

Fall 2007

Community Association LawLetter

ASSOCIATIONS SHOULD PLAN FOR EXPECTED RISE IN DELINQUENT ASSESSMENTS

Rising interest rates ... Falling property values ... Lender foreclosures ... Homeowner bankruptcies. This is the economic reality which association boards of directors must face as they prepare the 2008 association budget.

2007 has been a tumultuous time for many homeowners. Faced with rising interest rates and falling property values, more homeowners are straining to make their monthly mortgage payment and are unable to refinance or sell their property. Heading into 2008, interest rates on more mortgages will adjust upward resulting in higher mortgage payments.

For community associations, higher interest rates and mortgage payments also are causing a sharp increase in the number of homeowners who are behind in paying their association assessments. In turn, this results in a shortfall in the association's yearly revenue and the cost of operating the association must be spread among the other owners who are paying their assessments.

In anticipation of an increase in the number of owners who are delinquent in payment of association assessments, every community association board should plan ahead now to address the expected rise in unpaid

assessments. The board should promptly take the following actions:

- Maintain clear and complete owner account records showing all charges and payments.
- Review the association governing documents and applicable statutes to determine the remedies for collection of assessments, such as liens or court suit.
- Implement the available remedies by adopting a collection policy which clearly states the procedures to be followed to collect delinquent assessments.
- Notify owners of the association collection policy, including applicable late fees, interest and collection costs which delinquent owners will incur.
- Take prompt collection action against delinquent owners, such as filing liens against their property or suit against them personally.
- Review notices regarding lender foreclosures and homeowner bankruptcies and take appropriate action.

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DELINQUENT ASSESSMENTS

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- Amend the association governing documents, where needed, to provide for late fees, interest, collection costs and attorney fees to be assessed against delinquent owners and to permit acceleration of payment of assessments.

- Amend the governing documents to deny use of recreation facilities and other common areas by owners who are delinquent in payment of assessments.



Although association boards cannot prevent delinquent association assessments, planning ahead now to address the expected increase in the number of delinquent owners can cushion the financial impact on the association.

**NEW MARYLAND LAWS
TAKE EFFECT OCTOBER 1**

The Maryland General Assembly in 2007 considered many bills regarding condominiums, cooperatives, and homeowners associations. Some of these bills were introduced to implement recommendations of the 2006 Maryland Task Force on Common Ownership Communities.

A few of these bills passed. Most did not.

Among the new laws enacted was a bill (HB 183) to authorize the Maryland Attorney General's Consumer Protection Division to enforce provisions of the Maryland Homeowners Association Act which affect consumers. This enforcement authority is similar to existing authority for the Attorney General to enforce provisions of the Maryland Condominium Act which affect consumers.

Also enacted was a new law to permit a court to appoint a receiver to conduct the affairs of a condominium or homeowners association where the owners fail to establish a board of directors with enough members to establish a quorum under the association bylaws (SB 287).

These new laws take effect October 1, 2007.

Proposed legislation which was not passed include bills to:

- Establish new requirements and procedures for providing association records to homeowners (HB 36).
- Grant a limited priority for payment of association assessment liens in the event of a lender foreclosure (SB 605 and HB 1018).



- Clarify that association assessment liens can be foreclosed in the same manner as mortgages and that such liens are valid and enforceable for 12 years (HB 1382).

- Require the developer of a new community to conduct a reserve study regarding the useful life and replacement cost of association common areas; require an updated reserve study within 5 years after transfer of control of the association to the owners; require association bylaws to specify the frequency of additional reserve studies; and require developers to pay assessments on each lot and condominium unit it owns (SB 285 and HB 768).

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NEW MARYLAND LAWS

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- Establish a statewide Common Ownership Community Ombudsman to develop education programs for residents and boards of directors; answer and process owner complaints; and maintain a list of trained mediators and arbitrators.

Some of the legislative proposals not enacted in 2007 are expected to be introduced again when the Maryland General Assembly convenes in January 2008.

**SCHILD RECEIVES
CAI PUBLIC ADVOCATE AWARD**

Thomas Schild received the 2006 Public Advocate Award from the Washington Metropolitan Chapter of the Community Associations Institute (CAI). The award recognizes his volunteer work for CAI in representing community association interests regarding proposed legislation before the Maryland General Assembly and the Maryland Task Force on Common Ownership Communities.

Schild is Vice Chair of CAI's Maryland Legislative Action Committee which recently was named 2006 Legislative Action Committee of the Year by the National CAI organization.

**MARYLAND COURT OF APPEALS RULES
SHORT TERM RENTAL OF HOME DOES**

NOT VIOLATE "RESIDENTIAL" USE COVENANT

The Maryland Court Of Appeals – the highest state appeals court – has ruled that short-term vacation rentals in the Deep Creek Lake area in Garrett County, Maryland did not violate a covenant requiring that homes be used for "residential purposes only".

In *Lowden v. Bosley*, a property owner filed suit against neighboring property owners, contending that a restrictive covenant that the properties be used for "single family residential purposes only" bars short-term vacation rentals.



In applying the covenant, the appeals court noted that "residential" means a use for "living purposes, or a dwelling, or a place of abode". The court concluded that merely because a property owner received rental income is not inconsistent with the property being used for residential purposes. Moreover, the transitory or temporary nature of such use does not defeat the residential status.

The court declined to address the meaning of the "single family" restriction since there was no evidence that the properties were rented to multiple families or groups of unrelated individuals.

**COMMUNITY GOVERNANCE
WORKSHOPS**

Thomas Schild will be leading workshops regarding community governance for community association managers and board members this Fall. The workshops are sponsored by the Community Associations Institute (CAI). CAI is a national organization which provides education and resources to community association volunteers and the professionals who support them.

Schild is co-teaching a course for community association board members -- The Essentials of Community Volunteer Leadership - on October 20, 2007 in Rockville, Maryland.

The Essentials program includes discussion of governing documents, rules adoption and enforcement, property maintenance, budgets and finances, and association meetings.

A member of CAI's National Faculty, Schild will also be facilitating a two-day workshop on Community Governance for community association managers in Alexandria, Virginia on November 16 and 17. That course is part of the CAI Professional Management Development Program.

For more information regarding these programs, contact the Washington Metropolitan Chapter of the Community Associations Institute (703-750-3644).

THOMAS SCHILD LAW GROUP, LLC represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. The firm advises community associations on all aspects of association operations including covenant enforcement, assessment collections, developer warranties, maintenance and management contracts, and association document interpretation. Thomas Schild Law Group also represents community associations in court litigation and administrative hearings.

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