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February 2, 2024

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Delegate Marc Korman, Chair
Delegate Regina Boyce, Vice Chair
Environment and Transportation Committee
Room 251, House Office Building
Annapolis, Maryland 21401

Re: House Bill 281
Cooperative Housing Corporations, Condominiums and
Homeowners Associations – Funding of Reserve Accounts
Hearing Date: February 6, 2024
Position: Support with Amendment

Dear Chairman Korman, Vice Chair Boyce, and Members of the Environment
and Transportation Committee:

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with community associations (condominiums, homeowners’ associations, and cooperatives) throughout the State of Maryland.

We write on behalf of the Maryland residents statewide who reside in common ownership communities to offer our support for the above-referenced legislation, which is scheduled for hearing before your Committee on February 6, 2024.

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In the year since the passage of legislation mandating the funding of replacement reserve accounts statewide, we have had many interactions with community association board members and professional managers regarding the intricacies of compliance with the new law. In the course of our conversations, several important concerns emerged, only some of which are addressed by the proposed HB 281.

The first concern has been that those communities obtaining initial reserve studies have found themselves confronted with the urgent need to increase assessments precipitously in order to meet the funding requirements recommended by their reserve specialists. Those increases, when combined with current inflationary pressure, have prompted our constituents to ask if the 3-year grace period in the current statute might be expanded to 5 years. HB 281 incorporates a new 5-year provision; and, in so doing, it will blunt negative fiscal impact, as well as enlarge the opportunity for compliance.

The second concern is one raised by professional managers, accountants, auditors and attorneys. The current legislation—like its predecessors, which were originally applicable solely to community associations in Prince George’s and then Montgomery County—requires only that the association’s annual budget make provision for reserve account contributions. However, there has not previously been any requirement that such contributions actually be made. This is a significant issue during years when operating expenses in excess of those projected would cause a budgeted reserve contribution to become impossible to make without requiring owners to pay a special assessment or forego services. The present statute allows a board of directors to budget for reserves, and to increase assessments accordingly, as needed, without obeying any requirement to obtain owner approval for such increases. Thus, there is no reason not to require also—as does HB 281—that amounts budgeted to be contributed to reserves actually be deposited into the community association’s reserve accounts.

However, notwithstanding the progress represented by the aforementioned changes that HB 281 would accomplish, there is a new requirement included in the proposed bill that would amend Section 11-109.2 of the Maryland Condominium Act and 11B-112.2 of the Maryland Homeowners Association Act to require a residential condominium or homeowners association, as the case may be, to “review the study annually for accuracy”. Although the intended language would achieve parity with Section 5-6B-26.1 of the Maryland Cooperative Housing Act, which already includes the same language, we are concerned that a community association, which is governed by lay volunteers, would not possess the capability to determine whether a replacement reserve study prepared by a qualified professional, as required by current law, was accurate. Moreover, the introduction of an undefined standard of accuracy is problematic and opens up new possibilities for liability that are unintended in the context of a statute aimed at requiring community associations to do the right thing, unlike what happened in Florida when there was no

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such requirement. **Instead, we propose that HB 281 be revised to include language amending all three statutes to require that the respective associations “cause the reserve study to be reviewed annually.”** This language would alleviate any burden on lay volunteers by allowing them the option to retain a third party to conduct the required annual review for accuracy, or to delegate that function to a professional management agent.

Provided that the revisions referenced herein are made, we request a **favorable** recommendation by this Committee. Thank you for your time and attention to this important legislation.

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones, lobbyist for the MD-LAC, at 410-366-1500, or by e-mail at lisa.jones@mdlobbyist.com, or Scott Silverman, of the MD-LAC, at 301-251-1414, or by e-mail at ssilverman@schildlaw.com.

Sincerely,

Scott J. Silverman

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Member, CAI MD-LAC

Vickie Caine

Vicki Caine
Chair, CAI MD-LAC