

# 2009 Legal Forecast

Prepared by MercerTrigiani

Community associations are not insulated from societal trends, especially economic trends. As we forecasted for 2008, the downward economic trend has significantly impacted the way community associations do business. In 2008, we have experienced significant increases in delinquent assessment accounts, lender foreclosures, and a steady increase in bankruptcy filings by individual businesses. With the announcement in early December 2008 that we are in a confirmed recession and with rising unemployment, attention is focused on the economy.

Prognosticators on the economy suggest, unfortunately, that this economic downturn is unlikely to right itself completely in 2009. For that reason, community association leaders and professionals must continue to face economic realities head on.

Despite negative trends, 2009 may be a year for community associations to grow stronger through increased education, leadership, collective action, and volunteerism – the components and foundation for successful community association living. This will be an important year for community associations, particularly when it comes to how community associations deal with the financial and legal matters that affect how they operate.

**Assessment Collection.** Financial challenges are not over. We portend that the number of delinquent assessment accounts will continue to grow. Association volunteer leadership and management should continue to address high delinquency rates with aggressive but balanced and consistently applied collection procedures. Association leadership should act promptly to initiate tried and true procedures for assessment collection: recording liens and court action. Foreclosure should be carefully considered. Before initiating foreclosure, title to property should be evaluated. Associations must apply a cost benefit analysis to assess the appropriateness of enforcing the assessment liens via foreclosure.

Association leadership must balance an aggressive approach to collection with the realities of the owner's ability to pay. In some cases, payment plans may yield better results than judgments. Association leadership should continue to work closely with association legal counsel to identify and pursue delinquent accounts.

Associations should prepare for the increased delinquencies by adjusting the association budget for bad debt and the costs of collection.

**Failed or Stalled Projects.** Although the Washington, DC metropolitan area has been somewhat insulated by changes in the national real estate market, more and more of the region is not immune to those changes. The economic downturn, coupled with the credit crisis, has stalled and, in some cases, permanently put on hold projects slated for development in the area. Developers seeking financing are facing tougher scrutiny from lenders due to

harder underwriting guidelines and, as a result, may not be able to secure the necessary funds to build or complete their projects. Some developers who have already secured financing are defaulting on their loans and can no longer carry projects. Still others seek refuge in bankruptcy. We are likely to see more of the same in 2009.

Owners in newly developed communities may be particularly affected by the developer's plight. As was the case in 2008, struggling developers may continue to postpone the construction of planned amenities or additional phases of the community. Other developers will seek to minimize losses and sell interests in a project. The trend in 2008 has been for developers to rent unsold units or homes; we

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project that this practice will continue. Renting is frequently an attractive alternative to selling in the current soft marketplace, but does present challenges to community associations.

In the early stages of development, while the business of community associations is still under developer control, owners may not be active participants in the decision-making that affects the conduct of association business. Developers of stalled projects often understand the benefits of bringing homeowners onto the board. Developers should be encouraged to invite homeowner input and involvement, even though time periods reserved for developer control have not yet expired.

**Bankruptcy.** Bankruptcy filings will continue to increase in 2009 with filings by individuals and businesses.

Bankruptcy filings "spiked" in 2005 as a result of some significant changes to the United States Bankruptcy Code. In 2006, with new bankruptcy laws in place, only 590,000 cases were filed. However, bankruptcy filings have climbed steadily in Virginia and Maryland in 2007 and 2008. With the appearance of the problems with sub-prime mortgages, bankruptcy filings jumped to 827,000 in 2007 –



and this number was reached in just the first nine months of 2008. That trend should continue in 2009, particularly if bankruptcy code amendments under discussion now materialize.

Generally, the principal factors which cause individuals to seek bankruptcy protection are loss of employment, excessive uninsured medical bills, dissolution of marriage, and excessive credit card debt. All indications point to rising unemployment in 2009. Some analysts predict that, given the economic conditions, not only will the number of individual bankruptcy filings increase, but the individuals who file bankruptcy will have extremely high levels of credit card debt and will be less inclined to try to keep their homes.

The likely increase in bankruptcy filings in 2009 will only worsen the delinquency rates for community association assessments and increase the number of foreclosures by lenders. Associations must continue to diligently address their strategies for rising delinquencies and foreclosures.


**Education.** Education will be a critical component in dealing with the economic realities of 2009. Whether an association is in Maryland, Virginia, or the District of Columbia, the upheaval in the economy will force association leadership to understand and address a broadening variety of legal matters.

In order to manage associations and protect association assets, association leadership must become more knowledgeable about the laws affecting all aspects of collections, including assessment liens, foreclosures, short sales, deeds in lieu of foreclosure, loan workouts, bankruptcy protections, and general creditors' rights. Virtually every association throughout the region will be faced with difficult economic decisions concerning neighbors and friends. In order to evaluate the options and make good decisions, it will be a necessity to become better educated about the relevant laws.

The need for education about the law is all the more true in Virginia, where sweeping changes in the laws governing common interest community associations went into effect in July 2008. These changes create new licensing requirements for managers, impose new procedural requirements on association directors, and raise a host of questions that associations must now address. The statutory changes necessitate the promulgation of new policies, rules, regulations, and procedures to carry out the purposes of the new laws. Association leadership must quickly become familiar with the scope of changes in governmental authority in order to take steps to ensure compliance with new laws and regulations.

Education can help all those involved in the community association industry to be prepared to handle the challenges 2009 will present. The Washington Metropolitan Chapter Community Associations Institute will continue to be important for association leadership, providing educational seminars, workshops, and literature such as *Quorum*™ magazine. ☐

The attorneys of MercerTrigiani collaborated to present this forecast of legal issues affecting common interest communities. David S. Mercer, ESQ., Lucia Anna "Pia" Trigiani, Attorney at Law, Michael L. Zupan, ESQ., Philip C. Baxa, ESQ., Janie L. Rhoads, Attorney at Law, and Jeremy R. Moss, ESQ., have a long tradition of involvement with CAI. They have held leadership positions on both the national and local level and support the education goals of CAI by sharing information in articles like this and teaching in CAI sponsored programs.



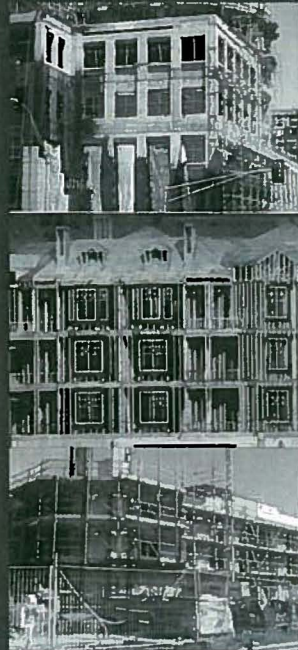
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