



2011 ADVOCACY ACTIVITIES

Federal and State Legislative Yearbook

Government & Public Affairs Department

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Note: State updates are current as of November 15, 2011.

Federal Legislative Issues

The federal government took up a host of issues in response to the economic and housing crisis in 2011. During the course of the year, Congress and federal agencies began the process of restructuring the entire federal mortgage finance system. As this process continues into 2012, there will be sweeping changes in the regulations that govern who will get a mortgage, for what type of home and in what type of community. The implication of these changes could have profound effect on community associations, as for the first time these regulations will require lenders to look at not only the financial health of the borrower, but of the community association as well. CAI launched an unprecedented federal lobbying effort and our Mortgage Matters Program in response to these challenges and to provide our members with updates on the many changes and proposals coming from the federal government. CAI's efforts in 2011 included:

Federal Mortgage Regulations

Qualified Residential Mortgages

In a letter dated July 10, 2010, CAI warned members of Congress that legislation to create "Qualified Residential Mortgages" (QRM) would generate unprecedented problems for future home buyers. CAI's concerns unfortunately were confirmed when the federal government released draft QRM regulations in the spring of 2011.

The proposed QRM regulations address the types of mortgage products that will be available for future borrowers. As drafted the regulations would require a minimum 20 percent down payment, prohibit the financing of realtor fees and closing costs, and would exclude any borrower who was 30 days late on any installment account in the past 36 months. A study by the lending industry noted that under the proposed standards, 70 percent of borrowers in 2010 would not meet the new standards.

In response to the draft regulations, CAI submitted more than 50 pages of [comments](#) addressing our concerns. Specifically, CAI's concerns focused on the impact of setting too high of a standard for mortgage lending. The average buyer, with a \$50,000 income, would need more than 14 years to save the 20 percent, down-payment requirement, not including realtor fees and closing costs. Such standards would push many borrowers to Federal Housing Administration (FHA) insured mortgages, which require a smaller down payment, but impose additional restrictions for condominium mortgages (see discussion below). Of further concern was a provision which would allow banks to rely on third parties for certification of mandatory expenses, like association assessments, for QRM qualifications. This would create liability for community associations in providing assessment information to lenders.

Qualified Mortgages

Along with the QRM regulations, the federal government issued draft regulations to revise requirements for qualified mortgages (QM). While the QRM regulations focus on the structure and type of mortgage products that will be available, the QM regulations address requirements to measure a borrower's

ability to repay a mortgage.

The proposed QM regulations offered some benefit to community associations. For example a borrower would be qualified not only on his or her ability to repay the mortgage itself, but also mandatory payments that accompany homeownership. These would include insurance, taxes and association assessments. The inclusion of a borrower's ability to repay assessments as part of a mortgage qualification calculation would be a benefit to community associations.

The proposed regulations also create new challenges for CAI members. First, to qualify buyers based on association assessments, the lender would rely on the association or a management company to provide accurate data on assessment levels. This creates potential legal liability to the provider of the data in the event that the information is not accurate and there is an impact to the borrower. The QM proposal also confuses monthly assessments with special assessments. The draft regulation would assume for the purposes of mortgage qualification that any special assessment in place at the time of the loan decision would be a cost to include for the life of the loan. In other words, if an association happened to have a \$100 special assessment that lasted for six months at the time of the loan, the lender would have to calculate the loan as if the \$100 assessment would be in place for the entire mortgage. This would have a substantial impact on the ability of a borrower to obtain a mortgage.

Finally, buried in the more than 300 pages of the draft regulation was a question regarding the use of deed-based transfer fees by community associations. This inquiry leads CAI to believe that yet another federal agency may be looking to impose new regulations on this issue. (See discussion under Federal Housing Finance Agency (FHFA) on the impact of such proposals).

CAI submitted extensive [comments](#) on the proposed QM regulations. The federal government is expected to issue revised regulations in early 2012.

FHFA Private Transfer Fee Guidance

In 2010 the FHFA, proposed a rule which would have banned any federally-backed mortgage for a home in a community association with a deed-based transfer fee.

The initial proposal made no distinction between transfer fees that go to support a community association and controversial transfer fees that require a payment to the developer or other third parties who have no ongoing relationship with the property. CAI engaged its members in a [survey](#) of how such fees are used by community associations and submitted extensive [comments](#) to FHFA on the impact of the regulation as drafted would have on housing within community associations. Up to 11 million homes in community associations would have become unable to obtain mortgages if FHFA had implemented the rule as drafted.

In March of 2011, the FHFA issued a revised draft rule that adopted nearly ALL of the recommendations made by CAI. The new proposal would ban federally-backed mortgages from going to any community with a deed-based transfer fee payable to a third party that had no connection to the community.

Community transfer fees, those fees charged by a community association, would be allowed under the new draft. CAI submitted [additional comments](#) on the revised draft. CAI and our members' efforts garnered national [media attention](#), with our successful efforts being widely reported by syndicated, housing columnist Ken Harney. As of November 2011, the revised proposal was still pending final approval.

FHA Condominium Guidelines

The ever-changing FHA Condominium Guidelines continued to be a challenge to associations in 2011. Despite the many challenges, CAI and its members were able to work with FHA to fix issues with the lending criteria imposed on condominium associations.

In January of 2011, CAI led a [delegation](#) to meet with FHA officials and discuss concerns related to FHA mortgage qualification criteria. The meeting focused on three problematic areas of the FHA Guidelines – rental restrictions, affordable housing and investor ownership limitations. Under the Guidelines, FHA would disqualify an association from financing if it had more than 50 percent of the units leased. However, if the association had imposed a rental restriction to help it meet that requirement, FHA would also disqualify it. Additionally, FHA would disqualify an association if more than 10 percent of the units were owned by any single person or entity. In many states and urban areas, many condominium developments are required to set aside units for affordable housing, and such units are typically owned by a nonprofit. Despite having a mission of promoting affordable housing, FHA was disqualifying associations with mandated affordable housing under the 10-percent ownership limitation. As a result of CAI's efforts, FHA [reversed](#) itself on the rental restriction requirements in March of 2011 and made an [exemption](#) to the 10-percent ownership limitation to allow for affordable housing.

CAI also conducted a member-wide survey to gather data on the impact of FHA's Condominium Guidelines. The [survey](#) found that the requirements imposed by FHA created problems for many associations; close to half of all associations reported being unable to obtain FHA financing approval on the first application.

As the year progressed, CAI reached out to [industry allies](#) that included the National Association of Realtors and the National Association of Home Builders to continue to call on FHA to revise its problematic requirements and to adopt a more open and transparent rulemaking process. This collaboration led to a [meeting](#) in June of 2011 where our issues with Guidelines and process were presented to the acting FHA commissioner.

In June of 2011, FHA issued major revisions to the Condominium Guidelines, which, according to FHA, would address the many issues raised by CAI and others. While the new Guidelines added some flexibility on assessment delinquencies, commercial space and rental restrictions, they also imposed new and troubling criteria on fidelity insurance, project certifications and assessment delinquency calculations. CAI produced a [FAQ](#) to assist our members in understanding the new Guidelines and then turned our attention to FHA.

First, CAI sent a [letter](#) summarizing concerns on the new Guidelines to the FHA commissioner. CAI noted that the requirements FHA imposed on fidelity insurance and project certifications were in conflict with many state laws and with the best practices of condominium associations. CAI also chided FHA for putting the burden on collecting assessments from bank owned properties on association boards rather than on the banks that get a subsidy from FHA under the condominium loan program. CAI also filed an [administrative challenge](#) against the new guidelines arguing that FHA failed to do minimal due diligence when drafting the new requirements.

After the release of the new Condominium Guidelines in June, CAI worked with our members to escalate our efforts to persuade FHA to engage in a more rational and transparent process in developing the Guidelines. Working with our state Legislative Action Committees we took our [concerns](#) directly to members of Congress. When FHA announced during a public training session that it would be looking at the issue of deed-based transfer fees, CAI sent a strongly worded [letter](#) urging it to follow the lead of the FHFA.

The arrival of fall saw the return on the investment in our Congressional Outreach. First, FHA backed away from their costly and duplicative [management company fidelity bonding mandate](#). This was followed a few weeks later by key members of [Congress](#) and the [Senate](#) sending letters critical of the FHA Guidelines and the lack of transparency in their development. It is through these efforts that CAI will continue to move FHA policy to more rational and fair criteria.

As the year ended, FHA's financial position showed significant deterioration, with the organization well below its statutorily-mandated reserve requirements. There were whispers in Washington of a pending bailout. This is bad news for potential condominium buyers as FHA continues to be the pre-eminent lender for condominium mortgages. This will likely make CAI's task for pushing for reforms of FHA lending criteria even more challenging. At the close of 2011, it looks as if 2012 will be yet another year filled with challenges on the mortgage front.

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Advocacy Highlights

Declaration Amendments—[HB 2441](#) would have allowed a declaration to be amended by any procedure provided in the declaration. It would have also allowed a declaration to be amended by the unit owners by a vote of at least 2/3. The bill specified that if a declaration provides for a smaller percentage of votes that is at least 50 percent of the votes cast, the smaller percentage applies. Under the provisions of the bill, unit owners would have also been provided with written notice regarding any meeting to amend the declaration, as well as the text of any proposed amendment, between 30 and 60 days prior to the meeting. HB 2441 passed the House of Representatives; however, it died in the Senate.

HOA Penalties and Attorney Fees—[HB 2717](#) would have prohibited HOA's from imposing or collecting a penalty of more than \$50 for a violation, regardless of whether or not it was a one-time or ongoing violation. Additionally, the bill would have prohibited HOAs from collecting attorney fees from rule violations when those attorney fees exceeded twice the amount of the penalty imposed for the

violation. This bill was amended and the chaptered version simply prohibits HOAs from charging a fee for the use or placement of the indoor or outdoor display of a for sale or lease sign. This bill passed out of the House of Representatives and later passed unanimously out of the Senate. It was signed into law by the governor.

Document Fees—[SB 1149](#) clarified that statements detailing unpaid assessments against a unit, as well as a statement summarizing any pending lawsuits in which the HOA is a named party, must be furnished to the requesting party within ten days of receipt of a written notice of pending sale or a written request. SB 1149 also allows HOAs to charge a unit or property owner no more than \$400 for the costs incurred in the preparation of documents related to resale disclosure and other services related to the transfer or use of a property. An HOA that charges or collects a fee in excess of the prescribed limit is subject to a civil penalty of no more than \$1,200. SB 1149 successfully passed out of the Arizona State Senate as well as in the Arizona House of Representatives. The bill signed into law by the governor.

Flag Display—[SB 1326](#) prevents a HOA from prohibiting the display of the Gadsden Flag. The bill also prevents HOAs from prohibiting the front yard or backyard display of flags, but allows HOAs to limit the number of flags displayed at one time as well as the height of the flagpole. This bill successfully passed both houses of the Legislature and was signed into law by the governor.

California

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Advocacy Highlights

HOA Transfer Fees—[AB 771](#), as introduced, would have prohibited a third party disclosure company from earning any profit. After the bill was amended it required HOAs to disclose transfer fees to third party

disclosure companies in order to protect those companies from possibly going out of business. As amended, new disclosure requirements were imposed and as such, little adverse financial impact would result for the companies. Initially the LAC opposed the bill but after the final draft was submitted the LAC decided to support it. It passed the Legislature and was signed into law.

Board Meetings—[SB 563](#) would have initially prohibited board members from talking to each other between meetings and banned non-noticed meetings. As amended, electronic consent is permitted for emergency meetings and non-noticed meetings are now prohibited. Although the bill passed into law, there is little financial cost attached to it as it will only drive up a slight cost for meeting notices. The LAC opposed the bill in all presented forms.

Political Sign Restrictions—[SB 337](#), as originally introduced, would have adversely affected an HOA's ability to regulate political signs that renters may display. However, thanks to an amendment introduced by CAI, the bill does not apply to common interest developments. Although the LAC strongly opposed the initial form of the bill, it decided to simply monitor the bill after inclusion of the amendment. The amended bill passed into law.

Artificial Turf Installation—[SB 759](#) authorized planned unit development owners to install artificial turf. The LAC opposed the bill, which was effectively vetoed by the governor.

Delinquent Assessments—[SB 561](#) required payments for delinquent assessments to be made first to the association and then towards collection costs. HOAs would effectively have to pay collection costs and may not have been able to collect late payments. The LAC strongly opposed the bill which was carried over to the next legislative session.

Colorado

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Advocacy Highlights

Conflicts of Interest - [HB 1124](#) addresses the Responsible Governance Policy addressing board member conflicts of interest which HOAs are required to adopt in Colorado. The bill requires the following items be included in the Policy: (1) a definition or description of what constitutes a *conflict of interest*; (2) the requirement that the Policy be reviewed periodically; and (3) procedures which must be followed when a conflict of interest is present which must include: (a) how the conflict of interest must be disclosed; (b) to whom the conflict of interest must be disclosed; and (c) whether the director with the conflict of interest must recuse himself or herself from discussing and voting on the issue which is the subject of the conflict. In addition, HB 1124 requires directors of HOAs located in a special district to disclose that they serve on the board of their HOA when running for a seat on the board of their special district.

Transfer Fees – [SB 234](#) was originally based upon the model transfer fee legislation which essentially prohibits residential transfer fees. Based upon stakeholder input, the model bill was significantly modified prior to introduction. CLAC’s successful participation in the stakeholder process resulted in transfer fees which are charged by HOAs and management companies being excluded from the definition of “Transfer Fee Covenant.” As a result, these fees are not impacted by the prohibition on transfer fees as set forth in SB 234. In addition, HOAs and management companies are not required to comply with the provision in the bill which mandates the recording of a “Notice of Transfer Fee” on property encumbered by transfer fees prior to the enactment of the legislation.

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Advocacy Highlights

Board Elections & Common Interest Ownership Act (CIOA)—[HB 6234](#) was the primary bill of interest featured in the state during 2011. Essentially, the bill modifies and clarifies a few of the provisions that were previously outlined in the CIOA. These new changes went into effect October 1, 2011. Under the bill, association board members have enhanced conflict of interest requirements, including not being allowed to “accept any item of value” which may influence a vote, action or judgment of the board member; hearings must be held before an action or a proceeding against a unit owner is brought; managers will not be allowed to campaign for any person seeking election as an executive board member; and a clarification of descriptions for horizontal and vertical boundaries is included. Associations will be required to prepare and maintain a schedule of standard fixtures, improvements and betterments on an annual basis so homeowners can coordinate their homeowners insurance coverage. The LAC closely monitored the development of the bill before it was passed into law.

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Advocacy Highlights

Condominium Amendment Act of 2011—B19-509 is a compromise bill that has been several years in the making. The measure - which contains broad changes to the Condominium Act of 1976 – proposes to include the following broad changes to the Condominium Act of 1976: proposes to include all condominiums created after the adoption of an effective statute; create a definition for electronic transmission and amend the definition for unit owner in good standing; adopts the business judgment rule to govern decisions of condominium boards; allow for the relocation of unit boundaries unless prohibited by the condominium instruments; allow for the subdivision of units unless prohibited by the condominium instruments; provide that if an association provides notice of a proposed amendment to the condominium instruments to the address of record of a mortgagee and that mortgagee fails to respond within 60 days, such failure to respond will be deemed to be a consent to the amendment; requires open meetings and authorize electronic meetings; clarify the association’s right to assess benefited members for maintaining common elements; allow the board to pledge as collateral for a loan or otherwise assign the association’s assessment income; amend requirements governing insurance to require owners to purchase insurance, and to permit the association to transfer responsibility for paying the deductible; amend statutory lien requirements; to require the association to maintain records and provide owners a right of inspection; and require declarants to record with the condominium rules an affidavit reflecting that a warranty bond has been posted. The LAC is already expecting to be in a war of attrition to get the majority of their desired changes adopted in the bill.

Florida

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Advocacy Highlights

Community Associations—[HB 1195](#) broadly covers different issues affecting HOAs and Condominiums. The bill stipulates that associations can continue to publish directories with permission from the owner. Owners will be entitled to access to employment agreements and payroll records, but not other personnel records. The bill provides condominium boards will be permitted to hold private meetings to discuss personnel matters and the board will now have the opportunity to meet candidates and

negotiate employee salaries without owner observation. HOA owners will be entitled to speak regarding any matter on the agenda at a board meeting as well. The bill also puts an end to the debate of whether to collect the entire rent payment from the tenant or just the current maintenance costs; the association will be specifically permitted to collect the entire amount, applying payments to delinquencies on the account. The measure provides that condominium directors may take the required certification course up to 1 year before or 90 days after the date of the election (or appointment), and that the written certification is valid as long as the director serves on the board without interruption. The bill provides a hearing is required for suspensions based on violations, but no hearing is required for suspensions based on delinquencies greater than 90 days. The bill also addresses board election eligibility, outstanding assessment liability and the collection of fees by management companies and collection agencies. The LAC supported the bill and it was passed into law.

Service of Process—[HB 59](#) states that an association must allow process servers into the community without announcing their presence to serve process on a defendant or witness who resides or is known to be within the community. The LAC monitored this bill and it passed into law.

Property and Casualty Insurance—[SB 408](#) provides that sinkhole coverage will be limited to structural damage for primary buildings. Hurricane, windstorm and sinkhole claims must be filed within three years after a storm to be claimed. Insurance carriers can withhold full payment for replacement cost until the policyholder produces evidence that the repairs will be made (except for homes that are destroyed). Premiums may go up by up to 15 percent per year for reinsurance costs. The LAC monitored this bill which passed into law.

Swimming Pools—[HB 849](#) adopted the pool retrofitting requirements in the federal Virginia Graeme Baker Pool and Spa Safety Act, requiring drain covers and grates to be equipped with an anti-entrapment system or device. The bill also eliminates generator requirements for operation of an elevator and will eliminate the requirement to adopt an emergency operations plan. The bill was monitored by the LAC and passed into law.

Georgia

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Advocacy Highlights

Super Lien Legislation—[SB 136](#) proposed a priority lien provision for the state. The LAC continued with its effort to adopt a “super lien” for the benefit of the state’s condominium and property owners associations after foreclosures. SB 136 was introduced during this first year of a two-year session. As originally drafted and introduced, the bill would amend the state Condominium Act and the state Property Owners Association Act to expressly provide that an association’s assessment lien is superior to the lien of any mortgage in an amount equal to the common expense assessments that came due during the 12 months immediately preceding the date of the foreclosure. The bill was heard by the Senate Judiciary Committee in early March and was modified substantially and referred to a special committee for further review and consideration. There was considerable opposition from the banking lobby and the bill was stripped of its super lien provisions. The LAC has hired a new lobbyist for the second year of the 2011-12 session and is already reaching out for alliances and support to revive the super lien bill. The LAC plans to introduce an amendment to the bill to modify the priority period from 12 months to six months. With the support of a full-scale lobbyist and early planning, the LAC is optimistic that final passage will be achieved in 2012.

Transfer Fee Bill—[HB 129](#) proposed to prohibit any type of private transfer fees upon conveyance of real property in the state. The LAC spent considerable time working with the sponsors of the bill, the Georgia Real Property Law Bar, to carve out transfer fees provided for in governing declarations for the state's condominium and property owners associations. The proposed legislation provided express exclusion for fees paid to communities formed pursuant to the state Condominium Act, the state Property Owners' Association Act and common law. There was much politicking by other interest groups around this bill and, in the end, it became a vehicle for added language regarding a pending, historic property dispute and utility fees. The bill ultimately did not pass; however, the LAC expects for it to be revived in 2012.

Other Proposed Legislation—The 2011 session did not produce as much association related legislation as in recent years. The LAC followed legislation that would have required registration and fees for vacant property, but did not take a position regarding the legislation.

State Capitol Meet and Greet—In a continuing effort to provide a greater visibility to the LAC and the Georgia Chapter of CAI, the LAC organized a "meet and greet" at the State Capitol on February 22, 2011. Members of the LAC served coffee and doughnuts in the Capitol Rotunda and met with many legislators during the visit.

Hawaii

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Advocacy Highlights

Foreclosure—[HB 1600](#) provided various protections, remedies, and notice requirements regarding condominium associations and foreclosure of condominium units. After completion of the foreclosure of a condominium unit, any of the foreclosed unit's unpaid share of common expenses or assessments be deemed a common expense collectible from all unit owners, including the acquirer, successors and assigns of the acquirer, provided that: any purchaser of the unit at auction, other than the mortgagee, shall be liable to the association for unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the mortgage foreclosure; and if the mortgagee is the purchaser at auction, then any successor or assign of the mortgagee shall be liable to the association for unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the mortgage foreclosure. The mortgagee shall not be liable for any amount assessed prior to its acquisition of title. The LAC is monitoring the bill and it has been referred to committee and carried over to 2012.

Illinois

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Advocacy Highlights

Homeowner Solar Act –[HB 991](#) amended the Homeowners’ Solar Rights Act and requires that any energy policy statement that a homeowners association, common interest community association, or condominium unit owners association adopts shall also address the location, design, and architectural requirements for any allowed composting, rainwater collection, or wind energy collection systems as well as whether a wind energy, rain water collection or composting system is allowed by the association. The bill was monitored by the LAC and passed into law.

Board Elections–[SB 1651](#) was an amendment to the Common Interest Community Association Act. The bill largely concerns master associations and the election of board of directors at large. This bill corrects contradictions in the Common Interest Community Association Act, which was adopted last year. Confusion arose when two laws in the act regarding the governance of master associations contradicted one another. Master associations will be subject to Section 18.5 of the state Condominium Property Act, not the Common Interest Community Association Act, due to their unique operation. This bill eliminates the election of master association board members at large, and common interest communities should follow the election method in their respective documents. There are also other revisions in this bill amending the Common Interest Community Association Act, including but not limited to obtaining mandatory fidelity insurance for associations with 30 units or more that covers persons who control or disburse funds of the association; that last documents to be provided upon resale; and that the particular accounting documents be provided to owners who live in a community association. The LAC monitored this bill and it was passed into law.

Condominium Property Act–[SB 1972](#) was an amendment to Section 18.5 of the state Condominium Property Act. This bill requires a purchaser of a unit bought at a judicial foreclosure sale, other than a mortgagee, to have the duty to pay the last six months’ past due assessments plus attorneys’ fees and collection costs that remain unpaid by the prior owner. The bill was monitored by the LAC and passed into law.

Kentucky

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Advocacy Highlights

Condominium Act—[SB 118](#) would have amended various sections of the state Condominium Act, so that the seller’s statement would be applicable to all condominiums, with exceptions. The bill also sought to clarify that a condominium is real estate with portions that are designated for separate ownership, and that it provided for lien priority as it relates to association assessments issued against a condominium. The LAC monitored the bill, which failed to pass upon adjournment.

This summer the LAC proposed revisions of SB 118 and has been participating in a multi-industry taskforce in an effort to draft a consensus revision bill. Representatives from the Kentucky Homebuilders Association, Association of Realtors, Kentucky Bar Association (Real Estate Section), Kentucky Society of CPAs, the mortgage and banking industry, insurance agents and volunteer board members have all participated in this effort.

The group has agreed upon a consensus bill which will be presented during the upcoming 2012 session. Proposed changes to the act include a number of technical clean-up items related to clarification in the resale certificate’s applicability with other legislation such as the state’s Not-for-Profit Corporation Act, better definition and clarification of the requirements for independent review for condominium association finances and a number of minor, technical changes.

Utility Tax—A second issue that surfaced is the application of sales tax to the water bills for residential condominium associations even though there is a clear exemption in state statutes, which states that residential condominiums are exempt from sales tax. The Louisville Water Company began charging sales tax after the state Revenue Cabinet made an administrative ruling that residential condominiums, managed by a third party, are commercial properties and therefore the utility can collect sales tax. The LAC will pursue defense of this statute in the 2012 session and push the requirement for the immediate repayment of these sales taxes to the associations.

Maine

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Advocacy Highlights

Condominium Homeowner Protection Act/Priority Lien—[LD 1332](#) is an amendment to the state Condominium Act and clarifies a unit owner's right to attend and receive notice of association board meetings. In addition, inconsistencies between statutes with conflicting guidance related to association records, retention and rights of owner's to review are resolved. While providing more transparency, the amendment also provides better fiscal and maintenance oversight: associations are now allowed to more easily borrow from lenders to address association repairs, improvements and replacement projects. To ensure the financial well being of the association, the amendment allows associations to limit access or suspend certain privileges of unit owners that fail to pay their assessments and, in the face of increasing condominium foreclosures, would provide the association the ability to recover foreclosure expenses and assessments for 6 months of common expenses. Further, the amendment also protects condominium homeowners and associations by extending the association lien from three years to five years, and fixes the initial date of a foreclosure sale as the date that assessments for common expenses shall accrue. Unfortunately, the House of Delegates voted to jettison the priority lien provision found within the bill. The LAC decided to support the bill in order to prevent the bill from dying in committee. The bill was passed into law with the support of the LAC.

Maryland

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Advocacy Highlights

Priority Lien—[HB 1246](#) provides that in the case of a foreclosure on a mortgage or deed of trust, a portion of a condominium/HOA lien has priority over the claim of a mortgage for up to four months worth of assessments, but not to exceed \$1200. The bill applies to both condominiums and HOAs but is only applicable to deeds of trust recorded on or after October 1, 2011. Additionally, the lien does not include interest, costs, fines, late charges, special assessments or attorney fees. The LAC strongly supported the bill and it was passed into law.

Real Property—[HB 100](#) and [SB 111](#) prohibited the foreclosure of certain liens. The bills prohibited a condominium or HOA from foreclosing on a lien if the damages secured by the lien consist only of fines or attorney's fees; requiring homeowner payments be applied in a specified order of priority. The LAC opposed this bill and it received an unfavorable report by the Environmental Matters Committee.

Enforcement Powers—[HB 395](#) authorized a board of directors of an HOA to impose a fee for the late payment of assessments and to levy fines for violations. The LAC supported this bill, but it received an unfavorable report by the Environmental Matters Committee.

Real Property—[HB 537](#) would have required management companies to register annually and pay a \$250 fee. The LAC opposed this bill, as it is in conflict with CAI National policy. This bill has been referred to interim study by committee with the manager licensing bills.

Unit Owner Insurance Coverage—[HB 679](#) authorizes the council of unit owners of a condominium to amend the bylaws of a condominium with by at least 51 percent majority, for the purpose of requiring all unit owners to maintain condominium unit owner insurance policies on their units. Under the bill, each unit owner can be required to provide evidence of the insurance coverage annually. This establishes a lower threshold than what was previously required the state Condominium Act (66.6 percent). The LAC worked with the sponsor in drafting the bill and it passed into law.

Common Interest Communities—[HB 722](#) would require a management company to enter into a specified written contract for management services. The LAC opposed this bill, as it is an interference in private business practices and unnecessary if manager licensing is ultimately implemented. This bill has been referred to interim study by committee with the manager licensing bills.

Assessments—[HB 827](#) and [SB 548](#) would have increased some HOA and condominium association assessments in order to meet government requirements. The bills authorized the board of a condominium or HOA to increase the amount of assessments without the approval of owners to cover costs resulting from the imposition of government charges, fees or taxes. The LAC supported this bill, but it received an unfavorable report by the Environmental Matters Committee.

Real Property—[HB 984](#) and [SB 266](#) would have altered the dispute settlement mechanism under the state Condominium Act and applied this mechanism to the HOA Act. The LAC supported this bill, but it received an unfavorable report by the Environmental Matters Committee.

Board Elections—[SB 532](#) establishes election procedure enforcement by the Division of Consumer Protection of the Attorney General's Office (division). This bill allows a lot owner who believes the HOA's board of directors has failed to comply with the governing documents' election procedures to submit the dispute to the division. It provides a lot owner can bring forth the dispute if the concern is regarding notice of date, time and place for the election; a manner in which a call for nominations is made; a format of the election ballot; a format and use of proxies during the election process; and a manner in which a quorum is determined. The LAC monitored the bill and it passed into law.

Manager Licensing—[HB 592](#), [HB 942](#) and [SB 824](#) were different versions of the Maryland Common Interest Community Manager Licensing and Regulation bills that were supported by the LAC. The LAC supported the intent of HB 592, HB 942 and SB 824, which provided for the regulation of managers of condominiums, HOAs and/or common interest communities to ensure that those who hold themselves out as possessing professional qualifications to engage in management services are, in fact, qualified to render management services of a professional nature, and provide for the maintenance of high standards of professional conduct by those licensed as a common ownership community manager. Each of these bills had the same goal—to regulate the common interest community management profession—but the specific language in the bills differed slightly. During the legislative session, stakeholder groups

worked together with the bill sponsors to agree upon language in order to align the details of the bills so that the general goal of effectively regulating common ownership community managers and protecting the more than one million Maryland residents living in common interest communities remained intact.

The amendments to the bills were submitted to the bill sponsors. With these amendments, the LAC would have supported the approaches taken by any of these bills and the goal of establishing a regulatory program for common interest community managers. However, the LAC did not support the fiscal notes issued for HBs 592 and 942. Those fiscal notes indicated a biennial-licensing fee of \$750 per manager would have been necessary to fund the licensing process. This fee is quite high compared to the relatively modest (\$75 - \$210) licensing fees for other professions in Maryland and would be a significant financial burden for individual managers when coupled with costs of continuing education. All the bills failed to make it out of committee and the issue will be reintroduced in the 2012 session.

Indemnification—[SB 264](#) would have altered the scope of indemnification provided by fidelity insurance that a cooperative housing corporation, condominium or HOA is required to purchase, and would have required a management company that provides services to a cooperative, condominium or HOA to purchase specified fidelity insurance. This bill received a favorable report from the Judicial Proceedings Committee and passed the full Senate but was referred over to summer interim study by the House Environmental Matters Committee.

The original draft would have required that management firms carry a fidelity limit equal to “...the lesser of three months’ worth of gross common charges and the total amount held in all investment accounts at the time the fidelity insurance is issued; or \$3 million.” The LAC recommended a reduction of this limit to \$2 million to limit the financial (premium) impact on smaller management firms as most management firms would reach the \$3 million threshold quickly.

During the summer study, the LAC recommended the bill be put in again for 2012, and will continue to support the bill with a \$2 million limit. It is important to note that the LAC fielded calls concerning the purpose of this law. Should a management representative steal money from the associations they manage, losses would trigger the associations’ policies first, but a management firm’s policy would be available as a mechanism for subrogation.

Massachusetts

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Advocacy Highlights

Condominium Laws Study—[HB 1248](#) would establish a commission that would include, in addition to a certified association property manager, a unit owner who is not a member of a condominium board, and an attorney specializing in condominium law “whose client base is comprised mostly” of unit owners, owner groups “or aggrieved unit owners,” and who does not primarily represent management companies or condominium boards. The LAC believed the commission make-up was one-sided. Having an attorney who primarily represents owners and a non-trustee owner is fine, but the commission should have also included an attorney who primarily represents boards and an owner who serves on a board. The LAC opposed the bill and it remains in committee.

Clotheslines/Right to Dry—[SB 589](#) was a bill introduced on the “Right to Dry” model passed in other states. The LAC opposed the bill because it flatly prohibits associations from enacting rules that in any way restrict the ability of owners or tenants to install outdoor clotheslines. The open-ended wording allows owners to place clotheslines wherever they like—in parking lots, on balconies, in common areas, limited common areas and everywhere in between. The LAC believes that association boards need the authority to establish rules that make sense for their communities. The bill remains in committee.

Clotheslines/Right to Dry—[SB 1014](#) was another “Right to Dry” bill the LAC had been watching closely, and would bar association bylaws from prohibiting clotheslines or drying racks, but exempts common areas and limited common areas from that restriction. Because of that exemption, which preserves the right of associations to dictate where clotheslines may and may not be placed, the LAC did not oppose the bill as written. Currently, the bill remains in committee.

Michigan

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Kramer-Triad Management Group

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Advocacy Highlights

Manager Certification—The LAC is continuing its pursuit of the adoption of a manager certification program based on a model developed by CAI. The LAC is working with a lobbying firm in seeking sponsors. The model provides that community association managers be required to receive certification through the NBC-CAM. The approach to this legislation has been non-partisan in nature. Regarding the manager certification program, the LAC is promoting the “revenue neutral” aspect as a selling point. The LAC believes it will be able to get a bill introduced and passed this coming year. During the 2010 legislative session, the LAC had trouble finding a sponsor before the legislature recessed and adjourned. It faced heavy opposition from the Board of Realtors, who wanted to teach the classes themselves, as well as slight opposition from the Institute of Real Estate Management. The fiscal climate of the state also occupied lawmakers. Some progress was seen in November 2011 as the LAC conducted a meeting with legislative analysts for the State of Michigan to explain the importance of Manager Certification.

Minnesota

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Advocacy Highlights

Real Property—[HB 1254](#) and [SB 926](#) seek to expand and define certain residential property rights and modify certain association vote and lien provisions of the Minnesota Common Interest Ownership Act. The bills nullify any provision of any deed restriction, subdivision, regulation, restrictive covenant, local ordinance, contract, rental agreement or regulation, or HOA document that limits the right of an owner or tenant to display a noncommercial sign, the United States flag or the Minnesota State flag. The bills also provide that any provisions of any deed restriction or restrictive covenant that limits the right of an owner or tenant to make alternative energy or landscaping improvements to a portion of the residential property that they have exclusive use of, are void and unenforceable. The bills also address the dissolution of a common interest community. The LAC is closely monitoring the bill as it has been carried over to the 2012 legislative session.

Missouri

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Advocacy Highlights

Residential Cooperatives—[SB 366](#) provides the first statutory structure for cooperatives in Missouri, although the new law focuses solely on business cooperatives and is unlikely to promote cooperative ownership of residential property. The LAC considered amending the bill to promote residential cooperatives, but there were a large number of small changes that needed to be made. However, the door is now open to an expansion of cooperative-ownership to residential housing if the committee wishes to pursue this. The LAC closely followed this bill which was signed into law.

Transfer Fees—[State Code 442.558](#) addresses Real Property Transfer Fee Covenants in Missouri. In 2008, the realtors pushed through a bill that prohibits the recording or enforcement of covenants that require the seller of real estate to pay a fee to a third party in connection with the conveyance of the real estate. Section 442.558 excludes realtors' commissions as well as other assessments from the prohibition, but what were not excluded are any condominium declaration or subdivision indentures requiring a payment to the association. Given the current housing market the LAC believes it would face substantial opposition to an exception for an association charging a fee on a transfer unless that exception excluded involuntary transfers (i.e., foreclosures) or the fee actually related to some service provided or expense incurred by the association in connection with the listing and sale of the unit (for example, the association's cost in providing documents for the resale certificate).

Utility Sales Tax—The LAC pushed for the introduction of a bill addressing utility sales taxes on usage in common ownership properties. Residential users are not required to pay state sales tax on their use of electricity. However, in multi-family structures, which are not on a single meter for the entire structure, electricity used to light or heat/cool common areas is subject to the state sales tax. Therefore in common interest ownership communities, electricity used for such items or locations as the community

center, community pool, exterior lighting for parking areas and similar common area usage, is subject to state sales tax. To eliminate this sales tax on residential electric use requires only a minor language change. The LAC did not seek sponsorship of this bill this past session because of state budget concerns. However, state revenues ended up exceeding expectations in the recently ended fiscal year, so this proposition may pass in 2012.

The Uniform Common Interest Owners Bill of Rights Act (UCIOBOR)—The LAC pushed a modified version of the UCIOBOR, which was presented to a number of legislators to review. Both the Uniform version and the LAC-favored, Missouri version are hard to sell because (a) they are long, (b) they are complicated and (c) there is no great public outcry. The Missouri version had the additional hurdle of not being a “uniform” law, and therefore, loses the potential benefit of having been adopted by other states.

Nevada

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Advocacy Issues

Wind Energy—[AB 122](#) was introduced in response to an entrepreneur in Sparks, Nevada, who invented a very small, but effective, wind turbine for installation in the back yards of homes. The LAC did not take a position on this bill as NRS 116, Nevada’s main CIC bill, prohibits these from being installed unless the property has a two-acre sized lot. The bill still allows for reasonable restrictions should associations have the two-acre parcels to allow for some control. However, those unique association will not be able to blanket refuse them. The bill was passed into law.

Listing of Owners—[AB 246](#) requires an association to work with an owner requiring for the board to get the addresses of other owners in order to communicate with them. The association must provide the addresses, but the LAC was successful in requiring names be removed for the disclosure information, and also requiring the candidate provide a written statement that the candidate is requesting the list for the purposes of distributing his or her campaign material directly to the other owners .The bill was passed into law.

Transfer Fees—[AB 271](#) indirectly sought to do away with the transfer fees for associations and management companies. The minutes from the bill’s presenter show that it was not the intent, but management companies are changing their contracts to clearly show “new owner set up fees” vs. transfer fees that were not discussed in the legislation. The bill does prohibit true developers to set up transfer fees in the future, and unless the developers record documents against all properties by July of 2012, the transfer fees will be eliminated in the state. The bill was signed into law.

Homeowner Bill of Rights—[AB 448](#) was defined as the “Homeowner Bill of Rights” bill by the sponsor. The assemblyman who put this bill forward agreed that he was not familiar enough with the contents of the bill and allowed two anti-association individuals to present the bill for him. The LAC testified many times against this bill and finally got it defeated.

Electronic Communication—[AB 564](#) states that the Secretary of State is to come up with provisions to allow a corporation or other entity subject to non-profit corporation laws to carry out their duties through the use of the most recent technology available, without limitation, including the use of electronic communication, videoconferencing and telecommunications. The LAC supported this bill and it passed.

Electronic Transfers—[SB 30](#) expands electronic transfers and payments beyond only utilities. This bill changes the law to comply with state and federal mandates that some payment funds be transferred electronically. The bill provides that IRS payments and some division payments must be sent electronically. Managers who were in violation of the law since 2009 had to send the payment electronically. The LAC supported the bill and it was passed into law.

Financial Review and Audits—[SB 89](#) is a LAC-supported bill because the north and south regions of Nevada are not equal in the amounts that are charged to have audits and reviews—the north was overly burdened in having either reviews or audits while operating on small budgets. The bill dismisses any association with a budget under \$45,000 from having an audit or a review unless the documents required otherwise or if 15 percent of the owners requested an audit or review. It further defines, by budget size, when an association is required to have a review or audit. The bill was passed into law.

Renters Privacy—[SB 222](#) prohibits tenant registration fees in Nevada and states that an association cannot expect to obtain any more information from a tenant than they would expect to obtain from owners. The LAC monitored the bill and it passed into law.

Re-Sale Fees—[SB 403](#) allows the manager or the management company to disclose in escrow any fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fess and attorney’s fees currently owed a selling unit’s owner. Previously, when asked in escrow to disclose any types of amounts owed except assessments, the association could not do so as they were considered confidential information. The LAC supported the bill and it passed into law.

New Hampshire

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Advocacy Highlights

Abutter's Notices—[HB 85](#) would have changed the definition of abutter for notice of land-use board hearings to include condominium or collective unit owners rather than the officers of the collective or association. The bill died with no direct LAC involvement.

Clotheslines—[HB 319](#) would have allowed the use of clotheslines and drying racks within community associations. The bill was opposed and successfully defeated by the LAC.

State Fire Code—[SB 110](#) provided the state fire code shall apply to the substantial rehabilitation of existing buildings, structures or equipment. It extended the time period under which the option to contract a condominium may be exercised and extended the statutory timeline for the declarant to convert convertible land in a condominium to finished units. The LAC monitored the bill and it failed to advance in the Senate.

Debt Collection—[SB 187](#) required the plaintiff to file certain additional materials with a complaint brought under RSA 358-C, relative to debt collection practices. The bill also required certain evidence of the amount and nature of the debt in order for the court to enter a default judgment or summary judgment against a debtor. The LAC monitored this bill and it failed to advance to the Senate.

New Jersey

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Advocacy Highlights

HOA Management—[AB 4080](#)'s original intent is to address concerns raised by residents of The Radburn Community in Fair Lawn, N.J., but the introduced version affects community associations statewide. The LACs concerns have been well received, and it continues to work with the sponsor and the Assembly Majority Office on targeted amendments to this bill to ensure it only addresses The Radburn Community. The LAC opposes the bill and it is pending consideration in its initial committee of referral. The measure will likely be reintroduced in 2012.

Enabling Act—[AB 2971](#) creates an enabling act for certain HOAs, and provides standards for governing documents, membership and management of all HOAs. The bill was referred to the Assembly Housing and Local Government Committee in 2010 and has not been posted on a committee agenda to date. Representatives from the LAC met with the sponsor, Assemblywoman Vandervalk, and discussed possible amendments to the bill and continue to work with the sponsor in this regard. This bill was also drafted to specifically deal with voting rights in The Radburn Community, but has statewide implications as well. The LAC opposes the bill in its current form and is seeking amendments as the measure remains in its initial committee of referral. The measure will likely be reintroduced in 2012.

Board Elections—[SB 2187](#) defines HOA membership and fair standards for elections and recall of trustees in HOAs. Representatives of the LAC met with the bill sponsor on a few occasions, and a LAC subcommittee has been formed and is currently drafting possible amendments for the sponsor's consideration. The LAC opposes the bill and the measure remains in its initial committee of referral. The measure will likely be reintroduced in 2012.

Building Inspection—[SB 2771](#) and [AB 3895](#) requires the periodic inspection of exterior walls of certain buildings. The Senate bill has passed its chamber of origin and the Assembly bill has passed its committee of referral despite considerable opposition and promises of compromise. The bills would require all structures (commercial and residential) over four stories in height to be subject to random inspections. The LAC has argued that the current five year inspection would cover exterior inspections in residential properties, and the sponsors offered an amendment that would remove the five year inspection requirement for a residential building. However, this amendment would still subject these buildings to separate inspections. A stakeholders group met with the bill sponsors in late June, but no compromise was reached at that time. The LAC went on the record at several committee hearings as opposing the bills, and the LAC will continue to actively oppose this bill.

Mold Safe Housing Act—[SB 2632](#) and [AB 3772](#) were introduced in both legislative chambers and were referred to the respective Senate and Assembly committees. The New Jersey LAC is seeking amendments on these bills and several representatives from LAC met with the bill sponsors to discuss concerns. The measures are pending consideration in their initial committees of referral and will likely be reintroduced in 2012.

Community Manager Licensing—The LAC continues its work on a community managers licensing proposal. A manager's licensing task force completed its work on this project in late 2010, and the LAC approved a draft version of the bill, which was then sent to CAI National for its approval, as is required. The LAC's next step will be to secure Assembly and Senate sponsors to formally introduce a bill.

New York

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Advocacy Highlights

Manager Licensing—[AB 2582](#) and [SB 3051](#) provide, among other things, for the licensing of individuals and companies engaged in the business of residential realty management. The LAC was not involved in the drafting of the bills, but has discussed a strategic approach to this issue. The LAC believes the bills are dead on arrival due to state budget issues and opposition by key committee staff. The bills are pending consideration in their initial committees of referral and will carry over to 2012.

Manager Licensing—[AB 5985](#) and [SB 87](#) require residential real property managers or any firm employing a property manager, contracting with a property manager or contracting to provide a property manager to file a registration statement with the secretary of state and to be certified from an approved certifying organization. The LAC was not involved in drafting the bills and has not yet engaged in effort. The bills are pending consideration in their initial committee of referral and will carry over to 2012.

North Carolina

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Advocacy Highlights

Planned Community & Condo Act Amendment—[HB 165](#) started out as a wide ranging set of actions that would have made the management of condominiums and homeowners associations most difficult; it was then developed by the House Select Committee on Homeowner Associations, and due to the diligent work of the LAC and help from the state Bar Association and the state Association of Home Builders, the bill now has only four primary purposes:

1. No lien can be foreclosed on unless the assessment remains unpaid for 90 days or more.
2. An association cannot foreclose a claim of lien unless “the executive board votes to commence the proceeding against the specific lot”.
3. The state Real Estate Commission will create a new homeowners association/condominium disclosure form for the sale of property (similar to the state residential property disclosure statement) by January 1, 2012.
4. By December 1, 2011, the Real Estate Commission must also create a brochure for the public on HOAs and condominiums regarding restrictive covenants and how the failure to pay assessments can lead to foreclosure.

The balance of the law takes effect and applies to foreclosures filed on or after October 1, 2011. The LAC is proud of its efforts and is satisfied with the outcome of this legislation.

Community Associations Managers Licensing Act—[SB 373](#), which is supported by the LAC, was favorably voted on by the Joint Committee on New Licenses and was subsequently referred to the Senate Committee on Commerce, where it will hopefully be taken up in the 2012 session.

Foreclosures—[HB 183](#) would have eliminated foreclosure as a collection tool for HOAs. It was amended into a bill that establishes a legislative committee to study the issue of foreclosures by HOAs for unpaid dues or related fees, and charges and examines alternatives to assessment lien foreclosure. The LAC will continue to monitor this closely, as this committee's recommendations may have a grave impact on HOAs.

Energy Saving Devices—[HB 282](#) seeks to prohibit HOAs from controlling the installation of solar and water saving devices. The LAC is monitoring the bill which has been carried over to 2012.

Taxation—[HB 355](#) could make real property owned by an HOA taxable if the property is located in a different taxing jurisdiction. While the legislation appears to be aimed at associations with recreational facilities several counties away, it would, as written, impact any association located in two taxing jurisdictions including those that are located in two contiguous counties. The LAC is monitoring the bill which has been carried over to 2012.

Liens—[SB 588](#) was proposed by the Community Associations Committee of the state Bar Association, and aims to bring uniformity to the process for filing and enforcing liens as well as resolve title issues and concerns related to the process. The bill is supported by the Administrative Office of the Courts as well as the Clerks of Court. The LAC generally supports this bill and will further review it before the 2012 session.

Ohio

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Advocacy Highlights

Super Lien—In 2011, the LAC worked on finding a sponsor for the state’s own Super Lien bill, but was unable to find a sponsor because of banking-interest resistance and other pressing budget and legislative issues. The LAC is talking to legislators about sponsorship for alternative legislation to the Super Lien bill, although it is at the very beginning of this process. The LAC did advise Senator Michael J. Skindell (D) on a piece of legislation, which was not introduced and, among other things, would have made a mandatory reserve requirement for condominium associations voluntary in the state.

Oregon

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Advocacy Highlights

Priority Lien—[SB 300](#) represented the continuing effort of the LAC to have legislation introduced and enacted that requires the payment of the prior six months of past due association assessments (except for fines) by a lender when a first mortgage or trust deed is foreclosed. SB 300 also gives the association the same lien priority as a condominium association under the state Condominium Act. Under the bill, the associations lien would have priority over the lien of a first mortgage or trust deed of record (and land sale contract) if: the association has given the mortgage lender the land sale contract or the trust deed 90 days prior written notice in accordance with the statute that the owner is in default in payment of an assessment; the lender has not initiated judicial action to foreclose the mortgage; caused to be recorded either a trustee's notice of sale under the trust deed or a notice of default and election to sell; or accepted a deed in lieu of foreclosure in the circumstances described in the act prior to the expiration of 90 days following the notice by the association; the association has provided the lender, upon request, with copies of any liens filed on the lot, a statement of the assessments and interest remaining unpaid on the lot and other documents that the lender may reasonably request; the borrower is in default as to principal or interest under the terms of the mortgage or trust deed; and a copy of the notice, together with an affidavit of notice has been recorded in the manner prescribed in the section. The bill failed upon adjournment.

Removal of Directors by Owners—[HB 3317](#) provides when owners remove a director, the owners are to fill the vacancy, unless the governing documents specifically prescribe a different procedure. The bill also prescribes requirements for notice of a meeting, the filling of a vacancy and other related procedural matters. Furthermore, it provides notwithstanding a contrary provision in the declaration or by-laws: any director whose removal has been proposed by the owners must be given an opportunity to be heard at the meeting, a vote to remove a director must provide an opportunity for owners to vote

separately for or against each director whose removal is proposed and removal of a director is effective only if the matter of removal was an item on the agenda and was stated in the notice of the meeting. The LAC monitored the bill and it passed into law.

Procedure for Lender Approval for Actions—[HB 3317](#) prescribes a procedure to obtain lender approval when lender consent or approval is required for actions by owners, a board or an association, unless another procedure is specified in documents or statute. The procedure conforms to rules currently required by Fannie Mae and the Federal Housing Administration. The LAC monitored the bill and it passed into law.

Easement over Limited Common Elements—[HB 3317](#) provides that when the use of a limited common element is reserved for five or more units, an easement (lease, license, etc.) may be granted over the limited common element when the action is for more than two years, with the consent or approval of 75 percent of the unit owners. When the action is for two years or less, the consent or approval of the owners of a majority of the units' owners is needed. HB 3317 also prescribes requirements for the instrument granting the interest or consent. The LAC monitored the bill and it passed into law.

Approval to Change Appearance of Unit—[HB 3317](#) permits the board to impose conditions of approval for changing the appearance of unit, notwithstanding other provisions of the declaration or bylaws. The LAC monitored the bill and it passed into law.

Clotheslines—[HB 3059](#) would have prohibited the inclusion in declaration or bylaws of a community governed by declaration provisions prohibiting use of clothesline. The bill failed in committee upon adjournment.

Real Property—[SB 774](#) would have prohibited planned communities or condominiums a provision in their declaration or bylaws that limit the use of real property in ways otherwise permissible under applicable planning and zoning for the area. The bill specified judicial procedure by which an owner of property may petition to remove provisions from the document. The bill failed in committee upon adjournment.

Pennsylvania

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Advocacy Highlights

Refuse Tax Credit— [Philadelphia City Council Bill 110130](#) would provide a credit against the tax for owners of condominiums and cooperatives and planned community units who do not receive regular city refuse, recycling and bulk item collection services all under certain terms and conditions. Adoption of the bill would provide momentum to statewide legislation to address this issue. The LAC supported the bill and provided testimony at a Finance Committee hearing in October.

State Tax Deduction for Association Assessments—[HB 202](#) would allow a unit owner in a common interest ownership community to deduct 75 percent of his or her association assessments from his or her personal income tax. The purpose of this legislation is to address the problem of association residents paying taxes for municipal services that are often not provided to them. The LAC did not decide what position to take on the bill. The bill has not made it out of committee.

Records and Meetings—[HB 419](#), [HB 950](#) and [SB 877](#) all addressed open meetings and open records in common interest ownership communities. CAI strongly agrees that the sharing of information and access to documentation are essential components of proper functioning of community association governance. However, there are laws and rules already in place that ensure openness and that unit owners have access to the records and documents of their community association. Furthermore, the adoption of this legislation will likely have several unintended consequences that will adversely impact the ability of associations to function properly. Adoption of certain provisions contained in these bills, including the use of recording devices during board meetings and the provisions regarding the application of fines for violations by board members, will have a serious chilling effect on the willingness of homeowners to serve on the board of directors within their communities. The LAC is seeking amendments to these bills to address the above concerns.

Clotheslines—[HB 417](#) and [SB 1048](#) would prohibit a community association from denying an owner's request to install a clothesline or other clothes-drying device. Both bills include an exception to the legislation that allows an association to deny use of a solar clothes drying device to protect access to an adjacent building, to preserve the proper emergency evacuation of buildings and to protect aesthetic values. The LAC supports these bills, but they remain in committee.

Private Transfer Fees—[SB 353](#) and [HB 442](#) prohibit the use of certain private transfer fees which are covenants attached to the deed of a property that force the seller to pay one percent of the sale price to a developer, in conjunction with an out-of-state privately held company, for 99 years. Private transfer fees constitute an unreasonable restraint on the transferability of real property, and are a private investment vehicle without any valid development purpose designed only to benefit the developer who imposes them. SB 353 preserves the rights of community associations to levy transfer fees for capital improvements which help fund replacement reserves necessary for the maintenance and improvement of the community, as well as fees which may be charged by an association, or its agent, for the statutorily-required resale certificate. The LAC supported the bills and HB 442 was passed into law.

Business Improvement District (BID) Condominium Assessments—[HB 1582](#) would alter the billing of BID assessments to associations. The value of assessments for all units within the association would be aggregated and one bill would be sent to the association, meaning the BID assessment would now become a common expense apportioned to each unit owner based upon percentage of ownership in the condominium as opposed to assessed value. The association would be responsible for including the BID assessment in each unit owners' monthly assessment, and for collecting the BID fee along with the monthly assessments. The LAC objected to various provisions of the legislation and sought an amendment that would allow the association to treat the BID assessment based on the actual assessment of each individual unit and not as a common expense allocated by a percentage of ownership. In addition, the amendment designates that the association is merely serving as the collection agent for the BID and that unit owners shall not be liable for delinquent owners who fail to pay their BID assessment. The BID would be responsible for directly pursuing any owners who do not pay. The bill, including CAI's amended language, was adopted by the House and sent to the Senate where it awaits action.

Rhode Island

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Advocacy Highlights

Common Areas—[HB 5518](#) would have made it easier for condominium owners to alter limited common areas. Under the existing requirements, a majority or, in some cases, a super majority of owners must approve any such changes. The proposed legislation would have allowed the board alone to approve or reject these plans, as long as immediate abutters have no objections. The LAC supported the bill but it died in committee in the House.

Transfer Fees—The LAC monitored a bill which would seek to ban private transfer fees, but the bill, as introduced, did not appear to target transfer fees for common interest communities.

South Carolina

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Advocacy Highlights

Liability Insurance—[SB 431](#) amends the Code of Laws by adding section 38-61-70 to provide that a liability insurance policy issued by an insurer and covering a construction professional must be broadly construed in favor of coverage. The bill also provides that, in certain circumstances, the work of a construction professional resulting in property damage constitutes an occurrence commonly defined in liability insurance, and is not the intended or expected result of the construction work of the professional. The bill effectively restores billions of dollars in construction defects from liability insurance coverage to community associations across the state. The LAC strongly supported this bill and it was passed into law.

Homeowners Association Act—[SB 218](#) is the same bill proposed last year (then SB 30) that the LAC was able to have favorably amended through several sub-committee meetings; however it did not pass the General Assembly. The bill is back in its original form, so the LAC must again work to prevent it from

being straddled with obligations, requirements and restrictions that would be very harmful to common-interest communities. The LAC opposes the bill and it remains in committee.

Transfer Fees—[HB 3095](#) attempts to restrict capital transfer fees. The LAC has been able to have this bill favorably amended at the committee level in order to support community-benefiting transfer fees. The LAC continues to monitor the bill and it remains in the Senate.

Alcoholic Regulation—[HB 3295](#) is a bill introduced for the purpose of clarifying that many HOAs own and operate food and beverage services where alcoholic beverages are sold, and requires equal treatment under state regulations. The LAC was able to support this legislation and level the playing field for associations with those types of interests. The bill was passed into law.

Manager Certification—[SB 699](#) is a bill crafted by the LAC and introduced into the Senate. It proposes to have community managers certified, and recognizes the CAI/NBC-CAM Education and Certification programs as the standard for professional designations. Professionals who have been in the industry for five years or more will not have to pass initial certification tests, but will need to participate in continuing-education courses going forward. The bill resides in the Senate Committee on Judiciary.

Tennessee

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Advocacy Highlights

Insurance Requirements—[HB 19](#) and [SB 1143](#) require HOAs to provide and maintain insurance and report information quarterly or as requested in writing. The LAC vigorously opposes the bills, which remain in their initial committees of referral and have been carried over to 2012.

Homeowner Association Study—[HJR 219](#) is a House Joint Resolution brought by Representative Gary Moore, Sr. (D) after he was not able to garner enough votes to get committee action on HB 19. An amendment was added to the resolution requiring the study to be conducted by the standing committee rather than through a special study committee. The LAC closely monitored the bill. The House approved the resolution as amended. The Senate referred the resolution to the Delayed Bills Committee, which did not take any action this year.

Transfer Fee Ban—[HB 1644](#) institutes a ban on deed-based transfer fees. With the support of the LAC, CAI filed an amendment exempting common interest communities. The bill as amended was subsequently passed into Law.

Municipal Exemption for HOA Fees—[HB 882](#) creates a study of laws and cases dealing with delinquent property taxes. An amendment was added late in the session to exempt local governments from restrictive covenants and assessments. This bill and amendment were proposed by the comptroller, who is given some deference on tax issues; this was a difficult issue that has been deferred until next year. The LAC closely monitored the bill.

Texas

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Advocacy Highlights

Foreclosures—[HB 1228](#), [SB 101](#) and some provisions in [HB 2761](#) addressed foreclosure-affected common interest communities. TCAA supported the change to judicial review as it had become apparent that not agreeing to a change in the process could mean foreclosure as a remedy would be eliminated. The bills provide, among other things, for the following:

- Requires expedited judicial foreclosure unless the owner agrees to non-judicial foreclosure.
- Provides the Supreme Court shall adopt rules similar to those adopted under Section 50(r) Art XVI (home equity loans) by January 1, 2012.
- Provides a new notice to certain lien holders and the opportunity to cure before commencing a foreclosure.
- Provides that owners with at least 10 percent of voting interests may petition to the association to call a special meeting to vote to remove or add the foreclosure remedy (TCAA did not ask for this but was part of the overall negotiation).
- Imposes a certain wording required in non-judicial foreclosures for those members of the military (TCAA actively supported this).

- Provides that amounts for records production cannot be subject to foreclosure (TCAA supported this).

All measures were passed into law.

Application of Payments—[HB 1228](#) stipulates that an association must apply payments in the following order:

1. Any delinquent assessment
2. Any current assessment
3. Attorneys fees or third party collection costs that solely are related to assessments or provide the basis for foreclosure
4. Any other attorneys fees
5. Any fines assessed by the association
6. Any other amount owed to the association

The bill provides if the owner is in default under a payment plan the association does not have to follow the above order and a fine may not be given priority over any other amount owed to the association. TCAA strongly opposed this concept; however, when it was apparent the bill was going to pass, TCAA negotiated the tie-in to the payment plan. The bill was passed into law.

Collections—[HB 1228](#) defines that a collections agent is the same as a debt collector under debt collection laws. It also provides a POA cannot hold an owner liable for fees by a collection agent unless the association provides the owner written notice. The bill further provides for the specifications of the written notice and outlines POAs' powers regarding collections. TCAA did not initiate the collections issue, but it was brought up as result of an inappropriate attorney's practice. As a result, TCAA worked with the legislators' offices and agreed to support the measure, which passed into law.

Payment Plans—[HB 1228](#) and [HB 1821](#) provide that associations greater than 14 units must adopt guidelines for an alternative payment schedule and record it. In addition, the plan must allow owners to make partial payments for delinquent assessments or any other amount owed to the association without accruing supplementary penalties. The bills provide that the minimum term is three months and the maximum is 18; however, there is no obligation to allow up to 18 months. The bills also provide an association is not obligated to offer the schedule if an owner failed to honor a previous payment plan during the last two years. TCAA supported the measures, which passed into law.

Resale Certificates—[HB 1821](#) stipulates that the notice a purchaser has to receive from the seller now must clearly state that they are entitled to receive the information provided in a resale certificate. The bill also stipulates the POA must promptly deliver a copy of the most recent resale certificate, which may not be prepared earlier than the 60 days prior. The bill provides additional items to be included in the

resale certificate package. In the new provision, a purchaser or seller can request a certificate; the purchaser pays unless otherwise negotiated and can collect funds for the resale certificate but may not “process” them until the resale certificate is available. TCAA supported the bill, which passed into law.

Open Meetings/Records—[HB 2761](#) and [HB 1821](#) define board meetings as “a deliberation between quorums of the voting board...or between a quorum of the voting board and another person, during which POA business is conducted and the board takes formal action.” Specifically, a board meeting is not a quorum of the board at a social function; regional, state or national convention; ceremonial event; or press conference as long as formal action is not taken. The bills further provide all POA regular and special board meetings must be open to members, and board meetings must be held in the county the association is located in or in an adjacent county, unless it is a telephonic or electronic meeting. The bills provide that written minutes must be kept and made available for member inspection, and records must be open and available for examination by an owner, a person designated in writing by an owner as the owner’s agent, attorney or a certified public accountant and imposes a cap on the amount an association can charge for providing the records. TCAA supported the concept and negotiated hard on the language, and agreed to a majority of the changes before the bills passed in law.

Mandatory Annual Meeting—[HB 2761](#) was supported by TCAA and stipulated that if a board fails to give notice of an annual meeting, the owner can send demand to do so within 30 days. The measure passed into law.

Voting Rights—[SB 472](#) and [HB 2761](#) provide that a POA shall give written notice of an association election no later than 10 days, or earlier than 60 days, before the date of the election or vote. The bills provide voting rights may be cast or given in person, by proxy, by absentee ballot, by electronic ballot, or by any method of representative or delegate voting provided by the dedicatory instrument. Absentee or electronic ballots may be counted as an owner present and voting for the purposes of establishing a quorum only for items appearing on the ballot. TCAA was mostly in favor of the provisions in the bills, which passed into law.

Amendments—[SB 472](#) contains amendments which dictated that 67 percent of homeowners can vote to amend restrictions, unless there is a lower amount permitted by documents, and provides bylaws that cannot be amended to conflict with a declaration. The bill was supported by TCAA and passed into law.

Solar Panels—[HB 362](#) covers the installation and use of solar energy devices. Under the bill, a POA may not enforce a provision that prohibits or restricts an owner from installing a solar energy device. However, a POA may enforce a provision that prohibits a solar energy device that: as adjudicated by a court, threatens the public’s health or safety, or violates a law; is located on a property owned or maintained by the POA; is located on property owned in common by the members of the POA; is located in an area on the owner’s property other than on the roof or other permitted structure; or is located in a fenced yard or patio owned and maintained by the owner. TCAA supported the bill, which passed into law.

Religious Displays—[HB 1278](#) establishes that a POA cannot prevent an owner from maintaining certain religious items that may be found on an entry to their dwelling. The bill limits the size to 25 square inches and provides the display must be motivated by the owner or residents' sincere religious belief. Exemptions were made for, among other things, public safety and offensive language. TCAA did not support this bill upon introduction, but helped craft language to make it acceptable and ultimately supported before it passed.

Flags & Flagpoles—[HB 2779](#) states that a POA cannot deny an owner's right to install flags or flagpoles for U.S., state or Armed Forces flags provided they are smaller than 20 feet and that placement and noise restrictions are taken into account. TCAA supported the bill and it passed.

Rain Water Harvesting Devices—[HB 3391](#) states that a POA cannot deny an owner's right to install rain water harvesting devices if they meet certain architectural requirements. The devices must be a factory color and some screening requirements are permitted. TCAA supported the bill and it passed.

Transfer Fees—[HB 8](#) protects POAs, foundations and other 501c-entities' existing foundation fees provided the payments directly benefit the encumbered property. The bill clarifies how the administrative transfer fee is typically collected, either by the association or management company, is not in violation of the prohibited fees in this bill. The LAC supported the bill with some hesitations after the measure passed.

Utah

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Advocacy Highlights

Condominium and Community Association Amendments—[HB 225](#) modified real estate provisions relating to condominiums and community associations. It also provided requirements for a notice of lien for an unpaid assessment, modified a provision relating to the enforcement of a lien for unpaid assessment and required an agent for an association to register with the Division of Corporations. The LAC monitored the bill before it failed.

Community Association Act—[SB 117](#) modifies the Community Association Act, specifically a provision prohibiting HOA governing documents from requiring an amendment to be approved by more than 67 percent of the voting interests. The bill also prohibits the vote required to amend governing documents to exceed 67 percent regardless of a contrary provision in the governing documents. The LAC monitored the bill and it was passed into law.

Reserve Account—[SB 89](#) modifies provisions of the Condominium Ownership Act and the Community Association Act relating to reserve accounts and requires such associations to allow owners annually to decide whether and, if so, how to fund a reserve account. The LAC monitored the bill and it was passed into law.

Condominium Ownership—[SB 167](#) modifies, repeals and enacts provisions relating to the Condominium Ownership Act and the Community Association Act. The bill establishes what constitutes as fair and reasonable notice, and modifies provisions relating to liens for assessments and related charges and the process to collect assessments. The bill also enforces the liens and enacts Community Association Act provisions, including provisions relating to development rights, association bylaws, creditor approval of specified actions and insurance. The LAC monitored the bill and it passed into law.

Vermont

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Advocacy Highlights

Taxation of CIC Property—[HB 217](#) proposes to give a town the authority to tax common interest community property. The LAC is monitoring the bill, as it has been carried over, and is preparing for a busy 2012 legislative calendar.

Virginia

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Advocacy Highlights

CICB Certification; Disclosure Packets—[HB 1674](#) adds the definition, “professionally managed” to the definitions contained in Code §55-528 and changes § 55-509.6 to refer to professionally managed associations. This bill also delays until July 2012 the time by which an employee of a CIC manager must hold a certificate from the Common Interest Community Board (CICB). This bill reduces from 90 to 45 days the time when the selling owner will be responsible for the fees for preparation of the disclosure packet when no settlement occurs on the unit or lot. This bill was introduced at the request of the Virginia Association of Realtors (VAR), but the LAC worked closely with VAR and the Virginia Association of Community Managers to ensure that community associations’ interests were protected. As a result of the LAC’s efforts, the requirement that associations and their employees obtain CICB manager certification was eliminated from the bill. As amended, the bill passed.

CICB Licensure Deadline—[SB 983](#) extends the expiration deadline for provisional common interest community manager licenses from June 30, 2011, to June 30, 2012. The bill also amends bonding requirements for associations whose residents are exempt from licensure by the CICB to conform to the Condominium and Property Owners’ Association Acts, provides for the payment of court-appointed receivers from the Common Interest Community Management Recovery Fund, and clarifies the CICB’s

authority to promulgate regulations. In addition, the bill clarifies provisions in the Virginia Real Estate Time-Share Act and Condominium Act governing the irrevocable appointment for service of process to apply only to nonresidents and corrects an erroneous reference contained in the Condominium Act. The LAC monitored this bill because it addressed a similar issue in HB 1674, and the bill passed into law.

Annual Assessment by CICB—[HB 1627](#) proposed changes to the minimum amount payable annually by common interest communities to the CICB from the lesser of \$1,000 or 0.05 percent to the lesser of \$3,000 or 0.03 percent. The LAC opposed this bill and it was left in committee.

Enforcement in General District Courts—[HB 2289](#) and [SB 1327](#) grant general district courts the jurisdiction to try and decide cases under the Virginia Condominium Act and the Virginia Property Owners' Association Act. These bills also authorize general district courts to order a violating owner to abate or remedy the violation, and provide that a general district court may enter default judgment against an owner on the association's sworn affidavit. These bills were introduced at the LAC's request, and both bills passed into law.

Transfer Fee Covenants—[SB 931](#) provided that a transfer fee covenant recorded in the Commonwealth on or after July 1, 2011, shall not run with the title to real property and is not binding on, or enforceable against, any subsequent owner, purchaser, or mortgagee of any interest in real property. The bill further provides that any lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in the Commonwealth on or after July 1, 2011, is void and unenforceable. However, the bill exempted from its definition of a "transfer fee" any assessments, charges, or fees authorized by statute, the recorded condominium instrument, or the recorded declaration to be charged by, or payable to, common interest communities or cooperatives. The LAC supported this bill with the specific exemptions and the bill passed.

Covenants Regarding Solar Energy Collection Devices—[HB 1598](#) invalidated any new or existing restrictive covenant adopted by a community association that prohibits or restricts the installation or use of any solar energy collection device. The LAC opposed this bill, which was left in committee.

Violation Charges and Suspension of Services for Rules Violations—[HB 2304](#) gave common interest community boards the authority, even in cases where the declaration does not expressly grant the authority to the boards, to suspend a unit owner's right to use facilities or services, including utility services, provided directly through the association for nonpayment of assessments that are more than 60 days past due. The LAC supported this bill, but it was stricken from the committee docket by voice vote and not considered.

Amendments to Condominium Documents; Smoke Free Units—[SB 1080](#) authorized condominium instruments to be amended by agreement of two-thirds of the unit owners, or by a larger majority if the condominium instruments specify, to require that units conveyed or transferred after the effective date of amendment be smoke-free units. The LAC opposed this bill because the authority to amend condominium documents by agreement of two-thirds of the unit owners already exists in the Condominium Act. The bill was stricken at the request of its sponsor and not considered.

Fees for Disclosure Packet/Resale Certificate—[HB 2188](#) decreases from 90 to 45 days, where settlement does not occur, the time when a seller of a condominium unit or lot will be responsible for the payment of all allowable fees related to the preparation of the disclosure packet/resale certificate provided by the association. It also provides that all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be assessed within one year after delivery of the same against the unit owner. SB 1323 also decreases from 90 to 45 days, where settlement does not occur, the time when a seller of a condominium unit or lot will be responsible for the payment of all allowable fees related to the preparation of the disclosure packet or resale certificate. The LAC supported these bills, which passed into law.

Access to Association Books and Records—[HB 1741](#) provides that charges for access to association books and records may be imposed only in accordance with a cost schedule adopted by the board. The cost schedule shall specify the charges for materials and labor, apply equally to all members in good standing, and be provided to such requesting member at the time the request is made. This bill is not effective until July 1, 2012. The LAC supported this bill, which passed into law.

Exemption to Virginia ABC Banquet License—[HB 1975](#) provides that no banquet license shall be required for private meetings or private parties limited in attendance to the members of a common interest community as defined in statute and their guests, provided the alcoholic beverages shall not be sold or charged for in any way, the premises where the alcoholic beverages are consumed is limited to the common area regularly occupied and utilized for such private meetings or private parties, and such meetings or parties are not open to the public. The LAC supported this bill and spoke on the bill at the request of its sponsor. The bill passed.

Property Owners Association Act; Notice of Pesticide Application—[HB 2290](#) requires property owners' associations to post notice of all pesticide applications in or upon the common areas at least 48 hours prior to the application. This requirement already exists in the Virginia Condominium Act. The LAC supported this bill, and the bill passed.

Parking in Hanover County—[HB 1551](#) grants to Hanover County the same powers to regulate vehicular parking presently granted to the Counties of Arlington, Fairfax, Stafford and Prince William and the Towns of Clifton, Herndon and Vienna. The LAC monitored this bill, and the bill passed.

School Zones in Planned Residential Communities—[HB 1879](#) and [SB 768](#) provided for the designation and enforcement of school zones within unincorporated planned residential communities with the costs borne entirely by the communities in which they are located. The LAC supported this bill, but the bill was left in committee and did not pass.

Funding for Road Maintenance—[SB 1397](#) required the Commonwealth Transportation Board annually to set aside from all funds available for highway maintenance and construction \$50 million to be distributed among homeowners' associations within the Commonwealth for use exclusively for highway maintenance and maintenance replacement. The LAC monitored this bill, but it was left in committee and did not pass.

Immunity of Officers/Directors—[SB 841](#) provides that the immunity from civil liability the directors and other officers of, among other entities, community associations enjoy for acts taken in their official capacities shall survive the termination, cancellation or other discontinuance of the community association. The LAC supported this bill, which passed into law.

Foreclosure on Lien for Unpaid Assessments; Priority of Certain Liens—[HB 2530](#) provided that such portion of unpaid assessments due and owing an association for a period not to exceed three years that is attributable to providing the maintenance and upkeep of the common areas and such other areas of association responsibility expressly provided for in the declaration, including capital expenditures, shall be prior to all other liens and encumbrances except any real estate tax liens on the unit or lot. The bill contained technical amendments. The LAC monitored this bill closely. The bill was passed-by in committee and was not considered.

Foreclosure on Lien for Unpaid Assessments—SB 411 provided that a property owners' or condominium association may conduct a foreclosure sale on a lien for unpaid assessments subject to the lien of a first trust. The LAC supported this bill, but it was stricken at the request of the patron and not considered.

Virginia Property Owners' Association Act; Control of Association by Declarant—[SB 1253](#) provided that a declaration may allow for declarant control of an association and its board of directors until three months after 80 percent of all lots that the declarant has reserved the right to develop in all phases of development have been conveyed to a person other than a declarant. The bill also provided that the declarant has the right to develop all additional lots in accordance with provisions in effect at the time of transfer of control and gives the declarant a seat on the board of the association until such time as all lots have been conveyed to a person other than a declarant. In addition, the bill prohibited, unless the declaration expressly provides otherwise, a declarant from amending the declaration to extend the period of declarant control including the power to appoint and remove some or all of the members of the board of directors or to exercise powers and responsibilities otherwise assigned to the board of directors or association unless the amendment is agreed to by 100 percent of the votes of the association. The LAC monitored this bill, and the bill was left in committee and did not pass.

Washington

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Advocacy Highlights

Reserve Studies—[HB 1309](#) addresses prior 2008 legislation that required condominium associations to disclose a copy of the association’s reserve study or a disclosure that there is no reserve study on file to prospective buyers. This year the LAC encouraged lawmakers to extend the law to include that disclosure to all condominium owners (not just prospective) and to those HOAs with significant assets. Significant assets are defined as the current replacement value of the major reserve components totaling 75 percent or more of the gross annual budget of the association. There are several other improvements to the existing condominium law as well. The bill passed into law.

Resale Certificates—[SB 5224](#) changed the cap on preparing a resale certificate. Previously, condominium unit owners were required to produce a resale certificate to a prospective buyer before any sale was executed. The resale certificate includes the most current statements of the association’s assessments, special assessments, unpaid assessments, fees, the declaration, rules, bylaws, financial statements, operating budget, pending lawsuits or legal proceedings, anticipated repairs, reserves, reserve studies and insurance coverage. The bill raises the cap from \$150 to \$275, bringing the cost of preparing the

resale certificate in line with the cost of performing the service and with additional reporting requirements. The bill was successfully passed into law with the help of the LAC.

Wisconsin

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Advocacy Highlights

Manager Licensing—The LAC took the preliminary steps to investigate requiring manager licensing in the state. These steps included meeting with attorney Mark Pearlstein, who was instrumental in the passage of a similar manager-licensing statute in Illinois.