

AB 1410 (Rodriguez)

CAI-CLAC POSITION – OPPOSED

AB 1410 makes several changes to the Davis-Stirling Act that restricts the ability for Associations to self-govern.

- AB 1410 places a number of new, ambiguous requirements on associations. The bill needs better language, definitions, and consistent use of terms.
- AB 1410 would place ambiguous requirements on associations that may require providing access to its online resources, even those owned by the association. We support the right to free speech, but an association should be allowed to control the content of its website and other online resources it manages or controls.
- AB 1410 would require volunteer directors and association employees to complete a course on fiduciary ethics and harassment prevention. Requiring volunteer directors to take training courses will cost associations money and will result in fewer people willing to volunteer and make housing less affordable by adding more costs to associations.

Fannie Mae Guidelines for Condominiums

Background

Fannie Mae (FNMA) is a government sponsored enterprise (GSE), created by Congress in 1938, that purchases mortgage loans from banks or credit unions. The mortgages are sold as mortgage-backed securities to investors, providing the liquidity in the market to make more loans and keep housing affordable. Prior to FNMA down payments could be 50% or more.

FNMA does not originate loans; they don't lend the money. To ensure a mortgage will be purchased by FNMA the loan must meet certain criteria. The lender is responsible to collect information about the buyer and the property. This review is known as "underwriting" the loan. The underwriting process includes an application verifying income, assets, debt obligations, property value etc. When an application is approved, and the criteria has been met the loan can proceed. However, if the property being purchased is a Condominium, there is an additional layer of underwriting.

The value of a condominium is affected by both the condition of the individual unit, as well as the general condition of the entire development (association). FNMA seeks to ensure the association is financially sound and stable before approving the mortgage. If the association meets all the FNMA criteria the condo is warrantable, conversely, if the association does not meet the FNMA standard it is non-warrantable.

Current Situation

In October 2021, FNMA issued lender guidance to update information needed to determine warrantability of condos. The guidance focuses on requirements related to the safety of the association. FNMA **will not** repurchase mortgages for condos in associations with significant deferred maintenance or projects deemed unsafe by a local or state authority.

To determine qualification FNMA has added an addendum to their standard questionnaire. Community Managers and Board Members are asked to make determinations of the structural soundness of an association. Managers and Board Members are not qualified to make such determinations. Doing so without expertise creates significant liability for the management firm and the board of directors.

Addendum questions include:

1. When was the last building inspection by a licensed architect, licensed engineer, or any other building inspector?
2. Did the last inspection have any findings related to the safety, soundness, structural integrity, or habitability of the project's buildings?
3. Is the HOA/Cooperative Corporation aware of any deficiencies relation to the safety, soundness, structural integrity, or habitability of the project's buildings?
4. Are there any outstanding violations of jurisdictional requirements (zoning ordinances, codes, etc.) Related to the safety, soundness, structural integrity or habitability of the project's building(s)?
5. Is it anticipated the project will, in the future, have such violation(s)?

The negative effect:

The effect of the questionnaire is the following:

1. Creditworthy borrowers are being denied access to funding.
2. Managers are being held responsible for the rejection of financing.
3. The process has become burdensome and expensive requiring attorney opinions and engineering reports.
4. Condo Projects are unnecessarily being classified as non-warrantable.
5. Borrowers are being forced to use alternative financing, resulting in loans with mortgage insurance, higher interest rates, and higher down payments.

How you can help:

CAI-CLAC has drafted a letter to the Federal Housing Finance Agency (FHFA) requesting implementation of the guidelines be suspended for at least one year. We are seeking signatures from the California Legislature.

Infrastructure

- Of the more than 55,000 associations in California, 65% of them are 20 years or older.
- Our goal is to keep condominium ownership and living safe and affordable by giving associations the tools to conduct long term financial planning.
- If this aging infrastructure is not maintained,
 - Residents' health and safety could be jeopardized
 - Fannie Mae will refuse to write mortgages for these residences and California will lose a significant percentage of its existing affordable housing.
- Many associations do not have adequate resources and tools to promptly and proactively fund large scale latent infrastructure investigation and repairs.
- CAI-CLAC is developing a legislative proposal for 2023 to provide Association Boards with the guidance needed to address aging infrastructure.

Insurance Availability and Affordability

- A large number of Common Interest Developments throughout California have had policies non-renewed, cancelled or face premium increases that make the policies no longer affordable. Some premium increases exceed 200 percent! These increases are not budgeted and must be passed along to homeowners, reducing the affordability of their homes, which are often “starter” condominium homes.
- AB 1755 (Levine) – SUPPORT IF AMENDED – this bill would require an insurer to write a policy for a homeowner that performs a prescribed list of home hardening practices. We are seeking an amendment to include residential areas with commercial insurance.
- AB 2450 (Valladares) – SUPPORT – this bill would add a definition of wildfire and provide for an additional wildfire deductible to be paid by the insured. A wildfire deductible would allow for more policies to be written in California.
- Fannie Mae and Freddie Mac will not provide loans to those associations unable to find insurance for the full value of their structures. Those who need to sell due to the increased costs of insurance will find it difficult to sell, and we may be faced with another rush of foreclosures impacting not only the homeowner, but the financial health of the community as a whole.
- CLAC is meeting with the Insurance Commissioner and Department of Insurance on a regular basis to address issues in the marketplace.

Reserves – Adequate Funding

- California law requires Associations to conduct a Reserve Study every three years to determine potential future cost of infrastructure and maintenance needs.
- Unfortunately, California law does not require an Association to actually retain money in its Reserve Fund.
- California law also includes a number of undefined terms and ambiguous language leaving Association Boards with great discretion on how to handle Reserve Funding
- A lack of adequate reserves usually leads to increased infrastructure costs and potential calamity, like in Florida, because major maintenance issues cannot be addressed.
- CAI-CLAC is working on a 2023 legislative proposal to provide more clarity for boards and establish a baseline for funding an Association's Reserve Fund.