

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

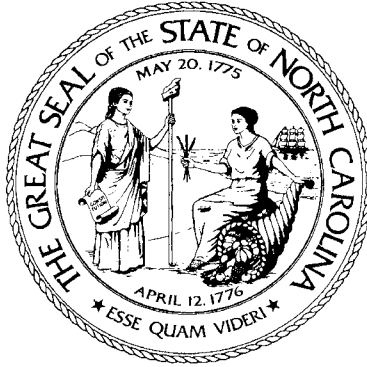
Final Assessment Report

For

COMMUNITY ASSOCIATION MANAGER LICENSURE/FEEES

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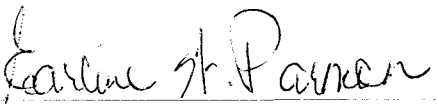
House Bill 762/Senate Bill 516



LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

June 3, 2009

The Legislative Committee on New Licensing Boards is pleased to release this assessment report on the licensure of Community Association Managers Licensure Act. This report constitutes both the preliminary and final assessment report.


Representative Earline W. Parmon

LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS
(2009-2010)

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PREFACE

The Legislative Committee on New Licensing Boards is a 9-member joint committee of the House and Senate created and governed by statute (Article 18A of Chapter 120 of the General Statutes). The primary purpose of the Committee is to evaluate the need for a new licensing board or the proposed licensing of previously unregulated practitioners by an existing board. The Committee has been in existence since 1985.

The Committee solicits written and oral testimony on each licensing proposal in carrying out its duty to determine whether the proposal meets the following criteria:

- 1) Whether the unregulated practice of the profession can substantially endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument.
- 2) Whether the profession possesses qualities that distinguish it from ordinary labor.
- 3) Whether practice of the profession requires specialized skill or training.
- 4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence.
- 5) Whether the public can effectively be protected by other means.
- 6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's good or services.

The Committee issues an assessment report on its findings and recommendations. The recommendation in the report is not binding upon other committees considering the proposal.

**HOUSE BILL 762/SENATE BILL 516
COMMUNITY ASSOCIATION MANAGER LICENSURE/FEEES**

BACKGROUND¹

Current Standards.

Currently in North Carolina persons or firms engaged in community management associations are not required to be licensed or otherwise regulated. The Real Estate Commission in investigating cases where licensed real estate brokers and salespersons manage associations discovered many serious incidents of wrong-doing resulting in financial loss to consumers. Further, the mishandling of community association monies by unregulated persons is frequently reported as well as arbitrary enforcement of association covenants, rules and regulations.

Community Managers collect, maintain, and invest the funds paid by homeowners and condominium unit owners and they are expected to preserve and protect the value of the largest single investment that most of these owners will ever make. Community Managers are responsible for proposing budgets, handling large sums of money, obtaining adequate insurance and maintaining the physical property, if the manager does not perform these duties properly, then the property values in the community will decline and individual homeowners will be faced with special assessments to pay for unanticipated repairs. This potential for substantial harm can be recognized by requiring all community managers to demonstrate through experience and testing that they are competent to perform the required tasks.

¹ **Source:** *Response to Questionnaire for the Legislative Committee for New Licensing Boards.* A copy of the questionnaire is attached to this report.

Another somewhat bigger problem are volunteer members of association boards who take over management of the association with little or no professional training. The fundamental duty of the professional manager is to preserve, protect, and enhance the value of the community in a objective method and approach. This is often not the case with volunteer members.

There are approximately 11,000 community associations in North Carolina as of 2005. Of these, perhaps 80% are self-managed and the remaining 20% are managed by professional managers and others. There are currently approximately 600 professional community managers in the State. Some community association managers are domiciled outside North Carolina and have little or no direct contact with the association boards they serve and they maintain association funds out-of-state.

There are several states that have recognized the public harm or danger to the public and instituted a licensing or certification process. The States include Connecticut, Georgia, California, Nevada, Florida and most recently, Virginia. Similar legislation has been proposed in South Carolina.

LICENSING REQUIREMENTS

"§ 93A-86. Purpose.

The General Assembly finds that persons who provide community association management in North Carolina affect the public health, safety, and welfare and that the mandatory licensure of persons who provide community association management for compensation is necessary to ensure minimum standards of competency. It is the purpose and intent of this Article to protect the public from persons unqualified to provide community association management and from unprofessional conduct by persons licensed pursuant to this Article.

"§ 93A-87. Definitions.

The following definitions apply in this Article:

Board. – The North Carolina Licensure Board for Community Association Managers.

Compensation. – A fee or anything else of value or the promise thereof.

Community association. – An association or organization of the owners of residential condominiums, time-shares, town houses, apartments, or lots in a planned community or subdivision that is subject to a uniform scheme of restrictive covenants, in which owner membership is made mandatory by covenant, contract, or deed, and is authorized to collect dues, assessments, or other payments from owner members.

Community association manager. – Any person who, for a valuable consideration or the expectation thereof, performs two or more of the following acts or services for a community association:

- Acts with the authority of a community association in its business, legal, financial, or other transactions with association members and nonmembers;
- Executes the resolutions and decisions of the government of a community association or, with the authority of the association, enforces the rights of the association secured by statute, contract, covenant, rule, or bylaw;
- Collects, disburses, or otherwise exercises dominion or control over money or other property belonging to a community association;
- Prepares budgets, financial statements, or other financial reports for a community association;
- Arranges, conducts, or coordinates meetings of a community association or the governing body of a community association;
- Negotiates contracts or otherwise coordinates or arranges for services or the purchase of property and goods for or on behalf of a community association;
- Offers or solicits to perform any of the acts or services in sub-subdivisions a. through f. of this subdivision on behalf of a community association.

License. – A certificate issued by the Board recognizing the person named therein as having met the requirements to provide community association management services as defined in this Article.

Licensee. – A person who has been issued a license under this Article.

"§ 93A-88. License required.

On or after October 1, 2010, it shall be unlawful for any person in this State to act as a community association manager, directly or indirectly engage in the business of community association management, hold himself or herself out to be a community association manager, or use the title 'Licensed Community Association Manager' or 'Community Association Manager' without first obtaining a license from the Board as provided in this Article.

The Board may issue a license to provide community association management to an individual. The Board shall not issue a license to provide community association management to a partnership, association, corporation, limited liability company, or other business entity. However, a licensed community association manager may perform community association management for or on behalf of a partnership, association, corporation, limited liability company, or other business entity, conduct business as a business entity, or enter into and enforce contracts as a business entity.

"§ 93A-89. Exemptions.

The provisions of this Article shall not apply to:

- An officer or member of a community association who, for no consideration or expectation thereof, performs the acts or services of a community association manager.

- The acts or services of an attorney-at-law who is engaged to represent a community association or community association manager in any business that constitutes the practice of law.
- The acts or services of a real estate broker hired by a community association to sell or rent real property belonging to the association.
- A trustee in bankruptcy, court-appointed receiver, or any other person acting under the express authority of an order issued by a court of competent jurisdiction.
- The acts or services of a certified public accountant acting solely in the capacity of a certified public accountant.
- A person who is the regular, salaried employee of a licensed community association manager or an entity lawfully engaged in community association management while performing clerical or ministerial functions under the direction and control of a licensed community association manager.
- A person who is the regular, salaried employee of a licensed community association manager or an entity lawfully engaged in community association management who performs any of the acts or service described in G.S. 93A-87(4), under the direct supervision and control of a licensed community association manager.

"§ 93A-90. North Carolina Licensure Board for Community Association Managers.

Membership. – The North Carolina Licensure Board for Community Association Managers is established. The Board shall consist of seven members appointed as follows:

- Four community association managers, two of whom shall be appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be appointed by the General Assembly, upon the

recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed by the Governor.

- A home builder appointed by the Governor, upon the recommendation of the North Carolina Home Builders Association.
- A licensed real estate broker appointed by the Governor, upon the recommendation of the North Carolina Association of Realtors.
- A public member who is not a professional in any of the categories in subdivisions (1) through (3) of this subsection, appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives.
- Members of the Board shall be citizens of the United States and residents of this State.

Terms. – Members of the Board shall be appointed for four-year staggered terms. Each Board member shall hold office until July 1 of the year in which the Board member's respective term expires and until his or her successor is appointed and qualified. No member may serve more than two consecutive full terms. Appointments made by the General Assembly shall be made in accordance with G.S. 120-121.

The initial Board members shall be appointed before October 1, 2007. Of the members initially appointed, the community association manager appointed by the Governor shall serve a one-year term. The community association manager appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and the licensed real estate broker shall serve two-year terms. One community association manager appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, and the home builder shall serve three-year terms. The remaining community association manager appointed by the General Assembly, upon the

recommendation of the President Pro Tempore of the Senate, and the public member shall serve four-year terms.

Upon the expiration of the terms of the initial Board members, members shall be appointed by the appointing authorities designated in subdivisions of this section for a term of four years and shall serve until a successor is appointed.

Vacancies. – Any vacancy shall be filled by the authority originally filling that position. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings in his or her capacity as a licensed community association manager shall be disqualified from participating in the official business of the Board until the charges have been resolved.

Compensation. – Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

Officers. – The officers of the Board shall be a chair, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Article. All officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified. The chair of the Board shall be a licensed community association manager.

Meetings. – The Board shall hold its first meeting within 30 days after the appointment of its members and shall hold at least two meetings each year to conduct business and to review the standards and rules previously adopted by the Board. The Board shall establish the procedures for calling, holding, and conducting regular and special meetings. A majority of Board members constitutes a quorum.

"§ 93A-91. Powers and duties of the Board.

The Board has the power and duty to:

- Administer this Article.
- Issue interpretations of this Article.
- Adopt, amend, or repeal rules as may be necessary to carry out the provisions of this Article.
- Determine the qualifications and fitness of applicants for licensure and license renewal.
- Establish an examination and approve educational curricula for persons seeking licensure under this Article.
- Adopt and publish rules governing the ethics and standards of practice for persons licensed as community association managers and create educational programs, books, and materials for licensees and the general public concerning community associations, their organization and proper management, and the rights of members.
- Issue, renew, deny, suspend, and revoke licenses and investigate and discipline licensees as provided by this Article.
- Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to enforce this Article and discipline persons licensed under this Article.
- Employ and discharge an executive director and other professional, clerical, investigative, and special personnel and to set the compensation and benefits for those persons.

- Purchase or rent office space, equipment, and supplies necessary to carry out the provisions of this Article.
- Adopt a seal by which it shall authenticate its proceedings, official documents, and licenses.
- Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- Establish fees as allowed by the Article.
- Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted by the Board.
- Request and receive the assistance of State educational institutions or other State agencies.
- Establish continuing education requirements for persons licensed under this Article.

Call upon the Attorney General to provide legal counsel and representation to the Board or, upon the approval of the Attorney General, to hire another attorney to represent the Board, provided that the cost of legal representation is borne by the Board.

"§ 93A-92. Requirements for licensure; denial of licensure.

To be licensed as a community association manager, an applicant shall do all of the following:

- Submit a completed application to the Board on a form provided by the Board.
- Pass a licensing examination prescribed by the Board or present evidence of one of the following:
 - Successful completion of the Professional Community Association Manager designation administered by the Community Association Institute.

- Successful completion of the Certified Manager of Community Association Certification Program administered by the National Board of Certification for Community Association Managers.
 - Attainment of the Certified Property Manager designation of the Institute of Real Estate Management Division of the National Association of Realtors.
 - Successful completion of any other program of education which, in the discretion of the Board, is equivalent to the programs described in sub-subdivisions a. through c. of this subdivision.
 - Possession of a valid license issued by another state or any political territory or jurisdiction acceptable to the Board if in the Board's opinion the requirements for that licensure are substantially the same as the requirements for licensure under this Article.
- Produce evidence of coverage by a fidelity bond in accordance with G.S. 93A-93.
 - Affirmatively demonstrate to the Board that the applicant possesses good moral character and the honesty, truthfulness, and integrity necessary to protect the interests of the public and promote public confidence in licensed community association managers.
 - Pay the applicable fees.

If the Board finds that an applicant has not demonstrated that the applicant possesses the character and fitness for licensure, the Board shall defer action on the applicant's application and shall notify the applicant in writing by first-class mail directed to the address provided by the applicant in the application. Within 60 days following the mailing of the notice, the applicant may request a hearing before the Board. Proceedings before the Board shall be governed by Article 3A of Chapter 150B of the General Statutes.

At the hearing, the applicant shall have the burden of demonstrating the applicant's good character and fitness for licensure. If the applicant does not make a timely request for a hearing, the application shall be deemed denied.

"§ 93A-93. Fidelity bonds; segregation of accounts.

Every community association manager engaged in community association management shall at all times be covered by a fidelity bond or an insurance policy complying with the provisions of this section.

A fidelity bond required by this section shall be in the amount of twenty thousand dollars (\$20,000) and shall:

- Be written by an insurance company authorized to write fidelity bonds in this State.
- Cover the community association manager and all employees and protect all of the community association funds in the custody of the community association manager or community association employees acting under the community association manager's supervision.
- Provide that the insurance company issuing the bond may not cancel, substantially modify, or refuse to renew the bond without giving 30 days' prior written notice to the Board, except in the case of nonpayment of premiums, in which case 10 days' prior written notice shall be given to the Board.
- Contain any other provisions as may be required by the Board.
- A licensee shall furnish the Board proof of required bond coverage before engaging in community association management activities and upon license renewal if the licensee continues to engage in community association management activities.

- The fidelity bond may be issued to an individual licensee naming the licensee as the insured party or may be issued to a community association management firm naming the firm, all affiliated licensees, and others as insured parties.
- A community association manager with custody, dominion, or control of money belonging to a community association or money belonging to a member of a community association shall comply with all the following:
 - Safeguard and account for the money promptly and accurately.
 - Promptly deposit the money into federally insured bank accounts in a bank lawfully doing business in North Carolina or in a federally chartered bank that consents to the jurisdiction of the Board for the examination of its records necessary to enforce this Article.
 - Segregate the money in an account or accounts used exclusively for the deposit and maintenance of funds belonging only to one association and not commingle the money belonging to one association with money belonging to another association, the manager, or another person or entity.
 - Obtain written authorization if any interest or other income earned by the money is to be paid to any person or party other than the association or member to whom the money belongs.
 - Create and maintain books and records sufficient to demonstrate compliance with the provisions of this section and rules adopted by the Board.
 - Upon depositing the money as provided in this subsection, expend, remit, or invest the money as directed by the association to whom the money belongs and provide an accurate account of any expenditure, remittance, or investment.

"§ 93A-94. Fees; subsequent application.

The Board may impose the following fees, not to exceed the following amounts:

- Application for community association manager license \$25.00
- Community association manager examination \$75.00
- Issuance of license \$150.00
- License renewal \$100.00
- Late renewal \$25.00
- Application for course approval \$150.00
- Course approval renewal \$75.00
- Course fee, per credit hour per licensee \$5.00
- Credit for unapproved continuing education course \$50.00
- Registration of community association \$50.00
- Copies of Board rules or licensure standards shall be the cost of printing and mailing.

An individual who applied for a license as a community association manager and failed the community association manager examination is not required to pay an additional application fee if the individual submits another application for a license as a community association manager within six months following the submission of the individual's first application. However, the individual shall pay the examination fee to be eligible to take the examination again.

"§ 93A-95. License renewal; inactive license; lapsed license.

Renewal. – A license issued under this Article expires on September 30 of each year. A license may be renewed by filing an application for renewal according to procedures established by the Board and paying the required renewal fee. The Board shall renew the

license of a person who files an application for renewal, pays the required renewal fee, and has fulfilled the continuing education requirements set by the Board. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board shall reasonably ensure that the courses needed to fulfill the requirement are available.

Late Renewal. – The Board may provide for the late renewal of a license upon the payment of a late fee. However, late renewal of a license may not be granted more than five years after the license expires.

Inactive License. – A licensed community association manager may apply to the Board to be placed on inactive status. An applicant for inactive status shall follow the procedure established by the Board. A licensed community association manager who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status. A community association manager on inactive status may apply to the Board to be reinstated to active status at any time. The Board may set conditions for reinstatement to active status. A community association manager on inactive status shall not perform any act or service for which licensure is required.

"§ 93A-96. Continuing education.

Requirements. – The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon renewing the license, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the licensee has completed the required number of classroom hours of instruction in courses approved by the Board. The Board shall determine the number of hours of continuing education a licensee is required to complete continuing education annually. However, the total number of credit hours shall not

exceed eight credit hours. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board.

Fees. – The Board may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. Approval of a continuing education course shall be renewed annually. The Board may also require a course sponsor to pay a fee for each licensee completing an approved continuing education course conducted by the sponsor.

Credit for Unapproved Course. – The Board may award continuing education credit for an unapproved course or related educational activity. The Board may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Board may charge a fee to the licensee for each unapproved course or activity submitted.

Extension of Time. – The Board may, for good cause shown, grant extensions of time to licensees to comply with the requirements of this section. Any licensee who, after obtaining an extension under this subsection, offers evidence satisfactory to the Board that the licensee has satisfactorily completed the required continuing education courses, is in compliance with this section.

Rules. – The Board may adopt rules regarding continuing education requirements, including rules that govern:

- The content and subject matter of continuing education courses.
- The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- The methods of instruction.
- The computation of course credit.

- The ability to carry forward course credit from one year to another.
- The waiver of or variance from the continuing education requirement for hardship or other reasons.
- The procedures for compliance and sanctions for noncompliance.

"§ 93A-97. Registration of community associations.

On or before January 1 of each year, every community association whose membership includes the owners of 20 or more residential condominiums, town houses, apartments, or lots or any combination thereof shall register the association with the Board and shall provide the Board with the following information about the association:

- The name and address of the association.
- The county where the property is located.
- The name and address of the community association's manager.
- Any other information the Board may require pursuant to rules adopted by the Board.

Registration is also required of any community association whose constituent parts include other community associations or organizations whose membership includes the owners of fewer than 20 residential condominiums, town houses, apartments, or lots, but in the aggregate includes the owners of 20 or more properties or interests. The Board may charge each affected association an annual registration fee not to exceed fifty dollars (\$50.00).

In the event an association required to register fails to register, the association shall not sue in court or otherwise pursue any legal remedy available to it until the association has registered with the Board, including the payment of any delinquent registration fees. The

Board shall publish a directory of registered community associations and registration fees, and the Board shall use the fees only for the administration and enforcement of this Article.

"§ 93A-98. Disciplinary action by the Board.

The Board shall have the authority to take disciplinary action. Upon its own initiative or upon the complaint of any person, the Board may investigate the conduct of a licensed community association manager or any other person who acts or assumes to act in the capacity of a licensed community association manager. The Board may suspend or revoke a license issued under this Article or reprimand a licensee if, following a hearing, the Board finds that the licensee has:

- Obtained a license by means of fraud, deceit, or misrepresentation.
- Engaged in gross negligence or incompetence as a community association manager.
- Engaged in any act or service for which a license is required with a lapsed or inactive license.
- Made a willful misrepresentation of material fact.
- Failed within a reasonable time to account for or remit money belonging to a community association or another person coming into the community association manager's possession in his or her capacity as a community association manager.
- Commingled money belonging to a community association with the community association manager's own or other money or failed to deposit, maintain, or safeguard the money of a community association as required by G.S. 93A-93(c).
- Been adjudged legally incompetent.
- Paid or offered to pay a valuable consideration to any person for acts or services performed in violation of this Article.

- Failed to reasonably supervise an employee to prevent a violation of this Article.
- Engaged in any other conduct that is dishonest or fraudulent.
- Violated any rule adopted by the Board or any provision of this Article.

The Board may also suspend or revoke the license issued to a community association manager when the licensee has been convicted in any court of competent jurisdiction in this State, another state, or the United States of the offenses of fraud, embezzlement, larceny, false pretenses, forgery, conspiracy, or any other offense involving dishonesty, breach of trust, or moral turpitude.

In any case in which the Board may take disciplinary action authorized by this section, the Board may also impose reasonable conditions, restrictions, limitations, and probation upon the licensee.

Hearings held pursuant to this section shall be governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

The Board shall have authority to issue subpoenas in aid of its authority to compel the testimony of witnesses and to require any person or entity to produce documents for examination and copying by the Board's representatives. Subpoenas shall be signed by the Board Chairman, Executive Director, or legal counsel. Upon written request, the Board shall revoke a subpoena upon a showing that the subpoena does not describe the evidence sought with reasonable particularity, the evidence sought by the subpoena does not relate to a matter within the authority of the Board, or compliance with the subpoena is unreasonably burdensome. If any person should fail to comply with a subpoena issued by the Board, the Board may apply to the Superior Court of Wake County or any county where the subpoenaed person resides or does business for an order to compel the person to comply with a subpoena or to show cause why the subpoenaed person should not be held in

contempt. The court may impose punishment for failure to comply with the Board's subpoena in the same manner as if the subpoena had been issued under the court's own authority. The Board shall be exempt from the provisions of Chapter 53B of the General Statutes when the subpoena seeks the production of records of money belonging to a community association or association member held by a financial institution.

"§ 93A-99. License is property of the Board; display of license; report address change.

A license issued by the Board is the property of the Board. If the Board suspends or revokes a license issued by the Board, the community association manager to whom the license is issued shall return the license to the Board upon demand.

A community association manager licensed by the Board shall display the license in a manner prescribed by the Board. A community association manager whose address changes shall report the change to the Board.

"§ 93A-100. Records.

All persons licensed under this Article shall maintain full and accurate records of business engaged in pursuant to their licenses. Records shall include the written, signed contract, and the written report required by the standards of practice established by the Board. Licensees shall retain records no less than three years. Licensees shall furnish their records to the Board on demand without prior notice.

"§ 93A-101. Violation a misdemeanor.

A person who violates any provision of this Article is guilty of a Class 2 misdemeanor. Each unlawful act or practice constitutes a distinct and separate offense.

"§ 93A-102. Injunctions.

The Board may apply to any appropriate court for an order enjoining violations of this Article. Upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or a restraining order or take other appropriate action."

SECTION 2. G.S. 93A-6(a)(12) reads as rewritten:

"(a) The Commission has power to take disciplinary action. Upon its own initiative, or on the complaint of any person, the Commission may investigate the actions of any person or entity licensed under this Chapter, or any other person or entity who shall assume to act in such capacity. If the Commission finds probable cause that a licensee has violated any of the provisions of this Chapter, the Commission may hold a hearing on the allegations of misconduct.

The Commission has power to suspend or revoke at any time a license issued under the provisions of this Chapter, or to reprimand or censure any licensee, if, following a hearing, the Commission adjudges the licensee to be guilty of:

(12) Commingling the money or other property of his or her principals with his or her own or failure to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association in North Carolina all money received by him or her as a real estate licensee acting in that capacity, or an escrow agent, or the custodian or manager of the funds of another person or entity which relate to or concern that person's or entity's interest or investment in real property, provided, these accounts shall not bear interest unless the principals authorize in writing the deposit be made in an interest bearing account and also provide for the disbursement of the interest accrued. However, a real estate broker who is also a licensed community association manager shall not be subject to disciplinary action by

the Commission for handling and accounting for money belonging to a community association in compliance with Article 6 of Chapter 93A of the General Statutes."

SECTION 3. Any person who submits proof to the Board that the person has been actively engaged in business as a community association manager for compensation in this State for at least three consecutive years before the effective date of this act and pays the required fee for the issuance of a license shall be licensed without having to satisfy the requirements of G.S. 93A-92, enacted by Section 1 of this act. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all requirements prescribed by the Board and to otherwise comply with the provisions of G.S. 93A-92.

SECTION 4. This act is effective when it becomes law.

FINDINGS AND RECOMMENDATIONS

COMMUNITY ASSOCIATION MANAGER LICENSURE/FEES

Findings. The Legislative Committee on New Licensing Boards finds that the sponsors have met the six criteria by which the Committee judges licensure proposals. Specifically, the Committee finds that:

- 1) The unregulated practice of community association managers can substantially harm or endanger the financial security and welfare of property owners and the property association proper. Currently, there is not a regulatory body in place to investigate and resolve allegations of fiscal or professional impropriety; no uniform academic or professional training requirements; no effective means for compensating victims who suffer financial loss; nor is there a comprehensive listing of all North Carolina community associations to disseminate information to associations on matters of special interest or concern to the them. The greatest potential for harm is from individuals who lack the appropriate professional credentials but are engaging in the speculation of community funds in investment accounts, certificate of deposits or misuse of escrow funds by theft or mismanagement.
- 2) The profession possesses qualities that distinguish it from ordinary labor due to community association managers being entrusted with many thousands of dollars collected from property owners for assessments, homeowner dues, and fines. Further, community association managers are expected to have a basic understanding of relevant state and local statutes, rules and regulations, be versed in basic business administration principles and accounting procedures, public administration skills, and a knowledge insurance, maintenance, human resources and construction.
- 3) Thus, the community association manager requires specialized skill or training to perform their duties to the best of their ability.
- 4) A substantial majority of the public does not have the knowledge or experience to evaluate the competence of community association managers.
- 5) The public cannot be as efficiently protected by other means.
- 6) Licensure would not have a substantial adverse economic impact upon the recipient of community association management.

Recommendation. The Legislative Committee on New Licensing Boards heartily recommends that the practice of community association management be performed by a licensed professional. This assessment report constitutes both the preliminary and final assessment report for the licensure of community association managers. The report is

based on the proposed licensing as set out in House Bill 762 and Senate Bill 516, the response to the Committee's questionnaire (Attachment), and testimony before the Committee on June 3, 2009.

ATTACHMENT

*Response to Questionnaire for the
Legislative Committee on New Licensing
Boards*

QUESTIONS FOR THE LEGISLATIVE COMMITTEE ON NEW LICENSING BOARDS

- **In what ways has the marketplace failed to regulate adequately the profession or occupation?**

The Manager Licensing issue was first raised many years ago by the North Carolina Real Estate Commission (“REC”) because of growing concern for the financial management of association’s funds in “time share” communities. At the time, there were numerous complaints involving misappropriation of escrow money. These contentions were echoed by the Attorney General’s Office. In an effort to address these concerns, the General Assembly passed a statute giving the REC authority to regulate community managers who hold a real estate license. This does not adequately address the problem because not every community manager holds a real estate license. Under the current law, there is no requirement that managers of condominiums or community associations be licensed. Some community association managers hold a license under the REC, and they are thus regulated, but many current managers are totally unlicensed and unregulated.

The REC’s restrictions on escrow funds require licensed realtors to invest all custodial funds, including reserves, in demand deposits in North Carolina banks, as would be the case with rental deposits. This means that community associations who are managed by licensed realtors are unable to invest association funds in so-called time deposits, including investment accounts and certificates of deposit, etc., which bring higher yields and

use of out-of-state banks. As a result of this investment restriction, some communities are having a hard time earning enough interest to offset the rate of inflation. These requirements limit the choices of investment to such an extent that Associations who hire a manager with a real estate license are at a disadvantage relative to other Associations who hire managers who do not hold real estate licenses. Over the last four years the REC has taken disciplinary action against several community association managers with real estate licenses, who had violated REC escrow deposit rules, but who had very prudently invested client/community association funds as a part of their community association management activities. The REC has agreed to waive these restrictive escrow requirements for any individual who obtains a license under the proposed Community Association Manager Licensing proposal, which will allow such managers to invest association funds in higher yielding accounts and instruments, which will be more beneficial to association members.

In 2005 the REC directed members of its staff to meet with representatives of the Attorney General's office, the real estate industry, property managers, attorneys and others to determine whether additional regulation was needed for community association managers and to make recommendations in support of its findings. After a number of meetings over the following year, this group, known as the Community Association Management Advisory Committee, specifically found, "that demonstrated and/or potential harm to consumers for an improper handling of community association monies warrants governmental action." Accordingly, the Committee recommended that a modest licensure regime be established in the statutes for community association managers, including the following specific provisions:

- Provide minimum standards for handling and accounting for association funds, and subject real estate licensees to those standards when handling and accounting for such funds.

- Provide a more effective means for compensating persons who suffer financial loss as a result of mishandling of association funds.
- 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, communication association members and others about community associations and their officers and managers.
- 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.
- 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.

A copy of the report of the Community Association Management Advisory Committee, dated January 10, 2007, is attached hereto marked "Exhibit A" and incorporated by reference herein.

- **Have there been any complaints about the unregulated profession or occupation? Please give specific examples including complaints, names and addresses.**

There have been numerous complaints about the unregulated profession. Representatives of the N.C. Real Estate Commission report that they receive numerous complaints about community association managers, but are powerless to act on such

complaints unless the respondent is also a licensed realtor. Representatives of the Consumer Protection Section of the Attorney General's office report that they also receive numerous complaints. The complaints include allegations of misappropriation of funds, improper notice and unwarranted foreclosures, and various forms of professional malfeasance.

The report of the Community Association Management Advisory Committee in 2007 made the following significant finding:

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.

We do not have access to the complaints filed in the offices of the REC and Attorney General's office; however, it is significant that representatives of those agencies have reported the existence of "many serious complaints". A copy of an article on embezzlement and mishandling of funds in the April, 2009 edition of Common Ground magazine, attached hereto as "Exhibit B", explains the specific problems faced by associations where managers mishandle their funds.

The General Assembly tried to address many of these concerns with the passage of House Bill 1541 in 2005. The statute establishes regulations for homeowner associations, but there are no adverse consequences for the unregulated professional managers who often advise the volunteer Board of Directors.

- **In what ways has the public health, safety or welfare sustained harm or is in imminent danger of harm because of the lack of state regulation. Please give specific examples.**

Currently, Community Association Managers are responsible for many millions of dollars of homeowner and condominium owner money, which is collected by associations in the form of various assessments payable by members. These owners' investments in their homes and condominium units, will most often be the largest investments of their lifetimes, and they reasonably expect that their paid assessments will be used to manage and maintain the value of their property. It is important that these managers have adequate training and that they be subject to a recognized and enforceable code of ethics.

Increasingly, Community Association Managers are taking on wide ranging duties. They are expected to have an understanding of relevant laws, but are not required to have continuing education to keep current. In addition, they are expected to understand a variety of subjects, including accounting, budgeting, construction, insurance, maintenance and the association's governing documents.

One of the large problems in the industry is that association's have largely volunteer board members who don't always have time, experience or know-how to select a qualified manager. The one possible way to address this serious problem is through licensure, which would have the effect of establishing minimum professional qualifications and a disciplinary process.

Community Associations and management are becoming more complicated with new federal, state and local laws and ordinances to apply every year. Volunteer Boards of Directors are responsible for making important decisions that affect the quality of life for the

individual homeowners. The Board Members often make imprudent decisions because they do not understand the complexity of the community associations industry and laws and they may underestimate the ramifications of their actions.

- **Is there potential for substantial harm or danger by the profession or occupation to the public, health, safety or welfare? How can this potential for substantial harm or danger be recognized?**

Again, Community Managers collect, hold and invest the funds paid by homeowners and condominium unit owners and they are expected to preserve and protect the value of the largest single investment that most of these owners will ever make. Community Managers are responsible for proposing budgets, handling large sums of money, obtaining adequate insurance and maintaining the physical property, if the manager does not perform these duties properly, then the property values in the community will decline and individual homeowners will be faced with special assessments to pay for unanticipated repairs. This potential for substantial harm can be recognized by requiring all community managers to demonstrate through experience and testing that they are competent to perform the required tasks.

- **Has this potential harm or danger to the public been recognized by other states or the federal government through the licensing or certification process? Please list the other states and any applicable federal law (including citations).**

There are several states that have recognized the public harm or danger to the public through the licensing or certification process. The States include Connecticut, Georgia, California, Nevada, Florida and most recently, Virginia. Similar legislation has been proposed in South Carolina. Conn. Gen. Stat. Ann. §§ 450-462 (2008); Ga. Code Ann. §§ 43-40-1 to -30 (2008); Cal. Bus. & Prof. Code §§ 11500-11502.5 (2009); Nev. Rev. Stat. Ann. 10-116A.400 to -470 (2009); Fla. Stat. Ann. §§ 468.32 to -.37 (2009) and Va. Code Ann. §§ 54.1-2345 to -.2354 (2009)

- **What will be the economic advantage of licensing to the public?**

The legislation will benefit all association homeowners and condominium unit owners. The Bill also requires all community and condominium associations to register with the State. This provision was recommended by the REC and supported by the Attorney General's Office as a consumer protection measure. The registration will allow the newly created Manager Licensing Board to promulgate critical information affecting the industry and provide much needed education to association leaders throughout the State. There is currently no central data base for association or board members and leaders.

- **What will be the economic disadvantages to the public?**

There are no disadvantages to the public. There is no statutory requirement that any association must hire a professional manager. Even if the association chooses not to hire professional management, the HOA will receive benefits from the registration requirement. Registration for HOA's will improve communication and facilitate the dissemination of important information such as new laws passed by the General Assembly. The registration fee will be kept to a minimum of \$50.00 or less. There will be no other requirements for the Associations, but educational courses will be available to all homeowners and their Board of Directors, thus exposing them to new ideas, best practices and professional advice regarding insurance and accounting.

- **What will be the economic advantages to the practitioners?**

Licensure will raise the standards for the industry. Individuals who can demonstrate that they have the knowledge and experience to obtain a license will have a greater chance to be rewarded with fair compensation for their services because they will not have to compete with less competent individuals. Also, the REC's unfortunate regulation of escrow funds held by their licensees who are also community managers will be eliminated and will no longer unfairly discriminate against these professionals who must compete against totally unregulated professionals today.

- **What will be the economic disadvantages to the practitioners?**

The practitioners will be required to pay a minimal annual renewal fee for licensure and will incur expenses for the cost of continuing education. They will also be required to provide fidelity bonding to protect consumers from financial misconduct.

- **Please give other potential benefits to the public of licensing that outweigh the potential harmful effects of licensure such as a decrease in availability of practitioners and higher cost to the public?**

There will be a requirement to hold all funds in a separate custodial account for each client in the name of the Association. The Bill would also require each manager to maintain fidelity bonding to protect Associations from the misappropriation and improper handling of funds, which has been a significant problem in North Carolina and across the nation. The insurance limits will be set so that the cost is not exorbitant, and coverage can be satisfied through an individual, corporate or HOA policy.

- **Please detail the specific specialized skills or training that distinguishes the occupation from ordinary labor?**

Competency will be measured through an entry level test or by demonstrating sufficient prior experience. At this time there is no requirement for pre-licensing courses, but all managers will need to complete at least eight hours of continuing education every

year. Community managers must possess a unique combination of skills. They need to have proficiency in communication and have a working knowledge of finances, construction, insurance, accounting, maintenance and other subjects. The manager is also often required to conduct meetings, so he or she must also understand the rules of parliamentary procedure.

The following is a typical job description for a community manager.

ADMINISTRATIVE SERVICES

Meetings

- Attend Board meetings-1 meetings per month (on average)
- Attend/Coordinate the Due Process Hearings to include presenting the case.
- Attend/Coordinate the Appeal Hearings to include presenting the case.
- Attend/Coordinate the annual meeting of the membership with presentations as required by the Board of Directors.
- Attend/Coordinate annual budget presentation meeting to the membership
- Attend Committee meetings (Social, Legislative, Community Watch, Communications, Grounds, Architectural Review) and provide support to all as required
- Conduct/Present quarterly homeowner orientation meetings at the club explaining how the HOA conducts business, Q/A's, etc.
- Attend educational meetings/programs and other association update programs.

Inspections

- Weekly routine property inspections and reports

- Monthly nighttime inspection
- Daily drive through of the main thoroughfares removing signs from the common areas, inspecting for vandalism and other duties as required by the Board.

Architectural Review

- Review and process architectural applications received on a day to day basis.
- Present each project submitted at the committee's monthly meeting. Some months require 2 meetings
- Some projects require on-site reviews
- Inform homeowners of committee's result
- Maintain the ACC minute book
- File and store each homeowner's project(s) for future inspections

Grounds / Maintenance

- Working with the landscaper on a day to day basis to ensure the common grounds are maintained at the highest quality possible.
- Weekly review of landscaping maintenance schedule
- Irrigation review as needed
- Monthly street light and monument lighting inspection
- Oversee all contractors hired by the Association

Administrative

- Maintain the minutes book and mail/post minutes of meetings as required
- Address homeowner walk-in's requests and/or concerns
- Annual Budget preparation and distribution to homeowners after Board approval

- Provide a written Management Report to the Board of Directors prior to each meeting which include the following:
 - Financial Reports
 - Delinquency Reports
 - Board Meeting Minutes
 - Manager's Report
 - Association activities
 - Contract specifications under consideration
 - Physical property inspection/maintenance report
 - Copies of correspondence
 - Architectural Control Applications Status Report
 - Miscellaneous items of business
- Address written communication between Board, committees and homeowners
- Draw specifications, obtain proposals and assist in analysis for contract services as outlined by the Board of Directors
- Respond to and inspect for compliance of Covenant violations as directed by the Board of Directors
- Act as liaison between homeowners, contractors, builders, developers, real estate agents and the Board of Directors to insure a smooth running association
- Contract negotiation
- Establish working relationship with area contractors, developers and builders

- Act as liaison between the Board and the current insurance carrier to obtain appropriate property, liability, and indemnity insurance coverage as approved by the Board
- Provide services to file insurance claims, coordinate with the insurance adjusters, assist in filing proof of losses, coordinate the restoration efforts and inspect the workmanship.
- Respond to voicemail messages, emails, and other homeowner requests and concerns promptly
- Assist the Board of Directors in amending the documents to include creating and maintaining a Book of Resolutions
- Provide education and guidance to the Board of Directors concerning their fiduciary responsibilities, legal documents and general matters upon advice from the proper professional contractors
- Hire and supervise any on site personnel as directed by the Board of Directors
- Assist with any legal lawsuits as directed by the Board of Directors.
- Routine and preventative maintenance planning projects such as assisting the Board of Directors in obtaining a current reserve study.
- Maintain a New Homeowner Welcome / Information Package
- Generate and inspect for completion of Work Orders and Purchase Orders.
- Transcribe minutes for all meetings held by the Board of Directors
- Coordinate quarterly advertisements for homeowners associations' newsletter
- Design and layout fliers/postcards for the community as outlined by the Board of Directors or Committees

Website

Maintain a Community Website as follows:

- Keep Association website updated with recent and relevant events, articles and links in and around the community.
- Reset passwords and login information when requested by the user.
- Post alerts and articles to the website when urgent or time-sensitive information arises.
- Keep website updated with photos, notices, and documents. Replace outdated documents as needed (legal documents, notices, etc) and constantly check for updates.
- Provide accurate links to information, manage online forms and requests and update the calendar to reflect current community events.
- Website must be updated at all times, at least 2-3 times per week.
- Must maintain web security and at no times grant unauthorized levels of access or passwords to unauthorized persons.

Miscellaneous

- Twenty-four (24) hour emergency on-call system.
- Update emergency on call documents when information changes.
- Quote resale's and deliver HOA handbook to the new owners.
- Other duties as assigned

- **What are the other qualities of the profession or occupation that distinguishes it from ordinary labor?**

The community manager must be able to relate to homeowners and bring consensus to the community. The individual homeowner must always believe his or her opinion has been heard and considered. If the majority of homeowners have a different opinion, the community manager must communicate this in an effective manner so that the community can move forward as a unified group.

- **Will licensing requirements cover all practicing members of the occupation or profession? If any practitioners will be exempt, what is the rationale for the exemption?**

Licensing will provide the highest level of credentialing for the Community Manager. Exemptions will be allowed for clerical workers under the supervision of a qualified manager, attorneys practicing law, Certified Public Accountants, Bank Trustees, and Court appointed Executors

The unique combination of services that a community manager provides is the defining measure of the profession. The manager licensing bill defines a community manager as an individual who provides at least two of a defined set of services. The rationale for the exemptions acknowledges that there are several other professions that provide similar services, but not the same combination.

- **What is the approximate number of persons who will be regulated and the number of persons who are likely to utilize the services of the occupation or profession?**

There are currently approximately 600 professional community managers in the State. There are approximately 11,000 homeowner and condominium associations, many of which are currently self managed.

- **What kind of knowledge or experience does the public need to evaluate the services offered by the practitioners?**

The best way for the Community Association leadership to evaluate the services of a potential community manager is to check his or her references to determine if the communities they maintain property values are affected positively, have avoided unexpected special assessments and have encouraged volunteer participation. The requirement for all Associations to register would facilitate this review process.

- **Does the occupational group have an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service?**

Community Association Institute (CAI) was founded over thirty years ago as a professional advocate for community associations. CAI offers educational courses through which individuals can earn professional designations, and the organization has an established code of ethics. The proposed manager licensing bill would recognize professional

designations from CAI, but would provide alternatives for testing and continuing education such as utilizing the State's community college system.
