

Winter 2017

Community Association LawLetter

WILL COMMUNITY ASSOCIATIONS GET TRUMPED?

The election of Donald Trump as the President of the United States ushers in uncertainty for a variety of **federal housing policies** which affect the financing and governance of homes in community associations—condominiums, homeowner associations and housing cooperatives. During the election campaign, Trump said little about the federal role in promoting homeownership.

But, his support for reduced government regulation and the **2016 Republican Platform** provide clues about how a Trump Administration may impact community associations.

FHA-Insured Condominium Loans. After years of deliberation, the Federal Housing Administration (FHA) issued proposed rules in late September regarding FHA condominium certification which allows condo unit owners to obtain FHA-insured loans. The rules would ease some criteria such as owner-occupancy and commercial/residential ratios but allow FHA staff to develop the details of other eligibility standards.

With new leadership at the Department of Housing and Urban Development (HUD) and the FHA, issuance of final rules might be held up for further review. The Republican Platform calls the FHA “poorly-managed”, and promises to limit taxpayer exposure to “risks taken by FHA officials” and end FHA loans for high-income individuals. Whether this results in more stringent FHA lending standards for condominiums is unknown.

Fannie and Freddie. For many decades, Fannie Mae and Freddie Mac have facilitated the availability of residential mortgage financing by purchasing home loans which they sell to investors as mortgage-backed securities. Since the onset of the Great Recession in 2008, Fannie and Freddie have been run by the federal government’s Federal Housing Finance Agency (FHFA).

The Republican Platform calls their operations a “corrupt business model” which lets their shareholders and executives “reap huge profits while the taxpayers cover all losses”. It promises that a Republican Administration would reconsider the usefulness of Fannie and Freddie and clear

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away “the jumble of subsidies and controls that complicate and distort home-buying”.

And, the Platform declares that the Republican goal is to end government mandates that require Fannie Mae, Freddie Mac, and federally-insured banks to satisfy lending quotas to specific groups.

What happens to Fannie, Freddie and the future of housing finance is up to the new President and Congress.

Assessment Lien Priority. In recent years, the FHFA has actively sought to invalidate state laws which give a foreclosure priority to the assessment liens of condominium and homeowner associations. In court litigation and legislative advocacy, FHFA contends that state lien priority laws are pre-empted by federal banking law. With Republicans often favoring state regulation over federal regulation, it is uncertain whether there will be a continued federal assault on state assessment lien laws.



Housing Harassment. Just weeks before the presidential election, the United States Department of Housing and Urban Development (HUD) adopted fair housing rules regarding “hostile environment harassment” which could make condominiums, housing co-ops and

homeowner associations liable for the discriminatory conduct of community residents. The new rules establish nationwide standards which HUD will apply in enforcing the federal Fair Housing Act with respect to alleged harassment based on race, color, religion, national origin, sex, familial status or disability.

Under the housing harassment rules, a community association could be in violation of the fair housing laws if its board of directors fails to take prompt action to correct and end a discriminatory housing practice by a community resident, where the board knew or should have known of the discriminatory conduct and has the power to correct it.

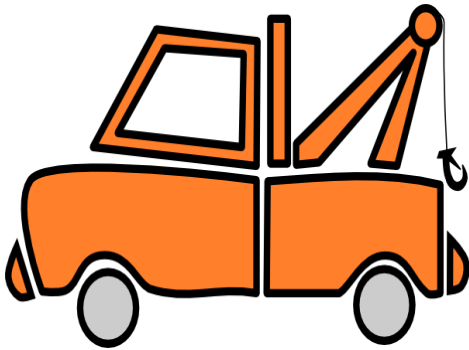
A community association could be held responsible for the discriminatory conduct of residents.

Whether the HUD leaders in the Trump Administration will follow this newly-minted policy, or seek to revise or reverse it, is unknown.

Jobs, immigration, and terrorism are the hot button issues which grab the headlines. However, there are also many decisions to be made by the new President, housing agency officials, and Congress which will impact homeownership and community associations. As the Trump Administration begins, the only certainty about the future of federal housing policies is....uncertainty!

MARYLAND TOP COURT TO REVIEW CONDO TOWING RULE

To tow or not to tow... with apologies to William Shakespeare, that is the question at the heart of long-running litigation between an Anne Arundel County condominium and owners whose vehicles were towed from the condo parking lot. The Maryland Court of Appeals will soon resolve the dispute over a condominium association's authority to suspend a condo owner's use of the common elements when the owner is in arrears in payment of condominium assessments.



Nearly 5 years after a condominium owner filed suit to challenge a condo association's practice of towing owner's vehicles from the condominium common element parking lot and denying access to the swimming pool, the litigation is now before Maryland's top appeals court in *Elvaton Towne Condominium Regime II, Inc. v. Rose*. The condo unit owner, who disputes that the assessments are in arrears, is also contesting the condo's court suit and assessment lien.

The condominium contends that the board-approved rule for suspension of the use of parking lot and pool is permitted by the Maryland Condominium Act and the

Welcome Scott Silverman!

Scott J. Silverman has joined Thomas Schild Law Group, LLC as a Principal of the firm beginning January 1, 2017.

Scott is returning to the law firm where he worked from 1994 to 2001, after working with his family construction business and in private law practice.

With more than 20 years' experience in the field of **Community Association Law**, Scott has wide-ranging knowledge of all aspects of the governance of condominiums, co-ops and homeowner associations in Maryland and the District of Columbia.

He has worked with community association boards in Montgomery County, Prince George's County, Howard County, Anne Arundel County, Baltimore County and other counties throughout Maryland.

More about Scott Silverman and Thomas Schild Law Group, LLC can be found on our website, **schildlaw.com**.

Condominium Bylaws which authorize the board to **regulate** the common elements.

In contrast, the unit owner claims that the Board's action is not merely regulation of the common elements but a **prohibition** on use not allowed by the Act or the condominium governing documents.

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The Anne Arundel Circuit Court and the Maryland Court of Special Appeals—an intermediate appeals court—previously agreed with the homeowner and ruled that the condominium board of directors does not have the authority to adopt a rule to suspend the use of the common element parking lot and pool for non-payment of assessments, where the condominium declaration and bylaws do not provide that such action is allowed. Because the decision of the Court of Special Appeals is “unreported”, it is not a

binding precedent applicable to other condominiums.

Concerned that the towing practice violates the Maryland Condominium Act and the Maryland Consumer Protection Act, the Maryland Attorney General participated in the court appeal in support of the homeowner whose vehicle was towed.

The Court of Appeals heard oral argument in early January and its decision is expected by June, 2017.

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

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