

House Committee On Consumer Protection and Government Efficiency

Testimony on the -1 Amendments to HB 2823 ♦ March 26, 2013
Joint Working Group: Condominium/HOA Working Group, CAI LAC and OWCAM

Background on Stakeholder Group

My name is Laurie Skillman and I am the Land Development Manager with the Real Estate Agency. I review and approve condominium developments. The Agency regulates condominiums and registers condominium associations. I am a member of a large and diverse stakeholder working group, informally called the Joint Working Group, which addresses condominium and planned community issues and proposed legislation.

The work group is composed of three subgroups (*See Exhibit B for Members*):

1. Condominium/HOA Working Group (a work group organized more than 35 years ago that includes association and developer attorneys, title insurance companies, accountants, and a representative from the Real Estate Agency)
2. CAI LAC. The Legislative Action Committee of the Oregon Chapter of Community Associations Institute
3. OWCAM: Oregon Washington Community Association Managers

For the record, I provide subject matter expertise and technical assistance to the group. The Real Estate Agency neither supports nor opposes the legislation developed by the working group, but serves as a neutral, fully participating member and technical adviser to the stakeholder group.

Purposes of -1 Amendments to HB 2823

HB 2823 incorporates the legislative concepts that were developed by the working group in 2012 and amend provisions relating to homeowner associations in the Planned Community Act and parallel provisions in Oregon Condominium Act. The work group reviewed the original bill and made a number of technical and housekeeping changes that are incorporated into the -1 amendments, which completely replace and reorganize the bill. I will testify to the -1 amendments only. (*See Exhibit A for a section-by-section analysis*)

Purposes. The -1 amendments to HB 2823 have two purposes.

- To safeguard association funds and minimize the risk of losses.
- To clarify allowable association investments and to allow association accounts to be held in securities broker-dealer firms.

Summary of HB 2823

Purpose #1: Safeguard Association Funds; Minimize the Risk of Losses

In June 2012, more than 30 Portland-area homeowners associations lost between \$1.2 and \$2 million in an alleged embezzlement by a community association manager. A subcommittee was formed to research, review and consider the manner in which associations can safeguard association funds and minimize the risk of losses in association accounts. The Joint Working Group came to consensus on three legislative concepts:

1. Fidelity/Crime Insurance. Require associations to maintain fidelity/crime insurance to protect funds from theft, dishonesty, crime and embezzlement by directors, employees, contracted community association managers, bookkeepers and others authorized by the association to handle association moneys.
 - Language parallels FHA requirements fidelity/crime insurance coverage and amount
 - Amount: at least three months assessments plus total amount of reserve
 - Section
2. Only Owners May Control funds. Limit individuals authorized to transact business in association accounts (sign checks, invest funds etc.) to owners (not to third parties).
 - To mitigate potential losses, only board members or officers who are also owners or co-owners may have direct control over association funds.
 - If an association want to authorize a third party to directly control funds, the board must adopt a resolution
3. Audited Financials for Large Associations.
 - Require financial statements to be audited if annual assessments \$500,000 or more.
 - Maintain current requirement of review of financials for more than \$75,000 and less than \$500,000
 - Large associations have significant cash flows and reserves at risk and are capable of absorbing the additional expenses of an audit.

Purpose #2: Clarify Current Statute on Allowable Association Investments and Allow Associations to Hold Reserves in Broker-Dealer/Securities Accounts

In June 2012, Karen Smith, an association manager, and David Bishop, a broker with Edward Jones, made a presentation to the Joint Working Group. They stated that the current statute that limited association investments to “obligations of the US Government” was not clear and they wanted associations to be allowed to have association accounts at securities firms covered by SIPC insurance.

Ms. Smith and Mr. Bishop proposed expanding allowable investments for associations to include, among other investments, mortgage-backed securities (Fannie Mae and Freddie Mac) because the investments “will give more flexibility to association boards of directors” and that “mortgage-backed bonds provide

for monthly income and monthly return of principal.” Second, they proposed expanding current law that limits association accounts to Oregon banks insured by FDIC, to allow associations to hold cash and securities at institutions insured by the Securities Investors Protection Corporation (SIPC). In response to these proposals, the working group developed the following legislative concepts:

1. Define Accounts and Require Insurance. Define association “operating accounts” and distinguish from “reserve accounts.” Require insurance on all accounts.
 - An operating account is an association account that holds moneys other than reserves.
 - Reserves are funds held for expenses of common elements that will require maintenance, repair or replacement during the period that is more than one and less than 30 years.
 - The association may not maintain moneys in an account, or at any one institution, in an amount that exceeds the insurance limits for the account or institution.
2. Investment Objectives. State investment objectives for associations for operating and reserve accounts as the preservation of capital and liquidity to meet the association’s financial obligations.
3. Allow Reserves Held in Securities Firms. Maintain requirement that operating accounts be held in Oregon banks, but allow reserve accounts to be placed in Oregon banks or in Oregon-licensed securities broker-dealers.
 - Currently, all association accounts (operating and reserve) must be held in Oregon banks that are FDIC insured.
 - Allows reserve accounts to be placed in Oregon-licensed securities broker-dealers insured by Securities Investor Protection Corporation (SIPC) or Oregon banks insured under FDIC.
4. Clarify Allowable Investments. Clarify that “obligations of the United States Government” as U.S. Treasury bills, notes and bonds.
 - U.S. Treasury bills, notes and bonds are backed by the full faith and credits of the U.S. Government. Mortgage-backed securities issued by Fannie Mar and Freddie Mac are not.
5. Define Process to Come into Compliance. Address the issue that investments of some associations may be out of compliance.
 - Allow for existing non-complying investments until investment is sold; however, require compliance for reinvestment and for all future investments.
 - Disallow rollovers on maturity of non-conforming investments.

* * * * *

The -1 amendments to HB 2823 also include a number of amendments for readability, clarification and housekeeping, including definitions of new terms.

Exhibit A: Section by Section Analysis

Amending ORS Chapter 94 Planned Community Act	Parallel Provisions to Chapter 94 Amending ORS Chapter 100 Condominium Act
Section 1, Pages 1-6 ORS 94.550: Definitions	Section 12, pages 32-38 ORS 100.005: Definitions
<u>Purpose:</u> To define the following: association account, association account holder, operating account, reserve account.	<u>Purpose:</u> To define the following: association account, association account holder, operating account, reserve account.
Section 2, Page 6 Adds Sections 3 and 4	Section 13, Page 38 Adds Sections 14 and 15
Section 3, pages 6-7 NEW SECTION: Association Accounts	Section 14, pages 38-39 NEW SECTION: Association Accounts
<u>Purpose:</u> Requirements for association operating and reserve accounts, including institutions that may hold accounts, insurance requirements, allowable investments and non-conforming investments.	<u>Purpose:</u> Requirements for association operating and reserve accounts, including institutions that may hold accounts, insurance requirements, allowable investments and non-conforming investments.
Section 4, pages 7-8 NEW SECTION: Control of Accounts	Section 15, pages 39-40 NEW SECTION: Control of Accounts
<u>Purpose:</u> Limits individuals who are account holders and control association funds to board members and officers who are owners. Exception: board resolution.	<u>Purpose:</u> Limits individuals who are account holders and control association funds to board members and officers who are owners. Exception: board resolution.
Section 5, Pages 8-12 ORS 94.595: Reserve Accounts	Section 16, Pages 40-45 ORS 100.175: Reserve Accounts
<u>Purpose:</u> Technical amendments for clarity, readability and language that is consistent with new provisions on reserve accounts.	<u>Purpose:</u> Technical amendments for clarity, readability and language that is consistent with new provisions on reserve accounts.
Section 6, Pages 12-16 ORS 94.616: Turnover Meeting	Section 17, Pages 45-49 ORS 100.210: Turnover Meeting
<u>Purpose:</u> Clarifies that declarant turns over all funds and control of accounts to association at turnover meeting. Technical amendments to conform language to new provisions.	<u>Purpose:</u> Clarifies that declarant turns over all funds and control of accounts to association at turnover meeting. Technical amendments to conform language to new provisions.
Section 7, Page 16-19 ORS 94.640: Housekeeping	Section 18, Pages 49-50 ORS 100.417: Housekeeping
<u>Purpose:</u> Conform statutory cite.	<u>Purpose:</u> Conform statutory cite.
Section 8, Pages 19-23 ORS 94.670: Financial Statements	Section 19, Pages 50-54 ORS 100.435: Financial Statements
<u>Purpose:</u> Require audit of financial statements for associations with \$500,000 or more in annual assessments. Maintain review requirements of financials for associations with \$75,000 to \$500,000	<u>Purpose:</u> Require audit of financial statements for associations with \$500,000 or more in annual assessments. Maintain review requirements of financials for associations with \$75,000 to \$500,000
Section 9, Pages 23-24 ORS 94.680: Fidelity/Crime Insurance	Section 20, Pages 54-69 ORS 100.480: Fidelity/Crime Insurance
<u>Purpose:</u> Require association to obtain and maintain fidelity/crime insurance to cover theft, dishonesty by directors, officers, employees, bookkeepers etc. in an amount equal to 3 months of assessments plus reserves.	<u>Purpose:</u> Require association to obtain and maintain fidelity/crime insurance to cover theft, dishonesty by directors, officers, employees, bookkeepers etc. in an amount equal to 3 months of assessments plus reserves.
Section 10, Pages 25-32 ORS 94.572: Technical Conforming Amendment	Section 21, Page 59 Technical Conforming Amendment

Exhibit B: Joint Working Group

The Joint Working Group responsible for the legislative concepts in HB 2823 and the -1 amendments to HB 2823 is composed of three groups:

1. Condominium/HOA Working Group
2. CAI LAC. The Legislative Action Committee of the Oregon Chapter of Community Associations Institute
3. OWCAM: Oregon Washington Community Association Managers

Condominium/HOA Working Group Members

Ron Balash
MultiServices, Inc.
503-222-7073
RBalash@msipm.com

Jonathan V. Barg
Attorney at Law
Barg Tom PC
503-241-8521
jvb@bargtom.com

J. David Bennett*
Attorney at Law
Landye Bennett Blumstein LLP
503-224-4100
dbennett@landye-bennett.com

Alan K. Brickley
Counsel
First American Title Insurance
Company
abrickley@firstam.com

Michelle D. DaRosa
Attorney at Law
Stoel Rives LLP
503-294-9468;
mddarosa@stoel.com

Howard M. Feuerstein
Attorney at Law
Stoel Rives LLP
503-294-9215
hmfeuerstein@stoel.com

John T. Gibbon
Attorney at Law
503-624-0896
jtgorygun@aol.com

Eugene L. Grant
Attorney at Law
Davis Wright Tremaine
503-778-5427
genegrant@dwt.com

Karna Gustafson
Attorney at Law
Landye Bennett Blumstein LLP
503-224-4100
kgustaf@landye-bennett.com

Kevin Harker
Attorney at Law
Vial Fotheringham LLP
503-684-4111;
kvh@vf-law.com

Barbara Z. Kanz
Special Projects Coordinator
Vial Fotheringham LLP
503-684-4111
bzk@vf-law.com

Laurie A. Skillman
Manager, Land Development
and Policy Coordination
Oregon Real Estate Agency
503-378-4630
laurie.a.skillman@state.or.us

Richard Thompson
Regenesis
503-977-7974
rich@regenesi.net

Rebecca Tom
Attorney at Law
Barg Tom PC
503-241-3311
rbt@bargtom.com

A. Richard Vial
Attorney at Law
Vial Fotheringham LLP
503-684-4111
arv@vf-law.com

LIAISONS:
Community Associations
Institute (CAI)
Denise Bower, CMCA, PCAM
Chair, CAI Legislative Action
Committee
Community Management, Inc.
503-233-0300
deniseb@communitymgmt.com

Oregon Washington
Community Association
Managers (OWCAM)
Gregory B. Coxey
Attorney at Law
Vial Fotheringham LLP
503-684-4111
gbc@vf-law.com

CAI LAC: Community Associations Institute, Legislative Action Committee Oregon Chapter 2013

Denise Bower, CMCA, AMS, PCAM
Community Management, Inc.
LAC *Chairperson*
503-445-1202

Karna Gustafson
Attorney at Law
Landye Bennett and Blumstein, LLC
LAC *Secretary*
503-224-4100
gustaf@landye-bennett.com

David Schwindt, CPA, RS, PRA
Schwindt & Company
LAC *Treasurer*
503-227-1165
DSchwindt@schwindtco.com

Cheryl Brendle, PCAM
Community Management, Inc.
503-445-1214
cherylb@communitymgt.com

Deana Doney
RE/Max Equity Group, Inc.
On the Green Condominium
503-495-5214
deanadoney@comcast.net

Frank Elsasser
Attorney at Law
Elsasser Law Office
503-224-3763
frankelsasser@comcast.net

Rich Thompson
Regenesis
503-977-7974
rich@regenesis.net

A. Richard Vial
Attorney at Law
Vial Fotheringham LLP
503-684-4111
arv@vf-law.com

OWCAM: Oregon Washington Community Association Managers Legal and Legislative Committee 2013

Gregory B. Coxe, *Chair*
Attorney at Law
Vial Fotheringham LLP
503-684-4111
gbc@vf-law.com

Ron Balash, *Board Liaison*
MultiServices, Inc.
503-222-7073
RBalash@msipm.com

Vern Newcomb
American Benefits
503-292-1580
vernnewcomb@abipdx.com

Andrea Klopenstein
Community Association Partners
503-546-3400
andrea@capartners.net

Kathleen Profitt Attorney at Law
Attorney at Law
Barker Martin P.S.
503-796-9806
kathleenprofitt@barkermaratin.com

Christian Scott
Attorney at Law
Landye Bennett Blumstein LLP
503-224-4100
cscott@landye-bennett.com

Legislative Consultant for Condominium/HOA
Work Group, CAI LAC and OWCAM:
Scott Barrie, The Barrie Hughes Group
503-781-0424
scott@barriehughes.com