions.

## RECOMMENDATION

CAI recommends that when state governments prudently determine that the interests of its citizens warrant amending their basic community association development laws, they consider the need for updated and comprehensive legislation consistent with CAI policy goals. Moreover, in undertaking such review, state governments are urged to consider and give favorable treatment, in whole or in part, to



one or more of the Uniform Community Association Acts, in particular the Uniform Common Interest Organizing Act and its adopted amendments.

The state LAC or chapter legislative committee must examine proposed legislation and determine it will not weaken efforts with respect to the creation or fair governance of common interest communities, and that support for any local legislative effort does not conflict with any other CAI Public Policy.

State LACs should utilize the services of CAI's Government and Public Affairs department to enhance the clarity, coordination, and support of proposed legislation as early as possible in the legislative process to ensure the interests of CAI and its members are well represented.

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

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

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

**Amended and approved by the Government & Public Affairs Committee, April 14, 2015**

**Adopted by the Board of Trustees, April 29, 2015**

# 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 effect 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:

1. Is the owner/resident exhibiting signage or any other commercial display?
2. Are clients regularly visiting the home?
3. Is the owner/resident using the gate services or concierge or otherwise draining private resources of the community for personal business?
4. Does the unit draw excessive traffic to its proximity?
5. Is the unit producing irregular noises or odors?
6. Generally, is the use of the unit inconsistent with typical residential living?
7. 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**

**Adopted by the Board of Trustees, March 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 any federal agency involved with the approvals or any other secondary mortgage entity as a loss payee on a community association insurance policy.

### **BACKGROUND**

The concern is to enable insurance proceeds to be appropriately applied and in the association's interest to restore property after a major catastrophe. CAI, an organization dedicated to the protection, preservation and enhancement of community association housing, recognizes and appreciates a federal agency'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 naming a governmental agency 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, a dramatic reduction in the availability of private insurance for community associations may be a direct result. Involving a federal agency in the claims process will also lengthen the time to complete the repairs. Higher claims' costs may occur which will ultimately increase premiums.

Historically, Freddie Mac, for example, sought to be named as a "loss payee" on community association policies to assure that a Freddie Mac representative controlled 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.

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 so it can manage itself. When the loss exceeds 10 percent of the insurable replacement cost or \$1,000,000, whichever is greater, the association must select an independent trustee. That trustee can be a professional other than a public adjuster, such as a CPA, PE or Certified Construction Manager.

### **RECOMMENDATION**

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 already in use and routinely included in the CC&Rs of community association in several states and is acceptable to the insurance industry in those states. Most insurance providers to community associations have a national presence.

This will facilitate expanding the use of insurance trustees to those insurers other jurisdictions and should facilitate the availability of insurance to all residential communities. CAI encourages members of the insurance industry to support and cooperate with this approach.

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, May 3, 2000**

**Adopted by the Board of Trustees, May 6, 2000**

**Amended and approved by the Government & Public Affairs Committee, December 13, 2011**

**Adopted by the Board of Trustees, January 26, 2012**

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

1. Community Associations Institute (CAI) endorses legislation that provides community associations with an assessment lien priority equal to the amount of assessments that are due over the term of the lien of a first mortgage or deed of trust.
2. Community association liens, including the portion that enjoys priority over the lien of a first mortgage or deed of trust, should be perpetually renewable. A single claim of priority should not preclude subsequent applications of future liens for a property in a community association.
3. The lien provided for should apply only to monthly or periodic common expense assessments made by an association in accordance with its annual operating budget, together with reasonable attorneys' fees and other costs of collection to recover this amount.
4. CAI also supports the 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 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, community housing association assessments have no such priority because of a lack of legislative authority, even though the association often serves a quasi-governmental function and the association continues to preserve the value of the lender's mortgage security by continuing to meet all its obligations to all its members, whether for structures, common area maintenance or administrative protections.

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 Department of Veterans Affairs, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Revisions over the years to the Uniform Acts have added additional benefits for community associations.

Twenty states have adopted some version of the lien priority, but the language, coverage and impact varies widely, with one state providing a twelve-month lien period and others with no such limits.

## **JUSTIFICATION**

In the absence of an association assessment lien priority, non-defaulting unit owners are forced to pay for the upkeep of the association common elements as well as the cost for required insurance and other expenses of the association, possibly for extended periods of time. This increases the amount of the assessments for all other unit owners and may have a negative impact on the ability of the association to qualify potential buyers for mortgage financing. Aside from the obvious unfairness of this situation, severe hardships are thereby imposed upon non-defaulting unit owners, many of whom are already committing a significant portion of take-home pay or fixed retirement income for housing related expenses.

In communities where multiple defaults are common, the resulting increase in regular assessments and/or special assessments which community associations are compelled to pass along to their responsible, non-defaulting unit owners to cover the shortfall 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 ensuring that associations have the financial resources to continue to maintain the common and shared areas of developments during foreclosure proceedings. Provision of insurance, maintenance and security services is essential to the preservation of the value of their mortgage security interests.

## **RECOMMENDATION**

In order to fully realize the benefit of the lien priority, the lien must be perpetually renewable, meaning that it may not be limited by a single priority payment. While the lien priority may be as modest as six months' worth of assessments, there should be no limit over time. By way of example, the payment of a priority claim in the current year should not affect the ability to re-assert a priority claim if a foreclosure commences in a subsequent year.

**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**

**Approved by the Government & Public Affairs Committee, July 9, 2013**

**Adopted by the Board of Trustees, August 15, 2013**

# 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**

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

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

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

## MANAGER LICENSING AND MODEL LEGISLATION POLICY

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 Community Association Managers International Certification Board (CAMICB)
- 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.

### 1. 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:

- a. 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.
- b. 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.
- c. An individual operating under a fictitious business name that provides management or financial services to a common interest development.
- d. An individual who agrees to provide management or financial services to a common interest development.
- e. 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 Community Association Managers International Certification Board (CAMICB) 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.

- a. Hold an active Professional Community Association Manager<sup>®</sup> (PCAM) designation from CAI.
- b. Hold an active Association Management Specialist<sup>®</sup> (AMS) from CAI.
- c. Hold an active Certified Manager of Community Associations<sup>®</sup> (CMCA) from Community Association Managers International Certification Board (CAMICB).
- d. 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.

#### **2. 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:

- A. Hold an active Professional Community Association Manager<sup>®</sup> (PCAM) designation from CAI.
- B. Hold an active Association Management Specialist<sup>®</sup> (AMS) from CAI.
- C. Hold an active Certified Manager of Community Associations<sup>®</sup> (CMCA) from Community Association Managers International Certification Board (CAMICB).

#### **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 CAMICB.

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 CAMICB’s national certification program in lieu of state licensure.

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

**Amended and Approved by the Manager Credentialing Legislative Task Force, April 22, 1998**  
**Approved by the Public Affairs Council, April 22, 1998**  
**Adopted 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**



# MARKETABLE RECORD TITLE POLICY

## POLICY

CAI supports legislation that permits the recorded governing documents of community associations to be enforceable in perpetuity, including restrictions on the nature of the community even where there is no community association. Certain states have adopted legislation known as the Marketable Title Act or the Marketable Record Title Act (the “Marketable Title Acts”) that automatically eliminate encumbrances on title to real property, including restrictive covenants, after the passage of statutory time periods. Almost all of these statutes contain an exception allowing restrictions limiting real estate to residential use to continue in force. However, these statutes can create uncertainty over the continued enforceability of restrictions on the nature of the community and the governing documents of community associations. CAI supports legislation that clearly supports the continuing and perpetual enforceability of such restrictions unless and until amended by the property owners subject to them, especially the governing documents of community associations.

## ABOUT THE COMMUNITY ASSOCIATION HOUSING MODEL

Although community associations come in many forms and sizes, all associations share three basic characteristics: (1) membership in the association is mandatory and automatic for all property owners; (2) certain legal documents bind all owners to defined land-use requirements administered by the community association; and (3) all property owners pay mandatory lien-based assessments that fund association operations.

The community association housing model is actively supported by local government as it permits the transfer of many municipal costs to the association and homeowners. Today, many community associations deliver services that once were the exclusive obligation of local government usually funded by government-levied property taxes. In fact, 77% of new homes in the United States are built in a community association. Generally, community associations are governed by a board of directors or trustees comprised of owners and residents elected by their neighbors. This board guides the association in providing governance and other critical services for the community.

## BACKGROUND

Approximately half of the states in the United States have adopted some form of a Marketable Title Act. The purpose of these statutes is to eliminate older recorded real property interests that may interfere with future development or create potential liability for title insurance companies to insure over when providing title insurance. It is common for states to create a 20-40 year time period in which certain real property interests will automatically be eliminated if they do appear in the chain of title. In many cases, the governing documents of community associations are subject to these acts. In some states, it is incumbent upon community associations to re-record notice of the restrictions before the expiration of the statutory time periods for the restrictions to avoid being automatically eliminated. The states also vary as to whether a document is contained within the chain of title if a deed indicates that the property is subject to “all restrictions of record” or whether a document must be specifically identified within a deed to come within the chain of title.

The limited purpose of Marketable Title Acts is not to permit title insurance companies to ignore earlier recorded restrictions because all such laws have exceptions requiring the title insurance company to examine title beyond the stated time limit. The true purpose is to invalidate claims to ownership, not restrictions on use or development. Marketable Title Acts would allow title insurance companies to avoid claims such as dower rights of a divorced spouse in some states, but not lot setback or coverage limitations or prohibitions on multifamily structures. In those jurisdictions where the Marketable Title Act has been interpreted strictly by the courts, it has allowed landowners and developers to ignore basic restrictions on which the other property owners have relied when purchasing their homes.

Marketable Title Acts may pose significant problems for community associations. In addition to potentially eliminating restrictions without the consent of the owners, these statutes create the possibility of nonuniform restrictions within the same subdivision or condominium. Under these statutes, it is possible for restrictions to be removed from less than all of the properties in a subdivision or condominium. Such a statutory scheme is inconsistent with the owners’ ability to enter into permanent contractual agreements to govern their property, and later vote to amend or terminate those restrictions. Lack of uniformity in the application of restrictions is inconsistent with the common law doctrine of negative reciprocal easements, and may also lead to decreased property values in a community. Arbitrarily terminating restrictive covenants that contain private property rights that owners have relied on for years is inconsistent with the community association housing model.

Additionally, these statutes have the effect of shifting the burden to perform title searches from sophisticated professional title companies to volunteer community association board members. These statutes are intended to benefit title insurance companies so that they no longer have to insure over older property interests, including

restrictive covenants. In many cases, the statutes do not require notice to property owners or community associations that a single property owner is attempting to remove restrictions on their property. Rather, these types of statutes require community associations to perform regular title searches to determine whether any of the lot owners have attempted to remove restrictions. In contrast, if a title insurer does not want to provide insurance for restrictions of a certain age, it can simply amend its contract to limit the scope of insurance.

As many common-interest communities created in the 1970s, 1980s, and 1990s mature the volume of communities that may suffer the loss of covenants and lien-based assessment rights materially increases. Even age-restricted communities that rely on the age restrictions can lose their protected status under the Fair Housing Act.

## **RECOMMENDATION**

CAI recommends that community associations consult with counsel to determine if a version of the Marketable Title Act presently exists in their state and what impact it may have on the continued enforcement of their governing documents. CAI supports legislation that clearly provides that (1) restrictions on residential use or additional development and (2) covenants establishing a community association continue in perpetuity unless and until amended by the property owners subject to such restrictions and covenants.

**Approved by the Government & Public Affairs Committee, December 9, 2020.**

**Adopted by the Board of Trustees. December 17, 2020**

## **MORTGAGE INTEREST DEDUCTION POLICY**

Community Associations Institute (CAI) supports a vibrant real estate market and financially affordable and attractive communities. CAI also supports efforts that permit as many citizens as possible to utilize the mortgage interest deduction to make homeownership a reality. It is a tool that has worked to maintain property values and as an incentive to real estate sales. Allied organizations have joined with CAI to support the continuance of this policy. Among them are the National Association of Home Builders, National Association of Realtors, the Mortgage Bankers Association and the Coalition for Sensible Housing Policy representing consumer and industry groups.

### **BACKGROUND**

- The deduction for mortgage interest on owner-occupied homes is one of the largest individual income tax expenditures provided to households. The Office of Management and Budget estimates the mortgage interest deduction to be worth nearly \$90 billion in fiscal year 2011.
- Experts predict home values could fall 15 percent as buyers discount the value of the mortgage interest deduction in their purchase offers.
- Research shows Americans still overwhelmingly consider homeownership a core value. Efforts to weaken or eliminate the mortgage interest deduction undoubtedly would meet widespread and vocal opposition. Equally unpopular would be proposals to diminish a federal role to help qualified home buyers obtain affordable 30-year mortgages.

### **RECOMMENDATION**

Protecting the mortgage interest deduction promotes housing. In supporting it, we help ensure that tomorrow's families can follow the same path to home ownership as those before them by having access to reasonable mortgage products. This incentive for home ownership effectively supports all those who qualify for and seek this status, ultimately resulting in healthier communities.

CAI opposes any changes that would limit or undermine current law.

**Approved by the Government & Public Affairs Committee, December 13, 2012**

**Adopted by the Board of Trustees, January 22, 2013**

## **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**

**Adopted 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**

# PROTECTION FOR COMMUNITY ASSOCIATION VOLUNTEERS POLICY

Community Associations Institute (CAI) 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**

## **PROTECTION OF COMMUNITY ASSOCIATION CLAIMS IN CONSTRUCTION DEFECT LEGISLATION POLICY**

Homeowners and associations should recognize that construction is a complex process and will not result in a product that is perfect, but should expect that their homes and common elements are fit for their intended purpose, conform to the legally binding representations made by the builder, complies with building code and plans, and is constructed in a manner that is consistent with good workmanship. In recent years, builder and developer advocacy groups have proposed “right-to-cure” legislation to provide homebuilders with certain tactical privileges in connection with construction defect claims that are not available to other litigants. Often these legislative proposals have unreasonably constrained the ability of community associations to timely represent the interests of both the association and individual owners and effectively seek resolution of construction defect claims.

### **IDENTIFICATION OF DEFECTS**

Construction defect legislation must provide a community association with a meaningful and adequate opportunity to inspect the construction of common property and facilities, and to present any claims it may have to its builder.

### **THE OPPORTUNITY TO CURE**

Builders must be given an opportunity to present a reasonable plan to repair defective construction, and an association should 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, or that would cause additional damage to the common elements or homes if not remediated. Associations must have a meaningful right to accept or reject any proposed plan to cure presented by a builder.

### **HOMEOWNER INVOLVEMENT**

Like any other aspect of community association operations, an open communication process that assures the flow of information among the board, committees and individual homeowners, should be established in every community. 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. When the association has the right to make claims (except during the period of builder control), the governing board, as the elected representative body of all homeowners, must be allowed to make claims without owners’ approval. The prudent governing board will utilize experienced, qualified legal counsel and other experts to verify the validity of a defect claim to help meet both fiduciary and business judgment obligations. Legislation should invalidate as unconscionable any governing document provision proposed by or on behalf of the developer that requires owners’ approval before legal action may be taken for construction defects. Governing boards must have the same discretion as any other corporate board to act on behalf of the corporation. Provisions in governing documents restricting the governing board from taking action do not represent the best interests of owners, and are incorporated by developers solely to benefit their interests. Builders should not be able to avoid their obligation to remedy defects by maintaining control of the association beyond the time permitted by law.

### **PROTECTION OF ATTORNEY CLIENT RELATIONSHIP**

A community association’s relationship with its chosen legal counsel should be protected. The association’s legal counsel must be able to consult confidentially with board members, owners, and agents of the community association without the risk that such communications could be required to be produced in discovery proceedings. Such confidential communication must be protected to the same extent that the



law provides for any other corporate counsel who communicates with the governing board, employees, constituents, members and agents of their corporate clients.

Legislation should not limit the choice and ability of a community association to be represented by the legal counsel of its choosing. Legislation should not interfere with the attorney-client relationship by limiting an association's ability to work with the attorney of its choice in any aspect of a construction defect dispute, including, providing disclosure to homeowners and builders. Furthermore, legislation should not require community associations or their legal counsel to provide disclosures to homeowners or builders irrespective of whether the community association and its legal counsel believe the required disclosure to be true.

## **ALTERNATIVE DISPUTE RESOLUTION**

Community Associations Institute (CAI) supports legislation that encourages alternative dispute resolution (ADR) as an acceptable alternative to construction defect litigation when consent to ADR is truly voluntary and occurs after the dispute arises. Either party should be allowed to request use of ADR mechanisms as long as it is performed in a reasonable timeframe and under terms that are agreeable to all parties. CAI recognizes the need for and supports the use of fair ADR mechanisms, consistent with its adopted Alternative Dispute Resolution Policy. Any legislatively directed ADR process must also provide for the tolling of any statutes of limitation or repose that could jeopardize the association's claims if the ADR process is unsuccessful.

## **RIGHT TO BE MADE WHOLE**

To enable the association and its homeowners to be in the position they would enjoy if no defects had existed, the association must have the right to make claims for defects affecting common elements or other components for which the association has repair or maintenance responsibilities. Should an association take emergency measures to correct a defect that poses an immediate health or safety risk, or remediate defects that would cause additional damage to the common elements or homes if not remediated, such action must not impair or preclude an association's right to recovery, provided evidence of the defect is preserved. When legal action is taken, the prevailing party should be allowed to recover costs, attorney's fees and prejudgment interest.

## **STATUTES OF LIMITATIONS AND REPOSE**

Legislation should provide for reasonable time periods for community associations to bring construction defect claims. Repose periods must account for the fact that latent defects often take years to discover. Limitations periods must give community associations reasonable time after the discovery of defects to investigate defects, work with the builder to informally resolve the dispute, and if necessary to retain legal counsel. Repose periods of less than ten years after the substantial completion of the community, do not provide a sufficient period for community associations to discover latent defects. Limitations periods less than two years after the discovery of the nature of the defect, do not provide community associations with sufficient time to investigate defects, work with the builder to informally resolve the dispute, and to retain legal counsel. The time period in which the board of directors of a community association is under the control of the declarant or other builder entity should not be counted towards any period of limitations or repose. Finally, the general contractor or Construction Affiliate's statute of limitation should be co-extensive with the statute of limitations during which the association can bring a claim against the developer.

## **SELF-GOVERNANCE**

Legislation should not interfere with community association's right to self-governance. It has become a common practice for builders to insert provisions in community association governing documents that are designed to shield builders from legal liability. Provisions in governing documents that are designed to shield builders from legal liability or make it more difficult, time-consuming, or expensive to bring a construction defect claim, should be statutorily determined to be unconscionable and unenforceable. CAI advocates for legislation consistent with its Self-Governance policy.

## **STATE CONCERN**

Community associations are usually creatures of state statutes. As such, CAI believes that the regulation of construction defect disputes is a matter of state concern and opposes any efforts to regulate construction defect disputes at the municipal level, as this would create differing and likely conflicting standards in local communities. In turn, this would make it difficult for community associations to comply with differing standards without knowledgeable legal counsel, which could subject community associations to legal claims as a result of their failure to comply with obscure and conflicting municipal ordinances.

## **RECOMMENDATION**

Recognizing that CAI's diverse membership is affected in different ways by construction defect issues, this policy balances the interests and needs of our members with those of the development community to provide an equitable approach to construction defect legislation and regulations. CAI advocates from every perspective to balance their approaches to issues related to construction defects, 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**

**Approved by the Government & Public Affairs Committee, December 13, 2012**

**Adopted by the Board of Trustees, January 22, 2013**

**Approved by the Government & Public Affairs Committee, April 12, 2016**

**Adopted by the Board of Trustees, May 4, 2016**

# **PETS AND ASSISTANCE ANIMALS PUBLIC POLICY**

## **POLICY**

Community Associations Institute (CAI) recognizes and supports the rights of residential community associations to regulate and adopt their own rules pertaining to pets and assistance animals living in their communities. CAI also recognizes the rights of individuals with disabilities to receive the assistance they need and supports state and federal law guaranteeing such rights.

CAI supports legislation that specifically allows community associations to request documentation to verify the need for an accommodation for an assistance animal.

CAI supports legislation that imposes penalties for fraudulent requests for service or emotional support animals.

CAI does not support legislation that contains provisions prohibiting community associations from fairly adopting rules governing animals.

## **ABOUT THE COMMUNITY ASSOCIATION HOUSING MODEL**

While community associations come in many forms and sizes, all associations share three basic characteristics: (1) membership in the association is mandatory and automatic for all property owners; (2) certain legal documents bind all owners to defined land-use requirements administered by the community association; and (3) all property owners pay mandatory lien-based assessments that fund association operations.

The community association housing model is actively supported by local government as it permits the transfer of many municipal costs to the association and homeowners. Today, many community associations deliver services that once were the exclusive province of local government.

Community associations are governed by a board of directors or trustees elected by their members. This board guides the association in providing governance and other critical services for the community usually funded by property taxes.

## **BACKGROUND**

The Americans with Disabilities Act (ADA) and Fair Housing Act (FHA) are federal laws which have provisions regarding assistance animals. The ADA applies to service animals in places that are open to the public, which may include community associations in certain cases, whereas the FHA applies solely to service and emotional support animals in housing. The ADA recognizes only dogs and miniature horses in both categories and the requirements are relatively straight forward. However, the FHA pertains to all animals and a very wide range of disabilities, resulting in varying legal interpretations. Understanding the difference becomes important for associations. A service animal is specifically trained to work or perform tasks for individuals with disabilities whereas an emotional support animal is an animal (also referred to as assistance animal), that provides comfort for people with disabilities.

The FHA requires associations to provide exemptions for service and emotional support animals from certain pet policies and rules. Further, the FHA requires associations to provide reasonable accommodations when requested by residents' for service and emotional support animals if the resident has a disability, the animal serves a function directly related to the disability and is necessary to afford the resident with the equal opportunity to use and enjoy their dwelling. However, the accommodation must be "reasonable" which does not mean "absolute." Rather, the reasonableness requirement limits accommodations to those that do not impose an "undue hardship" by causing excessive financial burdens to the community association or that fundamentally alter the nature of the community association.

According to the Fair Housing Act, people who have a qualifying disability are permitted to keep their

service animals within their condominium, homeowner's association or cooperative. Emotional support animals are also given permission to stay in "no pet" community associations; however, in certain instances if the resident's disability is not readily apparent the FHA allows housing providers the ability to ask for reliable documentation from a physician, psychiatrist, or other trained professional, to confirm the need for the emotional support animal. If the disability is readily apparent or known but the disability-related need for the assistance animal is not, the housing provider may ask the individual to provide documentation of the disability-related need for an assistance animal.

This documentation serves the purpose of:

- 1) verifying the condition that substantially limits one or more of the resident's major life activities;
- 2) describes the needed accommodation; and
- 3) demonstrates the relationship between the person's disability and the need for the requested accommodation.

When the disability is evident the association is required to make a reasonable accommodations in its rules, policies, and practices to afford the disabled resident equal opportunity to use and enjoy the property. Such documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support. Community associations should also ensure that they are aware of any requirements under state law that relate to emotional support and service animals, as many states have adopted civil rights statutes that are similar to the ADA and FHA.

## **RECOMMENDATION**

CAI recommends that members utilize their right to request reliable documentation when a resident's disability is not readily apparent or, if the disability is readily apparent or known but the disability-related need for the assistance animal is not, the association should ask the resident to provide the same reliable documentation. CAI supports changes in state and federal laws which further defines a housing provider's ability to request documentation. CAI opposes duplicative legislation at the state level which redefines an association's ability to request documentation already allowed under the Fair Housing Act or legislation which inhibits an association's ability to request this documentation. CAI also supports legislation that imposes penalties for fraudulent requests for service or emotional support animals.

## **MODEL LEGISLATIVE LANGUAGE**

Many states are in the process of statutorily acknowledging consequences for fraudulently misrepresenting the animal as a service animal or the need for the emotional support animal. If your state is working on legislation to do so, please consider the following language, approved by CAI, when defining a community association in the bill:

- A. "Common Interest Community or Association." The organization established to operate any condominium, homeowner association, cooperative, or planned community.
- B. "Housing Provider." A landlord or community association.

Consider the following model language as a guide for when an association wishes to request documentation of disability under FHA when questioning a service or emotional support animal:

## **RIGHT TO REQUEST DOCUMENTATION**

A housing provider that receives a request from a person to make an exception to a relevant policy prohibiting animals or limiting the size, weight, breed or number of animals on the housing provider's property or within property controlled by the association because the person requires

the use of an assistance animal or service animal may require documentation of the need from a licensed medical provider.

The person may be required to produce documentation of the disability and/or disability-related need for the animal only if the disability or disability-related need is not clear or known to the housing provider.

## **POLICY HISTORY**

For more information on the implications of pet policies within community associations, see “Pet Policies: How Community Associations Maintain Peace and Harmony – A Guide for Association Practitioners.” <https://admin.caionline.org/Advocacy/Documents/AssistanceAnimalChart.pdf>

**Approved by CAI Government & Public Affairs Committee October 10, 2019**

## REASONABLE OCCUPANCY STANDARDS POLICY

Community Associations Institute (CAI) supports the right of community associations to establish reasonable occupancy standards. This support does not condone or encourage discrimination against owners based upon familial status or other protected class. In the absence of any bright line rule being adopted by the Department of Housing and Urban Development (HUD), an occupancy limit of two persons per bedroom plus infants is typically an acceptable limitation. CAI remains concerned that with no bright line rule community associations are at risk for claims of discrimination under the Federal Fair Housing Amendments Act.

### BACKGROUND

The Federal Fair Housing Amendments Act (“FFHAA”) prohibits discrimination on the basis of familial status. Familial status discrimination is discrimination against families with minor children. HUD has stated “there is nothing in the legislative history which indicates any intent on the part of Congress to provide for the development of a national occupancy code.” HUD evaluates claims of discrimination in violation of the FFHAA on a case by case basis and may try to informally resolve complaints according to a December 18, 1998 Federal Registry notice.

Factors used in evaluation of a claim:

- Size of bedrooms and of the unit
- Age of children
- Configuration of the unit
- Other physical limitations of the unit (e.g., septic system)
- Reasonable state or local law restrictions
- Whether the limits are on the number of people, not children
- Any other relevant factor

Part of the difficulty for community associations is that there is no black and white answer, no ‘bright line rule’, because all housing units are not the same across our nation. This explains why a multiple of factors is used in each case which adds to the complexity of this matter.

While one Ninth Circuit Court of Appeals case in 1996 expressed a concern about the complexity of law in the housing area and admonished the HUD Secretary to enlighten the public as to expectations, it seems that little has changed in terms of available guidance.

### RECOMMENDATION

Like the law-abiding property owner, community associations also have difficulty determining what occupancy restrictions are permitted under the FFHAA. While it may be generally safe to assume that an occupancy limit of two persons per bedroom plus infants is typically an acceptable limitation, before challenging an applicant the prudent community association manager or community association board of directors is encouraged to seek the advice of its legal counsel. With legal counsel, you may also want to develop a reasonable occupancy policy. The same recommendation applies to unit owners who offer rentals in an association.

Please also refer to the **FAIR HOUSING POLICY** on page 33.

**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**

**Approved by the Government & Public Affairs Committee, December 13, 2011**

**Adopted by the Board of Trustees, January 26, 2012**

# 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 "layperson" 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**



## RISK MANAGEMENT AND INSURANCE POLICY

Community Associations Institute (CAI) believes that an effective risk management program can best be achieved if associations and their governing boards work with recognized community association professionals. CAI further believes that a comprehensive association insurance program must focus on meeting a broad range of legal and lender requirements while recognizing that the governing board is the trustee of the owners in insurance matters. This program (collectively, risk management and insurance) requires that risks of loss be fully evaluated and that funding for such loss (whether by commercial insurance or self- insurance) must be completely analyzed.

### BACKGROUND

Adopting a comprehensive risk management policy and adopting a policy regarding the purchasing of comprehensive insurance are both vital if a community association is to minimize the adverse consequences of accidental loss; maintain the continuity of the association as a business organization; and assist homeowner members in protecting their most important asset – their homes. Both programs need to be thought of as one program. More detailed information is contained in the two-part set titled Community Association Insurance and Risk Management, available in the CAI Press at [caionline.org/bookstore](http://caionline.org/bookstore).

There are six steps to establish a risk management program:

- **Identify Exposures to Loss:** There are four exposures to loss – property, liability, net income and personnel.
- **Evaluate the Use of Risk Control and Risk Financing:** Risk Control may eliminate or minimize losses. Risk Financing includes purchasing insurance, funding for deductibles and self-funding for small losses.
- **Interrelationship of Risk Control and Risk Financing:** Recognition of the important intersection of Risk Control with Risk Financing and proceed with an understanding of the importance of evaluating both together.
- **Implement Risk Control and Risk Financing:** This requires the board to work with a range of recognized association professionals --- attorney, manager, CPA and insurance agent.
- **Monitor and Improve:** These five steps need to be periodically evaluated in the same manner that the board reviews its financial and similar operations on a regular basis.

As the program moves from risk management to obtaining insurance, the board and its professionals need to regularly view insurance obligations in the broad context of the insurance requirements that arise from several sources:

- **Governance Requirements:**
  - Governing documents the declaration, CC&Rs and related guidelines, internal policies and procedures,
  - Requirements that may exist in a land lease or related documents that create vested interests in plans and approvals during the development process.

- **State Enabling Statutes**
- **Certain Other Local, State and Federal laws:**
  - Building ordinances and laws (local)
  - Workers compensation laws (state)
  - Flood insurance (federal) whether as a requirement to ensure mortgage lending or to protect against a possible exposure to loss.
- **Lender and “Agency” Standards:** Compliance with mortgage lender requirements and, if desired, with "Agency" guidelines such as those established by the two primary Government Sponsored Enterprises (GSEs) – Freddie Mac and Fannie Mae – as well as by the Federal Housing Administration (FHA) and the Department of Veterans Affairs.
- **Indemnitor/Indemnatee Obligations:** Compliance with contracts the association may have entered into as well as any entitlement agreements and regulatory agreements by which the association may be bound.
- **Good Business Judgment:** There may be no specific insurance requirements for a given type of coverage, but, if the association, using the Risk Management Process, determines that certain exposures to loss exist and that those exposures may be funded by insurance, then the board should consider obtaining that insurance.

**CAI believes that there are certain fundamental analytical components of a Risk Management & Insurance Program:**

- **Determining Values at Risk:** This may require obtaining an Insurable Replacement Cost Valuation to accurately determine property insurance limits. Similarly, it may require obtaining a Probable Maximum Loss (PML) study to determine, where appropriate, earthquake insurance limits. This analytical determination may involve investigating association industry best practices. For fidelity insurance it may require setting an insurance limit at three months of assessments plus reserve funds unless state law provides for different measures. Also, it may require adding the manager/management company as an insured for both fidelity insurance and Directors & Officers liability insurance. Further, this may require minimizing or eliminating the application of coinsurance for property insurance. Insurance is a significant cost to the association; lack of insurance can be a greater cost in the event of an under-insured loss because of incorrect limits.
- **Special Association Coverage Features:** Insurance is subject to pricing cycles and coverage availability cycles, but over time, association insurance professionals (together with the insurers with whom they work) have developed certain special coverage features for various critical insurance policies. These features vary with the type of insurance, but include by way of example – the association as the First Named Insured, non-compensated individuals as eligible for fidelity insurance coverage and a broad named insured for wrongful act protection in a Directors & Officers policy. These special features can be best be determined by working with knowledgeable insurance agents and related professionals.
- **Interface between the Owner and the Association:** Often, there is a coverage gap between the insurance obtained by the homeowner and that obtained by the association. This gap may be minimized and possibly eliminated if the association and owners are educated concerning the insurance obligations of each. This requires an understanding of the following:
  - Who owns (or has legal responsibility) for something

- Who needs to maintain or repair something
- Who needs to replace (or reserve for) something
- Who has to insure something

These four components need not be linked together, but they need to be understood especially if the units and common elements are to be properly insured.

## **RECOMMENDATION**

Governing boards, working with association professionals, must develop a comprehensive Risk Management and Insurance Program to minimize the adverse financial and related consequences of accidental loss and to help protect homeowner investment in their homes. To ensure there is a comprehensive approach, this program should be based on certain risk management principles and anchored in the governance, legal, lender and related requirements. Further, this program requires analytical efforts for determining values at risk, obtaining special coverage features and properly allocating risk between the association and the homeowner.

This effort is best done in collaboration with knowledgeable association insurance agents and professionals especially those who have earned the CAI designation of Community Association Insurance & Risk Management Specialist and who have attended the CIRMS Insurance Masters program.

CAI also recommends that:

- risk management and insurance be coordinated with the preparation of the association's annual budget and reserves
- risk management be reviewed regularly
- Insurance loss runs annually.

For a full discussion on this extensive topic please refer to the policy: **BUDGETS AND RESERVES** on page 17

**Approved by the Government & Public Affairs Committee on September 20, 2012**  
**Adopted by the Board of Trustees on October 11, 2012**

## **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:

- 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.
- Rules and regulations should be adopted solely to serve legitimate needs of the community, taking into consideration the personal and property interests of the unit owners.
- Rules and regulations reflect the current standards of a community and should be reviewed periodically to assure they are being kept abreast of the community's needs and are in compliance with governmental regulations. Changes should be considered in a meeting where unit owners are invited to attend and afforded the opportunity to review and comment upon proposed rules and regulations prior to their adoption by the governing board. Changes to duly adopted rules and regulations should be made available, using the association's regular communication modes, to the owners of record. Communication helps ensure compliance.
- The community's enforcement process should make adequate accommodation for due process, including the opportunity to appear before a hearing panel after a violation notice has been issued, and the violation has not been cured within a reasonable time.
- To avoid the appearance of selective enforcement and criticism by owners, the governing board or its appointed hearing panel should ensure that all violations of rules and regulations of which the association becomes aware are enforced in a consistent, uniform manner using common sense.

### **BACKGROUND**

The community association form of housing results in unique legal and social inter-dependence among property owners and residents recognizing that the governing documents form a contract between each purchaser and the association. 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.

### **RECOMMENDATION**

The long-term operation and social success of a community association is heavily dependent upon a rules making and rules enforcement process that operates in the best interest of the community and guarantees fair and consistent treatment of all residents. The rules enforcement process must be presented in a manner that ensures that the participants are well-informed concerning their procedural rights and obligations and must be based on sound legal authority, principles and practices as guided both by statute and applicable court decisions. If challenges are anticipated or encountered, the governing board may need to consult legal counsel to minimize unforeseen consequences.

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

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

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

**Amended and approved by the Government & Public Affairs Committee, March 15, 2012**

**Adopted by the Board of Trustees, June 14, 2012**

## SHORT-TERM (VACATION) RENTALS POLICY

The sharing economy for housing has significantly changed how homeowners rent property. Short-term or vacation rentals, typically meaning property that is rented for less than 30 consecutive days, exploded in popularity due to online platforms that connect property owners, or "hosts", with prospective guests by the click of a button. The pace of this new platform has quickly surpassed appropriate government response and regulation and it is essential that community associations – housing more than 68 million residents in the United States alone- have a voice in any legislative and regulatory process.

### BACKGROUND

The nature of short-term rentals is not intuitively harmonious with the community association housing model which focuses on bringing people together, strengthening neighborhood bonds and promoting a sense of community and belonging. Homeowner volunteers, who are elected by their neighbors to set policies and oversee association operations, and to act in the best interest of the community, are the center of community association governance.

Further, these volunteer board members, along with their professional managers, are guided by their association's governing documents that are created to maintain community standards, protect property values and encourage a sense of community stewardship. Governing documents form a private contract between each homeowner and the association and dictate community rules and regulations for both property rights and standards of personal conduct. Housing purchasers choose where to live and, if within a community association, to accept the contractual and ethical responsibilities to abide by established policies and to meet their obligations to that association and to their neighbors living in the community.

The community association housing model succeeds when a true sense of community is cultivated and there is active homeowner involvement based upon a culture of building consensus. In contrast, short-term visitors typically have no ties to the community, are not contractually bound by the association's established policies and are generally not invested in the overall good of the community.

CAI strongly supports the community association housing model and recognizes that no two communities are the same. Further, CAI recognizes that the sharing economy phenomenon has significantly transformed the dynamics of renting property. The use of online platforms to arrange short-term rentals has created a unique housing market where short-term rentals provide considerable income for some community associations' owners, particularly those in vacation destination and resort areas. Associations are incredibly diverse, as such, policies need to be tailored to meet the character, culture and desire of homeowners in a community.

### RECOMMENDATION

CAI encourages policymakers to engage industry stakeholders, including community associations, on this issue. Further, CAI believes crafting regulation should always take place in an open and transparent manner, providing the opportunity for comment by all interested parties.

A board of directors, with input from homeowners, is in the best position to decide whether short-term rentals are appropriate for their community and is the appropriate governing body to craft suitable policies. This is assuming the association's governing documents allow or could be amended to permit short-term rentals to reflect the preferences of homeowners.

CAI supports short-term rental regulation that is consistent with the association's governing documents, federal, state and local law and serves to protect and preserve the ability of community association homeowners to manage their affairs.

CAI opposes governmental regulations that would intrude upon community associations' board of directors' autonomy to serve the best interest of the association. Short-term rental regulation should not

impair association contractual covenants and take decision-making authority away from community association homeowners. This degrades the very core of community association governance, which is based on private contractual obligations of the community's homeowners.

### **SAMPLE LEGISLATIVE LANGUAGE**

Virginia Senate Bill 1578 (2017)

§15.2-983 (D) Nothing in this section shall be construed to supersede or limit contracts or agreements between or among individuals or private entities related to the use of real property, including recorded declarations and covenants, the provisions of condominium instruments of a condominium created pursuant to the Condominium Act (§ 55-79.39 et seq.), the declaration of a common interest community as defined in § 55-528, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), or any declaration of a property owners' association created pursuant to the Property Owners' Association Act (§ 55-508 et seq.).

**Approved by the Government and Public Affairs Committee, April 11, 2017**

**Adopted by the Board of Trustees, May 3, 2017**

## **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 50 years of experience in the development and operation of common interest communities. Associations now govern nearly 22 percent-24 percent of housing in the United States and this percentage keeps increasing. 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 currently encounter in the development and operation of common interest communities. The Uniform Law Commission's work has improved practices over the years.

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 condominiums require a statutory basis, but that some states go beyond an enabling act and impose a comprehensive statutory scheme balancing development flexibility with disclosure and consumer protection. Although other forms of community associations, such as cooperatives and planned unit developments (PUDs), can be developed under the common law, some states choose to impose statutory regulation. In those states, CAI believes that the uniform acts are the best statutory framework and should be enacted.

Historically, association developers, boards and homeowners in states with inadequate association legislation could rely on underwriting guidelines from Fannie Mae and Freddie Mac to standardize the rules and protect consumers. Now that the future of these entities is in question, as is their role in housing, the adoption of the uniform acts in such states becomes even more important.

### **RECOMMENDATION**

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. If legislation is being contemplated or proposed regarding statutory authority for any common interest community, the CAI Government & Public Affairs Department offers its resources and experience in this area.

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

**Approved by the Government & Public Affairs Committee, April 17, 2013**

**Adopted by the Board of Trustees, August 15, 2013**



# **SUSTAINABLE LANDSCAPE PRACTICES POLICY**

## **BACKGROUND**

Well maintained, attractive landscaping and a pleasant environment are essential to the quality of life in any community. Aesthetics is a key component in the desirability of a neighborhood and the value of its individual homes.

Conserving fresh, clean water is important. The United States Geological Survey reports roughly one-third of all water in the U.S. goes to irrigation and landscaping. Homeowners and communities can reduce water use significantly by adopting sustainable landscaping practices that reduce water consumption and the demands on public or private water supplies.

Community association boards are responsible for effectively communicating the community's landscaping covenants that the residents are responsible for maintaining.

See CAI's Public Policy on Conservation, Sustainability, and Green Issues for more background.

## **POLICY**

Community Associations Institute (CAI) supports the ability for communities to establish rules that govern landscaping practices for common areas and exclusive use property. CAI supports communities adopting best practices recommended for sustainable landscaping and encourages association boards to fairly evaluate homeowners' requests to convert to or utilize sustainable landscaping on their exclusive use property while protecting an association's assets.

Best practices for sustainable landscaping include, but are not limited to:

- Minimizing the use of finite natural resources, especially potable water
- Avoiding the introduction of non-native, invasive plants
- Using plants compatible with the native flora and fauna of an area
- Reducing erosion, pollution, wildfire danger, and other potential adverse effects
- Incorporating aesthetic components that maintain or increase property values
- Utilizing reclaimed and tertiary water for alternative irrigation

## **ABOUT THE COMMUNITY ASSOCIATION HOUSING MODEL**

While community associations come in many forms and sizes, all associations share three basic characteristics: (1) membership in the association is mandatory and automatic for all property owners; (2) certain legal documents bind all owners to defined land-use requirements administered by the community association; and (3) all property owners pay mandatory lien-based assessments that fund association operations.

The community association housing model is actively supported by local government as it permits the transfer of many municipal costs to the association and homeowners. Today, many community associations deliver services that once were the exclusive province of local government usually funded by government-levied property taxes.



Community associations are governed by a board of directors or trustees comprised of owners and residents elected by their neighbors. This board guides the association in providing governance and other critical services for the community.

## **RECOMMENDATION**

CAI supports legislation that recognizes the core principle of self-governance and co-ownership of common property of the community association housing model. CAI supports legislation that permits the association to enact reasonable rules and regulations concerning landscaping requirements.

Community associations must maintain the ability to impose a monetary penalty for noncompliance with landscaping covenants; however, the associations should refrain from imposing penalties on owners for failing to water during a government-declared drought. Water-use policies should focus on proven ways to reduce the need for watering landscaping, while maintaining the level of aesthetics valued by the community.

Further, community associations should not adopt rules explicitly prohibiting xeriscaping or the use of drought-tolerant vegetative landscapes. Association guidelines should provide an accessible means for owners to seek landscaping variances and committees or boards are encouraged to approve common sense requests that also maintain aesthetic standards. Covenants should also provide for adjustment during times of drought and protect homeowners who implement sustainable practices from adverse policy changes.

Sustainable landscaping practices are encouraged. Especially in geographic areas with desert-like topography or prone to drought, community associations are encouraged to evaluate the amount of water used to sustain the landscaping. Associations, boards and managers should use this review to develop guidelines for maintaining the community's common areas, and to guide individual property owners in their landscaping choices that benefit the association's responsibility to enhance property values. Guidelines should encourage the use of indigenous plant species, alternative water sources, including reclaimed and tertiary water, when available.

**Approved by the Government & Public Affairs Committee April 23, 2019**  
**Adopted by the Board of Trustees May 15, 2019**

## 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, fiber optics and other providers so community association residents have access to advanced, innovative services. Contracts binding owners regarding telecommunications' installations should be determined only after the association has transitioned from the developer control to the owners, while recognizing that the cost of initial developer-contracted installations of telecommunications wiring or other capital assets should be amortized over a commercially reasonable time frame. 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 an owner-controlled community association's ability to enter into telecommunications or video programming contracts. CAI further supports regulation that prohibits anti-consumer provisions in vendor service contracts.

### BACKGROUND

In 1996, Congress adopted the Telecommunications Act of 1996 which directed the Federal Communications Commission (FCC) to adopt rules governing antennas and satellite dishes. The FCC adopted rules governing "Over the Air Reception Devices" (OTARD). OTARD prohibits restrictions that impair the installation, maintenance or use of antennas used to receive video programming. Generally, OTARD prohibits most restrictions that (1) unreasonably delay or prevent installation, maintenance or use, (2) unreasonably increase the cost of installation, maintenance or use, or (3) preclude reception of an acceptable quality signal. CAI convinced the FCC that the government could not override community association restrictions as they relate to property not owned by the unit owner without just compensation. As a result, OTARD only applies to restrictions in the unit's exclusive use areas. In 2000, the FCC amended OTARD so that it applies to customer-end antennas that receive and transmit fixed wireless signals. For instance, restrictions on customer-end Wi-Fi internet access points are now covered by OTARD.

The FCC also limits the ability of telecommunications and video programming providers from entering into exclusive contracts that prohibit residents in a community from acquiring services from other providers. The FCC permits, however, community associations to enter into bulk billing arrangements (where video service is provided to every resident of a community, usually at a significant discount from the retail rate that each resident would pay if he or she contracted with the provider individually) and exclusive marketing arrangements (where a community association gives the provider, usually in exchange for some benefit, the exclusive right to certain means of marketing the provider's service to residents in the community). The FCC has recognized that benefits of bulk billing arrangements and exclusive marketing arrangements outweigh the potential harm to consumers.

The demand for wireless telephonic services and Wi-Fi has grown exponentially. This phenomenon has created a need for additional transmission equipment to service a growing demand and expectation for wireless services. Often, due to the development scheme of community associations and the residential character of many community associations, the only alternative for the placement of transmission devices is on a Community Association's Open Space/Common Properties or other community owned assets. The presence of a reliable wireless signal is one of the many considerations that many home buyers are looking for when purchasing. Community Associations that have appropriate access to wireless signals for telephonic and Wi-Fi service will be at a distinct advantage in the home market place.

## **RECOMMENDATION**

- CAI supports legislation and regulation that promotes a fully competitive telecommunications, digital 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. However, community associations should not be unfairly burdened with the cost of promoting a competitive programming marketplace. To that end:
  - CAI encourages Federal and State governments and private telecommunications providers to support the development of new technologies to increase access to services without infringing on community association common property or contract rights.
  - CAI opposes legislative proposals that would violate the Fifth Amendment of the U.S. Constitution and prevent a community association from reasonably managing and operating its common property. Part of reasonably managing and operating its common property is the ability of an association to prohibit antennas on common property, and to regulate the location and installation procedure for permitted antennas and related costs.
  - CAI supports the right of community associations to enter into commercially reasonable telecommunications, digital and video programming contracts with bulk billing and exclusive marketing arrangements if the associations' owner-elected representatives prudently determine that they are in the best interest of the association. Such agreements must allow the association to determine the disposition of any wiring and other equipment installed on the commonly owned property by the provider and permit an individual owner to contract with any other provider at that owner's sole expense.

CAI supports the reasonable installation of transmission devices including cell towers, mono poles and other transmission equipment that may be placed on an association's common property or structures such as buildings, water towers, fire towers etc. that will provide wireless telephonic and Wi-Fi service to its property owners. The community's Architectural/Design Review Committee guidelines should be considered in any installation on common property. CAI is aware that such installations may be controversial and would additionally urge the use of a process of community education and input before embarking upon such installations. CAI also supports the use of appropriate techniques approved by the association to help blend these installations into the surrounding community

**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**

**Amended and approved by the Government & Public Affairs Committee, July 8, 2014**

**Adopted by the Board of Trustees, October 15, 2014**

## TENANTS IN COMMUNITY ASSOCIATIONS POLICY

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

### BACKGROUND

The state of the economy, more specifically the mortgage industry and the regulatory responses thereto, can focus attention on the issue of investor-ownership and tenant occupancy of units in residential common interest communities. In a changing economy past owners may even become tenants. It is necessary and prudent for many associations to regulate the number of investor-owned/tenant-occupied units. It is also important to ensure that tenants within the community adhere to the restrictions and regulations governing all residents. In so doing, it is advisable that associations:

- Consult with legal counsel to determine if there is any statute or government regulation that impacts an association's rental policy.
- Establish and publish a policy that welcomes tenants as members of the community and invites them to participate in activities open to all residents. Receipt of the association newsletter and/or access to the public portions of an association website sends a positive message. A benefit of this approach may be to encourage tenants to behave like owners.
- Develop a resolution that informs all owners of rules and regulations governing rentals and suggest language owners might consider that have proven successful in tenant agreements to reduce future conflicts in the association.
- Consistently and uniformly enforce all standards related to rental properties, including notice to tenants and owners, when appropriate and lawful.
- Require owners to notify the association when the tenancy will commence. The tenant names and phone, E-mail or other contact information, including emergency contacts, should also be provided. This enables the association to contact all residents when events dictate communication on important, unforeseen matters.
- Make it a policy that owners arrange for tenant(s) to receive copies of the rules and regulations or other information important for all residents to have.
- Amend association documents to include an assignment of rents provision, which will enable the association to collect directly against a tenant if an owner is delinquent.

### RECOMMENDATION

Laws governing leaseholds and rental restrictions vary in jurisdictions. Keep abreast of changes in federal law that may link the high number of rentals in any one community to greater risk in lending to buyers. Be sure that any rental restrictions are adopted properly. Because rental restrictions affect basic property rights, most jurisdictions require that any rules or regulations that prohibit rentals exist by amendment to the Declaration, not merely documents that may be amended or adopted by the governing board. Boards may, by resolution, impose restraints on leasing, but these policies must be reasonable, uniformly applied and based on objective criteria. Most of all, communities should continue ongoing dialogue with legal counsel and regularly communicate with members in the association regarding the policies. CAI has adopted policies on Reasonable Occupancy Standards and Fair Housing. These may impact tenancy in any housing situation.

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

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

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

**Amended and approved by the Government & Public Affairs Committee, May 2, 2012**

**Adopted by the Board of Trustees, June 14, 2012**

## THIRD-PARTY LENDER FORECLOSURES POLICY

The Community Associations Institute (CAI) endorses legislation that provides a fair and equitable foreclosure process by third party lenders that protect homeowners, property values, and the financial health of community associations.

### CAI specifically advocates for and endorses:

- Lien priority laws that protect and enhance the priority of unpaid assessments as related to other loans secured by lots and units in community associations. CAI endorses the lien-priority language in the Uniform Common Interest Ownership Act.
- Foreclosure laws that require the prompt foreclosure of delinquent mortgages secured by homes in community associations and timely recordation of foreclosure deeds or, in the alternative, where the foreclosure is delayed, payment of association assessments by the lender.
- Laws that require lenders to protect and maintain homes subject to foreclosure prior to foreclosure and during the foreclosure process if the loan is in default and the unit or lot owner has abandoned responsibility for maintenance and upkeep of the unit or lot.
- Adoption and enforcement of regulations by Government-sponsored enterprises that require lenders and mortgage servicers to proactively maintain vacant homes.

### BACKGROUND

CAI understands and respects the rights of lending institutions to foreclose in the case of a loan default. Lenders have frequently delayed the foreclosure of mortgages in default even when homes in community associations were abandoned, thereby having multiple negative impacts on the community. In community associations, not only does the delay in pursuing foreclosures depress property values and impede market recovery, but there is also the additional detrimental impact of depriving associations of the needed income to maintain the property for the benefit of other owners, as well as lenders.

For community associations, foreclosure delays are particularly problematic because of their common interest ownership structure. Homes heading toward or in foreclosure may add an element of blight to the neighborhood. Properties are often neglected, the homes often fall into general disrepair and mandatory assessments to the association go unpaid by the owner or lender, thereby adding an additional financial burden to the other owners. The negative impact of foreclosures in community associations are amplified due to delays in commencing and prosecuting foreclosures by lending institutions.

Owners of distressed properties often fail to pay their share of association budgeted expenses by withholding the association's primary revenue source - assessment income. When that same owner is subject to a lender foreclosure, the association frequently suffers a loss during the foreclosure process that is often unrecoverable against the owner. Owners subject to foreclosure may file bankruptcy or may simply stop paying their mandatory assessments to the association. These losses will materially increase if the mortgage lender either delays initiation or prosecution of foreclosure proceedings. In short, any delay increases losses to the association because it does not start receiving the mandatory assessments until the foreclosure sale is completed and the lender or a new owner begins making the required payments.

During any period of delay, the remaining owners in the association effectively subsidize all common expenses that the delinquent owner fails to pay or they suffer from the inability of associations to undertake necessary maintenance of roadways, parks, open space and, in many communities, the exterior of buildings, all of which impact the value of all homes in the community, including the foreclosed property. The added expense leads to an unfair burden on the remaining owners in the community association when they had no part in the purchase of the unit or lot or in the lender's credit determination when granting the mortgage. In some instances, the increasing failure of delinquent properties results in a

death spiral as previously performing owners find it impossible to pay increasing assessments required to cover delinquent owners. Given this, mortgage lenders with the discretion to lend or not should not receive the maintenance benefits of association expenditures while failing to contribute a proportional share of the expenses.

**Approved by the Government & Public Affairs Committee, April 14, 2015**

**Adopted by the Board of Trustees, October 26, 2016**

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

Community Associations Institute (CAI) recognizes that a successful transition is the responsibility of the owner-controlled Board charged with the fiduciary duty to investigate and assess both the finances and the physical development of the property after the developer has transferred title to the real property as well as association control. A successful transition can be accomplished through (1) providing professional and industry-recognized educational programs for homeowners, (2) utilizing the right professionals for conducting reserve studies, transition audits and analysis of the Public Offering Statement and governing documents during the transition process, (3) managing with transparency and consistent communication with owners and (4) maintaining 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 by the developer to the owners who are managed by a board of trustees comprised of volunteer owners from the community. At the outset, the developer establishes the entity of the association and initiates association operations, including the preparation of an accurate operating budget and the provision of an adequate reserve funding scheme, inclusive of accurate future projections. The developer also provides interim governance to the community. Eventually, the association will fully transfer to the owners who will thereafter control the association and take full responsibility for continued governance, administration and maintenance of common elements. A successful and productive transition is one in which the collective interests of the developer and the owners are served to ensure completion of the development and sales process by the developer, while ensuring that the association functions effectively. CAI recommends several practices that the Board should confirm that the developer has provided:

- Utilize educational workshops and programs conducted by recognized experts, such as CAI business partners, 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 owners to make them aware of issues and concerns relating to the governance of their association and compliance with state legislative statutes.
- Turn over to the association originals or accurate copies of all association documents including all financial documents, as well as building plans, site plans, “as built plans,” instruction manuals, warranties relating to the construction of common property or equipment for which the association will be responsible.
- 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’s owners.
- Provide purchasers with full disclosure of the financial information concerning the operation of the association including projected operating budgets that are updated each year during developer control.



- National Reserve Study Standards (NRSS) stipulate that anything meeting the four following qualifications should be included in the Reserve Study:
  1. Common area maintenance responsibility
  2. Limited Useful Life (UL)
  3. Predictable Remaining Useful Life (RUL)
  4. Threshold repair/replacement cost

Additionally, the developer should ensure that the completed reserve study includes all eligible association elements.

## **RECOMMENDATION**

The governing board should hire a qualified specialist, such as RS or PE, to prepare a professional reserve study during the transition process. Depending on the State, reserve studies may not be expressly required by law, but federal lending guidelines may require communities to conduct or update a reserve study once every two years where ten (10) percent of the budget is not allocated for reserves. Also, reserve studies may be one of the most reliable documents for ensuring that all common elements have been identified and included in the financial accounting. In addition to the reserve study, boards should inquire as to all specific disclosures concerning possible environmental conditions that are required to be disclosed prior to the first sale. Environmental hazards often exceed the scope of a reserve study. Finally, the board should retain an independent professional accounting firm to conduct a transition audit of the association's finances as an integral part of transition. These safeguards are necessary to protect all homeowner investments in the community at the time of transition and for many years into the future.

In addition to consulting professionals to review legal and financial documents, CAI's Research Foundation has made available for online download, at no charge, a 51-page Best Practices Report on Developer-to-Homeowner Transition on the CAI website. Review this document for more detailed information concerning the transition process.

State legislatures should adopt legislation that provides the same level of services by local governments to residents of community associations as those provided to residents living outside of community associations, or local governments should provide reimbursements or credits to community associations for providing such services.

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

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

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

**Approved by the Government & Public Affairs Committee, September 20, 2012**

**Adopted by the Board of Trustees, October 11, 2012**



Community Associations Institute  
6402 Arlington Boulevard, Suite 500  
Falls Church, VA 22042  
(703) 970-9220  
[www.caionline.org/advocacy](http://www.caionline.org/advocacy)

For the latest from CAI government & Public Affairs, visit our blog and  
subscribe

[advocacy.caionline.org](http://advocacy.caionline.org)

Get social with @CAIadvocacy!

