

# BABB

## Property Pro

### Legislative Update

1. **House Bill 202.**

Allows an amount equal to 75% of the amount paid as dues to a HOA to be deductible from taxable income on the annual personal income tax return. Applies to State tax return.

A HOA is defined as “a legal entity created for the purpose of developing and managing a community of homes”, which includes “the authority to enforce covenants, conditions and restrictions of the community and the authority or responsibility to manage common amenities of the community” and dues means “any fee or payment required of a homeowner for membership and participation in a HOA”.

2. **Senate Bill 1048 and House Bill 417 Right to Dry Clothes by Solar Energy Act.**

Prohibits Associations from regulating clotheslines, except:

- (1). To protect access to an adjacent building
- (2). To ensure proper emergency evacuation of buildings
- (3). To protect the aesthetic value of the building and any surrounding dwelling units.

3. **House Bill 419, House Bill 950 and Senate Bill 877 Open Meetings and Open Records.**

Legislation is similar to the Sunshine Act and Open Records Act, which apply to public entities. Requires all meetings to be open to all unit owners, except for executive sessions only for employment, purchase of real estate, in anticipation of litigation or if privileged by law. All actions, even those involving topics of executive sessions must be taken at an open meeting. Books and records must be made available for examination and copying by a unit owner or their agent, except personnel records, medical records, business transactions currently in negotiation, privileged legal communications, complaints against a unit owner, executive session

records, or other records which would constitute an invasion of privacy under federal or state law. Bylaws must be amended to include required provisions

**CAI Position Paper:** CAI supports sharing of information and access to documentation. However, there are laws already in place to ensure openness and access. Objections by CAI in the position paper include: verbal document requests, greater limitation on the uses of documents by unit owners, more specificity in the definition of documents which Associations are required to produce, and those which are protected, mandatory changes to the bylaws, no confidentiality when dealing with sensitive issues among neighbors unless they fall into one of the executive session exceptions, the unfair burden on small associations to provide meeting facilities for all meetings, notice and openness requirements for committee meetings and executive board work sessions, extreme time limitations on board minutes (45 days after meeting...if a board meets quarterly, it is impossible to have approved minutes in 45 days), and treating a private entity like a public entity.

**4. House Bill 442. Private Transfer Fees. Signed into law on June 24, 2011.**

Prohibits the use of certain private transfer fees (covenants attached to a deed or declaration which force the seller to pay a fee to the developer), which excludes among other charges: "Any fee, charge, assessment, dues, fine, contribution or other amount payable to a homeowners' condominium, cooperative, manufactured home or property owners' association and its agent pursuant to a declaration or covenant or law applicable to the association, including, but not limited to, fees or charges payable for estoppel letters or certificates, including resale certificates, issued by the association or its authorized agent."

**FHA** plans to issue a Mortgagee Letter which would disqualify condo associations from FHA backed mortgages if they have deed-based transfer fees in place.

**5. House Bill 1298 expanding right to fly flags to include the Honor and Remember Flag.**

Existing statute provides that Associations may not prohibit the outdoor display of an American Flag, Commonwealth flag or military flag on unit owner's property or property in the exclusive control of a unit owner or on an exterior wall, provided the American flag is displayed in accordance with 4 USC §4 and the other flags in accordance with rules and regulations adopted by the association, which rules cannot exclude flying of a flag not larger than 3x5 on of the national flag-flying holidays. This bill adds the Honor and Remember Flag.