CALIFORNIA LEGISLATIVE ACTION COMMITTEE
community ASSOCIATIONS INSTITUTE

Via Certified Mail, Return Receipt Requested, U.S. Mail & Electronic Mail: (regulations@dfpi.ca.gov)

June 8, 2021

California Department of Financial Protection and Innovation
2101 Arena Blvd.
Sacramento, CA 95834

Attn: Regulations Coordinator

RE: SB 908 | Proposed Regulations Under the Debt Collection Licensing Act
Comments to the Proposed Regulatory Action

To Whom It May Concern:

The Community Associations Institute's California Legislative Action Committee (CAI-CLAC), which serves the interests of over 13 million homeowners residing in more than 55,000 common interest developments—commonly known as homeowners associations, condominiums, and planned communities—throughout California, submits the comments below to the proposed regulations under the California Debt Collection Licensing Act (CDCLA).

It is CLAC's position that the CDCLA does not apply to collection activities to recoup delinquent common interest development assessments from association members.

Common Interest Development Assessments Are Not Consumer Debt
Similar to property taxes, common interest development assessments provide funding for municipal and community services critical to all residents. Property taxes have been found to be outside of the realm of consumer debt as defined by the Fair Debt Collection Practices Act (FDCPA) Beggs v. Rossi, 145 F3d 511 [2 Cir. 1998]. As such, community association assessments should be found to be outside of the realm of consumer debt as defined by the CDCLA.

Common Interest Development Assessments: The primary source of funding for common interest development operations is payment of assessments (usually monthly) by the homeowners.

Many homeowner associations and condominiums directly deliver services that were once under the exclusive jurisdiction of local government, including trash pickup, neighborhood lighting, and snow removal. This transfer of services has become commonplace as the demand for housing has outpaced the ability of many local governments to provide services. Not only has the transfer of service relieved local municipal budgets, it has proven economically efficient for homeowners too.

In addition, common interest developments own the common elements; including, but not limited to, stairwells, hallways, roofs, windows, heating, cooling and water facilities, streets, sidewalks, parks, lighting, elevators, etc. The owners of the lots or units within the association pay assessments to the community for maintenance and upkeep of these common elements. When an owner does not pay his or her assessments, the remaining homeowners must make up the shortfall in the association's operating budget.

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For business purposes, the common interest development is organized as a nonprofit corporation and its financial model depends on the collection of assessments from homeowners to fund the services and maintain amenities based on the style of home within the community—condominium, cooperative, townhome, or single-family residence. Included in the financial model is the collection of reserve funds for capital expenditures such as roof replacement, stairwell repair, street paving, etc. Common interest developments do not generate revenue for a profit.

"Consumer debt" is defined as "money, property, or their equivalent, due or owing, or alleged to be due or owing, from a natural person by reason of a *consumer credit transaction*." (*Cal. Fin. Code* § 100002(f) (emphasis added).) "Consumer credit transaction" is defined as "a transaction between a natural person and another person in which property, services, or money is *acquired on credit* by that natural person from the other person primarily for personal, family, or household purposes." (*Cal. Fin. Code* § 100002(e) (emphasis added).) Stated alternatively, "there is a consumer credit transaction when the consumer acquires something without paying for it." (*Gouskos v. Aptos Vill. Garage* (2001) 94 Cal. App. 4th 754, 759 (analyzing the term consumer credit transaction under the Rosenthal Fair Debt Collection Practices Act); *see also Davidson v. Seterus, Inc.* (2018) 21 Cal. App. 5th 283, 296-97 (construing "consumer credit transaction" as "a transaction between a natural person and another person in which property, services or money is acquired without immediate payment and with the promise to pay in the future….").)

Every California common interest development (i.e., a homeowners association) has an obligation to "levy regular and special assessments sufficient to perform its obligations under the governing documents and [the Davis-Stirling Common Interest Development Act]." (*Cal. Civ. Code* § 5600.) Consequently, every owner within a common interest development has a corresponding duty to pay such assessments "when the assessment is levied by the…association." (*Diamond Heights Vill. Assn. v. Financial Freedom Sr. Funding Corp.* (2011) 196 Cal. App. 4th 290, 300.) That is, the obligation to pay assessments becomes due when it is levied by the association. Thus, owners are not acquiring services from the association on the promise of future payment and assessments do not meet the definition of "consumer debt."

Senate Bill 908 ("SB 908") was enacted in September 2020 and added Division 25 to the California Financial Code (i.e., the CDCLA). Section 100001(a) of the Financial Code states that "[n]o person shall engage in the business of debt collection in the state without first obtaining a license pursuant to this division." Therefore, in order to determine whether a license is required, it is important to determine what is included within the definition of "debt collection." The term "debt collection" is defined as "any act or practice in connection with the collection of *consumer debt*." (*Cal. Fin. Code* § 100002(i) (emphasis added).)

Furthermore, a "debt collector" subject to the licensing requirements of SB 908 is a person or entity who "**in the ordinary course of business, regularly**, on the person's own behalf or on behalf of others, **engages in consumer debt collection**." (Proposed Regs. Art. 1, § 1850(h); emphasis added.) A common interest development does not "regularly . . . engage[] in consumer debt collection." A common interest development is not engaged in "business" in the conventional sense. It does not seek to generate profits. Rather, a common interest development is a "**non-profit corporation or unincorporated association created for the purpose of managing a common interest development**." (*Cal. Civ. Code* § 4080; emphasis added.) The common interest development's primary function is to maintain infrastructure and enforce deed restrictions governing the community, including property owned in common with the other members. (*See, Cal. Civ. Code* §§ 4775 & 5975.) Thus, everything the common interest development does is for the benefit of the very people making the assessment payments, i.e., protecting the members' property interests. Likewise, the cost to comply with necessary licensing requirements must be paid by the presumed "consumers," i.e., the association members. It strains the bounds of credulity to suggest, for example, a four-unit homeowners association "in the ordinary course of business, regularly ... engages consumer debt collection" when it collects assessments.

In light of the foregoing, it is our position that the CDCLA does not apply to persons and businesses that engage in the collection of delinquent common interest development assessments, and the regulations should

be clarified to reflect this fact. To that end, the following language should be added to Article 1, Section 1850(h)'s definition of "debt collector," "The term "debt collector" does not include a common interest development, community association manager, management company, community association attorney, or business collecting assessments for a common interest development, as defined by Civil Code Section 4100." In addition, the term "in the ordinary course of business" as used in Section 1850(h) should be defined in a manner to clarify that common interest development boards, community association attorneys, community association managers, and management companies are not engaged in the collection of a "consumer debt" in their "ordinary course of business."

We thank you for your time and consideration. Please do not hesitate to contact us at JBeaumont@HOAattorneys.com or lbrown@kscsacramento.com if you have any questions or need additional information.

Sincerely,

Jeffrey A. Beaumont
Chair, CAI-CLAC