



CAI'S COLLEGE OF COMMUNITY ASSOCIATION LAWYERS PRESENTS

Law Seminar

Legislative Update— Part I & II

January 22-23, 2010
9:30 – 10 AM

Presenter(s):
J. David Ramsey, Esq.

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CAI LAC Advocacy Highlights

State Legislation



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Advocacy Highlights

- Hot Issues for 2009
 - Energy and Water
 - Manager Licensing
 - Governance
 - “It’s the Economy Stupid”
 - Miscellaneous

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Hot Issues

- **Miscellaneous**

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Pennsylvania

- **HB 675** - Allows a unit owner in a common interest ownership community to deduct 75 percent of association assessments from Pennsylvania state income tax
- This legislation was drafted to address the “double taxation” issue for municipal services that are not provided to community association residents
- LAC Supported and Bill Adopted

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New Jersey

- **A 3206** - Required stricter standards for private companies that employ their own security personnel
 - would require an association to hire at least one employee to act as a compliance officer under the act, similar to owners and operators of security officer companies
 - The LAC opposed the bill is working with the sponsor to exempt community associations from the proposed legislation

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Maryland

- **HB 687/SB 541** - As adopted, requires all condominiums, homeowner associations, and housing cooperatives to purchase fidelity insurance to provide for the indemnification of the community against loss resulting from fraud or theft by any officer, director, managing agent, or employee who disburses funds for the community
- The fidelity insurance policy must cover three months of assessments and the amount in investment accounts held by the community up to \$3,000,000, at the time the fidelity insurance is issued.

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Maryland

- **HB 287/SB 201** - Amends the Maryland Condominium Act to clarify that condominium master property insurance policies must cover both common elements and units
- Provides that up to \$5,000.00 of the master policy deductible will be the responsibility of the unit owner when the cause of damage or destruction originates in a unit
- Requires each condominium to provide an annual notice to unit owners regarding the unit owner's responsibility for the property insurance deductible
- The MD-LAC was actively engaged in the passage of this legislation to clarify the law following a Court of Appeals decision from 2008

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District of Columbia

- **Amendments to Condominium Act** - DC LAC worked to finalize proposed amendments to the DC Condominium Act. Key purposes:
 - Establish an attorney's fees provision in the Act
 - Create requirements that will guarantee the posting of a warranty bond with the DC government prior to the first sale of a unit within a condominium
 - Clarify ambiguities in the non-judicial foreclosure process
 - Clarify the process for amending condominium instruments

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District of Columbia

- **Amendments to Condo Act Continued:**
 - Establish procedures for open board meetings and executive sessions of the board
 - Establish a process for holding electronic voting;
 - Clarify the insurance provisions in the Condominium Act, including responsibility for the association's deductible when an owner's act caused the insurance claim
 - Establish provisions governing an owner's right to review an association's books and records.

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Colorado

- **HB 1220** - Amends the "Colorado Common Interest Ownership Act" to provide that there may be no interference with a deed or other restriction on the permissible sale price, rental rate, or lease rate of a unit, or occupancy or other requirements designed to promote affordable or workforce housing.

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Arizona

- **AZ LAC Bill (SB 1148)** - Amended state statute to provide that no covenant, restriction, or condition contained in a deed, contract, or security agreement affecting the transfer or sale of a residential or commercial property may prohibit the display of a "For Sale" sign or sign rider on the property by the property owner
- Does not apply to condominiums

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Massachusetts

- **HB 1240** - Requires that an association's attorney attend every executive session (the law would exempt discussions with counsel from the open meeting requirement) in order to convey to the other board members information the attorney has given to one of them
- LAC believes the language in the bill is not "workable," and opposes the proposed bill

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New Jersey

- **A 3302** - Makes landlords solely responsible for the prevention and eradication of bedbug infestations
- Since "landlord" requirements are often imposed on community associations, the LAC worked with the sponsors to amend the bill to impose responsibility for eradication upon the the resident and the owner of the multiple dwelling residential units
- The bill successfully passed

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Texas

- Over 100 Bills Affecting common interest communities were introduced for the 2009 session
- TLAC brought hundreds of homeowners to express their views and opinions on the legislation before the Texas Legislature
 - Testimony was provided in dozens of committee hearings
 - In addition, CAI representatives participated in many private negotiations to obtain compromise
- Only two Bills were adopted upon agreement by all stakeholders – One (**SB 1918**) concerning non-condo disclosure statements and one (**SB 1919**) requiring maintenance of an updated management certificate

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Washington

- **HB 1935**, as amended through the effort of Washington LAC, provides that HOAs may not discriminate against the operation of Adult Family Homes, but HOAs do have the right to establish reasonable rules and regulations that apply to Adult Family Homes (e.g., landscaping, signage, etc)
- Bill adopted

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Hot Issues

- **Governance**

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Utah

- **HB 243** - Provides that an association may restrict and completely ban non-owner occupancy of units, subject to the initial declaration or a properly amended declaration
- Restrictions on non-owner occupancy added after the association is formed by less than a unanimous consent of the owners must be in the Declaration and must have certain exceptions required by the statute
- LAC supported and bill was adopted

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Tennessee

- **HB 1677/SB 1516** - Would invalidate restrictive covenants limiting an owner's right to erect a political yard signs on an owner's property or exclusive use common area
- The bill would
 - not place any limits on the size of the signs
 - not establish any time limits before and after an election during which a political yard sign could be erected and
 - not define the term "political," which could potentially lead to claims that a wide variety of signs were protected under the proposed law.
- LAC opposed and not considered by House

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Rhode Island

- **HB 5906** - Drafted by the RI LAC, requires unincorporated condominium associations to record the names and contact information for members of the board at least annually, and more often if necessary, to reflect changes in board members
- The bill also allows Rhode Island condominium associations the power to borrow money from banks to fund repair and improvement projects
- The bill passed both chambers and became effective in November of 2009
- RI LAC, one of CAI's newest LACs, has successfully worked to pass proactive legislation in two successive years

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Massachusetts

- **HD 1277** - Would permit elections to be decided by a plurality of the ballots cast on election day with no quorum requirement
- Massachusetts LAC opposes the bill
- It is still pending in the House and has not been assigned a bill number at this time

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Virginia

- **HB 2305** - Provides that
 - in addition to aggregate salaries of all employees, actual salary information of the six highest paid employees of a property owners' association making more than \$75,000 shall be available for examination and copying by association members
 - The bill also specifies that all books and records of the association, including individual salary information for all employees and payments to independent contractors, must be available for examination by a member of the board of directors
- Although LAC opposed bill was adopted

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New Hampshire

- **HB 376** provides that:
 - Bylaws may be amended by a majority vote of the unit owners in attendance at the annual meeting
 - Meeting minutes be made available to all unit owners
 - All unit owners be notified by mail of the purpose of any regularly scheduled meeting
 - The condominium association follow certain procedures in holding meetings of the association, adopting the annual budget, and filling vacancies on the board
 - Meeting minutes be made available to unit owners and that an affidavit be prepared attesting that all unit owners were notified at least 21 days in advance of any annual or regularly scheduled meeting
- Although NH LAC opposed the initial bill, the bill was passed with key deletions

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Nevada

- **SB 182** - Provides that boards and managers are subject to Class D felonies under certain circumstances
 - Prohibits HOA from charging entry fee for service providers
 - Limits imposition of fines for tenants
 - Revises election law and reduces votes necessary for removal
 - Provides that punitive damages may not be recovered from the board
 - Requires that meetings be audio recorded
 - Requires homeowner forums at both the beginning and end of the meeting
 - Clarifies that a board may impose a Reserve Assessment without a vote of the membership
 - Revises requirements related to availability of records

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Nevada

- **SB 182** - Continued
 - Expands political sign provisions
 - Requires HOA to allow artificial turf
 - Provides that managers may be subject to punitive damages
 - Increases CICC to seven members (two more homeowners)
 - Requires that any affidavit filed with the RED is confidential
 - Provides for temporary certificate for highly qualified managers under certain circumstances
- Bill adopted

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Nevada

- **SB 183**
 - Prohibits use of delegates under certain circumstances
 - Exempts certain owners (e.g., places of worship constructed after July 1, 2009) from assessments
 - Revises fine provisions
 - Requires separate assessment and fine accounts for all owners (e.g., in accounting software)
 - Revises candidate disclosure requirements
 - Increases maximum term for board members to three years
 - Revises check signatory requirements for operating expenses;
 - Specifies that unapproved, “working” documents do not have to be given to owners under certain circumstances
 - Requires that certain opinions or views be published in HOA newsletter, etc.
- Adopted

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Illinois

- **SB 1390** – Adopted and amends the General Not-for-Profit Corporation Act to facilitate electronic communications
- Members of a nonprofit corporation may conduct voting meetings by mail, e-mail, or other electronic means.

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Illinois

- **HB 155** – Endorsed by LAC, it regulates the right of first refusal available to associations
- States that in the event of a sale of a condominium unit, an association may not exercise its right of first refusal, option to purchase, or right to disapprove a sale on the basis of financing used by the purchaser, particularly financing guaranteed by the Federal Housing Authority.
- Passed by the Illinois legislature

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Hawaii

- **HB 876** - Modifies certain terms of the Condominium Property Act regarding elderly residents
- The act clarifies existing requirements concerning elderly residents remaining in their condominium properties
- Eliminates loneliness, neglect, or inappropriate requests of others for assistance from the list of characteristics that the elderly or disabled must exhibit
- Provides that the elderly or disabled must exhibit one of the remaining characteristics, such as the inability to clean and maintain an independent unit; mental confusion; the abuse of others; an inability to care for oneself; or the inability to arrange for home care
- Adopted

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Hawaii

- **SB 574** - Provides that after unsuccessful mediation disputes between owners and boards can be resolved through an administrative hearings process, commonly referred to as "Condo Court"
- This procedure provides that any condominium board or owner that is a party to an unsuccessful mediation may file in Condo Court within 30 days after the end of the unsuccessful mediation
- Hawaii LAC supports the two-year extension of the Condo Court until June 2011.

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Florida

- **CS/CS/HB 821ER** - Permits new urban, mixed-used community development districts, and authorizes the board of the district to enforce covenants when authorized by the county or municipality
- Permits the district board to enforce covenants when the authority is assigned to the CDD by a homeowners association, and it provides for the election of an advisor by the property owners to advise the board in enforcement procedures

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Connecticut

- **HB 6672** - Bill which became law made significant changes to Connecticut's version of UCIOA, including:
 - changes regarding how association business is conducted in general (e.g., voting, meetings, member participation, and association records); and
 - 2) the applicability of CIOA to "pre-1984" or "pre-CIOA" associations.
 - These changes were implemented to provide greater transparency, require more formality general operations of the community, and promote more accountability

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Colorado

- **HB 1359**, as passed, requires a CIC to commission a reserve study at least every 3 years and to specify how it proposes to pay for scheduled repair or replacement of reserve assets
- The LAC worked to prevent unfriendly amendments including restrictions on assessment notices and delinquencies

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California

- **SB 259** - CLAC's bill provided that if a court voided any results of an election for one or more board members because of a procedural violation or technical error, the court could not invalidate a decision of the board that was reached unless the court found that the action of the board was contrary to law or the governing documents
- Bill shelved due to objection of judges that it usurped judicial authority

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South Carolina

- **SB 30 would:**
 - Require each community association to register with the state with and to pay a mandatory registration fee
 - Override each association's governing documents in favor of generalized provisions that would have interfered with well established contract law
 - Establish a dispute resolution process under the Department of Consumer Affairs that would have positioned Consumer Affairs as the advocate for the homeowner as well as the adjudicating body for the dispute
 - Render illegal duly authorized provisions of an association's governing documents to collect a Capital Improvement Assessment
 - Stay any enforcement provisions of association's governing documents until the Department of Consumer Affairs rendered a decision on any complaint filed by a property owner living in a community association
- SC LAC built a coalition of interests that included the Association of Realtors, the Association of Home Builders, the Bar Association and other interested groups and bill did not make it out of committee

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Hot Issues

- **Manager Licensing**

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Kentucky

- **HB 401** - As introduced, would have required community managers to hold a real estate license to engage in management services in Kentucky
- Follows a lawsuit lost by the Kentucky Real Estate Commission (KREC) against a community management company claiming the company required a real estate license to engage in business in Kentucky
- KLAC, our newest LAC worked to amend the legislation to specifically exclude community association management from regulation under KREC and bill was adopted

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Illinois

- **SB 1579** - Sponsored by the Illinois LAC and adopted as the Community Association Manager Licensing and Disciplinary Act
- Provides for community association manager licensing and creates the Community Association Manager Regulatory and Disciplinary Commission
- Establishes detailed standards for the basic qualifications for a community association manager and provides continuing education, testing, and discipline for managers

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South Carolina

- The South Carolina LAC worked with the Department of License and Labor Relations to craft a simple bill for introduction in the 2010 Legislative Session on Manager Certification
- The bill would require all individuals practicing Community Association Management to have (at a minimum) a CMCA credential

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North Carolina

- The Community Managers Licensing Bill was unanimously approved by the Joint Licensing Committee and is now before the Senate Commerce Committee and House Judiciary Committee
- NC LAC Supports the Bill

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Michigan

- New bill that would require community association managers to receive certification through the National Board of Certification for Community Association Managers
- The act would ensure that association managers maintain professional decorum and maintain high standards of professional conduct by those certified as managers of condominium associations
- In preliminary stages

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New York

- **A-07783A and A-08985** - The LAC followed and opposed what were two poorly drafted bills to license or regulate community managers as property managers
- In this session companion bills were introduced in the Senate
- This alignment of interests and sponsorship indicates that either bill can move quickly at the end of session.

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Hot Issues

- **Energy and Water**

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North Carolina

- **HB 1387** - Relates to the rights of homeowner associations to regulate architectural modifications concerning solar energy
- The N.C. LAC's representatives are working on a favorable compromise to amend the existing state law

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Nevada

- **SB 114** - Allows for wind energy systems in HOA's under certain circumstances, and prohibits requiring certain colors for solar energy devices
- Bill adopted

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Washington

- **SB 5136** - Allows owners in HOAs to install solar energy panels on the owner's property
- The prohibition against HOAs prohibiting owners to install solar panels does not apply to "common areas" as defined in the HOA and HOAs are allowed to establish reasonable rules and regulations regarding the devices
- Bill adopted

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Virginia

- **HB 2417** - Provides that no community association shall prohibit an owner from installing or using a solar energy collection device
- However, a community association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices
 - Community association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area
- The LAC opposed the bill but it was adopted

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Maine

- **LD 73** - "Right-to-Dry" bill was, at MLAC's urging, amended to exclude common elements of condominiums
- The amendment defines or limits the rights or privileges of owners or renters to use a solar clothes drying device on residential property
- May not prohibit a person from installing or using a solar energy device on residential property owned by that person or from installing or using a solar clothes-drying device on residential property leased or rented by that person
- The amendment permits certain reasonable restrictions on the installation and use of a solar energy device that protects public health and safety, shore lands, buildings, and historic or aesthetic values
- The bill's amendment was approved by both the Maine House and Senate and adopted into law

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Hawaii

- **SB 1338** - invalidates any provision that would prevent an owner from installing a clothesline on his or her single-family residential dwelling or townhome
- May adopt rules that reasonably restrict the placement and use of clotheslines, provided that those restrictions do not prohibit the use of clotheslines altogether
- The bill passed into law without the governor's signature

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Georgia

- **HB 262** – Originally provided that a required use of specified grasses, trees, or bushes could not be enforced to prohibit the use of xeriscape practices to reduce the amount of water necessary to maintain the landscape
- Georgia LAC opposed this version of the bill
 - Later revised to state that covenants could not be enforced to require a property owner to violate any state authorized local outdoor water use restrictions
 - The Georgia LAC did not oppose this later version of the bill, while passing in House, it did not receive a vote in the Senate and therefore failed to become law.

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Florida

- **SB 2080ER, 720.3075(4)(A)** - Participation of homeowners' associations and local governments is essential to the state's efforts in water conservation and water quality protection and restoration
- Section (b), provides that governing documents may not prohibit or be enforced so as to prohibit any property owner from implementing Xeriscape or Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with certain Florida laws

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Colorado

- **HB 1107** - LAC opposed bill that would have disallowed restrictions on the use of energy efficiency measures
- It prohibited regulations, covenants, or deed restrictions that increase the cost of renewable energy generation devices (e.g., solar panels) by more than 10 percent or \$500, whichever is less, or reduce their efficiency by more than 10 percent
- Bill was not enacted at urging of LAC, because communities still adapting to significant 2008 legislation supported by LAC

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California – Water Issues

- **AB 300** was almost amended to require HOAs to enforce all water usage in behalf of local water utility companies
- **AB 1061** initially prohibited rules that prevent drought-tolerant landscaping until CLAC obtained amendment to have any such rules enforceable as written
- **AB 407** requires owners and associations to install water-conserving faucets, toilets, sprinklers and other devices. The bill is on the Governor’s desk.

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California

- **AB 1328** - CLAC sought modification of bill endorsed by CACM that encouraged HOAs to enter into 5 year contracts for water and energy services without addressing conflict of interest issues
- Bill passed
- CLAC was successful in obtaining a veto.

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Hot Issues

- **“It’s the Economy Stupid”**

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Illinois

- **SB 2102** - Amends the Condominium Act to provide that the purchaser of a condominium at a foreclosure sale, other than a mortgagee, or a purchaser who acquires title from a mortgagee, has the duty to pay all assessments unpaid by the owner during the period prior to the sale
- ILAC supports the bill which is currently assigned to committee.

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Georgia

- **SB 141** – Adopted and provides that all foreclosure deeds under power must be recorded by the holder of the deed within 90 days of the foreclosure sale. Intended to address problems created when lenders unreasonably delayed the recording of foreclosure deeds in order to avoid assessment obligations

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Nevada

- **SB 128** - Requires deeds obtained following foreclosure sale to be recorded within 30 days to prevent lender from avoiding assessments
- Bill adopted

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Hawaii

- **SB 298** - Raised the cap on six-month limited priority liens of regular assessments from \$1,800 to \$3,600
- Regardless of zero equity in a foreclosed unit, the association will receive at least six months of regular assessments or \$3,600, whichever amount is less
- Hawaii LAC's primary concern: it does not address foreclosures that were initiated before April 20, 2009, the day it became effective after being signed into law

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Minneasona

- **Section MS 580.07(2)** passed and allows debtors five additional months to bring current their outstanding debts
- Prior to the sheriff's sale allows debtor to pay the debt installments owed up to the date of payment, plus any applicable late charges and interest and collection costs (including foreclosure costs) that had accrued
- After the sheriff's sale the debtor, in order to redeem the property, would have to pay the foreclosing creditor the entire amount of the debt
- The new law allows debtors to automatically postpone a sheriff's sale for five months by executing a sworn affidavit for that purpose but the period of redemption is reduced five weeks, instead of the normal six-month redemption period that otherwise applies

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Colorado

- **HB 1276** - Requires foreclosure counselors to assist eligible borrowers in the deferment of a foreclosure sale
- If a deferment of the foreclosure is elected by the unit owner, the foreclosure process is delayed
- The bill was enacted by the governor over concerns expressed by the LAC.

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Maine

- **LD 961** – Six month lien priority bill
 - Was amended to eliminate priority and authorize a condominium association to require the payment into escrow of assessments to a total of six months' worth of assessments for each unit as security for unpaid assessments
- The Maine LAC was opposed to this alternative because it is duplicative, impractical, and will probably not be used by condominium associations in Maine
- The bill was signed into law by the Governor

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California

- Conducted its 15th annual lobby day.
 - Educational seminars presented
 - Bills were briefed
 - Attendees personally met with their Senator and Assembly Member or staff, and intelligence was gathered
- Congratulations on continuing success of this program!

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Legislative Update: Part II

Andrew S. Fortin, Esq.
James Slaughter, Esq.



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Overview

- Federal Legislative/Regulatory Issues
 - Mortgage Modification
 - Mortgage Underwriting/Insurance
 - American Clean Energy and Security Act of 2009
 - 2010 Issues
- Model Nonprofit Act Revisions

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Federal Issues

- Mortgage Modification [HR 1106](#) / [§ 61](#)
 - Bill to allow reformation of terms, principal, for primary mortgages through bankruptcy.
 - Issues:
 - Section 100: Payment (subject to modification)
 - Section 103: Subordinate liens
 - Section 104: Excessive fees

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Mortgage Modification

- Section 100: Payment (subject to modification)
 - (A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

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Mortgage Modification

- Section 103: Subordinate liens
 - Allowed for modification of subordinate liens
 - "And the rights of the holder of *any* claim secured by a subordinate security interest in such residence"
 - Intent – liquidate any and all subordinate lien obligations
 - Blood from a stone?

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Mortgage Modification

- Section 100: Payment (subject to modification)
 - (A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

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Mortgage Modification

- Section 104: Excessive fees
 - Created notice and filing requirements for any “Fee, cost or charge” that is pending and arises from a debt secured by the principle interest.
 - Intent – prevent banks/lenders from recouping costs from cram-down through fees
 - Impact – any one with a financial tie to the property.

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Mortgage Modification

- Status
 - Passed House on 3/5/2009
 - 234 yeas - 191 nays
 - Senate
 - S 61 – Amended to address CAI concerns
 - Died in Senate – 45 to 51
 - Son of Cram-Down
 - Passed house again in late 2009
 - May reemerge in 2010 – Grandson of Cram down

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Mortgage Underwriting/Insurance

- Fannie Mae Announcement 08-34
 - CAI's concerns
 - Legislative Efforts
- FHA Mortgagee Letter 2009-19
 - CAI Comments
- FHA Mortgagee Letter 2009-46A, 46B
 - Ongoing concerns
 - Engagement

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 American Clean Energy and Security Act of 2009

- [HR 2454 /S 1733](#)
 - Would federalize and override covenants related to solar power: [Section 209](#)
 - Section 209
 - to prohibit any private covenant, contract provision, lease provision, homeowners' association rule or bylaw, or similar restriction, that impairs the ability of the owner or lessee of any residential structure designed for occupancy by 1 family to install, construct, maintain, or use a solar energy system on such residential property; and

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 American Clean Energy and Security Act of 2009

- Status
 - Passed the House by narrow margin
 - 219 yeas - 212 nays
 - Solar provision was recognized as problematic
 - But needed vote – Rep. Cardoza (CA-18)
 - Senate passage unlikely
 - Lack of consensus in Senate
 - Concern on impact to economy
 - Lack on international consensus (Copenhagen)

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 Issues in 2010

- Things to look for
 - Another attempt at Mortgage modification
 - Health Care
 - Ongoing efforts to shape underwriting standards
 - Financial Services Reform

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Model Nonprofit Corporations Act
Revisions

To: 2010 Law Seminar
From: Jim Slaughter
Re: Model Nonprofit Corporation Act Revision
Date: January 23, 2010

In August 2008 the ABA adopted a third edition of the Model Nonprofit Corporation Act. A number of governance changes have been incorporated into the model language, which is a successor to the MNPCA from 1952 and the Revised MNPCA from 1988. The model language has been forwarded to state legislatures for consideration and possible adoption.

Why should community association attorneys care? Well, because in some states, community association meetings are governed by nonprofit corporation statutes, in that there are no separate HOA meeting statutes. In other states, nonprofit statutes supplement community association statutes or govern older associations predating planned community schemes. As a result, nonprofit act amendments could be adopted with little notice by community association practitioners, but significantly impact associations.

Without question, there are both philosophical and substantive changes in the Act. The purpose of this short memo is to highlight some of the provisions to assist you in determining what amendments to the Model Act might be needed in your state.

The following provisions of the 2008 MNPCA are mandatory:

- In emergencies, board may modify lines of succession for directors and officers.
- Resignation of member, director, or officer effective immediately or when stipulated by individual. No acceptance required, except for prospective resignations.
- Board or 25 percent of membership may call special membership meetings.
- Notice required for regular (including annual) and special meetings.
- Secretary, or whoever tabulates ballots, is final arbiter of ballot validity.
- Once quorum present, meeting or adjourned meeting may continue without quorum.
- Inspectors of elections (tellers) are final arbiters of eligible voters; number of voters; validity of votes, ballots, and proxies; counting votes; and results.
- Directors' terms may not be shortened by bylaw amendment decreasing directors.
- Directors can only be removed by members at a meeting with prior notice.
- A vote of a majority of the directors present is required for board action, unless the articles or the bylaws require greater vote (i.e., abstentions are equal to voting "no").
- Board can create committees of directors with some of the powers of the board.
- Meeting, notice, quorum, voting, and waiver provisions applicable to board also apply to board committees.
- Board authorized to appoint additional officers not provided in the bylaws.

The following default provisions may be superseded by articles of incorporation or bylaws:

- In emergencies, only notice that is practicable needed for board meetings.
- Regular (including annual) and special membership meetings take place at principal office of corporation.

- 10 percent of the membership can call a special membership meeting (percentage can vary between 10% and 25% of membership.)
- Membership meeting notice must be between 10 and 60 days.
- Board chooses the membership meeting chair; otherwise, members may choose chair.
- Chair of membership meeting establishes meeting rules and agenda.
- Mail ballot permissible on any action.
- If meeting adjourns for lack of quorum, adjourned meeting has no quorum requirement.
- Directors elected by plurality vote.
- All power vested in the board. Some powers of board may be vested in “designated body,” which can include members.
- Directors continue serving until successors elected and qualified.
- Directors may remove a member-elected director for certain reasons, such as loss of eligibility for office or failure to attend bylaw-mandated number of meetings.
- Telephonic participation in meetings of the board may be permitted by the board.
- Special board meetings require written two days’ notice, need not state particular business in the call, not restricted to business in the call, and may be called by chair of the board, highest-ranking officer, or 20% of board.
- Board may remove any officer, with or without cause, and without notice.
- Members may amend bylaws by majority vote without notice. Board may amend bylaws, except provisions relating to member rights, director quorum and vote requirements, and director removal.
- Bylaws or articles may provide for regular (including annual) or special membership electronic meetings with members having only rights to hear or read proceedings, ask questions, make comments, and vote.

Full provisions of the 2008 MNPCA (all 143 pages) can be viewed online at <http://ali.state.al.us/docs/Nonprofit-Corp-Act-8-2008.pdf>. Also, you may wish to read the comments on the MNPCA by Michael Malamut, President of the American College of Parliamentary Lawyers, at http://www.michaelmalamut.com/articles/2009Q1_-_2008_Model_Nonprofit_Corporation_Act.pdf.

The ABA intends to keep the MNPCA current through continuing revisions, so it is possible that present MNPCA provisions could be changed with little notice.

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Jim Slaughter is President of the Greensboro, NC, law firm Forman Rossabi Black, PA, and is a member of CCAL’s Board of Governors. He is a Certified Professional Parliamentarian and Professional Registered Parliamentarian and served as first President of the American College of Parliamentary Lawyers. Jim’s Web site at www.jimslaughter.com contains many useful articles and charts on meeting procedure.



March 13, 2009

The Honorable Christopher Dodd
Chairman, Senate Banking Committee
U.S. Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Dodd:

Community Associations Institute (CAI), representing the more than 60 million Americans who live in community associations across the country, wants to ensure that H.R. 1106 helps distressed homeowners without placing costly and unintended burdens on communities and their homeowners.

Community associations may be condominiums, cooperatives, planned communities or homeowners associations. They are distinguishable from other residential units in that the owners in these communities are contractually obligated to support common elements of the community through monthly assessments. These assessments pay for a broad range of infrastructure that ranges from roads, parks, and clubhouses to sewer services, other utilities like water and power, and maintenance to common structures. Most community associations are organized as nonprofit corporations.

Community associations allow for growth in the available housing stock by shifting many of the costs associated with building and maintaining the community from the local government to the residents who will be the primary users of the neighborhood infrastructure. This allows for the expansion of housing stock with minimal impact on local government budgets. In fact, since association residents still pay all applicable state and local taxes for services that they are often providing themselves, this frees up state and local resources for other purposes. In 2007, community association residents assessed themselves roughly \$41 billion dollars for operations and maintenance, along with more than \$35 billion for longer term capital replacement costs.

Community associations range in size and scope so generalizations are difficult. At one extreme you have the typical association found in the District of Columbia and many other cities that consists of two, three or four units in a divided row house. Each resident has ownership of their unit, but shares the ownership of the common elements – walls, roof, elevator, yard, etc. – and is obligated to pay a share of the cost of maintaining these elements. On the other end of the spectrum are large-scale communities in which hundreds or thousands of residents pay assessments that

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A M E R I C A ' S A D V O C A T E F O R R E S P O N S I B L E C O M M U N I T I E S

The Honorable Christopher Dodd
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provide for roads, maintenance of common areas, parks, recreational facilities and even services such as security, traffic enforcement, sewers and public transportation.

Regardless of an association's size, assessments assure an association is properly funded and are critical to maintaining viable communities, protecting property values for all residents and preventing costs from being shifted back to local governments. The assessment funding stream is considered so vital to maintaining properties in common-interest communities that assessment delinquency rates are part of mortgage underwriting criteria used by Fannie Mae and Freddie Mac. Congress has also recognized their importance and acted to specifically protect association assessment obligations under Chapter 11 section 523(A)(16) of the bankruptcy code.

In addition to these federal protections, some states have super-priority liens that place the debts owed to an association in a position superior to the primary mortgage on the property, while others provide for assessment liens that are subordinate to the primary mortgage. As the mortgage modification process created by H.R. 1106 seeks to protect homeowners and communities from the negative impacts of foreclosure, the process should not prejudice the limited ability of associations to secure payment for delinquent assessments that would otherwise be available.

Attached you will find a Florida-based study that discusses the challenges faced by community associations from delinquent homeowners, specific examples from other states and a recent article on the impact of the housing crisis on our members. This information supports the concerns outlined in this letter.

We feel that with minor changes, the provisions of H.R. 1106 could be improved to assure that homeowners facing financial crisis can benefit from the modification process—but without inadvertent and unintended burdens being placed on their community association and their fellow homeowners. .

CAI's Concerns:

Amendments to H.R. 1106, as adopted by the House, make important reference to the President's Home Affordability and Stability Plan. Specifically, H.R. 1006 references the elements considered to be essential to a sustainable payment. They include amounts for principle and interest, mortgage insurance premiums, homeowner association dues, ground rent and special assessments. CAI strongly supports this express list of associated expenses that need to be included in calculating the modified payment for affected homeowners. We are concerned however, that as written, the definition of debtor's payment in H.R. 1106, Section 100 opens the door to modification of expenses beyond the mortgage or at the very least, creates confusion as to what expenses can be modified by the court.

Definition of "Payment"

Specifically as written H.R. 1106 in section 100 uses a parenthetical to define payment as to include such expenses as real estate taxes, hazard insurance, mortgage insurance premiums, homeowners association dues, ground rent and special assessments. It is clear from reviewing the President's homeowner affordability plan that the intent is to reduce the mortgage payment to a level that, when these other expenses are added to the base payment, they meet specific income threshold requirements. We feel that the statute, as drafted, would be ambiguous and could be interpreted to allow for the modification of the various enumerated non-mortgage costs.

Since the intent of the President's plan is to modify mortgages to establish a sustainable payment, we suggest that the language in this section be clarified by adding the words "advanced or paid by the mortgage holder" as presented below, or any other language that would make it clear in the statute that these associated non-mortgage costs are not subject to modification.

(A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments advanced or paid by the mortgagee) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

Subordinate Interests

Our second concern is with the language in Section 103: Authority to Modify Certain Mortgages, subsection 11. The intent of this section is to provide authority to modify mortgage language found in the parenthetical which reads, "(and the rights of the holder of any claim secured by a subordinate security interest in such residence)." However, this language appears to authorize the modification of non-mortgage related subordinate liens. Is the intent of this section to modify only the rights of the mortgage holder, or is the intent to modify the rights of the mortgage holder and all subordinate security interests?

Our attorney member analysis indicates that this provision could be used to modify the rights of subordinate security interest holders that could include secured liens for such diverse items as association assessments, local real estate, school and other taxes, child support payments and other costs. In application, it may come to pass that most subordinate interests will not be satisfied due to the value of the property and superior interests. However, it seems prudent that if there is even a remote possibility of collecting these other amounts, that opportunity should not be prejudiced under this act. If the underlying concern is modifying the rights of the mortgager, we suggest the following language:

(11) notwithstanding paragraph (2), with respect to a claim for a loan originated before the effective date of this paragraph and secured by a security interest in the debtor's principal residence that is the subject of a notice that a foreclosure may be commenced with respect to such loan, modify the rights of the holder of such claim (and the rights of the holder of any claim secured by a subordinate mortgage interest in such residence)

Excessive Fees

Our final concern is in section 104, Combating Excessive Fees. This section under subsection (3) creates a notice and filing process for any “fee, cost or charge” that is pending and arises from a debt secured by the principle residence.

Preventing fees and excessive charges from undermining the benefits of mortgage modification and preventing lenders for making up their losses on the fee side is understandable. However, as drafted this provision places an undue burden on all other legitimate debt holders to whom money is owed and which is secured by the property. While a for-profit enterprise may be able to pass the costs incurred through this filing process on to other clients, nonprofit associations run by homeowner volunteers cannot easily absorb this function or the associated expense. We believe this would also be true of local units of government and others with a debt interest secured by the property. Since we read this section as trying to prevent a mortgagee from recovering the loss on reformed mortgages through fees, we would support language to limit this requirement to mortgage debt secured by the property. The new subsection (3) under Section 104 would read:

(3) the debtor, the debtor's property, and property of the estate are not liable for a fee, cost, or charge issued or made by the mortgagee modified under this program that is incurred while the case is pending and arises from a debt that is secured by the debtor's principal residence except to the extent that—

Conclusion

CAI recognizes that the housing market is facing challenges of historic proportions—challenges that require aggressive action to stem the tide of foreclosures by exploring alternative remedies that keep people in their homes. Many of our members are taking similar steps to work with individual homeowners at the community level to maintain families in their homes without creating additional burdens to other owners or the association itself.

We are encouraged by the inclusion of homeowners association assessments in the calculus of sustainable payments outlined in the President’ Home Owner Affordability Plan. However, because the financial health of community associations, the property value of homes within these communities and the personal financial well-being of every individual homeowner in a community is tied to each and every owner living up to their obligation to pay for common

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expenses, we want to ensure that in the effort to address housing issues the ability of the association to collect assessments on a forward looking basis and the ability to collect past due assessments are not unduly compromised.

Such an outcome would have a substantial negative impact on a significant fraction of the housing market, would be counter-productive to the goals of the underlying legislation and could in fact cause additional homeowners and even entire community associations to experience financial failure.

We appreciate you hearing our concerns and stand ready to supply additional feedback and data to help ensure the final outcome of this process is a bill that addresses the underlying housing challenges without in advertently damaging the one in five homeowners who reside in community associations. I can be reached at 703-797-6338.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Skiba". The signature is written in a cursive style with a large, sweeping initial 'T'.

Thomas M. Skiba, CAE
Chief Executive Officer
TMS/asf



October 23, 2009

Mr. David H. Stevens, Commissioner
Federal Housing Administration
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

Dear Commissioner Stevens:

On behalf of Community Associations Institute (CAI) and its members, I am writing to you in regards to the Federal Housing Administration's (FHA) new regulations concerning condominiums as outlined in the Mortgagee Letter 2009-19. As you are aware, these regulations change the review and approval process for a condominium to qualify for FHA mortgage insurance. As proposed, the current spot approval process would be replaced by two processing options, and projects approved under either option would expire two (2) years from the approval date.

While CAI strongly supports efforts by FHA and other entities to ensure long-term stability in the mortgage insurance process, emerging indications from our members suggest that the FHA proposal will actually serve to further destabilize the housing market. Due to the common ownership obligations within condominiums and other community associations, this destabilization could be compounded, undermining the financial position of otherwise financially secure homeowners. As more than one in five homeowners currently live in a community association, the implications are immense. Specifically, our concerns are that the new regulations will create significant impediments to the resale of existing condominium housing stock, increase costs for the existing condominium association owners, push more families into financial distress, and impede sales in new condominium developments with existing owner-occupants.

CAI requests that the implementation of the new requirements be withheld for an additional 120 days to allow for a greater dialogue between FHA and communities on the impact of the proposed regulations and to provide a reasonable period of time for community associations to prepare to comply with imposition of the new requirements. We have attached a more detailed analysis of our concerns and hope this can serve as the beginning of a dialogue between CAI and FHA on this topic.

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Mr. David H. Stevens

October 23, 2009

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Community Associations Institute (CAI) is a national membership organization, with more than 29,000 members and almost 60 regional, state and metropolitan chapters. CAI is dedicated to fostering vibrant, responsive, competent community associations which include condominium associations, homeowners associations and planned communities. For more than 35 years, CAI has been the leader in providing proven education and resources for community associations and community association management across the country.

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Skiba". The signature is written in a cursive style with a large, stylized initial 'T'.

Thomas M. Skiba, CAE
Chief Executive Officer



October 23, 2009

Mr. David H. Stevens, Commissioner
Federal Housing Administration
U.S. Department of Housing and Urban Development
451 7th Street S.W., Washington, DC 20410

**RE: CAI Comments and Recommendations Based on HUD Mortgagee
Letter 2009-19: Condominium Approval Process**

On behalf of Community Associations Institute (CAI), representing more than 29,000 individual members, 60 local chapters and the interests of the one in five homeowners living in a community association, please find below the comments and concerns expressed to us by our members related to the HUD Mortgagee Letter 2009-19 addressing the Condominium Approval Process.

While CAI strongly supports efforts by FHA and other entities to ensure long-term stability in the mortgage insurance/underwriting process, emerging indications are that the net effect of the FHA proposal, combined with the simultaneous and uncoordinated efforts by Fannie Mae and Freddie Mac, will actually serve to further destabilize the housing market. Due to the common ownership obligations within condominiums and other community associations, this destabilization could be compounded, undermining the financial position of otherwise financially secure homeowners. As more than one in five homeowners currently live in a community association, the implications are immense. Specifically, the new regulations will: create significant impediments to the resale of existing condominium housing stock, increase costs for the existing condominium association residents, push more families into financial distress, and impede sales in new condominium developments with existing owner-occupants.

We hope these comments can assist the department in its efforts to address the current challenges in the mortgage markets.

I. **Issues Relating to the Creation, Development and Initial Operations of a Condominium Community Association**

A. Proposed Regulation-Concentration Limit: Projects consisting of three or fewer units will have no more than one unit encumbered with FHA insurance. Projects consisting of four or more units will have no more than 30 percent of the total units encumbered with FHA insurance.

CAI Comments: The proposed FHA concentration limits will severely limit the development and resale of condominiums, especially in urban areas. This will have several negative effects on the market. First, the concentration limits proposed in the new FHA regulations unfairly punish good projects with market acceptance. Currently, the condominium form of development is the preferred method in jurisdictions that place a premium on the conservation of land resources, energy, and transportation resources. Applying blanket concentration limits without consideration given to the particular market and project will unfairly punish those jurisdictions and developments which seek to achieve these goals. Currently, there are no concentration limits on traditional single-family products. The discrepancy in the treatment of condominium and traditional lot product directly translates into less energy savings, poor air quality, and suburban growth away from city centers.

Additionally, for existing projects, no guidance is provided on how to monitor existing FHA concentrations. Presumably, for existing projects, this would require the condominium association board of directors or its manager to provide concentration limits in conjunction with an approval processed through HRAP or DELRAP. As nonprofit entities, condominium board members are volunteer community leaders; most do not have access to resources necessary or required to provide this information without significant expense. As such, we fear that an abrupt transition from the spot approval process to the proposed processing options will place an undue burden on association volunteers and/or condominium managers. The time it will take to position the association to comply with these requirements will remove viable financing options and limit the marketability of thousands of developments across the country. Due to the common-ownership element, this means that even financially secure unit owners could find their properties unmarketable.

Finally, combined with the proposed 50 percent presale requirement, if FHA financing is only available for 30 percent of the units, some developments may reach the presale requirement but never be able to close because conventional financing is not available or the purchasers do not qualify for conventional financing. This is especially a problem in workforce and affordable housing projects and small condominiums characteristic of metropolitan housing - such as three story walk-ups in Chicago, Boston and other similar areas. The historical building configuration in these areas is usually 3, 6, 12, 18 units and so forth. Instead of encouraging

homeownership in these areas, the proposed concentration limit prevents homeownership by these populations—defeating the mission of FHA.

CAI Recommendation: CAI believes that FHA can move to limit its exposure and still provide ownership opportunities by imposing concentration limits of 50 percent for all borrowers in all markets and up to 80 percent concentration for borrowers in distressed markets subject to the following criteria:

Distressed Markets

Up to 80 percent concentration for borrowers in distressed markets, subject to the following criteria:

- A presale requirement of 50 percent
- Requiring a 5 percent down payment for applicants with a credit score of 660-699
- Requiring a 3.5 percent down payment for applicants with a credit score of 700 or higher
- Additional working capital collected at each closing equal to 1 month estimated assessments, provided it is not used to pay operational expenses.

Non-Distressed Markets

Up to a 100 percent concentration for borrower in non-distressed markets subject to the following criteria:

- Requiring a 5 percent down payment for applicants with a credit score of 640-659
- Requiring a 3.45 percent down payment for applicants with a credit score of 660+
- A presale requirement = 50 percent
- Additional working capital collected at each closing equal to 1 month estimated assessments provided it is not used to pay operational expenses

Distressed markets would be defined as the appraisal reflecting a declining market.

- B. Proposed Presale Requirement:** The new regulations require that at least 50 percent of the total units must be sold prior to endorsement of any mortgage in the project.

CAI Comments: We believe that a lower presale requirement is justified based on current market conditions. In addition, a 30 percent presale requirement will promote larger phases, reduce developer administrative costs, and increase the likelihood that legal phases will more closely conform to construction phases.

CAI Recommendation: Thirty percent presale requirement (for a phased project, 30 percent on the first phase, and calculated cumulatively on subsequent phases).

- C. Proposed Regulation-Developer Turnover of Control:** Transfer of control of the homeowners association shall pass to the owners of units no later than: (i) 120 days after the date 75 percent of the units are conveyed to unit purchasers; or (ii) one (1) year after completion of the project evidenced by the first conveyance to a unit purchaser.

CAI Comments: The proposed regulation is not feasible even during improved market conditions. Before transition occurs, the owners should have sufficient time to become familiar with the responsibilities associated with management of the association. These tasks are best accomplished gradually after the owners have had the opportunity to participate as a member in association matters. The Uniform Condominium Act provides for a two-step transition to owner control and most states have adopted a similar system to introduce unit owners to the responsibilities associated with community governance.

CAI Recommendation: If the state where the project is located has express laws governing the transition of control from the developer to unit owners, we believe the state law requirement should control. For states without laws governing transition of control from the developer to unit owners, the earlier to occur of: (i) three years after the first conveyance of a unit to a unit purchaser; or (ii) 120 days after 75 percent of the total number of units planned for the project are conveyed to unit owners other than the developer.

- D. Proposed Regulation-Certificates of Occupancy:** A final certificate of occupancy is required as a pre-condition to project approval. Temporary certificates of occupancy are not permitted.

CAI Comments: The temporary certificate of occupancy is a means adopted to allow occupancy of a portion of the project when individual unit final certificates of occupancy will not be issued until all components of a building or project are complete and have been inspected. Jurisdictions that have adopted the temporary C/O recognize that their required permitting process often delay the issuance of final certificates well after portions of the project are habitable and meet applicable safety and building code requirements. Requiring a final certificate of occupancy as a pre-condition to approval will delay closings, will increase development costs, and could jeopardize an otherwise successful project.

CAI Recommendation:

For those jurisdictions which issue certificates of occupancy, a temporary certificate of occupancy should be accepted when (i) the temporary C/O indicates that the unit is habitable and eligible for immediate occupancy; (ii) the jurisdiction issuing the temporary C/O has requirements regarding eligibility and habitability for occupancy of a unit; and (iii) the common areas are substantially complete.

For jurisdictions which do not issue a certificate of occupancy, the provisions outlined in ML 2001-27, as modified by 2009-19 should, be imposed.

- E. Proposed Regulation-Commercial Floor Area:** No more than 25 percent of the property's total floor area in a project can be used for commercial purposes.

CAI Comments: Mixed-use developments are becoming more prevalent given the desire of local officials to more carefully conserve energy and transportation assets, enhance environmental benefits, and promote sustainable lifestyles. The demand for these types of developments is likely to increase as the Congress explores new regulations to combat global climate change. An arbitrary restriction on the commercial component of a project will promote the concentration of FHA insured loans in suburban areas and away from the urban core. This is similar to the approach currently used by Fannie Mae. If the project has commercial space that exceeds 20 percent of the project area, the applicant must submit through the Fannie Mae PERS system and request a waiver.

CAI Recommendation: Projects with more than 25 percent of the project's floor area used for commercial purposes should be eligible for approval under the HRAP process. Approval should be granted where the applicant provides reasonable evidence that, after consideration is given to projected reserves, residential common areas can be properly maintained with assessments levied against residential owners; and common areas that benefit residential and commercial unit owners can be properly maintained with assessments levied against commercial and residential unit owners.

II. Issues Relating to the Operation of a Condominium Association

- A. Proposed Regulation-15 Percent Delinquency:** No more than 15 percent of the total units can be in arrears (more than 30 days past due) of their condominium association assessments.

CAI Comments: The requirement that no more than 15 percent of the total units can be more than 30 days in arrears on association assessments is an arbitrary number and does not adequately measure the financial health of the community. Increasingly,

associations are budgeting for bad debt, thus even though 15 percent of the units may be delinquent, the association may still be able to meet its budget obligations to maintain the associations common property. Therefore, if an association maintains an allowance for delinquent assessments and the delinquencies do not exceed any budgeted bad debt allowance, the delinquencies should have no impact on funding continued operations and routine maintenance.

Additionally, a 30-day test for delinquencies fails to take into account time periods required under various state laws with respect to any notice and mandatory payment plans. The association must comply with these time periods as a precondition to its collection efforts. In many cases, the association begins the process of tracking and seeking collection at or beyond the 30-day delinquency date, thus making a delinquency determination at such an early date difficult.

Associations also have a range of tools to manage cash flow and raise additional needed funds during a fiscal year. An association may borrow against a reserve fund to meet unexpected financial obligations such as mechanical failures, or unplanned utility cost spikes. An association may also vote to collect a special assessment or increase assessments to meet budgeted financial obligations. Focusing solely on the delinquency rate of the total units does not provide an adequate perspective or measure of the association's fiscal health.

CAI Recommendation: Community associations should have no more than 15 percent of the total units more than 90 days past due and any analysis of delinquency rates should also take into consideration current bad debt allowances in the association budgets and any supplemental funding mechanisms exercised by the association in the current budget year.

B. Proposed Regulation-Reserve Studies: A current reserve study must be no more than 12 months old.

CAI Comments: A reserve study includes the estimated life of certain capital components and the estimated costs to replace them adjusted for the effects of inflation. A new reserve study is required only if there is a fundamental change in the project, e.g., the expansion of the association, the addition of new amenities or new replacement methods. The infrequency of these fundamental changes does not justify the costs associated with preparing a new reserve study each year. CAI has established reserve study guidelines which also are included in the Common Interest Reality Association (CIRA) Audit Guidelines published by the American Institute of Certified Public Accountants.

CAI Recommendation: A reserve study should be submitted and must be no more than five (5) years old unless otherwise required by state law.

C. Proposed Regulation - Recertification of Project Approval: Existing condominium project approvals will expire two years from the date placed on the list of approved condominiums.

CAI Comments: This proposed regulation will disproportionately affect the resident controlled condominium association. The resident controlled condominium association is funded through member assessments. Thousands of these projects whose continued success relies on resales supported by FHA mortgage insurance would be required to spend considerable time and financial resources on securing approval. CAI believes that the 2 year expiration will introduce unnecessary chaos in an already chaotic financing environment.

CAI Recommendation: Unless specific and extenuating circumstances affecting a particular project are identified, CAI would encourage FHA to accept an existing Fannie Mae, Freddie Mac or VA approval in lieu of requiring recertification subject to satisfaction of applicable FHA owner-occupancy requirements.

D. Efficient Access to Mortgage Markets:

FHA mortgage insurance is a necessity in today's economy. Under the proposed regulations, spot approval is eliminated. Spot loan approval is the most frequently used means to obtain FHA insurance for the purchase of a condominium unit in an existing and mature project. The new regulations would require approval through HRAP or DELRAP. For the mature condominium project, where the condominium association desires a means to ensure that purchasers of units have access to FHA financing, the association will be required to initiate and oversee approval under HRAP. Community associations are managed by a board of owners serving in a voluntary capacity with the assistance, in many cases, of professional association managers. Neither condominium unit owners nor professional association managers have the necessary expertise to administer the HRAP process. Requiring the association to initiate the HRAP process and certify the information will consume association funds which would otherwise be used to maintain community common areas and would impose liability that boards and managers will refuse to assume.

CAI has three main concerns regarding aspects of the Mortgage Letter that will restrict the flow of mortgage credit to condominiums.

First, the elimination of the spot loan approval process will require an entire project approval for possibly one loan in an existing association. The fact that it is an existing association means that there should be less risk – key underwriting facts are immediately available, not the least of which is an income and expense history and a balance sheet. The added cost and time required for underwriting the entire project

together with the requirement of an environmental report will make FHA a less viable option.

Second, we are concerned that the HRAP and DELRAP processes are mutually exclusive. Mixed condominium review should be permitted. The existing condominium association should be permitted to independently utilize HRAP and not be prevented from seeking approval if a single lender has previously used DELRAP. We are concerned that the DELRAP approval process is subject to abuse. A lender with Direct Endorsement Authority can pull all case numbers for a particular project without the consent of the association or developer thereby preventing competing lenders from the DELRAP process. We further believe that elimination of spot loan approval and the restriction against mixed condominium review will reduce competition for mortgage loans: only a handful of national lenders have the staff and resources to perform DELRAP – some 7,000 community banks will likely be eliminated as competitive sources of mortgage credit for condominiums.

Third, CAI is concerned that the prohibition against mixed review could result in the ultimate elimination of HRAP. Fannie Mae tried to eliminate its in-house project approval process and rely solely on delegated underwriting by lenders, it was not readily accepted, few lenders could do it correctly and Fannie Mae had to reinstitute its internal project review process. The current housing problems derive, in part, from a lack of oversight in how private markets have functioned. There is no need to repeat this error.

In summary, CAI is concerned that unless FHA remains firmly and actively involved in the approval process, mortgage credit for condominiums will be restricted, the cost of financing condominium units will increase unnecessarily and the quality of underwriting will be insufficient—resulting in additional defaults and losses by FHA.

III. Creating Uniform Goals on Key Issues Related to Community Association underwriting:

As the only national organization representing the interests of the more than one in five homeowners living in a community association, CAI has a long history of working with state and federal agencies to build consensus-based policy solutions that serve to strengthen communities. CAI's work has extended to an active role in the creation and development of the Uniform Condominium Act, the Uniform Common Interest Ownership Act and similar statutes across the country. Through the years, we have also worked to bring uniformity to the underwriting criteria used by FHA, VA, Freddie Mac and Fannie Mae. Specifically, CAI convened successful task forces during past housing downturns and worked with key organizations such as the FHA to address uniformity issues some of this work resulted in Appendix 24 to HUD Handbook 4150.1.

The housing challenges facing FHA and CAI members today are of historic proportions. The critical role played by FHA in facilitating homeownership, the role condominiums play in creating affordable housing and the common interest element which binds units into a common fate, mean that the changes currently contemplated will have an impact beyond merely the record number of distressed properties. We hope that FHA is willing to look again at balancing the short-term demands for revision to the mortgage insurance process with the long-term viability of the 20 percent of all properties found in community associations.

As such we hope that FHA will consider the following:

- Reviewing the proposed requirements in the Mortgagee Letter 2009-19 and review the recommendations presented in this letter.
- Delay the implementation of the requirements by at least an additional 120 days to allow for additional stakeholder input and for time for affected associations to move toward compliance.
- Convene a stakeholder meeting with representatives of key industries to vet issues of common interest and to obtain input of industry experts.

We look forward to your response and to working with the FHA to address these concerns.

Sincerely,

Thomas M. Skiba, CAE
Chief Executive Officer

August 7, 2009

The Honorable Henry Waxman
Chairman
House Energy & Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Waxman:

On behalf of the Community Associations Institute (CAI), I wanted to make you aware of our members' concerns related to Section 209 of the American Clean Energy and Security Act of 2009 (HR 2454). CAI represents the more than 60 million Americans who live in a homeowners association, condominium, co-operative and other types of common interest communities.

As drafted, Section 209 would override the private covenants and agreements within community associations related to solar energy devices. It would also mandate the promulgation of federal regulations to govern the installation and use of such devices. While CAI and its members support the broad concepts of moving toward more clean and secure energy, we oppose the language found in Section 209. Our concerns include:

- There is no compelling reason to federalize the issue of solar panels in community associations. Currently more than 35 states have addressed this issue through state-level solar rights acts, solar access laws or both.
- The requirement that an association allow the installation of a solar device on "any residential structure designed for occupancy by 1 family" may require associations to allow a person to install a solar device on property they do not own, increasing maintenance and liability costs for all community residents.
- The rules and deed restrictions within community associations provide powerful tools for the adoption and enforcement of rules related to a host of conservation measures. Associations should be empowered to find solutions to meet the values of their community rather than having Congress mandate such solutions.

- CAI's experience in promoting good governance within community associations has taught us that sustainable solutions require buy-in from stakeholders. Section 209 was part of more than 300 pages of amendments added to HR 2454 just hours before the final vote. Such action undermines consensus building and removes local input for important community-wide decisions.

As the debate moves forward, it is our hope that you will take these concerns under consideration. Rather than focus on overriding community association agreements on a single issue, CAI hopes Congress can empower and incentivize citizens in community associations to take action on solar as well as a host of other environmental issues.

Regards,

Andrew S. Fortin, Esq.
Vice President
Government & Public Affairs

2008 CAI
STATE LEGISLATIVE ACTION COMMITTEE
ADVOCACY REPORT

Community Associations Institute
Government and Public Affairs Department

April 7, 2009

2008 STATE ISSUES OVERVIEW

One of the primary missions of Community Associations Institute is to ensure a fair and effective operating environment for our communities, managers and business partners. To achieve this goal, CAI is actively engaged in the public policy arena through active lobbying in state houses across the country. In fact, in 2008, CAI had close to 300 volunteer member advocates working as part of 30 state-based Legislative Action Committees to ensure the voice of community associations is heard.

CAI members fund advocacy efforts through the advocacy support fee. Of the money raised by the advocacy support fee, 100% is returned to state LACs on a pro-rata basis. In addition to the advocacy support fee, CAI maintains an Issues Advancement Fund (IAF) that provides grants to states in support of critical public policy projects. The IAF is funded through voluntary contributions and non-allocated advocacy support fees.

This report provides a look into how CAI's member-advocates put these resources to work in protecting community association autonomy and forwarding a pro-community agenda in 2008. Some notable accomplishments include:

- Passage of community manager licensing and credentialing legislation in Virginia.
- Defeat of an expansive Ombudsman bill in California which saved homeowners more than \$100 million in new fees and levies.
- Passage of association reserve legislation in Washington State that provides consumers with critical disclosures on reserve funding.
- Implementation of important collection/lien legislation in Pennsylvania, Rhode Island and California that will help associations collect past-due assessments.
- Defeat of legislation to micro-manage communities on a variety of environmental issues, preserving the right of associations to select approaches that meet their community needs.

We hope this report will help our members to better understand the many legislative challenges we face and to assist in facilitating the exchange of information between our 30 Legislative Action Committees and hundreds of member advocates.

Arizona

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Advocacy Highlights:

Ending Condo Act Exemptions – When Arizona enacted its 1985 Condominium Act, the law provided an exemption for certain options and exceptions for those condominiums created prior to January 1, 1986. In 2008, the Arizona legislature enacted HB [2726](#), effective January 1, 2009, removing language exempting pre-1986 condominiums from certain exemptions of the Act.

Proxies is one area of governance that will be impacted by the new law. In 2005, the Arizona legislature modified the Condominium Act to prohibit proxies. Under the pre-1986 condo exemptions, some condo developments were allowed proxies, while more recently constructed ones were not. HB 2726 will end such disparate practices.

Petitions – Notwithstanding any restrictions found in association governing documents, community associations in Arizona cannot prohibit the circulation of political petitions. HB [2440](#), effective September 25, 2008, prevents associations from prohibiting petition drives on issues ranging from candidate nominations, ballot initiatives, and referendums or recalls on property within the community dedicated to the public. Although the law bans associations from prohibiting petition circulation, it provides that an association may reasonably regulate the circulation of the petitions. The law also exempts associations that restrict vehicle or pedestrian access to association property.

California

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Personalized Property Management

Advocacy Highlights:

Collections/Foreclosures – The California LAC (CLAC) sponsored and secured the passage of SB [1511](#), the Association Solvency Act. The new law requires owners in possession of foreclosed properties to disclose their contact information. This allows associations to bill them for any assessments due within 15 days of escrow closing, saving millions statewide and keeping associations solvent. This was one of the few bills signed by the Governor, who vetoed most legislation as part of an ongoing budget battle with the legislature. It was also the only bill that addressed foreclosures in common-interest developments.

Ombudsman – Due to the successful efforts of the CLAC and CAI members, this third attempt to establish an ombudsman pilot program in California was vetoed by the Governor September 27, 2008. AB [567](#) proposed the creation of a new Common Interest Development Bureau/ Ombudsman Pilot Program. The Bureau would be empowered to (in part): offer training materials and courses to common interest development directors, officers, and owners; maintain a toll-free

telephone number and website for information and assistance purposes; and investigate and assist in resolving any dispute involving the law governing common interest developments or the governing documents of a common-interest development. The state would have levied an annual fee ranging from \$10 to \$20 per unit, for an estimated total of more than \$107 million over five years.

Assessment Collections – AB [952](#) would have required associations to establish a payment plan for any money owed the association upon request and to suspend association lien enforcement during any such plan. CAI opposed this legislation and, although it passed both chambers of the legislature, it was also vetoed.

Rental Restrictions – AB [2259](#) would have imposed restrictions on an association's ability to adopt and enforce rental restrictions. A grandfather provision in the legislation would have allowed some owners to rent units, but prohibited others. The legislation was opposed by CAI and CLAC, and the final version was vetoed.

Voluntary Board Member Education – AB [2806](#) was a CLAC-supported bill that would have created a voluntary board member education program. Board members who completed the course would have been required to disclose their achievement to homeowners during association elections. The bill would have required the association to include those candidate statements in the ballot materials for board elections. No additional liability for completing the course, or not completing the course, would attach to the person or association. However, the bill was vetoed.

California attributes its success this session to personal communication and advocacy with the Governor's legislative staff. In addition, CLAC launched a grassroots mobilization effort in opposition to AB 952 and AB 2259.

Colorado

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Advocacy Highlights:

Energy & Environment – Colorado weakened association rights to regulate a range of energy-saving and generation devices under HB [1270](#) that passed in the 2008 session. The law overrides existing covenants that ban the installation of energy-generating devices but allow for reasonable restrictions if installation costs are not significantly increased. The legislation also provides rights for homeowners to install enumerated energy-saving devices (awnings, shutters, trellises) on their home, but allows reasonable restrictions to be imposed by the association.

Fines, Due Process – HB [1135](#), as signed by the governor, requires associations to follow specific due-process procedures prior to fining a homeowner. The bill requires associations to adopt and follow enforcement policies and to include a ‘fair and impartial’ fact-finding process along with notice provisions. Hearings must be conducted by an “impartial decision maker.” The bill also incorporated federal requirements

Disabilities– Federal law requiring reasonable modifications to a disabled homeowner’s unit or common elements to ensure “full use and enjoyment of the unit” was incorporated into the Colorado Common Interest Ownership Act through the passage of HB [1135](#).

Mediation– HB [1135](#) also stressed the preference for the use and availability of the statewide Office of Dispute Resolution to resolve covenant enforcement issues.

Board Acts – HB [1089](#), signed by the Governor, offers an association new means to take action without a board meeting. Unless restricted in the association bylaws, a board may “meet” if written notice is sent to all board members of the action proposed to be taken; the notice states the time by which a director must respond; each board member votes, in writing “for” or “against” or abstains OR fails to respond; and if no board member demands a meeting for the proposed action.

Foreclosures, Timeshares – HB [1365](#), as enacted, allows more than one owner and more than one timeshare to be included in a foreclosure lawsuit in a timeshare association.

Connecticut

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Advocacy Highlights:

Nuisance Pets and Animal Control's Authority – The 2008 session began with many community association-related bills, only to see nothing critical pass. The LAC did come very close to seeing passage of HB [5829](#) regarding nuisance pets and animal control officers' authority. As introduced, it would have enabled animal control officers to impound roaming livestock and certain flightless birds; establish an owner and keeper notification process; establish fines for noncompliance by such owners and keepers; and enable municipal animal control officers to dispose of such livestock and flightless birds subject to certain conditions.

It passed the House and was put on the Senate calendar, but at the very last minute, it was pulled and did not reach a final vote.

District of Columbia

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Advocacy Highlights:

Water System Payments – The D.C. Council (“Council”) approved [B17-0980](#), a bill that would rework the way homeowners and business owners are charged for improvements to the city's storm water system. This legislation would charge owners a fee based on how much of their property is covered by a building, asphalt or other substances that prevent rainwater from seeping in. The money would be used to pay for projects that trap and filter rainwater, such as trees and plant-covered "green roofs."

City officials said that for next year the charge would be \$1.24 a month for a single-family house, an amount that might change as the city performs individual estimates, and about \$11,000 for a typical office building. In most cases, they said, the new fees would not be higher than the current storm water fee, which is based on water use. One exception would be parking lots, which would pay far more.

Accrued Leave – The Council adopted [B17-0197](#), the Accrued Sick and Safe Leave Act (ASSLA), that will have an effect on many operations. The ASSLA creates an obligation on WDC employers to provide paid medical leave to employees for physical and mental illness; preventative medical care; family care; and domestic violence or sexual abuse (known collectively as sick leave).

Among the provisions under ASSLA:

- An employee will not be entitled to paid sick leave unless he or she has been employed by his/her employer for at least one year and has worked at least 1,000 hours during the previous 12-month period immediately prior to the request for leave
- Employers with 100 or more employees must provide seven days paid sick leave per year to their employees
- Employers with 25 to 99 employees must provide five days paid sick leave per year to their employees
- Employers with less than 25 employees must provide three days paid sick leave per year to their employees
- Part-time employees are entitled to pro-rated sick leave
- The Mayor has discretion to exempt certain business from the application of the act upon demonstration of a hardship
- ASSLA shall not apply to independent contractors, students or classes of employees that earn their compensation primarily from tips and wages
- Employees bear the burden for procedural requirements prior to obtaining paid sick leave, where foreseeable

ASSLA also includes a section that makes it unlawful for employers to discriminate or retaliate against employees who use paid sick leave. Violations of ASSLA are punishable by civil fines of up to \$500 for a first offense, \$750 for a second offense and \$1,000 for a third or greater offense. Condominiums and cooperatives in the District of Columbia now need to comply with ASSLA to the extent that a condominium or cooperative has its own employees. Moreover, management companies and other service providers who provide site staff to condominiums and cooperatives in the District of Columbia also need to comply with ASSLA.

Florida

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Advocacy Highlights:

Management Licensing – HB [995](#) calls for a two-year license for the state’s association management firms. Each firm must designate a licensed Community Association Manager (CAM) to respond to complaints filed with the Florida Department of Business and Professional Regulation (DBPR), the agency that oversees activities relating to the management of condominium associations. The proposed legislation became the vehicle for at least two dozen various attempts to rewrite condominium and community association regulations. The bill’s provisions took effect in stages from its passage through January 2009.

Condominium Statute Amendments – HB 995 made sweeping changes to the Condominium Statute, including:

- Imposing mandatory property insurance coverage provided by each condominium unit owner, and authorizing the association to purchase coverage and to bill the cost of the coverage to those owners who do not comply with the provision
- Prohibiting all board member terms of office from exceeding one year without a revote of the membership to approve a term of no more than two years
- Prohibiting co-owners, in associations of more than 10 units, from being on the board at the same time, and enacts provisions requiring all candidates for the board to sign a statement certifying they have read and understand the condominium statute and association documents

- Requiring that the association's auditors state that the reserve calculation will be adequate to pay for capital repairs in the future, as well as a requirement for an audit to be done at least every fourth year
- Prohibiting owners delinquent in their payment of association assessments from being board candidates
- Providing that any board member who becomes 90 days delinquent in the payment of association assessments is considered as having abandoned his/her position on the board
- Broadening improvements to the emergency powers available to the association's board in the event of a declared disaster. Powers authorized include the ability to:
 - Conduct board and membership meetings with notice given as is practicable, even if the statute or documents would otherwise require greater notice
 - Name as assistant officers persons who are not directors and provide that these assistant officers shall have the same authority as the executive officers they assist during the state of emergency in the absence or incapacitation of any association officer
 - Implement a disaster plan before or immediately following the event for which a disaster has been declared, including, but not limited to, disabling elevators, electricity, air conditioners, water, sewer or security systems
 - Declare any portion of the condominium property unavailable for entry or occupancy to unit owners, family members, tenants, guests, agents or invitees to protect health, safety and welfare
 - Cancel and reschedule any association meeting
 - Require the evacuation of the condominium property in the event that the local authority issues an evacuation order
 - Mitigate further damage, including the ability to contract for debris removal, removal of wet drywall, insulation, carpet, cabinetry or other fixtures inside the units to prevent or mitigate the spread of mold, mildew or fungus
 - Contract, on behalf of an individual unit owner, for items or services for which the owners would ordinarily be responsible but which are necessary to prevent further damage to the condominium property. Some of these services could include the drying of units, the boarding up of broken windows or doors, the replacement of damaged air conditioners or air handlers to provide climate control in the units as well as to other portions of the property
 - Levy special assessments without a vote of the membership, even if a contrary provision requiring such approval exists in the condominium documents
 - To borrow money, without owner approval, and pledge association assets as collateral to fund emergency repairs and carry out the association's duties when the operating funds are insufficient
 - In the event the association chooses to undertake these emergency services, the unit owner(s) benefiting are responsible for reimbursing the association for the actual costs of the items or services

Georgia

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Today Management

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Timbers of Vinings

Advocacy Highlights:

Insurance – HB [1121](#) provides needed clarity to both associations and the insurance industry by clearly defining what a condominium association must insure. This legislation amends the condominium insurance statute to expressly require that the association insure all portions of each building which are common elements (including limited common elements), all foundations, roofs, exterior walls, including windows and doors and the framing, and all of the following items regardless of who is responsible for maintaining them under the condominium instruments: (a) the HVAC system serving the condominium unit; (b) all sheetrock and plaster board comprising the walls and ceilings of the condominium unit; and (c) the following items within the unit of the type and quality originally installed: floors and subfloors, walls, ceilings and floor coverings, plumbing and electrical lines and fixtures, built-in cabinetry and fixtures, and appliances used for refrigeration, cooking, dishwashing and laundry. Signed by the Governor, it became effective July 1, 2008.

Lien Minimum – HB [422](#) provides that no foreclosure action with respect to an assessment lien shall be permitted unless the amount of the lien is at least \$2,000. The bill also includes a provision that states that “to the extent provided in the covenants, the obligation for the payment of assessments and fees arising from covenants shall include the costs of collection, including reasonable attorney’s fees actually incurred.” This provision provides homeowners associations not subject to the Property Owners’ Association Act with statutory authority to recover all of their attorney’s fees in assessment collection actions. This legislation became effective July 1, 2008.

Xeriscaping – Facing a record-breaking drought, the state legislature took up HB [1322](#)/SB [217](#), legislation that would have prevented associations from enforcing covenants that require the use of specified grasses, shrubs, trees or bushes unless “xeriscaping principles” are recognized and applied. This bill did not make it to the floor for a vote.

Assessments Suspension – HB [800](#) would have suspended a homeowner’s assessment obligations if a board failed to comply with the association governing documents. This bill failed in committee.

Rental Restrictions – HB [261](#) would have prevented an association from enforcing rental limitations against any owner who did not approve them.

Hawaii

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Advocacy Highlights:

Condo Investments – HB [2460](#), signed into law, adds certificates of deposit placed through the Certificate of Deposit Account Registry Service as a permitted investment for condominiums.

Planned Communities – Also signed into law, HB [2894](#) revises the definition of planned community associations under the Hawai'i Planned Community Associations Act (Chapter 421J, Hawai'i Revised Statutes). HB 2894 empowers the boards of planned community associations to restate their governing documents to incorporate amendments and to comply with statutory and regulatory provisions, and simplify the amendment of planned community association documents.

Disputes – HB [3331](#) clarifies statutory administrative hearings procedures for condominium disputes. Specifies dispute resolution parameters related to the interpretation or enforcement of a condominium association's bylaws, house rules, or certain other matters. Allows parties whose dispute is not resolved by mediation to file for arbitration or a hearing by the Department of Commerce and Consumer Affairs no sooner than 30 days from the termination date of mediation. Makes more widely available the option for an administrative hearing. Signed into law, there is a June 30, 2009 sunset provision for this legislation.

Clotheslines – The Hawai'i LAC was successful in persuading the Governor to [veto SB 2933](#) which would have voided any covenants prohibiting or regulating the location of clotheslines for any single-family residential dwelling or townhouse. The legislature failed to override the veto.

Illinois

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Vanguard Community Management

Barbara D. Wick, CPCU, ARM, AIS, CIRMS

Advocacy Highlights:

Condominium Manager Licensing – The LAC continued its work on comprehensive manager licensing legislation. SB [2128](#) would amend the state's Condominium Property Act by requiring the licensing of community association managers. It would also create a Community Association Manager Regulatory Commission to implement a licensing regime; require a certification of a CMCA or similar program developed by the state for licensure; and provide for a disciplinary process for licensees. Although the bill did not pass in this session, significant progress was made in building consensus for 2009.

Distressed Property – HB [5037](#) would establish procedures for addressing distressed condominium property that is a danger, blight or nuisance to the surrounding community. The legislation would define distressed condominium property, and empower courts to authorize receivership and to otherwise secure the distressed property in question. This IL-LAC supported bill passed the House, but did not make it through the Senate.

Rental Restrictions - HB [5189](#), opposed by the IL-LAC, would restrict a community association's ability to impose rental restrictions on units. Under the language of the bill, associations would require existing unit owners to lease units and thus be exempt from any leasing restrictions a board may adopt. This legislation saw some action in the House of Representatives, but did not proceed beyond the Rules Committee.

Maine

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Dirigo Management

Advocacy Highlights:

On November 17, 2008, Maine was approved as CAI's 30th LAC.

Maryland

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Windsor Green HOA

Advocacy Highlights:

Master Policy Insurance – Under HB [646](#), the amount of the condominium master policy insurance deductible that can be shifted to individual unit owners by a condominium's bylaws was increased from \$1,000 to \$5,000. Signed by the governor, this new law applies to casualty losses beginning October 1, 2008.

Separately, the Maryland Court of Appeals ruled (*Anderson v. Council of Unit Owners of the Gables on Tuckerman Condominium*, 948 A.2d 11, 404 Md. 560 (2008)) in mid-April that: 1) the Condominium Act requires a unit owner to repair all damage which occurs in the unit, and 2) the Act does not require the condominium master insurance policy to insure damage to units. The LAC supports legislation to amend the Condominium Act to require that individual condominium units be included in the master insurance policy, and that individual unit owners be responsible for the cost of repairs up to the insurance deductible amount. Condominium casualty insurance coverage for individual condominium units legislation is expected to be introduced in 2009.

Assessment Liens – HB [645](#) has increased the time for enforcing condominium/homeowner association assessment liens by foreclosure. In an effort to aid collection of assessments on sales or refinances, since some title companies have not been requiring payment of assessment liens that could no longer be foreclosed after three years, this increase to 12 years corresponds to the duration of a court judgment. This bill was signed by the governor and took effect October 1, 2008.

Solar Collectors – HB [117](#) provides that any restriction on use regarding land may not impose unreasonable limitations on the installation of a solar collector system. Essentially, solar panels will be allowed in any area under the exclusive use and control of the owner of the property, a situation very similar to satellite dishes.

Liens after Forecloses – A MD-LAC initiative regarding payment of assessment liens after a lender foreclosure did not pass. HB [682](#) would have required the purchaser (other than the lender) to pay up to six months of assessments due prior to the foreclosure sale. If the lender purchased the property, that amount would be paid by the person who acquires the property from the lender. HB 682 does not establish a “priority lien” to be paid before the lender gets paid from the foreclosure sale proceeds, but the bankers’ trade association vigorously opposed the bill. The LAC intends to pursue this legislation in 2009.

Fidelity Insurance – Initiated from the state’s Attorney General’s Consumer Protection Division (“Division”), HB [1053](#) would have required the board of a co-op, condominium, or homeowners association to obtain a fidelity bond in an amount of not less than three months gross common charges covering the directors, officers, managers and employees charged with operation and maintenance of the property. The bill did not pass, but is expected to resurface in 2009.

Association Reserves – Another Division initiative, HB [993](#) would have required developers of condominiums and homeowners associations to pay assessments on each unit/lot owned until sold, and would require a reserve study roughly once every five years. The bill did not pass, but is expected to resurface in 2009.

Transition Procedures – The Division proposed, but did not see pass, HB [950](#) that would have required various procedures to be followed at the time of turnover of control to the homeowners.

Massachusetts

LAC Members

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Advocacy Highlights:

Open Meetings – SB [769](#) would have required homeowner associations to conduct all association business in open meetings, with only a few exceptions allowed for personnel matters and consultations with legal counsel or association staff members on pending or potential litigation. The LAC supported the legislation’s goal – making association governance more transparent – but felt that it failed to strike the necessary balance between transparency and the need for associations to function effectively. The LAC could support clarifying language in the legislation specifically authorizing executive sessions for community associations and detailing the purposes for which they can be held. This legislation was referred to study committee.

Manager Licensing – HB [317](#) would establish a five-member board (to include only one association manager) registering condominium managers. The LAC viewed HB 317 as making the conduct of business more complicated and more difficult for managers, imposing arbitrary rules and oversight from a source that doesn’t understand the industry or the day-to-day realities of what it means to be an association manager. This legislation was referred to study committee.

Voting – The LAC opposed HB [1274](#) because it overturns the existing voting structure for condominiums. Under the existing system, owners with a larger percentage interest in the community pay a larger share of the common expense and have a proportionally larger voice in association governance. Although arguably easier and more practical, the one-unit-one-vote approach gives a member with potentially much less ownership interest in the common area an equal vote in matters that might cause another owner a much greater expense. The vote based on percentage interest is appropriate, and should remain the standard. This legislation was also referred to study committee.

Construction Defects – The LAC opposed SB [777](#) on the grounds the legislation “jeopardizes the rights of condominium associations” attempting to pursue construction defects claims. The most serious problems:

- The procedures require associations to disclose in advance information that “they might decide not to disclose for strategy reasons.”
- The notice requirements and time periods allowed give contractors ample time to shed assets, “rendering any potential claim uncollectible. “

This legislation was referred to study committee.

Condominium Taxation – A number of tax measures were considered, including HBs [2850](#) and [3055](#) - legislation proposing to tax a declarant's reserved interests in a condominium. Calling these bills "overly broad and somewhat vague," the LAC testified that they "could expose unit owners to separate or double taxation." Both bills were referred to study. A third bill, HB [2990](#), that would also allow municipalities to take condominium units for non-payment of taxes without paying the unit's share of common area expenses, saw several committee hearings.

Another refilled tax measure also sent to study committee, HB [3007](#), would "subject unit owners to double taxation on common area land." A fifth tax measure, HB [3016](#), introduced for the first time this year, would allow municipalities to tax parking easements retained by a condominium declarant and located within the common areas. A better approach, the LAC has suggested, would be to revise the language of the existing statute to specify that a "reserved parking unit" may be defined as a separate taxable parcel "even if it may be otherwise considered part of the common area facilities." HB 3016 was also sent to study committee.

Michigan

LAC Members

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In Rhodes Management, Inc.

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Advocacy Highlights:

Taxing Assessments – The LAC pursued changes to the Michigan Business Tax (MBT) proposal contained in multiple bills over the past few years. Of particular interest to associations were provisions that would have led to the taxing of assessment revenues. The issue of specific concern was the definition of “gross receipts” and how the definition affects the tax liability of state condominium and homeowner associations under the MBT guidelines. Members communicated to legislators, encouraging the legislature to amend SB [1038](#) to reflect language that is utilized by the IRS (IRC 61) and in California’s Tax Code (Franchise Tax Board 1028 “Guidelines for Homeowners’ Associations”).

California describes taxable income as: “Taxable income is the association’s total gross income minus exempt function income and any deductions directly connected with the production of gross non-exempt function income. Taxable income includes: Interest (including interest from members), dividends, nonmember receipts,, gains from the sale of property, health service fees from members, meals or food service fees from members, housekeeping service fees from members, laundry use fees from members, amounts received from members for use of a facility for an evening, weekend, week, etc.” (Franchise Tax Board “Guidelines for Homeowners’ Associations”).

LAC members offered to help develop a clear and concise manner in which to address the “gross receipts” issue to be of mutual benefit to the state and its condominium and homeowner associations. Specifically, the industry requested that (1) the definition “gross receipts” be redefined, and (2) the assessment revenue collected by a community association be considered non-taxable income. By not noting the distinction between assessment revenue and non-assessment revenue, the tax burden on community associations will become an onerous liability for the owners who reside in those communities. The net effect will be that annual assessments will have to be raised to cover the increased tax burden, which will lead to an increase in the annual assessment to cover that tax burden, which will lead to another increase in the annual assessment - a vicious cycle that will have no end.

SB 1038 was approved by the governor in early 2009. Association assessment revenues were not excluded from gross receipts.

Minnesota

LAC Members

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Larry Teien
Old Shakopee Park North Association

Advocacy Highlights:

CIC Directory – Minnesota currently has no directory or other database which separately lists the thousands of common interest communities (CICs) in this state. Although most community associations are non-profit corporations, they may also be “for profit” corporations. Moreover, it is impossible to determine from the non-profit corporation data base all of the non-profit corporations which are CIC associations. The LAC is working to develop a separate statewide CIC association database.

“Replacement Reserve” – Although the Minnesota Common Interest Ownership Act (MCIOA) requires CIC associations to maintain “adequate” replacement reserves, the statute doesn’t define what “adequate” means. As a result, many associations’ replacement reserve accounts are severely underfunded – with that fact, in many cases, not becoming evident until “large budget” items (i.e., roof, siding, etc.) have to be replaced. The LAC is working on amendments to MCIOA that will make the statutory replacement reserve language clearer, and hopefully, allow CIC associations to avoid the “shock” they might otherwise encounter when their replacement reserve account funds have to be spent. The LAC is also considering a reserve study requirement in MCIOA which would require CIC associations to review their replacement reserve funding levels on a consistent basis and better prepare for the times when replacement funds will be needed.

Assessment Limitations – Many CIC governing documents – usually declarations – contain provisions which limit the amounts by which annual assessments may be increased each year. Such limitations are usually expressed in terms of percentages (i.e., “no more than 5% per year”) or specific amounts (i.e., “no more than \$15 per month”). While such limitations might have been great selling points for developers (“Your assessments are GUARANTEED to remain low!”), they didn’t and don’t address the reality of price increases in real-life, day-to-day association operations. The LAC is looking at amending MCIOA to allow associations to avoid such assessment increase limitations.

Voting Percentages – Many CIC declarations and/or bylaws require extremely high percentages of membership approval to amend association documents. Many declarations and/or bylaws also require as much as 100% mortgagee approval before an amendment can be passed. Such onerous voting percentage requirements severely hamstring association attempts to modernize their governing documents. The LAC is looking at how to amend MCIOA in a way that would

allow associations to avoid such severe requirements but also maintain the spirit or intent behind them.

Missouri

LAC Members

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Harper Pointe Homeowners Association

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Advocacy Highlights:

Planned Communities – Attempting to address the lack of any statutory framework for planned communities, the Missouri LAC worked to support passage of the Missouri Uniform Planned Community Act (UPCA). Introduced as SB [1005](#), members testified that associations and homeowners in planned communities should have the same public policy as Missouri provides for condominiums under the Uniform Condominium Act because their needs and functions are substantially similar. A hearing was held in the Senate Committee on Economic Development, Tourism and Local Government, but a vote was not taken.

Nevada

LAC Members

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Advocacy Highlights:

(NOTE: Nevada is in session every other year, and was not in session in 2008)

Governance; Reserves – As a result of 2007 common-interest community legislation from both the Senate and Assembly, AB 396 became the compromise bill containing provisions that CAI and its members found to be unacceptable and even dangerous to communities and their residents. Deemed a detriment to common-interest communities:

- Section 5 of the legislation would prevent associations from enforcing traffic restrictions (like speeding) on association roads. This would create dangerous conditions for families and burden already stretched police resources.
- Section 8.5 would allow individual homeowners to alter common association property. This provision would allow the state to take property that belongs to all association residents and give it to an individual. Although an individual would be given the right to alter property he/she did not own, all association residents would be liable for any resulting expense or damage from such alteration.
- Section 23 would weaken reserve funding requirements by allowing associations to only fund reserves for any anticipated expense in the coming five years. This would weaken associations' ability to plan for future common element replacement costs, and lead to either large special assessments or the deterioration of common elements in the future.

- Section 28 would extend state government editorial control over association newsletters by requiring an association to publish any and all opposing views on any “issue of interest.” The association would be required to run all submissions, without exception or edits, at the expense of all homeowners.

These and similar provisions would have a negative impact on Nevada homeowners who are already struggling with the historic housing and economic crisis. The industry, working in coalitions with other potentially impacted parties, persuaded Governor Gibbons to veto this legislation. However, proponents of this legislation vowed to overturn the veto in the 2009 session.

New Hampshire

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Kings Court Condominium

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Advocacy Highlights:

Clothesline Rights – 2008 saw the emergence of the much publicized issue of “Clothesline Rights.” HB [1523](#) would have overridden a community association’s ability to regulate the use and placement of clotheslines.

Focusing on the unique self-governed aspect of community associations, New Hampshire members emphasized that association residents are well positioned to build consensus and take positive action on a host of environmental issues. By overriding homeowner preferences and side-stepping the democratic process within associations, the legislature would be undermining the need to build consensus within communities and would encourage other special interests to take their appeals directly to the legislature. Moreover, the legislature would be mandating one size-fits-all solutions on environmental policies where there are literally hundreds of different actions communities can take.

The clothesline rights legislation was defeated in committee by a vote of 11-1.

Board Meeting Minutes – House and Senate legislation dealing with condominium association board meetings and minutes failed to pass before adjournment. The chapter did not support HB [1174](#), legislation that would require association boards to publish and make available the meeting minutes to all homeowners prior to the approval by the board. Additionally, the time requirement to have the minutes ready was 14-days from the date of the meeting. The chapter felt that such a request was unreasonable, as board members are all volunteers and that “within 14-days of the minutes being approved” would be a better time frame. The House and Senate could not concur on this issue, so it was not passed this session.

New Jersey

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Advocacy Highlights:

(Note: the state is in its 2008-2009 session, some legislation will carry over into 2009.)

Towing – Proposals amending the state’s Predatory Towing Prevention Act law, including the exclusion of public roads, were included in SB [2073](#). The proposed changes provide an opportunity for industry to amend the original Act, and members of the LAC are seeking an exemption for common-interest communities. The issue of notification of towing and the implications and problems that it poses for associations was also discussed. The major provisions of this bill would:

- Limit the law to only apply to “private property towers.”
- Lift the requirement for private property towers to register with the Division of Consumer Affairs, provided they are regulated by a local political subdivision.
- Allow private property towers regulated by a local political subdivision to charge fees approved by that political subdivision, rather than those established by the Director of the Division of Consumer Affairs.
- Exempt consent towing and contracted towing from the provisions of the bill.

Hydrant Fees – AB [3114](#), introduced mid-Fall, would prohibit the imposition of standby fees or charges for certain fire protection systems (hydrants) by public and private water utility providers. The LAC supports the bill. If enacted, it would prohibit the imposition of these charges upon community associations. Many community associations pay separate and substantial hydrant water fees. These fees are not paid by the owners of single family homes that are not located within community associations, and instead are typically borne by the municipalities where applicable.

Bed Bugs – AB [3203](#), is the “bed bug” bill. As originally drafted, the bill would treat community associations as landlords. CAI is seeking amendments which would clarify responsibility for eradication and to impose this duty upon the unit owner in connection with unit infestation, and the association in connection with common area or common element infestation. This bill is receiving a significant amount of press and attention, and comments have already been provided to the bill’s sponsors outlining CAI’s position and concerns.

Security Officers – AB [3206](#), introduced mid-Fall, proposes to amend the state’s Security Officer Registration Act (SORA), which would then be known as the Security Industry Regulation Act (SIRA). The amendment would expand SIRA’s requirements to include in-house security guards, and would therefore apply to security guards hired directly by community associations. SIRA covers matters such as background checks, fingerprinting, educational requirements and the retention of a compliance officer. CAI’s general concerns are in connection with the increased costs and limited benefits which are likely to result from the expansion of the scope of this Act. LAC members are discussing issues regarding this legislation with legislator sponsors and other stakeholders.

Age Certification – SB [88](#), now law, was supported by the LAC and chapter. SB 88/AB 305 requires the purchaser of a home or unit in an age-restricted community to certify compliance with the “housing for older persons act” exception (“HOPA”) under the Fair Housing Amendments Act. The LAC amendment placed the requirement to certify age certification on the purchaser rather than on the association, as the bill proposed originally.

Governance Issues, ADR – SB [1971](#), the “Owners’ Rights and Obligations in Shared Ownership Communities Act,” would mandate a number of issues as introduced, including:

- Revise and streamline the Public Offering Statement and the registration of developments process.
- Address problems which arise in what may be termed the “governance” stage of a homeowners association.
- Give owners earlier exposure to operational issues and input into governance matters.
- Create a commission in, but not of, the Department of the Public Advocate, to serve as a state resource center, liaison and educational resource to owners and their shared ownership community associations, and to coordinate low cost, reliable alternative dispute resolution (ADR) services to these entities with the Department of the Public Advocate.
- Move the responsibility for the “The Planned Real Estate Development Act” to a new bureau within the Division of Consumer Affairs in the Department of Law and Public Safety, to be known as the “Bureau of Homebuyers Protection.”

New York

LAC Members

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Advocacy Highlights:

Amherst Assessment – The Town of Amherst considered a two-tier taxing system to scale back property tax breaks that condominium owners currently have, repealing Section 339y (a section of the New York State Real Property Tax Law). Amherst, which has more condos than any other upstate municipality, is looking to use the homestead option to force some condominiums to be assessed at full-market value, rather than half the tax rate of a single-family home. Unfortunately, it was determined that this proposal will adversely affect fixed-income seniors and low-income starter families, both groups that are now significantly represented in condominium communities, and does not recognize the extensive services (i.e., street side maintenance, street repairs, trash collection, etc.) provided by condominiums which put them in an assessment category more like apartments than single family houses. If passed, it would change the legal structure of condominiums. Opponents voiced that to arbitrarily amend the Real Property Law by height of units, date of construction or geographic region of the state is inappropriate. The current proposal casts too large a net to catch the few cases where an inequity might exist. There was no further action on this issue mid-year, but the subject is not dead.

The LAC continued opposition to companion Senate and Assembly bills which if adopted would accomplish statewide what Amherst was trying to accomplish. Opposition was assisted by cooperation from the several chapters of the National Homebuilders' Association and Associations of Realtors.

Taxation – SB [7727](#) and AB [10730](#), relating to the taxation of property owned by a cooperative corporation, were held for committee consideration.

Tax Credit – The LAC also followed SB [1053-a](#) and AB [1575-a](#), known as the "Circuit Breaker Bills" that would establish a personal income tax credit for a portion of a taxpayer's residential real property taxes which exceeds a certain percentage of taxpayer's household gross income for

taxpayers that have resided in the residence for not less than five years. This legislation did not pass before the session ended.

Manager Licensing – The LAC followed and opposed what were several poorly drafted bills to license or regulate community managers as property managers (AB [481](#), SB [4343](#), and SB [1017](#)). Failing endorsement by the introduction of a similar bill in the opposite house, these bills, as they had in previous years, failed. The LAC mounted an all out press with its chapters to train, test and certify managers and management companies prior to introducing a bill that requires certification of community managers in accordance with CAI policy and procedures. The LAC has begun discussions with real estate professional associations in the state to smooth the way for a community management professional bill that does not threaten their property management interests in NYC and elsewhere in the state.

Liens – The LAC successfully supported AB [3677](#) regarding the collection of liens, but this legislation did not see much action.

Board Protection – SB [2065](#)-A was introduced on behalf of the Council of New York Cooperatives & Condominiums and supported by the LAC to close a loophole created by a recent lawsuit holding directors of a condominium jointly and severally liable for third party injury. The bill was not passed, while appeals to the lawsuit were tried.

North Carolina

LAC Members

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Michael Wm. Shiflett

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Investment Properties Management

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Advocacy Highlights:

Manager Licensing – The LAC continued its efforts to pass legislation that would establish a manager licensing program, working with state officials to pass legislation embodied in HB [1535](#) and SB [1315](#). These bills would establish a professional community association manager licensing board in the state and establish criteria that include CAI based designations, as the benchmarks for licensure. The state's Real Estate Commission has signaled its support of this legislation.

For the second year in a row, the licensing bill saw serious General Assembly consideration. Unfortunately, nearly the entire legislative session was focused on closing a gaping hole in the state budget due to the economic downturn. As a result, considerations of manager licensing and other issues were put off until 2009.

Ohio

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Advocacy Highlights:

Oregon

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Community Management, Inc.

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Landye Bennett Blumstein LLP

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Advocacy Highlights:

(Note: Oregon is in session every other year.)

Association Operations – HB [2665](#), LAC-supported legislation that became effective June 11, 2007, establishes procedures for the appointment of a receiver if owners fail to elect a quorum of directors; at the discretion of the board of directors, it permits any notice, information or written material otherwise required to be given an owner or director under the declaration, bylaws or Planned Community Act (PCA) to be given by electronic communication, notwithstanding any requirement under the declaration, bylaws or PCA/OCA; and defines electronic ballot. Additionally, an association can call an owners meeting then adjourn and reconvene if it does not gain a quorum, and then at the reconvened meeting, the quorum would be 50% less than the original quorum to as low as 20%, but not below 20%.

Among the substantive changes to existing law: if a declaration or bylaws of an existing planned community or condominium do not assign responsibility for payment of the amount of the deductible in the association insurance policy, the board of directors may adopt a resolution that assigns responsibility for payment of the deductible amount; permits the board to adopt a resolution that prescribes a procedure for processing claims, unless otherwise provided in the declaration or bylaws; and revises reserve study and maintenance plan requirements.

Association Rights – HB [2666](#), another LAC-supported measure effective June 11, 2007, includes technical and substantive amendments to the PCA and the Oregon Condominium Act (OCA). It conforms to OCA the right of an association to initiate or intervene in litigation or administrative proceedings if the association has maintenance or certain other responsibility for property individually owned by members of the association; revises the definition of common property to include property designated on the plat to be transferred to the association; and establishes default provisions that would apply when documents are silent (i.e., makes windows and unit access doors, except for glazing and screening, general common elements, unless the declaration provides otherwise). HB 2666 also provides that an association is responsible for the maintenance, repair and replacement of common elements and that cost is a common expense unless otherwise provided in the declaration or bylaws. It requires that a condominium declaration recorded on and after September 27, 2007, to include disclosure regarding square footage areas stated in the declaration and plat.

Depositing Assessments – SB [543](#) requires the association of planned communities and condominiums to deposit assessments in a federally insured account at a financial institution. Removes the previous requirement that the account be located within the state.

Pennsylvania

LAC Members

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Marianne C. Fein
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Advocacy Highlights:

Super priority lien – In 2004, the legislature adopted amendments to the state Uniform Condominium Act. In amending the act, the legislature inadvertently removed language allowing for priority liens for condominium associations. In 2008, the legislature fixed this error by passing [HB 2295](#). This bill restores the ability of condominiums to obtain a priority lien for assessments owed when a foreclosed unit is sold.

The LAC actively supported passage of HB 2295 as one of its top legislative priorities. As part of its advocacy effort, the LAC developed and circulated a [position paper](#) regarding the priority lien issue. The bill became effective upon passage in July 2008.

Uniform Condo Act – HB 2295 also made it easier for condominiums incorporated under the Commonwealth's older Unit Property Act to adopt the more dynamic and modern provisions of its successor law, the Uniform Condominium Act. Prior to HB 2295's passage, an association would need 100% approval to move under the authority of the Uniform Condominium Act. Now, a super majority of 67% of association votes is needed to affect the change.

Religious Displays – The LAC opposed legislation that would have removed an association's ability to govern the display of religious symbols within the community. [SB 31](#) would have required community associations to create a separate category of rules to govern religious symbols and provide specific disclosure of those restrictions and would have prevented associations from restricting their display. The LAC opposed the legislation as unneeded and duplicative of current requirements as discussed in its [position paper](#). The legislation died in committee.

Unfair Trade Practices – The legislature also introduced HBs [538](#) and [977](#) that would have applied the provisions of the state's Unfair Trade Practices Law to community associations. The LAC [opposed](#) adoption of these provisions, stating that the legislation would have a chilling effect on volunteer board member participation and impact the availability and cost to associations for insurance coverage. The legislation died in committee.

Sunshine Act Exceptions – HB 977 would also have applied elements of the state’s Sunshine Act to community associations. The LAC offered various [amendments](#) to the bill and developed a position [statement](#). As noted above, the bill did not move past committee.

Rhode Island

LAC Members

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Bilodeau Property Management Service,

Advocacy Highlights:

“Super Lien” – HB [7512](#) targeted a perceived flaw in existing statute that gave condominium associations the right to foreclose on units for non-payment of common fees, but makes those fees subject to the first lien of the mortgage lender. The Rhode Island “super lien” was supposed to be comparable to the six-month priority lien in place in approximately 15 states, including neighboring Massachusetts and Connecticut, but the priority is not a real priority at all because it has no true enforcement mechanism. This makes the foreclosure remedy “virtually ineffectual,” causing the newly-formed LAC to submit language affirming that a community association’s claim to six months of uncollected common fees takes precedence over the first lien of the mortgage holder. HB 7512 also increased from \$2,500 to \$7,500 the foreclosure-related costs associations can collect, along with unpaid common fees, under the super lien. HB 7512 became effective without governor’s signature.

Foreclosure Sales – SB [2057](#) requires lenders that take back a property through a foreclosure action to record the title within 30 days. Without this deadline, lenders who do not record the deed on a condominium unit could take the position that they don’t have to start paying the common area fees - causing associations to absorb up to 12 months of unpaid fees. With the association’s foreclosure process stretching out 12 months, or given the six-month super-lien limit on the back fees associations can collect and the current \$2,500 cap on foreclosure fees they can recover, Rhode Island community associations are losing money every time they foreclose.

Manager Licensing – HB [7513](#) would adopt the Certified Manager of Community Associations (CMCA) certification as a benchmark licensing standard for professional community association managers. The program would be administered by a licensing body separate from other real estate professionals (brokers and apartment managers) and comprised of community association managers and other industry professionals. This legislation was recommended to be held for further study.

Trash Collections – HB [7609](#) would require municipalities to provide trash collection services to condominiums comparable to the services provided to single-family homes. Municipalities that fail to provide collection services to condominiums would be required to reimburse associations for the fees they pay private trash services. This bill was held for further study.

Unexercised Rights – HB [7514](#) would authorize community associations to claim and renew the expired development rights of a developer or declarant and sell them to another developer to complete unfinished construction. The bill would require the approval of 75 percent of the owners and deletes an existing provision requiring associations also to obtain the approval of all unit owners' mortgagees. The bill was held for further study.

Insurance Coverage – SB [2593](#) delineates the responsibility of unit owners and condominium associations relating to obtaining property insurance. The bill was held for further study.

South Carolina

LAC Members

Paul Hershey, CMCA, AMS (**Chair**)
Rose Hill Plantation

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Association

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Advocacy Highlights:

Manager Licensing – The LAC, working with CAI members in the state, began the task of drafting the [South Carolina Community Association Managers Licensure Act](#). As drafted, the Act would ensure minimum standards of competency and conduct for professional community association managers. More importantly, the Act would establish CAI and NBC-CAM designations as the benchmarks for meeting licensure requirements. The LAC invested much of 2008 in building consensus and educating CAI members on their efforts.

Planned Community ACT – The LAC also researched and drafted a [Planned Community Act](#) to update South Carolina's community association statutes. The draft covers definitions, creation of the planned community, master associations, management of planned communities, bylaws, meetings, insurance, etc.

Concurrent to the LAC's development of a Planned Community Act, an unrelated SB [1283](#) introduced a Homeowners Association Act in the Senate. The bill did not move beyond the committee level.

Tennessee

LAC Members

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Alvin L. Harris

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Jim Trout, AMS, PCAM
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Jean M. Walker

Advocacy Highlights:

Condo Act – SB [2935](#) established The Tennessee Condominium Act of 2008. In passing the legislation, Tennessee adopts a comprehensive set of default provisions for the establishment, creation, alteration, termination and management of condominiums. The law became effective on January 1, 2009.

The Condominium Act has four major parts.

Part I establishes the coverage of the Act, whose provisions are only applicable to condominiums created after January 1, 2009. Existing condominiums may, under the terms of the Act, elect to be covered by the provisions of the new law and take appropriate action to comply with its requirements. The Act established default rules that may be superseded by agreement to provide otherwise.

Part 2 governs the creation of condominiums. It imposes reasonable restrictions on developer practices. It also provides that a zoning, subdivision, building code or other real estate use law, ordinance or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership.

Part 3 governs the administration of the association. It specifies the powers of its board, requirements for bylaws, upkeep, meetings, quorums, voting, proxies, conveyance of common elements, insurance, assessments and record-keeping. The Act provides that an association must be organized no later than the date the first unit in the condominium is conveyed. It sets the level of a quorum and provides for proxies.

Part 4 addresses the responsibility of the association and the unit owners to provide information upon request to prospective purchasers or lenders. It outlines Information to be provided, including a copy of the current rules and regulations of the association; the most recent balance sheet, income statement and approved budget for the association (or, if there has never been an approved budget, then the projected budget); and minutes of all meetings of the members and/or the board of the association for the 24 month period ending on the date of the request.

Texas

LAC Members

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Color Innovations Painting, LLC.

Advocacy Highlights:

(Note: The Texas Legislature meets every other year and will be in session in 2009.)

Foreclosures – Texas saw comprehensive legislation, SB [979](#), debated in 2007. While most provisions of the bill were acceptable to industry interests, a primary area of disagreement dealt with how the bill addressed foreclosures. Under the legislation, judicial foreclosure would have been mandated unless the property owner chose otherwise. CAI advocated for allowing alternatives, such as creating a system where expedited foreclosures – similar to those used in home equity loan foreclosures – would be used.

Utah

LAC Members

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Ivy Terrace Condominium

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Capital Consultants Management

Advocacy Highlights:

UCIOA – The LAC continued its drafting and consensus building efforts to introduce and pass a Utah Common Interest Ownership Act. Along with CAI member discussions, the LAC has reached out to key stakeholder groups.

Construction Defects – SB [220](#) modifies existing law by limiting a cause of action for construction defects to a breach of contract action (unless there is certain other property damage, personal injury, or an intentional or willful breach of a legal duty), and addressing who may bring an action for defective construction. Included in the new law is a provision that an action for defective design or construction may include damage to other property or physical personal injury if the damage or injury is caused by the defective design or construction. The LAC lobbied unsuccessfully to change some of the provisions prior to the governor's consideration. The LAC did not support this bill because of the provisions listed above.

Foreclosure –HB [400](#) addressed the contents of an association's lien notice on a unit; required an agent for an association to register with the Division of Corporations and Commercial Code; and required the filing of a notice of an association's right to claim a lien against a lot owner if the association does not record governing documents under Title 57. This legislation died in the Senate. LAC did not support this bill for obvious reasons.

Virginia

LAC Members

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Montclair Property Owners Association

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South Riding Proprietary, Inc.

Advocacy Highlights:

Manager Licensing – HB [516](#) and SB [301](#) establish a new regulatory program for community association managers and community associations, and make further changes to the resale disclosure provisions of the Condominium Act and Property Owners' Association Act. A Common Interest Community Board ("Board"), an 11-member citizen board appointed by the governor, is established and will include representatives of the management industry.

Effective January 1, 2009, entities offering management services must obtain and maintain a license with the board. The board will approve accredited training programs, and the Accredited Association Management Company (AAMC) designation by CAI will be considered the standard for compliance with these requirements. As a condition of licensure, the management firm must be in good standing and have established a code of conduct to avoid conflicts of interest; have internal accounting controls to prevent the risk of fraud; certify to the board that services are provided to community associations under a written form of contract; undergo an annual independent review or audit of the company's books and records; and carry blanket fidelity bond or employee dishonesty insurance.

Persons within a management firm who have the principal responsibility for providing management services, as defined in the new law, or who have supervisory responsibility for employees who participate directly in the provision of management services, must obtain certification from the board within two years after employment by a common interest community management firm. Obtaining designation as a Certified Manager of Community Association

(CMCA), Association Management Specialist (AMS) or Professional Community Association Manager (PCAM) qualifies an individual for certification.

The board is also empowered with the extraordinary authority to seek receivership of a common interest community management firm if the board determines that the management firm cannot properly discharge its fiduciary duties to its community association clients. In seeking receivership, the board has authority to require immediate inspection and production of records and to enjoin the withdrawal of bank deposits. Common interest community management firms and common interest communities are required to contribute to a recovery fund to protect the interests of associations.

Association Insurance – Also under these bills, associations will be required to maintain blanket fidelity bond or employee dishonesty policies to cover losses resulting from theft or dishonesty by association officers, directors, employees or the managing agent or management employees.

Resale Disclosures – Issues in the implementation of 2007 amendments regarding resale certificates caused legislators to focus on the amount of the fees charged and the manner of delivery of the certificates and disclosure packets by management firms. The 2008 changes affect communities managed by a management firm and communities with professional management staff and include new methods for delivery, revamped fee structure and additional disclosure statements. The resale provisions remain unchanged for self-managed communities. Two new disclosure statements are added to the certificate for resale and the association disclosure packet. The resale certificate and association disclosure packet must include a disclosure of any known post-closing fee charged by the management firm. The certificate and packet must now include copies of approved minutes of the board of directors or association meetings for the preceding six calendar months.

Ombudsman – A newly established Office of Common Interest Community Ombudsman replaces services currently offered by the Common Interest Community Liaison. Among other things, the Ombudsman will be responsible for helping members in understanding rights and the processes available under the declaration and bylaws of the community association, maintain data on inquiries/complaints/received, and if requested, be responsible for providing an assessment of proposed and existing laws.

Complaint Resolution – The board will develop requirements that common interest community associations establish procedures for resolving written complaints by individual association members or others. The director of the Department of Professional Occupational Regulation may determine whether the final adverse decision from the association is in conflict with the laws or Common Interest Community Board regulations or interpretations of the law and regulations by the board, and the director's determination is final and not subject to further review.

More details about this legislation may be found in CAI's [Manager Licensing](#) resource area.

Washington State

LAC Members

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Washington Arbitration and Mediation, Inc.

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SUHRCO Residential Properties, LLC

Jeffrey Rodgers
Northgate Plaza Condominium

Cynthia Jones, Esq.
Rafel Law Group, PLLC

Jeremy Stilwell, Esq.
Barker Martin, P.S.

Jim Talaga, RS
Association Reserves- Washington, LLC

Advocacy Highlights:

Reserves/Reserve Studies – The LAC led an effort to introduce and pass legislation addressing reserve accounts and reserve studies for condominium associations. SB [6215](#), as passed, encourages condominium associations to establish reserve accounts, requires condominium associations to update reserve studies annually and to make mandatory disclosures to purchasers.

Condo Conversions – The legislature also passed a bill related to condominium conversions. Under HB [2014](#) (substitute), increases tenant notice from 90 to 120 days, requires the developer to pay relocation assistance and disallows constructions until after the notice period expires.

Horizontal Property Act – HB [3071](#), which became law in 2008, addresses disparate language between the state's two community association statutes harmonizing the termination requirements for condominiums. Under prior law, condominiums built prior to 1990 required a 100 percent owner approval for dissolution, while condominiums built after 1990 required a vote of 80 percent. Under the new law, this threshold has been set at 80 percent for all condominiums.

Real Estate Licensing – The LAC successfully lobbied to exclude community association managers from a revision of the state's real estate licensing act. As introduced, HB [2778](#) would have defined community association management duties as real estate brokerage functions. This language was removed from the act through the LAC's outreach to bill sponsors and realtors.

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