

NORTH CAROLINA REAL ESTATE COMMISSION



ADVISORY COMMITTEE

COMMUNITY ASSOCIATION MANAGEMENT

REPORT

January 10, 2007

NORTH CAROLINA REAL ESTATE COMMISSION
COMMUNITY ASSOCIATION MANAGEMENT ADVISORY COMMITTEE

CONTENTS

Background and Recommendations
Revised Recommendations
Meeting #1 Report
Meeting #2 Report
Meeting #3 Report
Meeting #4 Report
Meeting #5 Report

NORTH CAROLINA REAL ESTATE COMMISSION
COMMUNITY ASSOCIATION MANAGEMENT ADVISORY COMMITTEE

Background and Recommendations

BACKGROUND

Responding to concerns from members of the North Carolina Real Estate Commission regarding the potential for financial loss to real estate consumers due to mishandling of community association monies by unregulated persons, which concerns were supported by reports from the Commission's Legal Services Division, Commission Chairman Matthew J. "Rick" Watts at the Commission's December 8, 2004 meeting initiated action to form a Community Association Management Advisory Committee. The committee was charged to determine whether persons and entities engaged in the business of managing community (homeowners', condominium and cooperative housing) associations should be governmentally regulated; and if so, to describe the demonstrated and/or potential harm to consumers due to lack of governmental regulation and the most effective means of providing such regulation.

Appointed to serve on the committee were Associate Attorney General Harriet Worley from the Consumer Protection Section of the North Carolina Attorney General's Office, North Carolina Association of REALTORS® Director of Regulatory Affairs Rick Zechini, community association managers Dennis Abbott (Charlotte) and John E. Lawton (Raleigh), resort community association manager Ted. S. Nye (Burnsville), builder/developer Robert W. Hecht (Denver), property manager Robert W. Lawing (Charlotte), and attorney Henry W. Jones, Jr. (Raleigh).

The Community Association Management Advisory Committee met in the offices of the Real Estate Commission March 29, April 26 and May 24, 2005 [See Meeting Reports]. Commission Executive Director Phillip T. Fisher acted as Facilitator for the meetings. The Commission's Director of Legal Services, Special Deputy Attorney General Thomas R. Miller, Director of Education and Licensing Larry A. Outlaw, Director of Audits and Investigations Emmet R. Wood, Director of Administration Mary Frances Whitley, Chief Deputy Legal Counsel Blackwell M. Brogden, Jr., and Deputy Legal Counsel Janet B. Thoren were the Commission's staff advisors to the committee.

Committee discussion during the first meeting focused on the services provided by community association managers and how they differ from those provided by property managers and real estate agents. At this meeting, it was also pointed out that as many as 80% of North Carolina's estimated 11,000 community associations are likely self-managed and would, therefore, remain unregulated if a regulatory program addressed only those persons engaged in the business of managing community associations. The committee began discussing a broader approach to regulation which would apply to virtually all community associations. This approach envisioned a requirement that associations register with a state government agency, and that persons handling association funds be bonded and subscribe to certain minimum standards for handling and accounting for such funds.

At its second meeting, the committee approved proposed standards for handling and accounting for community association funds but postponed action on a recommendation by the Commission staff advisors that association funds be required to be deposited in banks "lawfully doing business in North Carolina." The committee also generally agreed on the elements for the proposed community association registration program but withheld final action on a fidelity bonding requirement pending receipt of additional information.

At the committee's third and final meeting, it received reports from the Commission staff advisors regarding their meetings with a representative of an out-of-state bank which specializes in providing financial services to community associations and with a representative of an insurance company which bonds and insures community associations. After discussion, the committee approved the following finding, objectives and recommendations to the Real Estate Commission.

FINDING

That demonstrated and/or potential harm to consumers from improper handling of community association monies warrants governmental action.

OBJECTIVES

That, while acknowledging the potential benefits to the public which may be derived from governmental credentialing and regulation of persons engaged in the business of community association management, a more limited, measured approach designed to achieve the following objectives is advisable at this time:

1. Provide minimum standards for handling and accounting for association funds, and subject real estate licensees to these standards when handling and accounting for such funds.
2. Provide a more effective means for compensating persons who suffer financial loss as a result of mishandling of association funds.
3. Provide, through the creation of a comprehensive listing of North Carolina community associations, a more effective means to communicate with and disseminate information to associations on matters of special interest and concern to them, and provide a source of information for real estate licensees, attorneys, community association members and others about community associations and their officers and managers.
4. Impress upon association boards and persons entrusted with association funds the seriousness of their responsibilities by requiring associations to register with and submit information to a state regulatory agency.
5. Provide a more effective means of monitoring the activities of community associations and managers which could aid in assessing at some later time the need for any additional oversight and regulation.

RECOMMENDATIONS

That in furtherance of these objectives, the North Carolina Real Estate Commission should support legislation to:

- 1** Require associations consisting of five (5) or more residential properties or units (whether improved or unimproved) to register with the North Carolina Real Estate Commission, but exempt from the registration requirement voluntary membership associations, associations which must dissolve within five years of their creation, and associations which are not authorized to collect monies from their members. Associations in existence at the time of the Registration Act must register within one year following the effective date of the Act, others must register within 180 days following the first sale of a lot or unit, and all must periodically renew their registration. In the event an association fails to properly register or renew its registration, the Real Estate Commission may seek injunctive relief against it to compel registration, and the association could not pursue legal remedies in the courts until it is properly registered; however, other actions taken by the association while not registered would not be invalidated by its failure to register.

- 2 Require associations to submit information to the Real Estate Commission in connection with their applications for registration which would include at a minimum (a) a description of the property and the association; (b) a registration fee (preferably not to exceed \$25-\$30) which, together with the annual renewal fee, is sufficient to cover the costs of administering the registration program; and (c) a list of persons who have substantial control over the association's monies and evidence they are covered by the required fidelity bond.
- 3 For associations required to be registered that have \$10,000 or more in total annual assessments (regular and special) require persons who have substantial control over the association's monies to be covered by a fidelity bond in an amount that is at least twice the total annual assessments or \$250,000, whichever is less, or the amount required by the association's governing documents.
- 4 Establish minimum standards for handling and accounting for community association funds which would apply to persons responsible for handling and accounting for monies of associations required to be registered and to real estate agents when handling and accounting for community association funds. The standards should, at a minimum, require (a) that persons in substantial control of association monies safeguard and account for them promptly and accurately; (b) that written authorization be obtained if any interest earned on association monies is paid to a person or entity other than the association; (c) that accounts be segregated (i.e., separate accounts for each individual association) and monies not commingled with those belonging to other persons or entities; (d) that association books and records clearly identify the source and purpose of the monies received by the association, the person(s) to whom they are paid and for what purpose, and the financial obligations to the association and its obligations to others; (e) that association books and records create a clear audit trail of association monies sufficient to demonstrate compliance with rules adopted by the Real Estate Commission for this purpose; and (f) that association monies be deposited in federally or North Carolina-insured accounts in a bank or banks lawfully doing business in North Carolina, or in a federally-chartered bank that executes a consent to service of process and pleadings and a consent to provide records relating to the deposit of North Carolina community association monies upon a lawful request by the Real Estate Commission that could be enforced through North Carolina courts, or by a community association or community association member or other party upon a lawful request through North Carolina courts, but, following deposit, may be invested at the direction of the association's governing body exercising its lawful authority.
- 5 Authorize the Real Estate Commission to adopt rules necessary to implement and administer the community association registration program and establish any additional standards necessary regarding the proper handling and accounting for community association funds. And direct the Real Estate Commission to form an advisory committee or other body which would include persons with community association management experience and expertise to assist the Commission on matters requiring such specialized expertise. The Commission would not be charged to investigate allegations or prosecute persons (other than licensees of the Commission) believed to be in violation of statutory standards for handling and accounting for community association funds, or to investigate any other allegations involving community associations or their managers that are not related to the registration of associations.

The committee further recommended that, if its report is approved by the Real Estate Commission, the "Community Association Registration Act" legislation be considered, if possible, during the 2006 Session of the North Carolina General Assembly, with the registration of community associations to begin in 2007.

Mr. Fisher presented to the Real Estate Commission at its July 6, 2005 meeting, the advisory committee's June 28 report and recommendations. In order to assure they had adequate time and information before making a decision concerning the committee's recommendations, the Commission postponed further consideration of the report and recommendations to its August, 2005 meeting and invited the advisory committee members to be present for the discussion.

At its August 10 meeting, the Real Estate Commission resumed its discussion and consideration of the recommendations submitted by the advisory committee in its June 28 report. Present for and participating in the discussion were committee members John Lawton and Harriet Worley, together with Jim Laumann, President of Homeowner Associations of North Carolina. Committee member Bob Hecht also submitted a letter for consideration by the Commission. During its discussion, the Commission expressed concern that as proposed, the Real Estate Commission, as the state agency responsible for registering community associations, would have no authority to investigate complaints against persons believed to be mishandling community association funds or to prevent such persons from continuing their improper conduct. The Commission further concluded that, without an effective mechanism for investigating complaints and enforcing the proposed minimum accounting standards, it was questionable as to whether the protection afforded consumers by the registration program would be sufficient to justify the effort and expense to administer it. The Commission, therefore, respectfully requested the committee to reconvene and continue to examine approaches which would address these concerns. The Commission also named Mr. Laumann to serve on the advisory committee and later, Mr. John Stone President of the North Carolina Chapter of the Community Associations Institute.

The committee reconvened October 17, 2006. At this fourth meeting of the committee, it reviewed its charge from the Commission and its findings and recommendations to the Real Estate Commission as set forth in its June 28, 2005 report. To address the Commission's continuing concerns, the committee reviewed and discussed certain "Revised Recommendations" prepared by Mr. Fisher whereby a separate state occupational licensing board would be created to develop, implement and administer a program for registering community associations (both self-managed and fee-managed) and for licensing persons and firms in the business of managing them. As proposed, the community association registration and renewal fees would enable the board to develop and disseminate educational and informational materials and programs to association members and leaders which could especially benefit self-managed associations, and help financially support the licensure and regulatory program for association managers. In addition, the licensure and regulatory program for managers would provide additional protection to consumers by better assuring that persons who engage in the business of managing community associations are at least minimally competent and knowledgeable about community association matters, and that those who fail to subscribe to the prescribed standard of practice would be subject to disciplinary sanctions including loss of licensure. The committee was in general agreement with the "Revised Recommendations" but amended them to require the bonding of persons/entities responsible for handling and accounting for community association funds – not just licensed community association managers as originally proposed by Mr. Fisher. And it also directed that the recommendations reflect that "continuing education" would be required of licensees. The committee then approved the following revised recommendations:

Revised Recommendations

That the North Carolina Real Estate Commission support legislation to:

- 1 Require community associations (whether self-managed or fee-managed) exceeding a certain minimum number of residential units (with exceptions) to register with a state government agency which would include
 - a. furnishing basic information about the association and a contact person for the association, and
 - b. paying a nominal registration (and annual renewal) fee.

Registration of community associations would provide a database enabling the agency to communicate with associations concerning any law changes or other issues affecting them and about educational opportunities the agency would make available to them. The registration and renewal fees for community associations, together with the licensing fees for community association managers, would provide a continuing source of revenue to cover operating costs for the registration and licensing programs.

- 2 Require persons (and firms) in the business of managing community associations to obtain a community association manager license from a state government agency which would include
 - a. completing prelicensing education, a licensing examination and continuing education on community association management subjects,
 - b. adhering to a mandatory standard of conduct, and
 - c. paying a licensing (and annual renewal) fee.

Licensing community association managers would provide additional protection to consumers by better assuring that persons who engage in the business of managing community associations are at least minimally competent and knowledgeable about community association management matters, and that those who fail to subscribe to the prescribed standard of practice would be subject to disciplinary sanctions including loss of licensure.

- 3 Protect community association funds by requiring bonding of persons/entities responsible for handling and accounting for them.

Bonding would provide a more effective means for compensating persons who suffer financial loss as a result of mishandling of association funds.

- 4 Create a state government agency consisting primarily of community association managers to develop, implement and administer the community association registration and community association manager licensing programs. Authorize the agency to investigate and discipline licensees who violate the license law but limit its authority so that it would not be required to investigate or otherwise intervene in disputes or complaints from association members other than those alleging misconduct on the part of a licensed manager.

Although other state government agencies could provide technical support and assistance, no existing state agency possesses the expertise in community association subject matter necessary to develop, implement and administer the programs. Unless the agency has considerable resources (requiring higher fees), it would likely be incapable of effectively responding to association member complaints regarding pools, pets, parking, and similar complaints.

At the Real Estate Commission's November 15, 2006 meeting, Mr. Fisher presented to the Commission the advisory committee's "Revised Recommendations". While realizing that many details remain to be resolved, the Commission determined that the committee's revised recommendations could provide a workable framework for a meaningful regulatory program for the management of community associations and, therefore, approved the recommendations in concept.

At its fifth and final meeting on November 28, 2006, the committee was informed by Mr. Fisher of the Real Estate Commission's favorable response to its revised recommendations. The committee reviewed draft legislation prepared by Mr. Jones which would require licensure by an independent state licensing board of persons in the business of managing community associations. He and Mr. Stone reported that this draft legislation, which was consistent with the advisory committee's recommendations regarding the licensing of association managers, had been favorably received at meetings of chief executive officers and managers of community association management firms in Raleigh and Charlotte. The committee commented on various provisions of the draft legislation. Mr. Jones and Mr. Stone stated that, when finalized, the legislation will hopefully be considered by the North Carolina General Assembly during its 2007 Session.

NORTH CAROLINA REAL ESTATE COMMISSION
COMMUNITY ASSOCIATION MANAGEMENT ADVISORY COMMITTEE

March 29, 2005

Raleigh, North Carolina

REPORT

Committee Members Present:

Dennis Abbott (Charlotte)
Robert V. Hecht (Denver)
Henry W. Jones, Jr. (Raleigh)
Robert W. Lawing (Charlotte)
John E. Lawton (Raleigh)
Ted Nye (Burnsville)
Harriet Worley (Raleigh)
Rick Zechini (Raleigh)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Emmet R. Wood, Director of Audits and
Investigations
Thomas R. Miller, Director of Legal Services
Mary Frances Whitley, Director of
Administration
Blackwell M. Brogden, Jr., Chief Deputy Legal
Counsel
Janet B. Thoren, Deputy Legal Counsel

Welcome

Mr. Fisher welcomed the members to the first meeting of the Community Association Management Advisory Committee. Mr. Fisher reminded the committee that additional meetings are scheduled for April 26 and, if necessary, May 24.

Committee Composition

Mr. Fisher stated that the Real Estate Commission endeavored to appoint to the committee persons who could bring a variety of perspectives to the issues under study. Towards this end, the Commission appointed five persons engaged in community association management, of whom one is a builder/developer (Mr. Hecht); one is engaged in resort community association management (Mr. Nye); two members (Mr. Abbott and Mr. Jones) appointed by the Carolinas Chapter of the Community Associations Institute (CAI), a national organization of community association managers; and one at-large community association manager member (Mr. Lawton). Mr. Fisher pointed out that the Commission also appointed to the committee a representative from the Consumer Protection Section of the North Carolina

Attorney General's Office (Ms. Worley); a staff member from the North Carolina Association of REALTORS® (Mr. Zechini, Director of Regulatory Affairs); and Real Estate Commission member Skip Alston.

Charge

Mr. Fisher reminded the committee that persons and firms engaged in managing community associations are not required to be licensed or otherwise regulated. However, in investigating cases where licensed real estate brokers and salespersons manage associations, the Real Estate Commission has discovered many serious incidents of wrong-doing resulting in financial loss to consumers. Ms. Worley added that the Consumer Protection Section also receives complaints against persons managing community associations but, due to lack of resources, it is difficult for her office to respond to and properly address them. Mr. Fisher explained that, in light of this complaint history, the Commission formed the Community Association Management Advisory Committee giving it the following charge: Based upon demonstrated and/or potential harm to consumers, determine whether persons and entities engaged in the business of managing community (homeowners', condominium and cooperative housing) associations should be governmentally regulated; and if so, the most effective means of providing such regulation.

Mr. Fisher referred the committee members to the meeting agenda [Item 1].

Community Associations/Management

Mr. Fisher began the discussion by asking the community association managers on the committee to describe how their services are solicited. They responded that their services are normally solicited by developers while they are still in control of their properties, by associations when properties are transitioning from developers to individual owners, by owners who want to form associations in existing neighborhoods, and by owners who want management companies to assume management of their volunteer or self-managed associations. Mr. Lawton stated that, based upon the best available information, there are approximately 11,000 community associations in North Carolina. Of these, perhaps 80% (8,800) are self-managed, and the remaining 20% (2,200) are managed by professional managers and others, of which 50%-60% (1,100-1,300) are managed by CAI's 80 members.

Mr. Lawing observed that some community association managers who are domiciled outside North Carolina have little or no direct contact with the association boards and members they serve, and they maintain association funds out-of-state. According to the community association managers on the committee, the biggest problem facing the industry is volunteer members of association boards who take over the management of the association. Often, persons with a computer and an accounting program but little experience become association managers, especially when there are fewer other job opportunities. All members of the committee agreed that the number of community associations will continue to grow, and that most properties sold in the future will have community associations.

Community Association Management Services

With regard to services provided by community association managers, Mr. Nye, who instructs CAI courses, stated that the fundamental duty of the professional manager is to preserve, protect and enhance the value of the community. Ideally, the manager would first assemble a team of specialists including the manager, an attorney with experience in association matters, a Certified Public Accountant also with relevant experience, a banker or financial advisor, an insurance or risk management specialist, and a reserve study professional. However, except in larger associations, association boards are rarely willing to spend funds necessary to assemble such a team; therefore, the manager often performs these tasks. The manager normally begins by collecting and examining the documents forming and governing the association (non-profit corporation documents and bylaws, and restrictive covenants) and reviewing them with the board of directors, which documents are often incomplete and not provided to purchasers of property subject to them; determining the parameters of the association's responsibility for the physical plant (streets, amenities, etc.) and whether there are sub-associations separately managed; and evaluating the financial health of the association, including identifying members who should be paying assessments, whether income is adequate to cover expenses, whether funds are properly accounted for and safeguarded, etc. The association board then chooses from a menu of services offered by the community association manager. Among the services frequently provided are the administration of architectural and environmental controls adopted by the board and performing periodic inspections of the premises including overseeing maintenance, issuing requests for proposals for major repairs/improvements, and performing minor repairs. Mr. Nye stated that the most common problems are "pets, pools, and parking."

Resort Association Management

In contrasting the services provided by association managers at resort properties with those at non-resort properties, the committee stated that, in addition to managing the association, managers of resort properties are also frequently involved in renting and selling the properties which requires a real estate license. In doing so, they often focus their energies on the more profitable rental and sales activities to the detriment of their association management responsibilities.

Property Management

Comparing association management to property management, Mr. Lawing pointed out that rental managers usually answer to only one entity (i.e., the property owner) while association managers answer to constantly changing boards. Another distinction mentioned was that while rental managers are not involved in enforcing architectural standards, they are more involved with maintenance issues, especially repairs and maintenance of the interior of units. Mr. Lawing stated that most rental managers manage only a few associations, while Mr. Lawton responded that association managers are usually "portfolio managers" managing a number of associations. They agreed that the skills needed by association and rental managers are similar (accounting, maintenance, etc.), but the knowledge required is quite different. According to Mr. Lawing, the Institute of Real Estate Management includes in its training for rental managers very little instruction on association management subjects. When asked by Mr. Fisher as to where community association managers receive their training, the association managers on the committee replied "CAI or OJT."

Real Estate Licensees

The committee then discussed the relative advantages and disadvantages of having a real estate license in performing community association management services. Mr. Miller agreed with the community association managers on the committee who stated there was very little instruction in real estate prelicensing courses or coverage on the license examination specifically addressing community association management subjects [CAI Item 2]. He opined, however, that having a real estate license is advantageous to the least competent association managers because real estate prelicensing education provides them training on handling money and fiduciary responsibilities. He added that dealing with a licensed real estate broker or salesperson may also be advantageous to consumers of community association management services because licensing provides them a governmental agency with whom they can air their grievances. Mr. Miller acknowledged that community association managers who have real estate licenses must comply with the Real

Estate License Law and Real Estate Commission rules when performing community association management services while unlicensed managers are not subject to these requirements. Also, the licensing process serves to screen from the industry persons who are unfit to act as managers because of their lack of integrity and moral fitness.

To complete its discussion of community association management services, Mr. Abbott made available to the committee the Community Associations Institute's definition of "community association manager" [Item 3].

Need for Governmental Regulation

The committee then turned its attention to its specific charge; namely, whether there exists any demonstrated and/or potential harm to consumers from lack of governmental regulation of the community association management business; and if so, what would be the most effective means of providing such regulation. Based upon their discussion during the meeting and the experiences and observations they brought with them to the meeting, the committee members found that:

1. A substantial number (est. 11,000) of community associations currently exist in North Carolina (of which as many as 80% may be self-managed), and virtually all communities created in the future will form associations to perform some level of services for their residents. However, reliable data on associations is not available because no listing or other records identifying associations and/or persons engaged in community association management are maintained.
2. While the services provided and the skills needed by community association managers may be similar to those delivered by property managers and real estate agents, the knowledge required is different. Education necessary for licensure as a real estate broker or salesperson and training in the field of property management do not address important subject areas specific to community association management. However, a separate, self-supporting credentialing program for community association managers which includes entry-level education, examination, continuing education and enforcement of standards would be expensive to implement and administer and would require substantial fees from practitioners [CAI Items, 4, 5, 6].
3. Depending upon the size of the association, substantial amounts of association money are often received and disbursed by persons designated and authorized by the association's board of directors. However, with the exception of licensed real es-

tate brokers and salespersons engaged in providing community association management services, persons entrusted with association funds are not required to satisfy any governmentally mandated accounting or recordkeeping standards, nor are they accountable to any governmental authority in the event they fail to properly handle and account for such funds.

According to reports from the North Carolina Real Estate Commission and the Consumer Protection Section of the North Carolina Attorney General's Office, many serious complaints have been received against persons performing community association management services, especially with regard to handling association funds. However, the Real Estate Commission lacks jurisdiction to investigate complaints which do not involve real estate licensees, and the Consumer Protection Section lacks the necessary resources to investigate and act upon such complaints.

Pursuant to its charge, the committee determined that persons responsible for handling and accounting for community association funds should be required to subscribe to minimum accounting standards to assure that the funds are properly safeguarded, and that should they fail to do so, they should be subjected to possible criminal sanctions. Additionally, a mechanism should be available to compensate association members for their financial losses. Recognizing that the harm that can come to consumers is the same whether associations retain the services of a manager or are self-managed, the committee determined that the standards should apply to and be enforced against all persons entrusted with association funds, including persons who volunteer their services in self-managed associations as well as persons engaged in the business of managing community associations.

Towards this end, the committee recommended that the Real Estate Commission support legislation to:

1. Require community associations consisting of four or more individual dwelling units to, upon formation: (a) register with a designated state agency by submitting identifying information about the association and person(s) responsible for handling and accounting for association funds; (b) provide proof that such persons are covered by a fidelity bond sufficient to fully compensate association members for any loss due to the person's mishandling of such funds; and (c) pay a registration fee sufficient to offset costs of administering the registration program and (if funds are available) to pay for any resources needed to audit associations and investigate com-

plaints involving the handling and accounting for association funds. Failure to register would expose the board of directors of the association or other responsible party to possible civil and criminal remedies.

2. Establish minimum standards for maintaining and accounting for community association funds which would apply to all persons responsible for handling and accounting for funds for associations consisting of four or more individual dwelling units. Failure to subscribe to the minimum standards would subject such person(s) to possible criminal sanctions. Real estate licensees would also be required to adhere to these standards when handling and accounting for community association funds rather than those rules and guidelines which now apply. Their failure to subscribe to the standards would subject them to disciplinary action by the Real Estate Commission as well as possible criminal sanctions.

Although acknowledging the potential benefits to the public which could result from a state government program to license persons engaged in the community association management business [CAI Item 7], the committee determined that a more measured approach to addressing the immediate problems identified is more feasible and advisable at this time. The committee concluded that registration, while the least restrictive form of state regulation, would nevertheless accomplish the following objectives:

1. Provide minimum standards for handling and accounting for association funds and sanctions for failure to adhere to them, and subject real estate licensees to the same standards as others when handling and accounting for such funds.
2. Provide a more practical means for compensating persons who suffer financial loss as a result of mismanagement of association funds.
3. Create a comprehensive listing of North Carolina community associations enabling the registering agency and others to communicate with and disseminate information to associations on matters of special interest and concern to them.
4. Impress upon association boards and persons entrusted with association funds the seriousness of their responsibilities by requiring them to submit information to a state regulatory agency.
5. Provide a more effective means of monitoring the activities of community associations and managers which could aid in assessing at some later time the need for any additional oversight and regulation.

Mr. Fisher informed the committee members that he would circulate to them in advance of their April 26 meeting a draft report of the meeting for their review and comments. Given the current position of the Community Associations Institute that "...the Real Estate Commission of a particular state should not govern the community association manager regulatory program", the CAI members on the committee will report to the committee at its next meeting the position of CAI regarding the North Carolina Real Estate Commission administering the proposed community association registration program should the Commission be willing and interested in doing so.

The meeting was adjourned at 3:30 p.m.

Submitted by:

Phillip T. Fisher

Phillip T. Fisher, Facilitator

This 26th day of April, 2005.

NORTH CAROLINA REAL ESTATE COMMISSION
COMMUNITY ASSOCIATION MANAGEMENT ADVISORY COMMITTEE

April 26, 2005

Raleigh, North Carolina

REPORT

Committee Members Present:

Dennis Abbott (Charlotte)
Robert V. Hecht (Denver)
Robert W. Lawing (Charlotte)
John E. Lawton (Raleigh)
Ted Nye (Burnsville)
Harriet Worley (Raleigh)
Rick Zechini (Raleigh)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Emmet R. Wood, Director of Audits and
Investigations
Thomas R. Miller, Director of Legal Services
Larry A. Outlaw, Director of Education and
Licensing
Mary Frances Whitley, Director of
Administration
Blackwell M. Brogden, Jr., Chief Deputy Legal
Counsel
Janet B. Thoren, Deputy Legal Counsel

Mr. Fisher informed the committee members that he had been notified by Mr. Jones that he would likely not be able to attend the meeting due to an unforeseen business commitment, and by Mr. Zechini that commitments at the North Carolina General Assembly would preclude him from attending until the afternoon; Mr. Zechini arrived at the meeting at 2:00 p.m.

March 29 Meeting Report

The committee approved as presented Mr. Fisher's report of the committee's March 29 meeting. The committee then proceeded to further discuss the following two recommendations set forth in the report: That the Real Estate Commission support legislation to (1) establish minimum standards for handling and accounting for association funds which standards would also apply to real estate licensees when handling such funds, and (2) require community associations to register with a state agency and provide proof that any person responsible for handling association funds is covered by a fidelity bond.

**Standards for Handling and Accounting for
Community Association Funds**

Pending Legislation

Mr. Fisher reported to the committee that legislation has been introduced in the 2005 North Carolina General Assembly [**Item 1**] which would *inter alia* require community associations to prepare and provide each lot owner an annual financial report of association funds which, depending upon annual revenues of the association, must be either *compiled financial statements, reviewed financial statements*, or (for associations with total annual revenues of less than \$100,000 or fewer than 50 parcels) a report of *cash receipts and expenditures*. The proposed legislation further provides that, if approved by a majority of association members, the association may prepare only a report of cash receipts regardless of annual revenues. As described in the proposed legislation, a report of cash receipts and disbursements must disclose the amount of receipts and disbursements including costs for security, professional and management fees and expenses, recreation facilities, lawn care, building repair and maintenance; insurance, etc. The Charlotte-area committee members suggested that the proposed legislation was probably in response to media reports of certain Charlotte community associations foreclosing on property owners because of the owners' failure to pay dues and assessments. Mr. Fisher emphasized that the legislation is yet to be acted on by the General Assembly but may be instructive as to the financial reporting requirements which some state legislators feel are appropriate for community associations.

Elements

Mr. Fisher then referred the committee members to "Recommended Elements of Standards for Handling and Accounting for Community Association Funds" [**Item 2**] drafted by the Commission staff advisors to the committee and furnished to the committee members in advance of the meeting. As stated in the document, the elements recommended should be included in any statute establishing minimum standards for handling and accounting for association funds. They include a requirement that (1) persons having dominion and control over association monies safeguard and account for the monies promptly and accurately; (2) written authorization

be obtained if any interest earned on association monies is paid to a person or entity other than the association; (3) accounts be segregated (i.e., separate accounts for each individual association) and monies not commingled with those belonging to other persons or entities; (4) association books and records clearly identify the source and purpose of monies received by the association, the person(s) to whom they are paid and for what purpose, the financial obligations to the association and its obligations to others, and permit an audit under generally accepted financial accounting standards and rules as adopted by the registration authority; and (5) association monies be deposited in federally insured accounts in a bank or banks lawfully doing business in North Carolina but following deposit may be invested at the direction of its governing body exercising its lawful authority. Additionally, the statute should authorize the registration authority to adopt rules governing the handling and accounting for association money.

With regard to the requirement that association books and records permit an audit “under generally accepted financial accounting standards”, Mr. Miller and Mr. Wood explained that this was intended to create a clear audit trail to permit a meaningful audit of association monies. To avoid confusion, the committee voted to change the applicable sentence to read “Said books and records should create a clear audit trail of association monies and demonstrate compliance with rules adopted by the registration authority.”

With regard to the requirement that association monies be deposited in banks “lawfully doing business in North Carolina”, Mr. Miller and Mr. Outlaw stated that this would provide practical access by the registration agency to the association’s financial records. Mr. Lawton, Mr. Nye and Mr. Abbott questioned whether this would prevent Community Association Banc, SmartStreet and similar financial institutions offering specialized financial services to community associations from operating in North Carolina. Later in the meeting, Ms. Thoren reported that, based upon information she had obtained, it appeared that Community Association Banc accounts are F.D.I.C. insured. However, since the question remained as to whether they satisfied the proposed requirement that they be able to “lawfully” do business in North Carolina, Ms. Thoren agreed to further research the matter and report her findings to the committee at its next meeting.

With the change previously agreed to regarding “generally accepted financial accounting standards”, the committee otherwise approved the standards for handling and accounting for community association funds as recommended, with the understanding that the committee would further discuss at its next meeting the

proposed requirement that financial institutions receiving community association funds be able to lawfully do business in North Carolina.

Enforcement

The committee discussed the role of the registration authority in enforcing the standards for handling and accounting for community association funds and the penalties to which persons should be subjected if they violate the standards.

While the committee agreed that the investigative and enforcement powers of the registration authority should be limited to matters involving the completeness of the application for community association registration and the handling and accounting for association funds, Mr. Lawing expressed concern that the registration authority will become a magnet for consumer complaints about every aspect of association management and that an aggressive program of auditing association accounts combined with severe penalties for violations of standards could have a chilling effect on volunteer members of self-managed associations, especially persons asked to serve as treasurers. Mr. Fisher added that the extent to which the registration authority is able to respond to complaints and to pursue enforcement of standards will be determined by the resources available to the authority, which, in turn, will be determined by the number of associations from which fees are collected and the fee charged to register associations. Mr. Fisher cautioned the committee that legislators will carefully scrutinize the amount of any fee proposed. The committee recognized that members of community associations could benefit from having a government agency audit financial books and records of their associations to determine whether they are in compliance with the mandatory accounting standards. However, the committee also acknowledged that, in order to do so, it would be necessary for the agency to employ a team of well-trained and knowledgeable accountants to perform the difficult audits frequently encountered with community association accounts. Concern was expressed that this could substantially increase the cost and complexity of administering the registration program. The matter was left unresolved and will be the subject of further discussion at the committee’s next meeting.

Regarding penalties which should be imposed against persons who violate the standards for handling and accounting for association funds, the committee agreed that, in deference to the interests of property owner members of the association, such penalties should not include revocation, suspension or other disciplinary action which would prevent the association from conducting its business. Mr. Miller described to the committee various remedies available for failing to properly handle and

account for association funds. He stated that currently, persons who mishandle association funds can be sued to recover any damages and/or enjoined from further engaging in this activity. In addition, disciplinary action can be taken against real estate licensees who violate the Real Estate License Law or Commission rules when handling community association monies. He also stated that criminal charges can be brought against persons committing fraud or embezzlement but that district attorneys often give these matters low priority when determining whether to prosecute them. Mr. Miller indicated that other penalties not currently available might include fines imposed against association officers or agents who, through their grossly negligent conduct, are responsible for offenses, and that more severe criminal penalties can be proposed. Questioning whether additional civil and criminal penalties not currently available are needed, and concerned that they might have a chilling effect on volunteer members willing to serve on boards and act as treasurers, it appeared to be the sense of the committee that the civil remedies and criminal penalties currently available to associations and their members are adequate.

Community Association Registration

Mr. Miller furnished and reviewed with the committee his April 26 memorandum [**Item 3**] outlining his recommendations for a program for registering community associations. Based upon the recommendations, the committee generally agreed that:

1. The North Carolina Real Estate Commission should be the registration authority and a separate adjunct board which includes persons with experience and expertise in community association management should be created to advise the Commission on any matters requiring such specialized knowledge. [*Note: Mr. Lawton acknowledged that The Community Associations Institute (CAI) may have a different view from its North Carolina Chapter regarding the North Carolina Real Estate Commission administering a community association registration program and that, according to CAI, a registration program in Florida may have chilled volunteer participation.*]
2. Only community associations should be required to register—not management companies, managers or other individuals.
3. Any association of owners of improved or unimproved residential real property (including condominiums, townhouses, cooperatives, timeshares and single family residences) consisting of five or more properties (units) or owners should

be required to register with the Real Estate Commission. However, voluntary associations, and associations which by their own terms must dissolve within five years from their creation, and associations which have no authority to collect monies from property owner members should be exempt from the registration requirement. [*Note: Concern was expressed by staff advisors that the number of owners/properties triggering registration may be too low, which could generate ill-will among smaller associations, cause administrative problems for the registration authority, and result in opposition from legislators.*]

4. Associations in existence at the time of enactment of the registration Act should be required to register within one year following the effective date of the Act, and associations created after enactment should register within 180 days following their creation. [*Note: Mr. Brogden suggested that registration deadlines for associations in existence at the time of enactment of the legislation be staggered to facilitate registration.*]

5. Information submitted to the Real Estate Commission in connection with the application for registration should, at a minimum, include a description of the property and the association, and a list of persons who have “substantial” control over the association’s monies.

6. The person(s) named in the application for registration as having substantial control over association monies should be covered by a fidelity bond which should, at least in part, indemnify property owner members for any financial losses sustained as a result of the person’s mishandling of such monies. [*Note: Concern was expressed that the cost of obtaining a fidelity bond may be burdensome to some associations and that legislators may, therefore, consider such a requirement to be unreasonable. The Commission staff will obtain information regarding the cost and availability of fidelity bonds for community associations and report its findings to the committee at its next meeting.*]

7. The application for registration should be accompanied by a fee sufficient to cover the costs of administering the registration program.

8. Associations which fail to register should be subject to fines imposed by the Real Estate Commission, but it should not affect their ability to conduct their business. The Real Estate Commission should be authorized to determine the accuracy and completeness of registration materials.

9. Associations should be required to renew their registrations annually by filing a renewal application accompanied by a renewal fee, and they should be required to timely notify the Real Estate Commission of substantial changes in the information submitted with the application for registration.

10. The "Community Association Registration Act" legislation should, if possible, be considered during the 2006 Session of the North Carolina General Assembly, with the registration of community associations to begin during 2007.

Mr. Fisher informed the committee members that he would circulate to them in advance of their May 24 meeting a draft report of the meeting for their review and comments. At this meeting, the committee members will discuss (1) whether Community Association Banc and similar financial institutions would be prevented from offering financial services to community associations in North Carolina if the registration Act required that association monies be deposited in banks "lawfully doing business in North Carolina"; (2) whether the registration authority (i.e. the Real Estate Commission) should conduct audits or otherwise investigate complaints alleging violations of accounting standards by persons with control over association funds; (3) whether the number of owners/properties triggering registration should be increased; and (4) whether the cost and accessibility of fidelity bonds for persons in control of association monies is reasonable.

The meeting was adjourned at 4:00 p.m.

Submitted by:

Phillip T. Fisher
Phillip T. Fisher, Facilitator

This 24th day of May, 2005.

NORTH CAROLINA REAL ESTATE COMMISSION
COMMUNITY ASSOCIATION MANAGEMENT ADVISORY COMMITTEE

May 24, 2005

Raleigh, North Carolina

REPORT

Committee Members Present:

Dennis Abbott (Charlotte)
Robert V. Hecht (Denver)
Robert W. Lawing (Charlotte)
Ted Nye (Burnsville)
Harriet Worley (Raleigh)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Thomas R. Miller, Director of Legal Services
Larry A. Outlaw, Director of Education and
Licensing
Mary Frances Whitley, Director of Administration
Blackwell M. Brogden, Jr., Chief Deputy Legal
Counsel
Janet B. Thoren, Deputy Legal Counsel

April 26 Meeting Report

The committee approved as presented Mr. Fisher's report of the committee's April 26 meeting.

Report on Interim Meetings

Craig L. Huntington, Community Association Banc

As requested by the committee at its previous meeting, Ms. Thoren reported to the committee on a May 10 meeting with Craig L. Huntington, President of Community Association Banc, during which the question was discussed as to whether Community Association Banc and similar financial institutions would be prevented from offering banking services to community associations in North Carolina if the Registration Act required that association monies be deposited in banks "lawfully doing business in North Carolina." During the meeting, Ms. Thoren, Mr. Miller and Mr. Brogden acknowledged that current North Carolina law administered and enforced by the North Carolina Banking Commission requires financial institutions to have a physical presence in North Carolina in order to lawfully do business here. Mr. Huntington responded that, although Community Association Banc operates a mortgage office in Charlotte, it projects that it could cost \$250,000 to establish a teller-line satisfying the legal requirements for a "brick and mortar" presence. He stated that First National Bank of Nevada and First National Bank of Arizona of which

Community Association Banc is a division, is not yet prepared to make that financial commitment. He added that the Banc is currently doing business in 47 states (not including Hawaii, Oregon and North Carolina) through electronic means and by couriering monies collected in the 47 states to their offices in Nevada and Arizona where they are deposited. Ms. Thoren stated that it was emphasized to Mr. Huntington that only the North Carolina Banking Commission and ultimately the North Carolina General Assembly could provide his institution the relief it seeks.

Having determined that a provision in a community association registration law requiring association funds to be deposited in a bank(s) "lawfully doing business in North Carolina" would, in fact, prevent associations from depositing monies in the Community Association Banc and similar institutions, the committee continued to discuss whether such provision should be included. The Commission staff advisors to the committee and Ms. Worley expressed their concern that, without this provision, the power to subpoena and thereby gain access to the bank records pertaining to associations would be severely hampered should a question arise as to whether the association's monies are being properly handled. This they added was because, as a practical matter, no state agency or other party could afford to commence lawsuits in other states to gain access to the records. Mr. Nye and Ms. Abbott, however, continued to express concern that preventing the Community Association Banc and similar institutions from operating in North Carolina would deprive consumers of a package of services which is less expensive and more helpful than those currently offered by North Carolina banks. To address these competing concerns, the committee determined that community association monies should be deposited either in a bank or banks lawfully doing business in North Carolina or a federally-chartered bank that executes a consent to service of process and pleadings and a consent to provide records relating to North Carolina community association deposits upon the lawful request through North Carolina courts by the community association registration authorizing (i.e., the Real Estate Commission), a community association or association member, or other party.

J. Carter Glass, Carter Glass Insurance Agency

As requested by the committee at its previous meeting, Ms. Thoren reported to the committee on a May 18 meeting with J. Carter Glass of the Carter Glass Insurance and Financial Agency to discuss the projected cost and requirements to bond persons who have substantial control over community association monies. Mr. Glass stated that he represents Nationwide Insurance and Financial which insures 600-700 community associations in North Carolina. According to Mr. Glass, a community association which currently has insurance coverage through Nationwide could add a \$100,000 fidelity bond covering persons who handle the association's monies for an annual premium of \$250, or a \$250,000 bond for \$500; however, the premium may vary depending upon the number of persons covered. Mr. Fisher added that, according to Mr. Glass, it is a very simple process for associations to apply and qualify for such coverage.

Based upon this information and the belief that bonding persons in control of association monies can provide meaningful protection to consumers, the committee determined that a fidelity bonding requirement should be included in the Registration Act. However, to avoid placing an unreasonable financial burden on associations, the committee agreed that the requirement should only apply to community associations required to be registered (i.e., those consisting of five or more residential properties) that have \$10,000 or more in total annual assessments (regular or special), and that the amount of the bond should be at least twice the annual assessments or \$250,000 whichever is less.

Registration Agency Scope of Authority

The committee continued its discussion of whether the registration authority (i.e., Real Estate Commission) should be charged in the Registration Act to conduct audits or otherwise investigate complaints alleging violations of the proposed standards for handling and accounting for community association monies or other complaints regarding the management of the association. While recognizing that governmental auditing of association accounts and investigation of complaints would add a measure of consumer protection, committee members expressed concern that it would increase consumer expectations, result in an unmanageable volume of other complaints ("pools, pets, parking") being filed with the registration authority, and substantially increase the cost of administering the program and, consequently, the registration fees. Therefore, the committee determined that, with the exception of complaints related to the registration of associations and complaints against real estate licensees engaged in community association management, the Real Estate Commission as the

registration authority should not be charged to investigate complaints or audit community association accounts. However, the committee recognized that this may need to be revisited at some future time if, based upon experience, there appears to be a need for additional regulatory and enforcement authority.

Finding

Following its discussions at this and its two previous meetings, the *Community Association Management Advisory Committee*, pursuant to its charge from the North Carolina Real Estate Commission to "...determine whether persons and entities engaged in the business of managing community (homeowners', condominium and cooperative housing) associations should be governmental regulated, and if so, to describe the demonstrated and/or potential harm to consumers due to lack of governmental regulation and the most effective means of providing such regulation", concluded that demonstrated and/or potential harm to consumers from improper handling of community association monies warrants governmental action.

Objectives

While acknowledging the potential benefits to the public which may be derived from governmental credentialing and regulation of persons engaged in the business of community association management, the committee believed that a more limited, measured approach designed to achieve the following objectives is advisable at this time:

1. Provide minimum standards for handling and accounting for association funds, and subject real estate licensees to these standards when handling and accounting for such funds.
2. Provide a more effective means for compensating persons who suffer financial loss as a result of mishandling of association funds.
3. Provide, through the creation of a comprehensive listing of North Carolina community associations, a more effective means to communicate with and disseminate information to associations on matters of special interest and concern to them, and provide a source of information for real estate licensees, attorneys, community association members and others about community associations and their officers and managers.
4. Impress upon association boards and persons entrusted with association funds the seriousness of their responsibilities by requiring associations to register with and submit information to a state regulatory agency.

5. Provide a more effective means of monitoring the activities of community associations and managers which could aid in assessing at some later time the need for any additional oversight and regulation.

Recommendations

In furtherance of these objectives, the committee recommended that the North Carolina Real Estate Commission support state legislation to:

1. Require associations consisting of five (5) or more residential properties or units (whether improved or unimproved) to register with the North Carolina Real Estate Commission, but exempt from the registration requirement voluntary membership associations, associations which must dissolve within five years of their creation, and associations which are not authorized to collect monies from their members. Associations in existence at the time of the Registration Act must register within one year following the effective date of the Act, others must register within 180 days following the first sale of a lot or unit, and all must periodically renew their registration. In the event an association fails to properly register or renew its registration, the Real Estate Commission may seek injunctive relief against it to compel registration, and the association could not pursue legal remedies in the courts until it is properly registered; however, other actions taken by the association while not registered would not be invalidated by its failure to register.

2. Require associations to submit information to the Real Estate Commission in connection with their applications for registration which would include at a minimum (a) a description of the property and the association; (b) a registration fee (preferably not to exceed \$25-\$30) which, together with the annual renewal fee, is sufficient to cover the costs of administering the registration program; and (c) a list of persons who have substantial control over the association's monies and evidence they are covered by the required fidelity bond.

3. For associations required to be registered that have \$10,000 or more in total annual assessments (regular and special) require person(s) who have substantial control over the association's monies to be covered by a fidelity bond in an amount that is at least twice the total annual assessments or \$250,000, whichever is less, or the amount required by the association's governing documents.

4. Establish minimum standards for handling and accounting for community association funds which would apply to persons responsible for handling and accounting for monies of associations required to be registered and to real estate agents when handling and accounting for community association funds. The standards should, at a minimum, require (a) that persons in substantial control of association monies safeguard and account for them promptly and accurately; (b) that written authorization be obtained if any interest earned on association monies is paid to a person or entity other than the association; (c) that accounts be segregated (i.e., separate accounts for each individual association) and monies not commingled with those belonging to other persons or entities; (d) that association books and records clearly identify the source and purpose of the monies received by the association, the person(s) to whom they are paid and for what purpose, and the financial obligations to the association and its obligations to others; (e) that association books and records create a clear audit trail of association monies sufficient to demonstrate compliance with rules adopted by the Real Estate Commission for this purpose; and (f) that association monies be deposited in federally or North Carolina-insured accounts in a bank or banks lawfully doing business in North Carolina, or in a federally-chartered bank that executes a consent to service of process and pleadings and a consent to provide records relating to the deposit of North Carolina community association monies upon a lawful request through North Carolina courts by the Real Estate Commission, a community association or community association member or other party, but, following deposit, may be invested at the direction of the association's governing body exercising its lawful authority.

5. Authorize the Real Estate Commission to adopt rules necessary to implement and administer the community association registration program and establish any additional standards necessary regarding the proper handling and accounting for community association funds. And direct the Real Estate Commission to form an advisory committee or other body which would include persons with community association management experience and expertise to assist the Commission on matters requiring such specialized expertise. The Commission would not be charged to investigate allegations or prosecute persons (other than licensees of the Commission)

believed to be in violation of statutory standards for handling and accounting for community association funds, or to investigate any other allegations involving community associations or their managers that are not related to the registration of associations.

There being no further business to come before the *Community Association Management Advisory Committee*, Mr. Fisher stated that he would prepare the report for the committee's May 24 meeting and final committee report for submission to the Real Estate Commission. Mr. Fisher stated that he plans to submit the report to the Commission not later than the Commission's July 6 meeting and will circulate a draft to committee members for their review and comments in advance of the meeting.

Mr. Fisher once again expressed to the committee members the appreciation of the Real Estate Commission for their diligent work in addressing the issue before them.

The meeting was adjourned.

Submitted by:

Phillip T. Fisher

Phillip T. Fisher, Facilitator

This 28th day of June, 2005.

NORTH CAROLINA REAL ESTATE COMMISSION
COMMUNITY ASSOCIATION MANAGEMENT ADVISORY COMMITTEE

October 17, 2006

Raleigh, North Carolina

REPORT

Committee Members Present:

Dennis Abbott (Charlotte)
Melvin L. "Skip" Alston (Greensboro)
Henry W. Jones, Jr. (Raleigh)
Jim Laumann (Morrisville)
John E. Lawton (Raleigh)
Ted S. Nye (Banner Elk)
John Stone (Pinehurst)
Harriet Worley (Raleigh)
Rick Zechini (Raleigh)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Thomas R. Miller, Director of Legal Services
Larry A. Outlaw, Director of Education and
Licensing
Emmet R. Wood, Director of Audits and
Investigations
Mary Frances Whitley, Director of Administration
Miriam J. Baer, Assistant Director of Legal Services

Others Present:

Janet B. Thoren, ARELLO Director of Legal
Resources

Welcome

Mr. Fisher convened the fourth meeting of the Community Association Management Advisory Committee. Mr. Fisher informed the committee that members Robert V. Hecht (Denver) and Robert W. Lawing (Charlotte) were unable to attend the meeting but had submitted comments for the committee's consideration. Mr. Fisher welcomed and introduced two additional members appointed to the committee by the Real Estate Commission since the committee's previous meeting: Jim Laumann who is President of Homeowners Associations of North Carolina, Inc. (Morrisville) which maintains the largest existing database of North Carolina homeowner associations; and John Stone, President of CAS and incoming President of the Carolinas Chapter of the Community Associations Institute. Mr. Fisher also introduced committee member Skip Alston, President of The Alston Realty Group, Inc. (Greensboro) and current Vice-Chair of the Real Estate Commission. Mr. Fisher announced that committee staff advisor Blackwell M.

Brogden, Jr. was no longer employed by the Commission and is being succeeded as staff advisor by Miriam J. Baer, the Commission's Legal Counsel and Assistant Director of Legal Services. He also reported that staff advisor Janet Thoren is now employed by the Association of Real Estate License Law Officials (ARELLO) as its Director of Legal Resources and, in that capacity, is present for the meeting.

Committee Charge, Finding, Recommendations

Mr. Fisher reminded the committee of its initial charge from the Real Estate Commission to determine whether persons engaged in the business of managing community associations should be governmentally regulated, and if so, how.

He pointed out that in its June 28, 2005 report to the Commission [**Item 1**], the committee found that "demonstrated and/or potential harm to consumers from improper handling of community association monies warrants governmental action" but that "... while acknowledging the potential benefits to the public which may be derived from governmental credentialing and regulation of persons engaged in the business of community association management, a more limited, measured approach...is advisable at this time." Mr. Nye emphasized that the limited approach recommended by the committee was based upon the committee members' belief and understanding that the number of persons currently engaged in the business of community association management would not be sufficient to generate fees needed to financially support a credentialing program.

Having found that some means of governmental regulation is warranted but that a credentialing program for association managers is likely not feasible, and that any regulation should include "self-managed" associations which comprise an estimated 80% of all community associations in North Carolina, the committee in its 2005 report made the following recommendations to the Real Estate Commission:

1. Require (with certain exceptions) community associations to register with the Commission, including describing the property and association, listing person(s) who have substantial control over the association's monies, and paying a registration fee;

2. Require persons to obtain fidelity bonds if they control more than \$10,000 of assessments;
3. Adopt minimum standards proposed by the committee for handling and accounting for association monies which would also apply to real estate brokers; and
4. Authorize the Real Estate Commission to adopt rules to implement the registration program with input from an advisory committee comprised of persons with community association management expertise; however, Commission would not be authorized to enforce accounting standards or investigate and act upon consumer complaints other than those relating to association registration.

As previously reported to the committee, the Real Estate Commission, after reviewing the committee's report and thoughtful recommendations, questioned whether the benefits to consumers of the proposed community association registration program without any regulatory authority over association managers or the ability to investigate and respond to complaints alleging mishandling of association funds, justified the effort and expense of implementing the program. Therefore, the Commission requested the advisory committee to reconvene and further explore ways to strengthen the investigative and enforcement authority of the registration agency.

Revised Recommendations

To address the Real Estate Commission's continuing concerns, Mr. Fisher prepared and reviewed with the committee as a starting point for discussion certain "Revised Recommendations" [Item 2] a copy of which was furnished to the committee members in advance of the meeting. As proposed, the advisory committee would recommend to the Real Estate Commission that the Commission support legislation to create a separate state occupational licensing board to develop, implement and administer a program for registering self-managed and fee-managed community associations and for licensing persons and firms in the business of managing community associations, including the requirement that they be bonded. Mr. Fisher explained that community association registration and renewal fees would enable the board to develop and disseminate educational and informational materials and programs to association members and leaders (esp. in self-managed associations) and help financially support the licensure and regulatory program for association managers. The licensure and regulatory program for managers would provide additional protection to consumers by better assuring that persons who engage in the business of managing community associations are

at least minimally competent and knowledgeable about community association matters, and that those who fail to subscribe to the prescribed standard of practice would be subject to disciplinary sanctions including loss of licensure.

While the committee was in general agreement with the "Revised Recommendations" as proposed, members expressed concern that they offered no protection nor any effective means for compensating members of self-managed associations who suffer financial loss as a result of mishandling of the association's funds. Therefore, the committee determined that the "Revised Recommendations" should be amended to require the bonding of persons/entities responsible for handling and accounting for community association funds – not just licensed community association managers as originally proposed. The committee also determined that, with regard to the licensing of community association managers, the "Revised Recommendations" should be amended to reflect that "continuing education" would be required of licensees. The committee then voted to approve the "Revised Recommendations" as amended [*Mr. Zechini abstained*].

November 28 Meeting

The Committee voted to hold its next meeting on November 28 beginning at 10:00 a.m. in the Real Estate Commission office. At the meeting, the committee will consider various elements which must be incorporated in any proposed legislation establishing the community association registration and association manager licensing programs, including (1) the minimum number of residential units that would trigger the association registration requirement; (2) "grandparenting", credit for equivalent education/experience, or other factors to facilitate the transitioning into licensure of persons currently engaged in association management; (3) the methods for enforcing the community association registration requirement, including possible dissolution of the association; (4) the method for determining the amount of the required fidelity bond and to whom the bonding requirement will apply; and (5) the procurement of "seed money" or other means to fund the initial operations of the board until registration and licensing fees are received.

To assist the committee in determining the size of associations which would be subject to the registration requirement, and thus the registration fees necessary to help fund the operations of the regulatory board as projected by Mr. Fisher [Item 3], Mr. Laumann agreed to survey associations in his database. And Mr. Abbott, Mr. Jones, Mr. Lawton, Mr. Stone and Mr. Laumann will provide information to assist the committee in determining the number of persons and firms currently engaged in the

business of managing community associations which would be subject to licensure, and thus the licensing fees necessary to help fund the operations of the board. Also in preparation for the next meeting of the committee, to help gauge support for the proposed plan especially with regard to licensure of community association managers, Mr. Zechini agreed to consult with the leadership of the North Carolina Association of REALTORS®, and Mr. Abbott, Mr. Jones, Mr. Lawton and Mr. Stone with the membership of the Carolinas Chapter of the Community Associations Institute. Mr. Fisher will likewise report to the committee on the Real Estate Commission's response to its "Revised Recommendations" (as amended).

Mr. Fisher informed the committee members that he would circulate to them in advance of their November 28 meeting a draft report of the meeting for their review and comments.

The meeting was adjourned at 3:30 p.m.

Submitted by:

Phillip T. Fisher

Phillip T. Fisher, Facilitator

This 28th day of November, 2006.

NORTH CAROLINA REAL ESTATE COMMISSION
COMMUNITY ASSOCIATION MANAGEMENT ADVISORY COMMITTEE

November 28, 2006

Raleigh, North Carolina

REPORT

Committee Members Present:

Dennis Abbott (Charlotte)
Melvin L. "Skip" Alston (Greensboro)
Robert V. Hecht (Denver)
Henry W. Jones, Jr. (Raleigh)
Robert W. Lawing (Charlotte)
Jim Laumann (Morrisville)
John E. Lawton (Raleigh)
Ted S. Nye (Banner Elk)
John Stone (Pinehurst)
Harriet Worley (Raleigh)
Rick Zechini (Raleigh)

Commission Staff Members Present:

Phillip T. Fisher, Executive Director (Facilitator)
Thomas R. Miller, Director of Legal Services
Larry A. Outlaw, Director of Education and
Licensing
Emmet R. Wood, Director of Audits and
Investigations
Mary Frances Whitley, Director of Administration
Miriam J. Baer, Assistant Director of Legal Services

Others Present:

Janet B. Thoren, ARELLO Director of Legal
Resources
Dawn M. Bauman, CAI Executive Director NBC-
CAM
Andrew Fortin, CAI Vice-President for Government
and Public Affairs

Welcome

Mr. Fisher convened the fifth meeting of the Community Association Management Advisory Committee. With all committee members in attendance at this meeting, Mr. Fisher welcomed Dawn M. Bauman, Executive Director of the Community Associations Institute's (CAI) National Board of Certification for Community Association Managers, and Andrew Fortin, CAI's Vice-President for Government and Public Affairs, who were present at the meeting.

October 17 Meeting Report

Mr. Fisher reviewed with the committee its revised recommendations [**Item 1**] approved by the committee at its previous meeting. Mr. Fisher reported that he had presented the committee's revised recommendations to the Real Estate Commission at its November 15 meeting. The Commission determined that the recommendations could provide a workable framework for a meaningful regulatory program for the management of community associations. Realizing that many details must be resolved before and during the legislative process, the Commission approved the recommendations in concept. Having submitted these recommendations to the Commission, Mr. Fisher congratulated the committee on having fulfilled its charge.

Draft Community Association Manager Act

With regard to the committee's recommendation that legislation be enacted to require persons (and firms) in the business of managing community associations to obtain a community association manager license from a state government agency, Mr. Jones reviewed with the committee draft legislation [**Item 2**] prepared by him which, according to he and Mr. Stone, received a favorable response at meetings of chief executive officers and managers of community association management firms in Raleigh and Charlotte. The committee commented on various aspects of the draft legislation. Mr. Jones noted the comments and suggestions from the committee for consideration when he and others further develop the bill which will also address the committee's recommendations regarding mandatory registration of community associations.

Other

To assist Mr. Jones, Mr. Stone and others who may be involved in finalizing legislation and developing the program for licensing community association managers and registering community associations, Mr. Fisher presented and reviewed with the committee a program implementation schedule [**Item 3**] which he prepared identifying various tasks which must be completed by the licensing agency and staff to establish the programs. Mr. Laumann also furnished the committee the results of a survey which he conducted [**Item 4**] in an effort

to determine the number of units in North Carolina homeowner associations for use in projecting the community association registration fees which may be required to help support the licensing and registration programs.

Mr. Jones and Mr. Stone stated that they would schedule meetings with various members of the advisory committee, Commission staff advisors and others to finalize the legislation in sufficient time for introduction in the 2007 North Carolina General Assembly.

There being no further business to come before the *Community Association Management Advisory Committee*, Mr. Fisher stated that he would prepare the report for the Committee's November 28 meeting and final committee report for submission to the Real Estate Commission.

Mr. Fisher thanked the committee members for their diligence in addressing the many issues associated with the Real Estate Commission's charge and extended to those persons who will be involved in pursuing enactment of the legislation the Commission's best wishes for success.

The meeting was adjourned.

Submitted by:

Phillip T. Fisher

Phillip T. Fisher, Facilitator

This 10th day of January, 2007.