



# HOTSHEET

America's Leading Advocate For Quality Rental Housing

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## [Capitol Conference Speakers Announced](#)

NAA has some great sessions planned for this year's Capitol Conference to be held March 8-11 at the Omni Shoreham in Washington, D.C.

- Dana Perino will speak at our first ever Capitol Conference Keynote address on Monday morning. This will be Perino's first public appearance since ending her tenure as the White House Press Secretary for President George W. Bush. Perino will be discussing current political realities, including the economy, touching on housing and public perception.
- Ben Coffey Clark from Fleishman-Hillard will speak Monday afternoon about using social media in your communications plan. His areas of expertise include new media platforms such as blogs and social networking sites, Web site design, Web writing, online community outreach and partnership strategies.
- We have two exciting speakers for Tuesday's Government Affairs Roundtable lunch to do a "point-counterpoint" discussion – Tony Blankley and Peter Beinart.
  - Blankley is currently executive vice president of global public affairs with Edelman, a worldwide public relations firm, and is a national syndicated weekly political columnist for *The Washington Times*. Blankley also appears regularly on MSNBC's *Hardball* with Chris Matthews, CNBC's *Kudlow and Company*, Fox News' *Hannity & Colmes* and *Fox and Friends*, as well as several national commercial talk radio shows. In addition to his television appearances, Blankley is a popular writer and a timely speaker as his new book *American Grit* is about to be released.

- Beinart is the editor-at-large at *The New Republic* and the author of *The Good Fight: Why Liberals—And Only Liberals—Can Win the War on Terror and Make America Great Again*, published in 2006. He is also a senior fellow at the Council on Foreign Relations where he focuses on U.S. foreign policy and is a regular contributor for *Time* and *The Washington Post*. In addition to his bylines, Beinart has contributed to *The New York Times*, *The Wall Street Journal*, *The Financial Times*, *The Boston Globe*, *The Atlantic Monthly*, *Newsweek* and *Slate*, among others. Beinart has been featured on the television news circuit for his expertise and articulate analysis. He is a contributor to CNBC, and has appeared on ABC's *This Week with George Stephanopoulos*, *Charlie Rose*, *The McLaughlin Group*, MTV, *The Colbert Report* and several other televised programs.
- Tuesday evening, please join us and members of Congress for the annual Better Government Fund event to be held at the U.S. Botanic Garden, at the base of the U.S. Capitol. Transportation will be provided and tickets are available for \$125.

Registration, hotel information and the full schedule can be found on the NAA Web site at [www.naahq.org](http://www.naahq.org).

### **NAA to Host First Green Conference**

The National Apartment Association (NAA) will be holding its 2009 Green Conference & Exposition April 28-29, 2009, at the LEED-Certified Phoenix Convention Center. The event will connect experts from all sections of the green building and management movement. Education tracks at the conference will include:

- The National Green Building Standard and LEED
- Greening Multifamily Properties and Enhancing Net Operating Income
- Green Regulations, Incentives and Mandates
- Costs and Benefits of Sustainable Design
- The Multifamily Investor and Apartment Resident—Will They Care?
- Supplying Green Builders, Developers and Managers

In addition, the 2009 NAA Green Conference & Exposition will feature a state-of-the-art trade show for industry suppliers to showcase their green products and services. For information, visit the [NAA Web site](#).

Further, NAA launched its Green Communities Web site in late December 2008. The [Green Web site](#) is a one-stop green information resource with information on all of NAA's and the multifamily housing industry's green efforts. In order to make members' shifts to green practices as easy and efficient as possible, this Web site will be continually updated with the latest green information, news and strategies related to and affecting the multifamily housing industry. Topics of interest covered include:

- Why Go Green?
- Government Affairs issues, including green building/energy conservation and smart growth
- Green management education
- Greening tools and resources
- Renters' Education Center

(National Apt. Assn. – Scot J. Haislip)

## **Arizona**

### **AMA to Reintroduce Impact Fee Reform Bill**

The Arizona Multihousing Association (AMA) has indicated its intent to sponsor the reintroduction of a previously vetoed Development Impact Fee Reform bill during the 2009 Session.

The bill will be modeled after 2008 SB 1406, which prohibited municipalities from assessing new or increased fees against a development within 24 months following final approval of the site plan. During the 24-month period, municipalities would have been permitted to increase fees if they had an index provision or phase-in period that was approved prior to site plan approval.

Gov. Janet Napolitano's (D) veto message called for the creation of "comprehensive procedures" to foster the fair implementation of development and impact fees. With Napolitano moving to Washington, AMA anticipates support for the bill from incoming Gov. Jan Brewer (R). (Arizona Multihousing Assn. – Erik Taylor)

## California

### **California Appeals Court Allows Secondhand-Smoke Lawsuit Against Property Owner to Proceed**

In a ruling issued earlier this month, the 2nd District Court of Appeal in Los Angeles ruled that a 7-year-old asthmatic girl had standing to file suit as a resident against an apartment owner over secondhand smoke in outdoor and common areas of the community, such as swimming pools, barbecues, playgrounds and dining facilities. (*Birke v. Oakwood Worldwide*, 09 C.D.O.S. 409).

The suit was brought by the girl's father, a California civil litigator, who claims that the court's ruling establishes a national precedent. As reported in law.com, the girls' father asserted that, "This is the first time that a court anywhere in the country -- and I can say that with some certainty because we did the research -- has ruled that outdoor secondhand smoke can constitute a public and private nuisance." Though the court's holding is noteworthy, it needs to be stated that at this point in the litigation multifamily property owners need not panic. The court has simply ruled that assuming the facts of the case as stated by the plaintiff are true, that the plaintiff may be entitled to relief under the law. Nevertheless, now that the case will proceed forward, it may well be dismissed based on the facts of the case.

Of further note, a concurring judge in the court's opinion indicated that he would have also let the case move forward under the federal Americans with Disabilities Act (ADA). If a case of this nature was to proceed under the ADA, it has the potential to be very damaging to the multifamily housing industry as it could lead to a wave of class-action lawsuits against apartment owners under the theory that residents were injured by second-hand smoke.

Concerned property owners/managers may consider imposing a clearly defined smoke-free policy on their entire community, including outdoor and common areas. If adopted, the policy should be specifically included in the community's apartment lease and associated rules and regulations, as well as conspicuously posted in the community's common areas. NAA's National Lease Program is currently developing a Smoke-Free Addendum for use in conjunction with the NAA Lease Form. This addendum is expected to be completed in late January. For more information on the NAA Lease Program visit the [NAA Web site](#). (National Apt. Assn. – Scot J. Haislip)

### **City of Los Angeles Bans Resident Evictions During Foreclosure**

The Los Angeles City Council has banned the practice of evicting residents in foreclosed single-family and multifamily properties during the time the property is owned by the bank. Once a new owner takes title, then the new owner may proceed with eviction procedures. Los Angeles is one of several jurisdictions across the country to ban evictions during foreclosure proceedings. (California Apt. Assn.- Los Angeles – Rachel Arnold)

### **Ventura, Ca., City Council Rejects New Rental Inspections**

In early January, the Ventura, Ca., City Council decided to not inspect all rental units nor impose any new fees. Currently, property owners with four or more units must obtain and pay for a business license and all property owners with three or more units receive a fire inspection and pay a fire inspection fee. To better respond to complaints and watch for obvious exterior violations, the city will transfer building inspectors from new construction into code enforcement. (California Apt. Assn.-Los Angeles – Rachel Arnold)

### **San Francisco Adds Inspections and Considers New Taxes**

The Department of Public Health (DPH) in San Francisco recently sent out bills to owners of buildings containing three or more units for a "Vector Control and Healthy Homes Program." The fee is on a scale depending on the number of units in the building and ranges from \$25 to \$103. DPH will be sending inspectors to examine common areas, yards, garbage storage areas and lobbies for signs of infestation from disease causing vectors.

This is a new inspection program in the city of San Francisco and while the ordinance was signed in July, it already has caused strife between city departments. The inspection – which has not yet been clearly defined – is in essence the same as the inspection done by the Department of Building Inspection, thus causing the two departments to arguing over who should be inspecting. DPH has not determined what it will be doing with the revenue, though hiring new inspectors is under consideration. DPH is also already considering a fee increase for next year so it can bring in more money.

The San Francisco County Supervisors will be voting soon on whether to hold an election in the coming months on new tax measures in order to increase revenue. One of the taxes that will be on the ballot, should the supervisors approve the election, would be a rental income tax. (San Francisco Apt. Assn. – Rachel Arnold)

## Massachusetts

### **Massachusetts Limits Use of Ionization Smoke Detectors**

In January, the Massachusetts State Board of Fire Prevention Regulations voted to approve new smoke detector regulations. The change comes after several months of deliberations on the type of technology allowed – ionization vs. photoelectric smoke detectors.

Under the new regulations, only photoelectric smoke detectors will be allowed within 20 feet of an entryway to a kitchen or bathroom containing a bathtub or shower. The 20-foot requirement includes and extends into common areas of a multifamily dwelling. Smoke detectors located outside this area must use both ionization and photoelectric technology, either as a single detector or two separate detectors. The regulations give consumers a year to comply, taking effect on Jan. 1, 2010.

The change mirrors an existing provision of the state building code prohibiting the installation of ionization smoke detectors. By placing the same requirement in the fire code, older homes built prior to 1975 are captured.

The Rental Housing Association of the Greater Boston Real Estate Board successfully opposed an earlier version of the regulations that would have placed additional liability on owners and property managers during a fire inspection and required compliance by October 2008. (Gtr. Boston Real Estate Board – Scot J. Haislip)

## **New Jersey**

### **New Jersey Bed Bug Legislation Changed to Include Two Key NJAA Amendments**

In a rare procedural move, after having been amended both in the Assembly Housing & Local Government Committee and on the Assembly Floor, legislation aimed at addressing bed bugs in residential properties was sent back to the Housing Committee for further amendments. At a Committee hearing, A-3302 was amended unanimously, as two key New Jersey Apartment Association (NJAA) amendment requests were approved. NJAA offered amendments to: 1.) extend from 30 days to 90 days the time period when all current residents must receive a new pamphlet on bed bugs from the Dept. of Health & Senior Services and 2.) include a “safe harbor” provision to the section addressing pamphlet delivery, protecting property owners if a resident refuses to accept delivery or sign acknowledgement that the required pamphlet was delivered. Legislation now moves to the Assembly floor for further action, which could come as early as February. On the State Senate side, the companion legislation, S-2257, has yet to see action. (New Jersey Apt. Assn. – Scot J. Haislip)

### **New Jersey Gov. Corzine Proposes \$181 Million in Cuts for Final Months of FY 2009**

In early January, the New Jersey State Treasurer's Office, under the Governor's name, released a list of proposed spending cuts totaling \$812 million for late-FY 2009. The twelve pages of proposed cuts range across the whole of State government, from a low of \$1.5 million for the State Commission of Investigations to a high of \$155 million for the Treasury Department. Proposed cuts to key state agencies include: \$81.5 million – Department of Community Affairs (DCA); \$6.29 million – Department of Environmental Protection; \$2.62 million – Office of Public Advocate; and \$155.15 million – Treasury Department. NJAA members should take note that contained within the proposed DCA cuts of \$81.5 million, some \$47 million comes from the State Rental Assistance Program and \$6 million from the Lead Hazard Control Assistance Fund. Additionally, the proposed Treasury cuts include some \$35 million from Homestead Property Tax Rebates, as well as another \$7 million from the Senior Property Tax Freeze program. With only six months left in FY 2009, many of these proposed cuts will most likely freeze dozens of state programs in place until the FY 2010 Budget is negotiated and passed. The Constitutional deadline for a new FY 2010 Budget to be approved and in place is midnight on June 30. The later-half of the FY 2009 cycle looks dicey from here on out, and the numbers for FY 2010 are looking even worse. Various estimates place the FY 2010 Budget gap to be at least \$2 billion, and perhaps as high as \$4.5 billion. The Governor has already requested, and received, a delay in the date he will present his FY 2010 Budget proposal to the General Assembly and Senate. The original date of Feb. 24 has now been re-scheduled for March 10, giving the Administration two additional weeks to craft the FY 2010 proposal. (New Jersey Apt. Assn- Scot J. Haislip)

### **NJAA Member Named to Governor's New Jersey Real Estate Advisory Board**

In December, Gov. Jon S. Corzine (D) announced the creation of a new advisory panel, known as the New Jersey Real Estate Advisory Board, to be comprised of economic development leaders throughout the State, representing a cross-section of New Jersey's major industry sectors. One of the first appointees announced for the Advisory Board was NJAA member Carl Goldberg, Principal – Roseland Property Company. The advisory panel will support the initiatives outlined in Corzine's Economic Assistance and Recovery Plan announced in October. The new Board, which will serve as an informal advisory commission to the Governor, includes representation from the following sectors: Academic, Banking/Lending, Commercial, Construction Management, Housing, Industrial, Law, Office, Trade Organization, Retail, Risk Management, Broker/Dealers and Investors. (New Jersey Apt. Assn. – Scot. J. Haislip)

## Pennsylvania

### **Pennsylvania's Highest Court and General Assembly Agree: Leases or Lease Transactions Cannot be Taxed in the Commonwealth**

In 2008 the Apartment Association of Greater Philadelphia (AAGP) successfully lobbied for a bill that prohibits Pennsylvania cities and towns from imposing taxes on leases and lease transactions. Pennsylvania's Local Tax Enabling Act (LTEA), which is the state's enabling statute for municipal taxing authority, was amended in October with language that clears up an ambiguity in the section of the law that prohibits taxes on leases (Act 130 of 2008). While the legislation was winding its way through the General Assembly, the Pennsylvania Supreme Court heard arguments in a case that had challenged the Borough of Millersville's tax on leases. Millersville had imposed a \$30 per lease tax on all residential leases written in the Borough. Appellants argued the Borough's tax was not permitted under the LTEA. In December, the Pennsylvania Supreme Court issued its ruling in the case, and held the LTEA in fact prohibits taxes on leases and lease transactions. The Court's ruling dealt with the language of the LTEA as it existed prior to Act 130, but in its opinion the Court expressly recognized and welcomed legislative efforts to clarify the issue. Therefore, according to the Highest Court and the Pennsylvania legislature, taxes on residential leases and lease transactions are illegal. (Apt. Assn. of Greater Philadelphia – Scot J. Haislip)

## Texas

### **Dallas Passes Crime Reduction Ordinance**

After working with the Dallas Police Department since early last year, specifically Deputy Police Chief Brian Harvey and Officer Keith Allen, the Dallas City Council has passed a revision to Chapter 27, Minimum Urban Rehabilitation Standards of the Dallas City Code. They have added an entire section entitled "Mandatory Crime Reduction Program for Designated Apartment Complexes."

Police personnel presented an outline of the program to the Public Safety Committee in December, but there was some confusion over the cost of the program so staff was asked to review the numbers and return with final figures, as well as the draft ordinance. Staff provided final figures and a draft ordinance at a meeting held in early January. The Apartment Association of Greater Dallas (AAGD) was given a few days to review the ordinance and wrote a letter of support for the program, only asking that the Purpose statement be changed to reduce the potential for additional liability for the owner should they fall into the mandatory program. Although Chairperson Elba Garcia clearly wanted to pass over AAGD's request, Councilmember Dwaine Caraway pushed for the city attorney to at least hear AAGD's concerns. It was also learned that the city manager's office pushed for the association's input to be heard. AAGD received the revised statement, had it reviewed by member attorneys and provided final approval.

In summary, the Dallas Police Department will use a complicated mathematical formula to determine if a property has above average criminal activity, based on violations of Part 1, Part 2 and Chapter 125 crimes. If a property falls into that group, it will enter a mandatory crime reduction program for six months, where it will be required to conduct criminal background and credit checks on all employees and potential residents; hold monthly crime watch meetings; execute a trespass affidavit; undergo a security lighting and landscaping inspection; submit to at least two inspections of the property by police; keep all common areas locked; pay a \$250 program fee; and enclose the property with a fence, if not already fenced, within 60 days. (Apt. Assn. of Gtr. Dallas – Rachel Arnold)

### **Texas Considers Changes to Municipal Code Adoption Process**

Texas Rep. Jose Menendez (D-San Antonio) filed HB 554, changing the municipal code adoption process at the request of the Texas Apartment Association (TAA). The legislation would ensure that stakeholders have input before municipalities adopt code amendments. Under the bill, municipalities would either have a board made up of representatives from affected stakeholders, or if no such board existed, a person could register with the city secretary's office to receive notification before the issue is considered by a city council. In addition, codes would not be effective until at least 30 days after passage, unless there is an imminent threat to health or safety. (Texas Apt. Assn. – Rachel Arnold)

### **Texas Legislature Considering Several Bills of Interest**

TAA is already monitoring more than 100 bills that have been filed in the Texas Legislature. Because the session is just getting under way, the TAA Legislative Committee has not yet met to take formal positions on bills.

- Meth disclosure—HB 23 by Rep. David Leibowitz (D-San Antonio)

HB 23 would require a rental property owner to disclose to prospective residents if any rental unit has been the site of a meth lab. In cases in which the owner has failed to make the disclosure (even if remediation has taken place), the resident would be entitled to unilaterally terminate the lease.

- Lease termination for sexual assault victims—SB 83 by Sen. Jane Nelson (R-Lewisville)

SB 83 would provide lease termination rights for sexual assault victims when the assault has taken place in the resident's unit or on the property. The bill would also expand current lease termination rights for domestic violence victims to include situations when the abuser is not a co-habitant. TAA is working with stakeholders to reach an acceptable compromise on this legislation. (Texas Apt. Assn. – Rachel Arnold)

**NAA Announces New State & Local Policy Manager**

NAA is pleased to announce that Erik Taylor has joined the staff as state and local policy manager, working with our affiliates in the southern part of the country. Taylor's background includes work at a state government affairs firm on a variety of tax and commerce-related issues across the states and as a staff person in the Michigan House of Representatives. He can be reached at [erik@naahq.org](mailto:erik@naahq.org) or 703/518-6141 Ext. 117.

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