

2016 End of Session Report

Attorney General’s Bureau of Consumer Protection - CAI supported [House Bill 1774](#) as amended. This legislation assigns the investigation and mediation of complaints regarding planned communities, cooperatives, and condominiums under Title 68 (Real Property), to the Office of Attorney General’s Bureau of Consumer Protection. CAI has submitted an amendment to narrow the scope of the Bill. The measure passed the House but died upon adjournment.

Voting and Proxies - CAI supported [Senate Bill 666](#) with amendments. This legislation amends the Pennsylvania Uniform Planned Community Act (UPCA), the Real Estate Cooperative Act and the Uniform Condominium Act (UCA) under Title 68 (Real and Personal Property) to provide for the use of paper ballot, absentee ballot, electronic ballot, Internet-based ballot and other appropriate methods expressly permitted by the association by persons entitled to cast votes. The bill passed the Senate without being amended, but died in the House upon adjournment.

Recorder of deeds fees - CAI supported [House Bill 1101](#) and Senate Bill 1282. Pursuant to the Pennsylvania UCA, and the UPCA, all amendments to a declaration must be recorded. Unfortunately, what has historically been an administrative act at minimal expense, has become a large financial burden. Several counties have implemented a requirement to index each amendment against each parcel number in the condominium or planned community. And, for indexing amendments against each parcel number, these counties have adopted a “per parcel” fee. CAI has compiled the following examples of skyrocketing fees for recording a change to an association declaration:

County	Association	Declaration Changes	Recording Fee
Bucks	Villages of Flowers Mill	Three-page amendment	\$6,822
Chester	Orchard Valley HOA	Changes to conform with state law	\$1,862
Dauphin	Meadows of Hanover	Changes to sub associations	\$8,300
Montgomery	Blue Bell Country Club CA	Six-page amendment	\$8,731
Montgomery	Morgandale Condo	Three-page amendment to regulations	\$5,738

Many other counties around the Commonwealth have adopted similar fees. Such fees are not only absurdly high, they bear no relation to the work required to record documents. Moreover,

as recording is a legal requirement, such fees could prevent associations from complying with the UCA or the UPCA. Additionally, in some instances, Declaration amendments are required to comply with Federal law requirements, as in the case with FHA or FNMA regulations. SB 1282 was signed into law and went into effect January 3, 2017.

Private dam assistance - CAI supported House Bill 1712. This legislation establishes the Pennsylvania Private Dam Financial Assurance Program and the Private Dam Financial Assurance Fund. Early in 2014, the Pennsylvania Department of Environmental Protection (DEP) issued new regulations requiring private dam owners to provide a mechanism for financial responsibility over their dams, in the event of a dam breach. The deadline for the financial responsibility tool was January 1, 2016. This new requirement was in addition to new registration and dam project fees in the thousands of dollars. For the many community associations throughout Pennsylvania that own a private dam, this meant that by January 1, 2016, the community needed to have surety or collateral bonds in place. However, it has been found that adequate insurance products are simply not available, requiring community associations in some cases to put up tens of thousands of dollars in bonds. These sums are simply beyond the financial ability of many community associations who depend on their lakes for recreational amenities for owners and visitors alike. House Bill 1712 would offer financial assurance for the owners of private dams to meet the financial obligations imposed under the Dam Safety and Encroachment Act. The measure passed the House early in 2016 but failed upon adjournment.

Leasing Restrictions and Lien for Assessments - CAI supported [House Bill 1340](#). This legislation amends the Pennsylvania Uniform Planned Community Act (UPCA) and the Uniform Condominium Act (UCA) under Title 68 (Real and Personal Property) to ensure that community associations are not affected negatively by a recent U.S. Court of Appeals decision and new federal mortgage underwriting guidelines. Details of the legislation include:

Amendments to Section 3219 (d) and Section 5219 (d) of the Title 68 Acts – Amendment of Declaration. As a result of current mortgage underwriting guidelines, a condominium might be ineligible for mortgage financing if the number of rental units in the community exceeds fifty (50%) percent. A community association that is declared ineligible for financing suffers dramatically from decreasing values of the units and a chilling effect on sales. Therefore, to preserve such eligibility status, many condominium associations have adopted, or are in the process of considering, amendments to their governing declarations to limit the number of rental units to below fifty (50%) percent. Amendments to declarations governing condominiums and planned communities are authorized under the Acts upon an affirmative vote of sixty-seven (67%) percent of the unit owners. However, unanimous consent is required under the Acts if, among other things, the amendment changes the “use to which the unit is restricted.” Most practitioners agree that an amendment limiting the number of rental units permitted in a community association does not change “the use” of a unit as the unit has been, and will remain, used for residential purposes. However, to avoid any confusion on this issue and insure that associations will be able to comply with federal underwriting standards, the Acts must be amended. These amendments would make it clear that the term “uses to which any unit is restricted” does not include the leasing of units.

Amendments to Section 3315 (d) and Section 5315 (e) of the Title 68 Acts – Lien for Assessments Condominium and homeowner associations rely on unit owner assessments to pay for various obligations imposed on them by their governing documents and the Acts. In most cases, these obligations entail not only maintenance and repair of unit components such as roofs and siding, but also infrastructure components, including roads, storm water management and utility systems. Continued payment of assessments as well as the ability to collect them, is therefore, vital to these communities. To assure continuous funding of community associations via unit owner assessments, the above-noted sections of the Acts impose upon each unit a “lien for assessments”. This statutory lien serves as an effective mechanism to promote the payment of assessments and as appropriate security in the event of a serious delinquency. However, most often, associations seek to recover unpaid assessments by obtaining a personal judgment against the delinquent unit owner(s) rather than foreclosing on the statutory lien. Such a collection procedure is much less expensive than a foreclosure action and enables the homeowner to retain ownership of his or her home. In 2014, the US Court of Appeals held that a personal judgment obtained by a community association does not preserve the statutory lien. This means that unless associations file lien foreclosure actions within three years of a delinquency, the lien for assessments is extinguished. As a result, associations will be required to resort to much more drastic, aggressive, and expensive foreclosure proceedings to assure continued financial viability. In turn, collections of unpaid assessments will become substantially more expensive and time-consuming, with the increased costs being passed on to homeowners. The proposed amendments to Section 3315(d) of the UCA and Section 5315(e) of the UPCA will solve the serious problem caused by the decision and enable associations and their members to resolve assessment delinquencies without putting ownership of homes at risk through foreclosure proceedings intended to protect the association’s lien position.

The measure was signed into law at the end of April 2016.