



COMMUNITY ASSOCIATION
LEADERSHIP LOBBY

CALL ALERT!



CALL ALERT for December 16, 2011—HB 319 and “Safe Harbor” Amendments

The so-called “safe harbor” amendments that were recently added to HB 319 by Rep. Moraitis have been the subject of some recent blog posts and commentary, which appear more aimed at misstating CALL’s position on the issue than actually presenting the issue fairly.

The Bill’s sponsor (and the vast majority of attorneys who practice in this area of law) believe that first mortgage holders are only required to pay the “safe harbor” amount (12 months past due assessments or 1% of the original mortgage debt, whichever is less) after foreclosure, and that the additional charges for attorneys fees, costs, interest, and late charges cannot be added to the safe harbor amount. Representative Moraitis, the sponsor of HB 319 and a practicing real estate attorney, requested technical assistance in drafting language that would reflect this.

CALL vigorously supports legislative reform to make the lenders pay more than the current safe harbor amount. However, if there is going to be a change in the law requiring banks to pay substantially more money when a bank takes title to a unit, we believe the additional money should go to the association for the unpaid assessments, not primarily to lawyers and collection agencies. To put it another way, at the end of a foreclosure case, CALL believes it is more important for the association to collect assessments than for the lawyers and collection agencies to collect fees.

Accordingly, the so-called “safe harbor” amendments simply clarify the existing law and reject the notion of a bonanza for lawyers and collection agencies without any additional recovery of assessments for the associations. It is not intended to help banks, but rather, to remove any perceived ambiguity with the statutes and facilitate the prompt resale of units. As expressed by Representative Moraitis in a recent message, the ambiguity which currently exists serves to encourage litigation and delay the resale of units. It is important that the units that are in foreclosure make their way back into the hands of new owners who will pay the assessments. We do not want the closing of these units to be delayed and in many cases scuttled because of disputes regarding the amounts the attorney or collection agency can take home from the closing, which is a big problem in many cases today.

So let's put the focus back on legislation that will bring real relief to associations. To that end, CALL supports changes proposed by Rep. Passidomo's Fair Foreclosure Act and is working for additional changes that will require lenders to complete their foreclosures more quickly and which will give judges discretion to sanction lenders who unreasonably delay their foreclosure case, including ordering banks to pay assessments during the pendency of a stalled foreclosure case.

Very truly yours,

Yeline Goin Executive Director for CALL
Community Association Leadership Lobby (CALL)

Please visit our "CALL" Website at www.callbp.com to view the full text of the bills "CALL" is tracking.