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2018 Legislative trends that impact community associations

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As the New Year begins and legislative sessions resume, community associations around the country will see trends in state legislatures. While not the only issues that will face associations in the coming year, CAI anticipates that the following five will be at the top of many legislative agendas and will impact the people who live and work in community associations.

Construction Deficiencies

For years associations have been under attack by legislation and ordinances aimed at stripping associations' ability to seek relief from damages due to legitimate deficiencies found in the construction of units or common areas.

According to Dawn Bauman, CAE, CAI's senior vice president of government and public affairs, "There exist identifiable trends in the legislation. Most of what we see in the declaration or preamble of the bills cite the need for more affordable housing." Proponents of these bills argue that frivolous lawsuits filed by associations and the costs associated with them makes building affordable condominiums too risky. The bills add additional obstacles associations must fence before filing a lawsuit or limit the definition of a construction defect to those only causing physical, bodily harm.

Construction deficiencies are complex according to Ross Feinberg, Esq. and Ron Perl, Esq. who note in their book *Construction Defect Litigation: The Community Association's Guide to the Legal Process*, "Developers and contractors dislike construction defect litigation as much as homeowners do, and most will make genuine efforts to resolve problems quickly and efficiently—if you let them. In fact, most construction defects are resolved without legal action—and for good reason.

Litigation is extremely costly." According to a 2017 CAI study, the vast majority of the claims were resolved outside of the courthouse with most being resolved with direct negotiation. The report also found that it took more than a year for nearly two-thirds of the communities to recover damages and only one-third reported the damages were enough to cover the repair.

Short-term (Vacation) Rentals

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. Association homeowners choose where to live and accept contractual and ethical responsibility to abide by established policies and meet their financial obligations to the association. In contrast, short-term visitors with no ties to the community may not be contractually bound to the association's established policies nor invested in the overall good of the community.

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 association owners, particularly those in vacation destination and resort areas. Community association owners must determine what short-term rental policy is appropriate for their particular community.

Alternative Dispute Resolution

Alternative Dispute Resolution ("ADR") is statutorily required in many states. Even where ADR is not required by law, 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.

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.

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 have wide discretion to choose precisely how to implement the ADR within their particular community. Determining the method of ADR may depend on the issues or parties involved or in the resources readily available to a particular community.

Disclosure Before Sales in Community Associations

CAI believes that homeowners should be informed about association matters that may impact their decision to purchase a home/unit and that 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.

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. 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.

Solar Rights & Electric Vehicle Charging Stations

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.

According to CAI, 25 states including Maine, Massachusetts and Vermont currently prohibit or offer the ability to prohibit covenants or restrictions placed upon homeowners which would prevent the installation of solar powered panels and associated devices. And fifteen states currently have laws that protect easements and their establishment on a legal contractual basis without having an express solar rights law - New Hampshire is currently among these 15 states with solar easements.

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