Dear Ms. Majors and Claire,

The Federal Housing Finance Agency (FHFA) has adopted a position that would have detrimental impacts on an estimated one million Missouri homeowners who reside in community associations – homeowner associations (HOAs) and condominiums. FHFA wants to nullify lien priority statutes adopted in Missouri and 20 other states and Washington, DC, that provide a limited lien priority over a first mortgage to collect the borrower’s delinquent assessments.

The amount in question is modest, typically six months’ delinquent assessments. Yet, the limited lien priority is an effective tool in fostering financial stability for community associations and, thus, the ability to provide maintenance and repair, insurance, utilities, and other essential services that protect the property value of all homeowners – and mortgage lenders. FHFA would give big banks a free ride by forcing homeowners in the association to absorb budget shortfalls due to borrowers’ failure to pay the lien priority amount.

If limited lien statutes are preempted, associations would have no effective remedy to collect delinquent assessments from loan servicers when their borrowers default. Instead, associations would be left with a mere “payment priority,” forced to be spectators while they wait for the bank to foreclose, a process that has no deadline and may take more than three years. During such prolonged delay, other homeowners in the community would have the burden of meeting budget deficits through additional assessments, effectively subsidizing big banks while the association maintains the value of the banks’ collateral. In short, big banks would get a free ride on the backs of homeowners.

Please see link below to FHFA’s 2015 Annual Report to Congress (page 11). In its report, released on June 15, 2016, FHFA states it has initiated litigation in federal courts in Nevada to override that state’s limited lien priority law. The Community Associations Institute (CAI), a national nonprofit organization that provides information to association volunteer leaders, managers and others, strongly opposes FHFA’s position. With more than 30 years’ experience representing community associations in Missouri, I volunteered to prepare amicus briefs on behalf of CAI in two cases on appeal in the Ninth Circuit. Missouri has strong CAI participation through the Heartland Chapter.

* FHFA contends that HERA requires FHFA consent to foreclosure of association liens in states with limited lien priority statutes. Despite the fact that HERA has no procedure for an association to request consent, FHFA has asserted its blanket refusal and has initiated extensive litigation to preempt state statutes.
* FHFA would like Congress to believe it is protecting taxpayer dollars; in fact, FHFA’s position reflects the interests of big banks and is designed to save money for big banks while Fannie Mae and Freddie Mac decline to enforce their own loan servicing regulations. FHFA fails to state the cost to taxpayers of its ill-conceived litigation.
* Elsewhere in its report, FHFA praises itself for creating advisory groups and seeking public input on many of its programs, such as HARP, but made a unilateral decision to nullify laws in nearly half the states and the District of Columbia with no opportunity for public comment or Congressional review.
* Also note FHFA’s position doesn’t apply to local governmental property tax liens which secure revenue and enable municipalities to maintain infrastructure and provide other services. For decades, community associations have been responsible for infrastructure, streets, snow removal, public lighting, and many other functions traditionally furnished by local government. Thus, the role of community associations is directly analogous to that of local governments and deserves the same level of protection to collect delinquent assessments.
* Nationally, an estimated 66.7 million homeowners live in a community association. FHFA’s position would particularly impact older and retired homeowners on fixed incomes. In Missouri alone, an estimated 132,000 -- 28% -- of our condo residents are age 55 or older. Further, community associations often include opportunities for entry-level housing, but FHFA’s position would make it more difficult and costly for first-time buyers to achieve homeownership.
* Fannie Mae, Freddie Mac and big banks have threatened to stop mortgage loans in states with limited lien priority statutes. This scare tactic worked recently in Tennessee, which changed its law to a mere payment priority.

Apart from FHFA, the Federal Housing Administration (FHA) has proposed rule 206.136 under which reverse mortgage loans would not be available in states with limited lien priority statutes. There should be no doubt FHA’s proposed rule would directly impair older and retired homeowners on fixed incomes, the sector of homeowners most in need of reverse mortgages.

Additional information is provided in several attachments. Please find a copy of the letter to FHFA sent by the entire Massachusetts Congressional Delegation dated May 12, spear-headed by Senators Elizabeth Warren and Edward Markey. Also attached is an article by a Boston community banker in the current issue of National Mortgage News, and an article by Mizzou law professors Wilson Freyermuth and Dale Whitman in ABA’s *Probate & Property* magazine (July/August 2015).

We have also met with Congressman Lacy Clay and are working with his office on this matter.

We strongly encourage you to stand up for homeowners by sending a strong rebuttal to FHFA and Members of Congress. This memo is copied to CAI governmental affairs staff if you have any questions. Also, feel free to call me: my cell is 314-494-0538.

Your prompt and kind attention to this matter is appreciated.