



Government Affairs Department

HOTSHEET

America's Leading Advocate For Quality Rental Housing

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Web site Links

[Government Affairs Overview](#)
[Government Affairs Issues](#)
[Hotsheet Archives](#)
[units Archives](#)
[Calendar of Events](#)
[Home](#)

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[U.S. Supreme Court Declines to Hear Source of Income Case States Work through 2009 Budgets, Consider Raising Taxes](#)

[CALIFORNIA](#)

- Disability Access Lawsuits Continue to Rise, California Legislature Agrees to Address the Problem
- Californians Again Reject Attempts to Overturn All Rent Control; Eminent Domain Reform Successful
- City of Los Angeles Examines Tenant Right of First Refusal for Sale of Buildings
- Ventura, Calif., Intends to Establish Substandard Housing Code Enforcement Program
- County of Los Angeles Close to Mandatory Green Building Ordinances
- Los Angeles Regional Water Quality Control Board Proposes Fees and Restrictions on Land
- South Coast Air Quality Management District New Clean Air Rules for Development

[FLORIDA](#)

- Florida Governor Signs FAA's Priority Legislation – Early Lease Termination Fee Bill

[IOWA](#)

- Iowa Legislature Considers Smoking Ban

[MARYLAND](#)

- Maryland Enacts Deceased Tenant Bill
- Montgomery County, Md., Contesting Concession Fees

[NEW JERSEY](#)

- Comprehensive Housing Reform Package Advances in New Jersey General Assembly
- Repeal of Rent Control on New Senior Housing Clears New Jersey Senate Committee
- New Jersey Considering Attorney Review Period on Residential Leases
- Racketeering Laws Used to Punish New Jersey Apartment Owner for Renting to Illegal Immigrants
- Proposal to Create "Green Building Tax Credit" Passes Key New Jersey Assembly Committee
- Bridgeton, N.J., Initiates "Seven-Step" Crime Fighting Plan

[NEW YORK](#)

- New York Considering Several Bills Potentially Harmful to the Apartment Industry

[PENNSYLVANIA](#)

- Pennsylvania Apartment Association Publishes Landlord/Tenant Lease and Law Handbook

SOUTH CAROLINA

- South Carolina Enacts Immigration Legislation

TENNESSEE

- Tennessee Apartment Association Ends 2008 Legislative Session with Big Wins

TEXAS

- Texas Renews Discussions on Property Taxes and Appraisals
- Dallas Provides Opportunity to Cure Inspection Violations
- Dallas Green Building Task Force Kicks Off
- Dallas "Gold Star" Program Advances
- Mesquite, Texas, Pushes Onerous Crime Free Program

VIRGINIA

- Virginia Housing Commission Begins Work
- City of Alexandria, Va., Seeking Public Input on Draft Environmental Charter

WASHINGTON D.C.

- Washington D.C. Nuisance Property Bill Passes with AOBA Amendments
- D.C. Council Vote on Energy Bill Delayed; Submetering a Hot Discussion

Are You an AIMS Member?

U.S. Supreme Court Declines to Hear Source of Income Case

In late May, NAA, NMHC and the Louisville Apartment Association, along with five other affiliates filed an amicus brief asking the U.S. Supreme Court to rule whether states and localities can force community owners to participate in the federal Section 8 program by passing laws making it illegal to deny a voucher-holder based on "source of income." This "friend of the court" brief was filed in response to the Glenmont Hills case out of Montgomery County, Md., where the courts ruled that a multifamily property owner in Maryland can be forced to participate in the federal Section 8 program through a local ordinance.

Though the petitioners believed that the Maryland case was ripe for review by the U.S. Supreme Court, on June 9 the Court denied the petition to hear the case. Since the Court did not act to clarify the law, these conflicts likely will become more numerous as states try to alter the voluntary nature of the program by passing so-called "source of income" non-discrimination laws that make community owner participation mandatory. Affiliates who do not already have these laws should be diligent in combating attempts to implement them by local and state governments.

Currently, 17 cities, including Los Angeles, New York, Philadelphia, Seattle, St. Louis and Washington, D.C., have "source of income" anti-discrimination. Thirteen states also have such laws: California; Connecticut; Maine; Maryland; Massachusetts; Minnesota; New Jersey; North Dakota; Oklahoma; Oregon; Utah; Vermont; and Wisconsin. (National Apt. Assn. – Mark Ingrao)

States Work through 2009 Budgets, Consider Raising Taxes

Several apartment associations across the nation, such as the Rhode Island Apartment Association, are awaiting the final resolution of their states' budgets for fiscal year 2009. Several states are facing major revenue shortfalls in budgets and are considering raising taxes in order to fill budget holes. Of particular concern to the multifamily housing industry are proposals to tax previously untaxed services such as apartment leasing and apartment community management. While most states have held off raising taxes for now, citizens in Maine, Maryland, Minnesota and New York, are out of luck.

- Illinois increased the sales tax by one-quarter percent in Chicago and surrounding counties to avoid cuts and fare increases in public transportation.
- In Maine, beer and wine drinkers and soda fans will have a bigger tab now

that lawmakers more than doubled excise taxes on those items, with the money directed to the state's health insurance program.

- Marylanders who earn \$1,000,000 are getting slapped with a new tax rate of 6.25 percent, up from 5.5 percent. The tax replaces a computer-services tax that lawmakers approved in 2007 but repealed this year after widespread criticism that the tax would force technology businesses out of the state.
- Minnesota drivers will pay 8.5 cents more for every gallon of gas they put in their car, thanks to a higher state gas tax.
- New York smokers will pay an extra \$1.25 on each pack of cigarettes now that state lawmakers raised the state tax to \$2.75 a pack, the highest in the country.
- New York also became the first to require online retailers that do not have a physical presence in the state to collect sales tax on purchases New Yorkers make. The state figures it can collect \$50 million from the new requirement. Amazon and Overstock.com have already filed legal challenges to the law.
- A few states raised one tax so that they could cut another. Indiana sales tax went up 1 percent, with the money going to cut property taxes. In Florida, voters this November will decide whether to do the same thing.

So far, at least 30 states have cobbled together budgets for the 2009 fiscal year that begins July 1 in most states. However, eight additional states are showing actual declines in overall tax revenues for the July, 2007 through March, 2008 period – Arizona, Florida, Mississippi, Nevada, Oklahoma, Oregon, Rhode Island and South Carolina – prompting concerns that taxes may be raised in these states next. (National Apt. Assn. – Scot J. Haislip)

CALIFORNIA

Disability Access Lawsuits Continue to Rise, California Legislature Agrees to Address the Problem

Hundreds of claims have been filed by attorneys in California on behalf of individuals who allege that business owners, including rental property owners and managers of residential rental property, have violated the Americans with Disabilities Act (ADA) by failing to make their properties accessible to individuals with disabilities.

The ADA, which has been in force for more than a decade, establishes anti-discrimination and accessibility requirements for businesses of all sizes. A common misconception is that no action is required unless a business is remodeling an existing, or constructing a new, facility. The ADA, however, requires the removal of barriers in existing places of public accommodation where "readily achievable." It is this provision that underlies most of the litigation.

The California Legislature has taken notice and this year has come to a bi-partisan agreement to provide balance and to correct the abuses that have occurred by lawyers who have used the law to extract money from property owners. That agreement, encompassed in SB 1608, intends to mitigate the ongoing problem of plaintiffs and lawyers who have used the disability laws and court system to systematically extract monetary settlements rather than to improve disability access. Current disability access requirements, established by the federal Americans with Disabilities Act (ADA) and state laws, can be highly technical leaving interpretation complex and subjective.

SB 1608 sets up a process that is intended to slow or stop the lawsuits. It establishes a recognized state-certified access specialists program that businesses can voluntarily access in order to ascertain ADA compliance. SB 1608 promotes compliance with disability access requirements and addresses unwarranted litigation by, among other things:

- Encouraging owners of existing buildings to voluntarily use state-certified access specialists (CASps) to ensure compliance. It also requires building inspectors to be educated in access requirements;
- Requiring demands for money issued by attorneys under the disability access

laws to be accompanied by an advisory statement explaining building owner/resident obligations under the disability access laws, as well as legal options; and

- Establishing an expedited court process for those ADA claims involving businesses that have obtained a certification from an ADA specialist.

This bill is co-authored by Republicans and Democrats. Along with the California Apartment Association, this bill has a broad coalition of business support, including the State Chamber of Commerce, the Retailers, Manufacturers, Hotel/Motel Association and the Civil Justice Association of California. (California Apt. Assn. – Rachel Arnold)

Californians Again Reject Attempts to Overturn All Rent Control; Eminent Domain Reform Successful

It was déjà vu all over again as California voters rejected – for the third time – efforts to overturn and ban all rent control laws in the state. Faced with dueling Propositions 98 and 99, the recent vote demonstrated that voters want changes to California's eminent domain laws but are unwilling to strike down all forms of rent control.

The 61 percent (No) to 39 percent (Yes) vote seemed a sharp rebuke of Proposition 98, a measure that would have prohibited government agencies from using eminent domain powers to force the sale of residential and commercial properties, farms and churches to private developers. It also attempted to phase out all forms of rent control in California, lifting limits on rental increases as apartment units and mobile home spaces are vacated. Sponsored by an anti-tax group, apartment and mobile home park owners and some farm groups, the coalition raised and spent an estimated \$7.5 million on a campaign to qualify and push the measure.

Citing a "hidden agenda" (phasing out rent control), the Yes on Prop 99 and No on Prop 98 coalition raised an estimated \$14 million to portray apartment and rental property owners as greedy villains who were attempting to fool the electorate. The coalition focused less on eminent domain reform and more on the rent control provisions of Prop 98. The Yes on Prop 99 and No on Prop 98 Coalition secured the endorsement of Gov. Arnold Schwarzenegger (R), former Gov. Pete Wilson (R), the California Chamber of Commerce and other business groups who were concerned that the eminent domain restrictions within Prop 98 would constrain California's water storage needs which could have a chilling impact on the states' economic growth.

Historically, California voters have shown a deep-rooted reluctance to overturn rent control through statewide ballot measures. In 1980, Proposition 10 tried to limit rent control ordinances only if approved by the local voters instead of a vote by a city council. The measure failed 65 percent to 35 percent, despite the fact that property owners outspent their opponents 80 to 1. In 1996, Proposition 199, another statewide ballot measure attempted to phase out rent control on mobile homes and to prohibit state and local rent control ordinances. That measure failed, 61 percent to 39 percent.

CAA's Board of Directors was divided on Prop 98. All CAA Directors expressed opposition to rent control and stressed the importance of continuing efforts to limit and eliminate rent control. Many CAA Directors also expressed concern about the wide sweeping and potentially chilling impact of local governments' inability to use eminent domain to improve communities should Prop 98 pass.

While not a linchpin in the CAA Board's decision to remain neutral on Prop 98, public opinion polling commissioned by the CAA Board in January clearly indicated that the Proposition would easily be defeated and that the apartment industry would take a public relations beating on television, over the radio and in print advertising. In the aftermath of Prop 98's defeat, with an emboldened resident movement, CAA must now focus on stopping attempts to launch additional local rent control ordinances and efforts to chip away at the state Costa-Hawkins Rental Housing Act (a law sponsored by the California Apartment Association in 1996, which gave property owners the ability to raise rents in rent control jurisdictions when there is a vacancy). The solution to eliminate rent control must be strategic and thoughtful and

combine concerted education, public awareness, legal strategies and legislative muscle. The CAA Board of Directors and its local associations remain committed to this effort.

The alternative measure, Proposition 99 or "eminent domain-lite," was much more narrowly drawn. It bars government agencies from using eminent domain to force the sale of owner-occupied homes for private development. The measure won handily, 62.5 percent to 37.5 percent. Sponsored by local governments and environmental groups and supported by a large coalition of resident, homeowners, senior citizens, labor unions, chambers of commerce and consumer organizations, Prop 99 was put on the ballot primarily to counter Prop 98. (California Apt. Assn. – Rachel Arnold)

City of Los Angeles Examines Tenant Right of First Refusal for Sale of Buildings

The Tenant Opportunity to Purchase Act (TOPA) was heard at the Los Angeles City Council Housing Community and Economic Development Committee on June 11 with a recommendation for further study, "due to the success of Washington, D.C.'s TOPA law and similar programs in Maryland." Washington, D.C.'s program has significant defects, including significant delays in the sale process, legal exposure for property owners and vulnerability to fraud and abuse for the residents.

TOPA requires owners of occupied rental units to offer residents the right-of-first-refusal when the owner decides to sell the building. Specifically, owners are required to notify residents and the mayor's office of the opportunity to purchase, initiating a process that provides the residents time to organize, raise funds and solicit outside assistance. Additionally, TOPA provides residents the option to assign their rights to a third-party. In other words, residents and resident organizations have the ability to sell their rights for payment (typically cash) or partner with a developer/non-profit in the purchase of the building.

The committee asked for a more detailed report addressing apartment industry concerns within 90 days. (California Apt. Assn.-Los Angeles – Rachel Arnold)

Ventura, Calif., Intends to Establish Substandard Housing Code Enforcement Program

Ventura, Calif., is in the stages of drafting a Code Inspections and Landlord Licensing/Certificate Ordinance. To obtain a Landlord Certificate each property owner would be required to complete training within 180 days of becoming an owner/manager in: rental agreements, rental applications and resident screening, evictions, Section 8 Housing, state fire marshal standards, working with the police, criminal background checks, drugs in rentals and crime prevention through environmental design. No person could operate rental units in the city without securing and maintaining the annual Ventura Rental Housing Certificate in addition to any general business license required by the City of Ventura.

The mandatory annual city inspection (and inspection fee) may be limited to the exterior only, provided that all of the following conditions are met:

- No validated substandard housing violations have been observed and documented within the past 12 months or last certification period – which ever is less, and
- The resident does not request and authorize an interior inspection, and
- The city inspector does not observe any exterior indications of substantial property neglect, substandard conditions, or public nuisances on the property

The City of Ventura estimates its proposed rental housing program will cost approximately \$400,000 annually and will be charged to the property owners. CAA-Los Angeles is in discussions with the city. (California Apt. Assn.-Los Angeles – Rachel Arnold)

County of Los Angeles Close to Mandatory Green Building Ordinances

Following the recent passage of green building and renovation ordinances in several metro-L.A. cities, the County of Los Angeles is proposing three green building

ordinances at its upcoming Regional Planning Council meeting.

- Mandatory Green Building for all new construction and major renovation of 50 units or 50,000 square feet. At this moment in negotiation, for residential, developers must either achieve U.S. Green Building Council LEED certification or meet Build It Green's GreenPoint Rating system or meet California Green Builder requirements, which is recognized by the California Energy Commission.
- Mandatory drought tolerant landscaping required for all projects. Currently, the plant list needs to allow a few more species of different types of greenery and the grid to the zones is incorrect, but the County is amenable to feedback.
- Mandatory Low Impact Development required. This is a precursor to the MS4 permit that will be updated next year (currently being updated in Ventura County.) There are some concerns here about project scale and ability to do infill/redevelopment. CAA-Los Angeles' residential coalition is pushing for enough flexibility to do sub-regional and regional solutions, not lot by lot.

For detailed information, visit

<http://planning.co.la.ca.us/spGreenBuildingProgram.htm> (California Apt. Assn.-Los Angeles – Rachel Arnold)

Los Angeles Regional Water Quality Control Board Proposes Fees and Restrictions on Land

The Regional Water Quality Control Board Los Angeles Region, which governs streams in L.A. and Ventura Counties, is renewing the Urban Stormwater Permit for Ventura County that will be replicated next year for Los Angeles County permits. The U.S. Environmental Protection Agency has indicated that it wants consistency in permits across all Southern California counties. This permit contains significant new controls for how renovation, construction and development occur, in addition to numerous restrictions on the cities in Ventura County. For example, the permit:

- restricts grading on any slope over 20 percent for 6½ months of the year;
- contains low impact development requirements that will make infill and redevelopment more difficult;
- will force stormwater systems to be implemented on individual lots, which dedicates portions of a homeowners yard to stormwater management and prevents them from using that space for other purposes, like a patio or pool, and will cost \$600 per household with per door for multifamily to implement.

The next meeting of the Regional Water Quality Control Board Los Angeles Region is in July. For detailed information, visit

www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater (California Apt. Assn.-Los Angeles – Rachel Arnold)

South Coast Air Quality Management District New Clean Air Rules for Development

The South Coast Air Quality Management District (AQMD) is the smog control regulatory agency, which governs the Counties of Los Angeles, San Bernardino, Riverside and Orange in Southern California. A South Coast AQMD working group is finalizing a proposal to require new development and major renovations to have approved clean air plans focusing on vehicle trips and air pollution impacts.

AQMD says, "...projects produce new sources of air pollution from new vehicle trips, use of consumer products, landscape maintenance, new stationary source processes such as fuel combustion, as well as emissions generated during construction activities. Each day millions of vehicles travel the roads in the South Coast Air Basin and the length of vehicle trips is expected to increase as outlying areas continue to be developed. In addition, older residential, commercial and industrial areas may undergo major redevelopment involving construction activities, with emissions comparable to new development projects. Redevelopment projects may also generate additional vehicular traffic compared to the projects they replace because redevelopment projects often involve increasing population density compared to the previous use. Redevelopment includes demolishing existing

buildings, increasing overall floor area or building additional capacity on an existing property."

More detailed information can be found at www.aqmd.gov/rules/proposed/2301/index.html. (California Apt. Assn.-Los Angeles – Rachel Arnold)

FLORIDA

Florida Governor Signs FAA's Priority Legislation – Early Lease Termination Fee Bill

On June 10, Florida Gov. Charlie Crist (R) signed HB 1489, the Florida Apartment Association's (FAA) early lease termination fee bill, introduced by Rep. Pat Patterson (R-26). State law now allows a property owner to charge liquidated damages or a termination fee of up to 60 days rent when a resident breaks a lease.

For over 20 years many lease agreements had clauses which imposed a penalty in the form of a flat amount in the event the resident skipped. This amount was variously known as an early termination fee, re-let fee or liquidated damages charge. The purpose of the charge was to help compensate the property owner for damages, including the additional turnover costs.

A Circuit Court decision in the *Yates vs. Equity* case in Palm Beach County brought these charges into question. The Circuit Court held that when a resident broke the lease, only the specific remedies provided in Florida Statutes 83.595 could be used by the property owner against the resident. These remedies included holding the resident responsible for rent until the unit was re-rented, but did not include charging a flat amount. The court's decision was based upon the market conditions at that time; vacancy was extremely low and units were rented as fast as they became available. The court failed to take into account the non-rent damages incurred by the property owner. The court felt that, if the unit was re-rented quickly, the liquidated damages or termination fee was a "double rent" windfall.

FAA has been trying to legislatively correct this court ruling since 2005. Last year, the House and Senate passed FAA's bill, only to have it vetoed by the governor. Crist stated the legislation "would harm the 4.5 million Floridians who live in rental properties." FAA President Mark Ogier met with Crist in January. FAA leadership and lobbyists met with the governor's staff and the individuals, legislators and groups which opposed the bill last year. The efforts paid off with unanimous support for the bill in the House and Senate and the governor's signature.

Guidance is posted on the FAA Web site www.fl-apartments.org to enable owners and managers to take advantage of the new law. (Florida Apt. Assn. – Patrick Horn)

IOWA

Iowa Legislature Considers Smoking Ban

The Iowa Legislature Rules Committee is continuing its work on a statewide smoking ban due to take effect on July 1. The Central Iowa Apartment Association (CIAA) Legislative Committee is forming a roundtable to discuss specific issues that may affect the rental housing industry. CIAA's government affairs representatives have concerns that the Rules Committee will seek to push definitions of "public areas" into private property areas such as outdoor swimming pools and open stairwells of apartment communities. CIAA will continue to monitor this important issue. (Central Iowa Apt. Alliance – Scot J. Haislip)

MARYLAND

Maryland Enacts Deceased Tenant Bill

On May 13, Gov. Martin O'Malley (D) signed into law HB 452 providing a property owner with statutory guidelines for disposing of a deceased resident's possessions if the resident died intestate and without next-of-kin. This bill was introduced by Del. Doyle L. Niemann (D-47) at the request of the Apartment & Office Building

Association of Metropolitan Washington (AOBA). It was passed unanimously by both the House and Senate and will take effect October 1.

The bill will help to expedite the turn-around time for re-renting a unit, allowing more efficient use of the rental supply. Previously, there was no provision in the state code that addressed this particular situation. The law now provides guidance to the property owner in dealing with the vacant unit and the possessions contained within. It enables a property owner to bring an action for summary ejectment against a deceased resident, and allows the owner to certify, to the best of the owner's knowledge, that the resident died intestate and without next-of-kin. The property or income from the property held by the housing provider in the deceased resident's unit will then be deemed abandoned, according to state law. (Apt. & Office Bldg. Assn. of Metropolitan Washington – Rachel Arnold)

Montgomery County, Md., Contesting Concession Fees

Rental housing owners and managers are receiving letters from the Montgomery County, Md., Attorney requesting that they self-report, by affidavit, whether their company, currently or in the past, has used "concession fees." Specifically, the county attorney is interested in the practice of identifying one rent as the "market" rent, but offering a discount off of that rent if paid by a date earlier than the due date provided for in the lease.

It is the county attorney's position that this practice constitutes an illegal late fee and is in violation of both county and state law. The county is requesting that all housing providers immediately cease and desist the use of such "concession fees." This request is based solely on the county attorney's April 22 opinion that this practice violates Sections 8-203, 8-207, and 8-208 of the Maryland Code and Chapter 29 (Landlord-Tenant Relations) of the Montgomery County Code. The merits of this position have never been argued before, or ruled upon by, the county's Commission on Landlord and Tenant Affairs or any Maryland court. The only complaint on this issue was settled in May, just prior to a full hearing before the commission. The housing provider has advised that it settled as a business decision, and not based on the legal merits of the practice that had been challenged.

Despite a number of legal and policy questions raised by the Apartment & Office Building Association of Metropolitan Washington (AOBA) in meetings with both the county attorney and the Department of Housing and Community Affairs, the county decided to move forward as planned. The plan includes the following:

- Inquiry being sent to all rental housing providers, with response requested by a specific date;
- If a housing provider answers in the affirmative, the county attorney will investigate and determine if there is a violation;
- If the county attorney determines that a violation has occurred, he will not seek civil penalties, but will seek the return, going back a full three years, of the difference between the market rate and the discounted rate of all monies paid by affected residents;
- If a housing provider fails to respond, the county attorney plans to investigate and compel a response.

(Apt. & Office Bldg. Assn. of Metropolitan Washington – Rachel Arnold)

NEW JERSEY

Comprehensive Housing Reform Package Advances in New Jersey General Assembly

New Jersey Assembly Speaker Joe Roberts' (D-5) comprehensive housing reform package, A-500, was reviewed and released by the Assembly State Government Committee recently, sending the bill to the Assembly Floor for a final vote. The package had already cleared the Assembly Housing Committee as well as the Assembly Appropriations Committee, but was recommitted to the State Government Committee to be amended to match recent amendments made in the state Senate. The reform package includes a controversial proposal that would end

Regional Contribution Agreements (RCAs), which enable suburban municipalities to transfer their affordable housing obligations to nearby urban centers. New Jersey is unique in that it has a constitutional mandate for inclusionary development, which was the result of two high-profile New Jersey Supreme Court rulings known as the *Mount Laurel* decisions of the 1970s and 1980s. The bill also contains two measures strongly supported by the New Jersey Apartment Association (NJAA) that would require Housing Affordability Impact Analysis and Smart Growth Development Impact Analysis statements to accompany all proposed state rules and regulations. These two requirements will help focus all regulatory agencies on avoiding needlessly impacting the affordability or availability of housing when proposing a new rule or regulation. NJAA is strongly in support of Speaker Roberts' housing reform package. (New Jersey Apt. Assn. – Scot J. Haislip)

Repeal of Rent Control on New Senior Housing Clears New Jersey Senate Committee

Recently the New Jersey Senate Community and Urban Affairs Committee amended and released S-630, a controversial proposal that would repeal the rent control exemption on new senior rental construction. Sponsored by Sen. Joe Vitale (D-19), S-630 would reverse over two decades of state housing policy developed to promote apartment construction in rent-controlled cities and suburbs across New Jersey. After nearly an hour of heated testimony, the committee voted to release the bill with by a 3 to 2 margin. NJAA will continue to strongly oppose S-630 and harmful implications the bill holds of the prospects of any new age-restricted senior rental housing construction in New Jersey. (New Jersey Apt. Assn. – Scot J. Haislip)

New Jersey Considering Attorney Review Period on Residential Leases

New Jersey S-1704, sponsored by Sen. Ron Rice (D-28), which would require a three-day attorney review period for all residential lease agreements, was recently amended and released by the New Jersey Senate Community and Urban Affairs Committee. NJAA sought two key clarifications regarding the timing of the review period and the new resident's actual possession of the apartment. Both clarifications were accepted by the Committee. (New Jersey Apt. Assn. – Scot J. Haislip)

Racketeering Laws Used to Punish New Jersey Apartment Owner for Renting to Illegal Immigrants

The Immigration Reform Law Institute (IRLI) – an anti-immigrant group based out of Washington, D.C. – has filed a civil lawsuit under the Racketeering Influenced and Corrupt Organization (RICO) Act against a New Jersey apartment owner and manager, Connolly Properties, for renting apartments to illegal immigrants. This is the first civil lawsuit using RICO to challenge renting apartments to illegal immigrants, and, if successful, could be the impetus for a raft of additional cases alleging the same. This case is the latest in a series of anti-immigration initiatives in New Jersey that began with Riverside Twp., N.J. becoming the second municipality in the country to adopt an "illegal immigration relief act" ordinance. NJAA is still evaluating the facts alleged in this recent complaint, and will weigh the possible industry-wide implications as the case progresses further. (New Jersey Apt. Assn. – Scot J. Haislip)

Proposal to Create "Green Building Tax Credit" Passes Key New Jersey Assembly Committee

Legislation creating New Jersey's first "Green Building Tax Credit" program unanimously passed the Assembly Environment and Solid Waste Committee in early May. The bill, A-2070, provides tax credits toward the corporation business tax, gross income tax and other taxes for builders, developers and owners who design and build buildings that meet certain "green building" criteria. These criteria ensure that participating developers use materials and technologies that minimize environmental impacts and provide a healthier environment. Under the bill, the New Jersey Departments of Community Affairs (DCA) and Environmental Protection (DEP) would be tasked with establishing a New Jersey specific green building standard. NJAA sought clarification that the New Jersey standard would not be linked exclusively to the U.S. Green Building Council's LEED standard, as there is no LEED standard for multifamily buildings. Linking the new state program solely to LEED would all but exclude the participation by multifamily rental housing builders and developers looking to "go green." The committee agreed with NJAA's

request and language was added clarifying that the resulting New Jersey-specific "green" standard established under the tax credit program would be broader than LEED. (New Jersey Apt. Assn. – Scot J. Haislip)

Bridgeton, N.J., Initiates "Seven-Step" Crime Fighting Plan

Representatives from major apartment communities in Bridgeton, N.J., have unveiled a "Seven-Step Plan" to try and reduce crime in their developments. The plan was created in response to a proposition by Mayor Jim Begley to require apartment communities to have around-the-clock armed security patrols. The "Seven-Step Plan" includes an inspection of each community by apartment staff and the city police department to review the properties where physical improvements can be made to reduce crime, such as additional lighting and the elimination of "blind areas." The plan also consists of additional criminal background checks on rental applications, added cooperation with law enforcement, bi-monthly meetings with apartment staff, city officials and the police, as well as community education through newsletters and resident meetings. During a recent meeting, the sentiment expressed by property owners was that they could not handle the expense of paid security guards. City Council President Bill Spence commented that while the proposed ordinance for 24-hour armed security guards is "dead at this time," it could come back to the table if the apartment owners do not follow through with their plan. (New Jersey Apt. Assn. – Scot J. Haislip)

NEW YORK

New York Considering Several Bills Potentially Harmful to the Apartment Industry

Though the official calendar of the New York state legislature is open year-round, in actuality most legislative activity is wrapped up in the month of June. There has been a flood of legislative activity as legislators attempt to enact bills in time for the governor's signature to make them law this year. As part of this legislative activity several bills have been proposed which may have a negative impact on the multifamily housing industry, among them:

- AB 631 would allow property owners to charge potential residents application fees no greater than the actual cost of a credit check or related services paid to a third-party by the property owner, and in no event shall such fee exceed \$30.
- AB 662 would require a property owner to return to a resident the full security deposit within 30 days of the surrender of the premises by the resident unless the property owner provides the resident with a written statement listing the reasons for the retention of any portion of the deposit; sets forth particular situations for which the property owner may retain such security deposit; renders the property owner liable for treble damages for any violation.
- AB 664 would provide for a stay of eviction proceedings of a resident from a multiple dwelling if the court finds that a resident may qualify for social services assistance until such time as a determination of eligibility may be made by a local social services district.
- AB 2006 would make provisions for the protection of indoor air quality, including the requirement that building owners develop and maintain an indoor environmental plan and undertake other responsibilities relating thereto including investigating complaints and providing a written response thereto; directs the Department of Health, in consultation with specified others, to adopt standards of ventilation for new and existing buildings.
- AB 2539 would provide that no person 62 years of age or older be denied occupancy in multiple dwellings, nor shall such resident be evicted from a multiple dwelling on the sole ground that he or she owns or keeps a common household pet or pets, the harboring of which is not prohibited by the multiple dwelling law or other applicable law, unless the pet causes damage to the subject premises, creates a nuisance or interferes substantially with the health, safety or welfare of other residents.
- AB 3592 would require the exclusion of Saturday, Sunday or a public holiday in determining a 72-hour notice period for a stay of eviction warrant.
- AB 4420 would provide for the licensing of apartment information vendors;

defines such vendors as persons who, for a fee, furnish information concerning the location and availability of rental property.

- AB 6584 would prohibit discrimination based on gender identity or expression; defines gender identity or expression as having or being perceived as having a gender identity, self image, appearance, behavior or expression whether or not that gender identity, self image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.
- AB 7861 would provide for unlawful discriminatory practices in housing based on lawful source of income, including Section 8; provides for punitive damages.

As New York is often looked to as an example by other states across the nation when enacting their own laws, NAA and its New York affiliates will continue to closely monitor these bills as they make their way through the legislative process. (National Apt. Assn. – Scot J. Haislip)

PENNSYLVANIA

Pennsylvania Apartment Association Publishes Landlord/Tenant Lease and Law Handbook

The Pennsylvania Apartment Association (PAA) new Landlord/Tenant Lease and Law Handbook hit the streets recently. The book explains every clause in the NAA/Pennsylvania lease, and highlights common lease issues. Books are available for sale to members as well as the general public. The association also plans to distribute complimentary copies to Magisterial District Judges throughout Pennsylvania. Distributing the handbooks will serve everyone's interest as it is hoped judges will use them as a valuable reference for the landlord/tenant cases that come before them. PAA will also make the book available to key legislators in Harrisburg, and will be mentioning it during upcoming testimony before the Pennsylvania Senate Urban Affairs Committee hearing regarding the Neighborhood Blight Reclamation and Revitalization Act. (Apt. Assn. of Gtr. Philadelphia – Scot J. Haislip)

SOUTH CAROLINA

South Carolina Enacts Immigration Legislation

The South Carolina Senate gave third reading to HB 4400, the House concurred with the Senate amendments to the bill and Gov. Mark Sanford (R) signed it. HB 4400 removed the state preemption language against local immigration ordinances that exceed state law that was contained in previous versions of the immigration bill. It also authorizes the South Carolina Department of Labor, Licensing, and Regulation (LLR) to issue an employment license to private employers, in addition to any business licenses required by local government, and requires private employers to verify the legal status of new employees. Failure to comply may result in a civil penalty of up to \$1,000 per violation and the revocation of any business license, including a local business license. All fines collected are retained by LLR.

Businesses that provide immigration services are required to obtain a license issued by LLR in addition to any local government business license requirements. Failure to comply with this requirement may result in a civil penalty of up to \$1,000 per violation and the revocation of any business license, including a local business license. This fine does not preempt or preclude additional civil and criminal penalties to include restitution to the political subdivision. Additionally, if the person or entity is convicted of criminal activity in providing immigration services, they are jointly and severally liable for any loss suffered by an agency or political subdivision of the state. (South Carolina Apt. Assn. – Patrick Horn)

TENNESSEE

Tennessee Apartment Association Ends 2008 Legislative Session with Big Wins

The Tennessee Apartment Association (TAA) had a very active and successful legislative year. TAA representatives traveled to Washington, D.C., and to the state capitol to meet with legislators and closely monitored several bills which affect the multifamily housing industry.

TAA was successful in an alliance with the Realtors, National Federation of Business and other business interests to educate and communicate to government officials the implications of SB 4173 introduced by Sen. James Kyle, Jr. (D-28) and HB 1429 introduced by Rep. Gary Odom (D-55) which would remove the exemptions of Family Limited Partnerships and Family Limited Liability Corporations from the Franchise and Excise Tax. The Commissioner of Revenue will report to the General Assembly by Jan. 20, 2009, as to the fiscal impact of the exemption.

TAA registered a significant victory with an amendment to both SB 3048 introduced by Sen. Raymond Finney (R-8) and HB 3083 introduced by Rep. Joe McCord (R-8) which would have allowed the resident or other authority to delay an eviction by complaining to the public health authority or other authority regarding a housing codes violation. The legislation passed in the House and Senate with the amendment to exempt monthly rental agreements. The law will sunset in one year.

SB 2600 sponsored by Sen. Tim Burchett (R-7) and HB 2528 introduced by Rep. Larry Turner (D-85) that required only photo-electric smoke detectors in rental housing units statewide did not pass. This is another victory for TAA.

TAA defeated a requirement of battery back-up to gate systems in the Gate Access Bill, SB 1382 and HB 649 introduced by Sen. Joe Haynes (D-20) and Rep. Mike Turner (D-51). The new law as it was passed will require all new construction and substantially renovated commercial gates to have a device that allows police, fire and emergency personnel access to the community. The new guidelines will go into effect on July 1. (Tennessee Apt. Assn. – Patrick Horn)

TEXAS

Texas Renews Discussions on Property Taxes and Appraisals

Property taxes and appraisal reform are front and center once again for the Texas Legislature. The Senate Finance Subcommittee on Property Appraisal and Revenue Caps met recently to hear testimony on issues with the state's appraisal system and possible ways to improve it, revenue caps for local taxing jurisdictions and lowering the cap on taxable value increases. TAA member and current HAA President John Ridgway, of Pinnacle in Houston, presented the concerns of the industry and recommendations for improving the system.

A House Select Committee on Property Tax and Appraisal Reform will be traveling the state, holding hearings in Austin, McAllen, San Antonio, Arlington, Lubbock, Beaumont, Houston and El Paso from June through August. TAA members will be testifying in several locations, advocating TAA's recommendations. (Texas Apt. Assn. – Rachel Arnold)

Dallas Provides Opportunity to Cure Inspection Violations

After four years of effort by the Apartment Association of Greater Dallas (AAGD), the Dallas City Council approved an ordinance change, as presented by Code Director Forrest Turner, to give apartment owners 45 days to cure any violations found during a city inspection before a failing fee will be assessed. After 45 days, a supplemental inspection will be conducted. If the repairs have not been made, a failing fee of \$25 per unit, plus additional re-inspection fees will be billed to the property. The ordinance change was voted on in May, where AAGD addressed the council in support of the staff recommendation. The council expressed tremendous support and passed the ordinance unanimously. The ordinance took effect immediately. (Apt. Assn. of Gtr. Dallas – Rachel Arnold)

Dallas Green Building Task Force Kicks Off

AAGD attended the kick-off meeting for the Dallas Green Building Task Force in early June. Approximately 50 people were in attendance, most of which served on

the original Green Building Task Force that prepared the construction guidelines that the council recently adopted. The task at hand is to develop guidelines for existing buildings to attain the city's stated goal, which is to make Dallas carbon neutral by the year 2030 and to be the greenest city in the U.S.

Apparently there has been significant debate about whether apartments belong in the commercial or residential category. They have been placed with residential, which looks like it will have an advantage because all of the residential goals include incentives to make improvements. AAGD will continue to stay involved as task force work progresses (Apt. Assn. of Gtr. Dallas – Rachel Arnold)

Dallas "Gold Star" Program Advances

AAGD representatives met with four Dallas police officers in early June to discuss the progress on the "Gold Star" program, which is essentially a crime free program patterned after Houston. The police are facing some delays with the data input needed to establish the crime index, but that should be complete by the end of June. As with all the other crime free programs, there will be three phases that must be completed:

- Phase I: Have two people from each property attend a 6-8 hour crime prevention workshop.
- Phase II: Allow the Dallas Police Department to conduct a free Crime Prevention Through Environmental Design (CPTED) survey of the property.
- Phase III: Conduct an annual crime watch meeting for residents with a local officer.

Upon completion of the phases, a certificate will be issued that will be good for one year. The city will also provide a link on its Web site to certified properties.

The officers asked if AAGD could provide them a list of 10 potential properties that would participate in the beta test program. They would then have the option of narrowing the list to five properties. Mayor Tom Leppert (R) is in full support and will be holding a press conference to announce the launch of the program. When the test period is over, he will also give out certificates to the properties that have participated. (Apt. Assn. of Gtr. Dallas – Rachel Arnold)

Mesquite, Texas, Pushes Onerous Crime Free Program

In contrast to the Dallas proposal, AAGD has recently learned that the City of Mesquite, Texas, has been pushing its version of a crime free program for the past six months. The program was formally announced at a managers meeting about six months ago, at the same time the fire marshal's office told them about the new Fire Code requirements. As feared with the Irving, Texas, program, which Mesquite claims they patterned after, this program goes a few steps farther. Not only does the city want the manager to attend the 8-hour training sessions, it wants all leasing and maintenance personnel to attend as well.

The crime watch meeting for residents is clearly outlined, and apartment management is told they must provide food, and are told what types of food they must provide. The packet includes a form that authorizes the police to conduct criminal background searches on the residents. Interestingly, in a conversation with the police lieutenant who heads the program, he said that the form was not for the purpose of checking on applicants, but that it was to be used "after an incident occurred" involving an existing resident. Phase 2 includes a Crime Prevention through Environmental Design (CPTED) audit, as with other programs, but goes quite a bit further. Mesquite officials also want to inspect the interior of each apartment to be sure they have locks on the doors and windows. Additionally, the police department is telling managers that take Mesquite housing vouchers that the program is mandatory for them, but a phone call to the city's housing department disputed that. Unfortunately, 36 of the city's 60 properties have already signed up for the program. It will be difficult to push for any changes with the city, as it seems to have already received the approval of the local managers. (Apt. Assn. of Gtr. Dallas – Rachel Arnold)

Judge Strikes Down Farmers Branch, Texas, Immigrant Apartment Ban

U.S. District Judge Sam Lindsay ruled May 25 that Farmers Branch, Texas' attempts to ban illegal immigrants from renting apartments are unconstitutional. In a 35-page decision, the federal judge wrote: "The court concludes that only the federal government may determine whether an individual is legally in the United States." Michael Jung, a Dallas-based lawyer representing the city, said the city will eventually try to implement another version of the ban that he believes will satisfy the court's constitutional concerns. Farmers Branch's attempts to kick illegal immigrants out of city apartments transformed this Dallas suburb into an epicenter of the country's immigration debate. Local voters supported the ordinance by a 2-to-1 margin. The ordinance Lindsay struck down would have required apartment community managers to demand either immigration papers or signed declarations of U.S. citizenship. Fearing that Lindsay would strike down the ordinance, Farmers Branch City Council members passed a new one earlier this year that would require prospective apartment residents to give copies of their immigration or citizenship papers to a city building inspector, who would then have them checked by federal immigration authorities. The new ordinance would go into effect 15 days after Lindsay ruled on the older version of the rental ban. City Council members believe it will be constitutional because it asks the U.S. government to decide who is in the country legally. (Fort Worth Star Telegram – Rachel Arnold)

VIRGINIA

Virginia Housing Commission Begins Work

When the Virginia General Assembly adjourned for the 2008 regular session, a total of 31 bills had been referred to the Housing Commission for additional study and recommendations. At the first meeting of the legislative interim, work groups were appointed to focus on five identified policy areas. The Virginia Apartment Management Association (VAMA)/Apartment & Office Building Association of Metropolitan Washington (AOBA) has since secured positions on three of those work groups, focusing on housing affordability, housing and environmental standards and mortgage lending and financial regulation.

Del. John Cosgrove (R-Chesapeake) was tapped to chair the Housing Affordability Workgroup, which will focus on the growing gap between housing costs and incomes and the need for direct and indirect housing subsidies, as well as on regulatory mandates and incentives for privately generated housing subsidies. In particular, several legislative measures aimed at creating a dedicated state funding source for affordable housing, a concept supported by VAMA/AOBA, have been referred to Cosgrove's work group. These measures fell victim to a difficult fiscal environment during the 2008 session, when legislators were struggling to balance the budget. They were, however, carried over to the 2009 session, where they will receive additional consideration.

Del. Danny Marshall (R-Danville) will chair a work group tasked with evaluating mortgage finance regulatory issues and making recommendations to the General Assembly regarding an appropriate state response. This work group will examine perceived causes of the ongoing mortgage crisis (e.g., unwise borrowing choices resulting from limited financial literacy and/or deceptive, predatory lending practices), and will also look at Virginia's supply and geographic distribution of housing to meet the needs of its population and to sustain long-term economic growth.

VAMA/AOBA has also secured a critical position on the Housing and Environmental Standards Workgroup, to be chaired once again by Sen. John Watkins (R-Midlothian). VAMA/AOBA sought this position in order to represent the industry's concerns with regard to legislative proposals to mandate retrofitting of automatic sprinkler systems in all high-rise residential buildings across the Commonwealth. Del. Jennifer McClellan's (D-Richmond) HB 333 and SB 363, sponsored by Watkins, have been referred to this work group. These two bills sought to require that all buildings over 75 feet or more than six stories high, or which are being used to house individuals or provide guest rooms for occupancy, be equipped with an automatic sprinkler system by Dec. 31, 2017. Had the two sprinkler bills been approved, the Board of Housing and Community

Development would have been required to promulgate regulations establishing standards for the required systems. VAMA/AOBA lobbied extensively in opposition to these bills, citing a lack of sufficient information regarding the number and type of affected buildings, as well as the lack of evidence in available fire incidence data to justify the extraordinary costs involved. Consequently, neither of the bills was passed, but both were sent to the Housing Commission for additional study. The House sponsor has indicated her intent to revise the legislation to focus only on senior housing and reintroduce it next year. However, Watkins has indicated that he intends to push for approval of identical legislation in the next session. Work groups have begun scheduling meetings in conjunction with the scheduled special session to address transportation infrastructure financing. (Virginia Apt. Management Assn./Apt. & Office Bldg. Assn. of Metropolitan Washington – Rachel Arnold)

City of Alexandria, Va., Seeking Public Input on Draft Environmental Charter

The City of Alexandria, Virginia's Environmental Policy Commission hosted a summit for interested citizens and community members in early May to unveil and seek public input on the city's first draft environmental charter. The draft document is intended to serve as a guide to city government by defining the city's commitment to sustainability, and providing direction to achieve a set of "essential" sustainability principles and core values linked with the city's 2015 Strategic Plan. While the draft charter has been made public, the city is simultaneously working on creating an environmental action plan that establishes specific policy objectives, identifies programs and resources, sets tentative timelines and develops measures of success, to serve as a road map for the city council and government leaders. City staff hopes to have a plan completed for the city council's review by fall.

Of particular interest, the draft charter proposes guiding principles for city council action related to land use and open space, water quality, air quality, transportation, energy, green building, solid waste, environmental health and emerging environmental challenges. Though these principles are in no way binding, they will set the tone for policies to be set by the city council.

A copy of the draft charter can be viewed online at:

<http://ecocity.ncr.vt.edu/docs/EcoCityCharterDRAFT.pdf>. (Apt. & Office Bldg. Assn. of Metropolitan Washington – Rachel Arnold)

WASHINGTON, D.C.

Washington, D.C., Nuisance Property Bill Passes with AOBA Amendments

On June 3, the D.C. City Council gave final adoption to Bill 17-86, the "Nuisance Properties Abatement Reform and Real Property Classification Amendment Act of 2008." Prior to the final vote, an AOBA-led coalition that included the D.C. Association of REALTORS and the D.C. Building Industry Association pressed for a number of amendments to the bill the council had initially approved last month. In the legislative meeting, Councilmembers Evans, Wells, Cheh and Brown advanced six amendments, including several that the coalition sought. (Apt. & Office Bldg. Assn. of Metropolitan Washington – Rachel Arnold)

D.C. City Council Vote on Energy Bill Delayed; Submetering a Hot Discussion

D.C. Councilmember Mary Cheh (D-Ward 3), Chair of the Committee on Public Services and Consumer Affairs (PSCA), is the primary proponent of Bill 17-492, the "Clean and Affordable Energy Act of 2008," a far-reaching bill with many implications for AOBA members and their residents. AOBA testified about various concerns with the bill at a PSCA hearing several months ago, and has continued to work with Cheh's staff on those matters, as well as others. Potomac Electric Power Company (PEPCO), Washington Gas and other stakeholders have done likewise.

Cheh originally scheduled a May 21 mark-up on the bill and circulated a version with significant new additions and revisions – including some that AOBA and others had sought. Business groups and affected utilities were concerned that ample time was not being afforded, to them or to citizens, for review of the changes to this complicated, 30-plus page bill. Consequently, AOBA, the D.C. Chamber of

Commerce, D.C. Building Industry Association, PEPCO and Washington Gas suggested delaying the markup and holding an additional hearing on the revised bill. Cheh declined and commenced the markup, but was ultimately thwarted due to efforts of the business community and three committee members. Cheh nonetheless made clear her intent to push the bill out of committee, as well as obtain the requisite two readings and adoption by the full Council before it recesses in July.

Consistent with that plan, Cheh rescheduled the mark-up for June 2 and circulated another version, which had a number of the new provisions removed – among them, a section suggested by AOBA that would authorize submetering of energy utility usage in buildings. Only two U.S. jurisdictions—the District and Mississippi—do not allow this practice, despite a body of studies documenting that reduced consumption of gas and electricity occurs when users get a bill and must pay for it themselves. That body of evidence and the good company of Mississippi notwithstanding, however, another councilmember raised rent control and other concerns in withholding his support. Consequently, to secure the votes needed to move the bill out of committee, Cheh removed the submetering and various other provisions, promising to later package and introduce them as a separate bill to allow for a hearing on them. A unanimous committee then adopted the truncated bill on June 2, with one amendment requiring that PEPCO develop a financing mechanism, with long-term low-interest loans, for homeowners interested in installing solar panels.

While the vote was unanimous, committee members were not unanimous in their position on one key issue: submetering. Councilmember Graham expressed his opposition to submetering in multifamily properties, and even questioned whether there was any need for submetering, given that owners currently can ask the gas or electric company to install individual meters in their buildings (while technically true, the fact is that physical characteristics effectively make this impossible in many buildings). However, Councilmember Barry strongly disagreed with Graham; he asserted the importance of submetering, and expressed his support for a bill that would authorize submetering in both multifamily and commercial buildings. Barry also emphasized that Cheh's earlier proposed submetering language did not mandate, but merely authorized, the installation of submetering equipment. As to the other issues, Graham requested an accounting of existing programs authorized by the existing energy efficiency funds, the Reliable Energy Trust Fund and the Natural Gas Trust Fund. He also expressed concern about the impact on the District as a ratepayer and inquired about the status of the bill's fiscal impact statement.

The bill is proceeding on the regular legislative schedule despite Cheh's efforts to expedite it. (Apt. & Office Bldg. Assn. of Metropolitan Washington – Rachel Arnold)

Are You an AIMS Members?

Every day the government affects the multifamily housing industry through taxation, financial regulation, building codes and rent control policies. We have to make sure that government officials understand the implications of their decision-making for multifamily housing. Timely and targeted communication with elected officials can make a difference and improve the business environment in which you work.

AIMS, the Apartment Industry Mobilization Service, is NAA's network of members that is ready to respond to calls for action and contact federal legislators when action is needed on Capitol Hill. AIMS is an opt-in program that requires participants to actively register themselves to receive alerts and information updates. AIMS members also receive valuable information on Capitol Hill activities that affect the apartment industry through the *Updates* newsletter series.

To view recent AIMS Update newsletters or to register as a member, visit the [NEW NAA Web site](#).

[Click here](#) if you choose to opt-out from receiving this newsletter.

[Click here](#) if you prefer not to receive any further email from the National Apartment Association.

