



## **2010 ADVOCACY ACTIVITIES**

*Federal and State Legislative Yearbook*

Government & Public Affairs Department

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Note: State updates are current as of February 1, 2010.

## Federal Legislative Issues

**Financial Services Reform (Mortgages)**—Seeking to reign in the excesses of the banking system, Congress passed a sweeping bill to reform the financial services industry—**H.R. 4173**. The bill created a new agency, the Bureau of Consumer and Financial Protection, which is empowered to regulate a broad array of financial transactions. As drafted, community associations and management companies could be considered financial institutions and fall under the regulatory scope of this new agency. The statute requires that all regulations exempt organizations that aren't considered traditional financial institutions. Draft regulations are expected in 2011.

In addition, an amendment by Senator Mary Landrieu has set the stage for radical changes in the mortgage markets by requiring the federal government to create regulations that define “Qualified Residential Mortgages”. Such mortgages will be defined in regulations drafted by a host of federal agencies. Housing that does not meet the requirements of the new mortgages will have great difficulty in finding financing for sale or purchase. CAI sent a [letter](#) outing industry concerns directly to Congress while the bill was in consideration. As passed, the new law will reset the rules for mortgages nationwide and will have far reaching impacts on community associations. At the end of 2010, CAI proactively engaged federal agencies by providing [comments](#) to address concerns of community associations prior to the start of the regulatory process.

**FHFA Private Transfer Fee Guidance**—The Federal Housing Finance Agency (FHFA) was set up by Congress to oversee Fannie Mae, Freddie Mac and Federal Home Loan Banks in the wake of the housing crisis. One of the first actions by this organization was to issue regulatory guidance to curb the use of so-called Private Transfer Fees (PTFs).

Under the draft's guidance, communities that have deed-based transfer fees that require a payment at time of sale or transfer of property will not be eligible for mortgages underwritten by Fannie Mae, Freddie Mac or other federally supported mortgage underwriters. The guidance is in draft form and makes 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 FFHA on the impact the regulation as drafted would have on housing within community associations. The regulation was under review at the end of 2010.

**Private Transfer Fees**—In response to the proposed regulatory guidance issued by the FHFA, two legislative proposals were introduced to address the issue of private transfer fee abuse. The first, HR 6332—Homebuyer Enhanced Fee Disclosure Act, was introduced by Representative Phil Gingery. This bill would have required disclosure of any deed-based transfer fees, but would not have imposed any regulation on the type of fees that could be attached to property. HR 6260, the Homeowner Equity Protection Act of 2010, was introduced by Representative Maxine Waters and would have banned private transfer fees payable to parties not connected with the encumbered property. CAI opposed both bills citing action by 17 states on the matter in 2010 and noting that states should be provided with time to address the issue before expanding federal authority in this area.

**CAI Letter to the White House on Future of Housing**—Responding to a request for information from the White House, CAI, through its Federal Affairs Task Force, submitted [comments](#) on how the evolving federal requirements for mortgage qualification are affecting the more than 60 million residents of community associations. The comments also provided feedback on proposals to overhaul the entire federal mortgage finance system.

CAI called on the Administration to take a second look at current mortgage criteria for purchases in community associations to ensure that they adequately reflect fair measurements of financial health and risk. CAI also cautioned against a rush to wind-down critical institutions such as Fannie Mae and Freddie Mac, without a full discussion on how the government can ensure the market benefits provided by such organizations can continue, but with mitigated risk for future bailouts by taxpayers.

**Data Privacy**—The Personal Data Privacy and Security Act of 2009 (S.1490) attempted to address issues of data privacy in three substantive areas. First, it would have created a set of federal crimes and penalties for violation of the regulations adopted by the act. Second, it would have created a nationwide set of regulations for data brokers. Third, it would have also created a set of federal regulations to govern the collection and protection of consumer personally identifiable information (PII). It would also create a set of regulations governing notification of consumers for security breaches involving PII. S. 1490 was voted out of committee but did not receive a vote on the Senate Floor.

**FHA Condominium Guidelines**—The evolution of the FHA’s condominium guidelines continued to be a challenge to condominium associations in 2010. CAI continued to [call on FHA](#) to reconsider its qualification criteria while working with members to address inconsistencies and errors in the implementation process. In 2010, FHA issued [guidance](#) governing the recertification of association approvals and then [revised deadlines](#) when faced with a flood of applications. FHA insured mortgages continued to grow in importance for condo purchases due to the insolvency of Fannie Mae and Freddie Mac.

**FTC Red Flag Rule**—After numerous delays the Federal Trade Commission’s (FTC) regulation requiring financial institutions and creditors to adopt a policy to flag and respond to identity theft become effective at the end of 2010. The Red Flag rule requires that *financial institutions* and *creditors* develop, implement and administer a written identity theft prevention program to identify and flag potential theft of consumer data related to certain covered accounts. Although associations were not the target of the regulation, some may fall under its requirements. CAI produced a [template policy](#) for communities to adopt if needed.

**Health Care Reform**—The Patient Protection and Affordable Care Act ([HR 3590](#)) is the name of the key bill passed by Congress to overhaul the provision of health care in the United States. The law makes many consumer-friendly changes to health insurance, mandates that individuals obtain health insurance or face fines and requires certain employers to provide health care insurance for their employees. The provisions of the law will be implemented in phases between 2010 and 2018.

The new law institutes a concept called shared responsibility. Under this concept, it is the policy of the United States that the responsibility for health care is shared among individuals, employers and government. Individuals are required to be covered by a health plan either through their employer or through an individual plan. Employers, over a certain size, are required to provide coverage to their

employees. Government, at both the state and federal level, is charged with ensuring that such plans are affordable and for creating markets where consumers can purchase insurance. Under the new law, the government will be providing tax-credits and subsidies for individuals to purchase health insurance. The law also directs state governments to set up insurance exchanges by 2014, where consumers can purchase insurance coverage from private insurance companies.

Controversy and confusion surrounding health care reform helped the Republican Party sweep the 2010 mid-term elections. The new GOP super majority in the 112<sup>th</sup> Congress will further complicate implementation of the health care law.

**EPA Lead Paint Rule**—The Environmental Protection Agency (EPA) finalized the Lead Renovation, Repair and Painting (RRP) rule to protect people from the lead generated by renovation activities like sanding, cutting and demolition. This work can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. The final rule, which became effective April 22, 2010, affects contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities and schools built before 1978. For contractors, this rule means they must now be certified and must follow specific work practices to prevent lead contamination. To become EPA certified, renovation contractors must submit an application and fee payment to EPA.1978.

# Arizona

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## Advocacy Highlights

**Public Roadways**—[HB 2153](#) proposed that, after the period of declarant control, an association has no authority over any roadway for which the ownership has been dedicated to a governmental entity. This bill passed out of the House of Representatives by a vote of 43 ayes, 14 nays and 3 not voting and later died in the Arizona State Senate after being withdrawn from the Committee on Natural Resources, Infrastructure and the Public Debt.

**Private Easements**—[HB 2154](#) outlined a number of requirements for the holder of an easement, including the following: (1) Requiring the holder of any roadway easement that is in the nature of a private right-of-way and the owner of the land to which the easement is attached to maintain the easement; (2) Requiring, for an easement that is held by more than one person or that is attached to parcels of land under different ownership, in the absence of a maintenance agreement, the cost of maintenance will be shared proportionately among the easement holders according to the use made by each user; (3) Requiring, for an easement held by more than three persons, maintenance to be approved by a majority of the easement holders who use the easement; and (4) Allowing a holder of an easement or owner of land to which an easement is attached to apply to any court in the county for the appointment of an impartial arbitrator to apportion maintenance costs for the easement and allowing, if arbitration is not accepted by all parties, a court to enter a judgment determining the proportionate liability of the parties. The bill passed out of the House of Representatives by a vote of 43 ayes, 12 nays and 5 not voting and later died in the Arizona State Senate awaiting Senate Committee of the Whole.

**Antennae Accommodation**—[HB 2615](#) would have required municipal zoning plans, county plans and community associations to provide reasonable height and dimensions for accommodation of amateur radio station emergency communication antennae and structures. The bill passed out of the House of Representatives upon reconsideration by a vote of 37 ayes, 20 nays and 3 not voting and later died in the Arizona State Senate after being held in the Committee on Government Institutions.

## California

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### Advocacy Highlights

**Board Elections**—[AB 1726](#) gave HOA's the ability to reduce quorum requirements for board elections. The bill would potentially saves many thousands of dollars per HOA by avoiding repeated election attempts when quorums are not attained. The LAC served as a sponsor of the bill, which was eventually vetoed by the governor.

**Foreclosure Sales**—[AB 2016](#) gave HOAs the ability to record a single “blanket” request (covering all parcels) to be notified of foreclosure sales. It essentially enables HOAs to commence billing for assessments much sooner. This legislation would have significant impact on assessment collections in terms of keeping HOA’s solvent as dues can be collected several months earlier than under previous foreclosure sales notification standards. The LAC sponsored the bill and it was successfully signed into law.

**Artificial Turf Installation**—[AB 1793](#) prohibited HOAs from restricting the installation of artificial turf by homeowners. The bill was sponsored by San Diego Water Authority and received support from many water agencies. The bill created the potential of being sued due to exposure to toxins in some of the manufactured products. The LAC opposed the bill and it was vetoed by the governor.

**Renter Limitations**—Upon introduction [AB 1927](#) would have caused HOAs extreme difficulties in limiting renters. As amended, it would affect few, if any, HOAs. The bill was sponsored by the California Association of Realtors. As amended, the bill will have little, if any, cost for HOAs. Due to the included amendment, the LAC changed its original opposition to the bill and instead elected to remain neutral in the issue. The bill was eventually vetoed by the governor.

**Homeowner Rights**—[AB 2502](#) considered whether owners should be empowered to stop paying assessments and if collection agents should be barred from being paid for work performed? As last amended, agents would be bound by arrangements previously entered into between owners and the HOA. The bill was sponsored by CARA. Essentially, every HOA could have lost thousands of dollars because the bill permitted owners to dictate when and how they would pay assessments. The bill was strongly opposed by the LAC and generated over 900 letters of opposition. The bill’s author accepted all of CAI’s amendments; thus, the bill was gutted and collection agents would be bound by pre-existing arrangements established between owners and their HOA’s. The bill died in the legislature.

**Water Meters**—[AB 1975](#) required new multi-family developments to have one master water meter and individual sub meters to each dwelling. The bill was sponsored by the Sierra Club and supported by the water agencies. The bill would have been extremely costly to new HOA’s as they would have been prohibited from charging owners for their water usage. The LAC opposed the bill and it died in the Senate Appropriations Committee.

## Colorado

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### Advocacy Highlights

**Foreclosed Property Clean-Up—[HB 1084](#)**, the Good Samaritan Foreclosed Property Clean-Up Act, was to specify that persons who go onto unoccupied property on an unpaid basis to clean-up trash, remove weeds or water the lawn shall be presumed to have the landowner's implied consent. The bill also amends the civil and criminal trespassing laws to exempt persons who engage in this type of activity. CLAC worked diligently with the sponsor to amend this legislation so that the role of a CIC was clearly articulated and defined in terms of self-help protections and CIC immunity found in the unpaid and voluntary provisions of the legislation. In the first committee hearing, 14 amendments were offered and the legislation failed on a 10-1 vote and was postponed indefinitely.

**HOA Information and Resource Office**—[HB 1278](#) addressed the creation of an HOA Information and Resource Office. CLAC supported this legislation and actively lobbied the inclusion of constructive amendments upon negotiation with the bill sponsors, Homebuilders Association, Land Title and several other stakeholder groups. Because the concepts of a registry and information tracking are viewed as helpful identifiers in providing resources to Colorado citizens residing in homeowner associations, CLAC was able to designate its envoy team to fully engage in the crafting of this legislation. The bill was successfully passed. The legislation creates an HOA Information & Resource Center and a registry within the CO Division of Real Estate. The center is to be managed by the Information Officer and the purpose is to act as a clearing house for information concerning the basic rights and duties of unit owners, declarants and unit owners associations. The center will also track inquiries and complaints and report annually to the Director of the Division of Real Estate regarding the number and types of inquiries and complaints received. The bill requires every unit owners association in Colorado to register annually with the Director of the Division of Real Estate. The effective date is January 1, 2011. CAI is positioned to lend support to the resource center to help educate Colorado's HOAs about the rights and responsibilities of homeowners and boards. It is expected that CAI-CLAC will be involved in the upcoming rulemaking procedures which will occur over the next several months.

**CCIOA Exemption**—[HB 1290](#) dealt with CCIOA Exemptions of Small HOAs. CLAC's envoy group held two meetings with sponsor Rep. Stephens and the Homebuilders Association to voice concerns and opposition to the bill. Of key importance was the bill's designation to carve out an entirely new segment of HOAs from CCIOA. This backwards direction would create a host of governance and transparency issues for a large number of Colorado homeowners. CLAC testified and heavily lobbied against this bill, which was ultimately defeated on the House floor 31-34.

**Homeowner Protection Act**—[SB 45](#) was initially designed to be a re-introduced version of last Session's failed legislation, however this measure took on a new life as a required-mediation-in-foreclosure bill. After much discussion, anticipation, off-and-on-again committee calendaring and stakeholder meetings, an unexpected strike-below was offered which would require a lender's loss mitigation department to respond to homeowner calls within a 15-minute window so that distressed homeowners aren't left on 'terminal hold' when they call for help. This was met with unacceptable concerns due to the existing nature of the Foreclosure Hotline as well as the reality that many loss mitigation departments are located outside of Colorado jurisdiction, thus rendering this proposal ineffective. In the waning hours of the session, the bill was postponed indefinitely by the Senate State Affairs Committee.

**Property Lien**—[SB 93](#) addressed lien rights during foreclosure. After months of discussion, SB 93 was introduced and amended to address public trustee foreclosure sales and the ability of the purchaser of a foreclosed property to pay off junior lienors (like homeowner associations) that have a right to redeem the property. Of concern to CLAC was the one-sided nature of the legislation which would not provide any protections to ensure associations will receive full payment of their liens in an appropriate manner. With CLAC leading the charge and being supported by the public trustees, mortgage brokers and others, this legislation was successfully defeated and ultimately postponed indefinitely in the House Local Government Committee on a 10-1 vote. However, all parties agreed to work together during the off-session to craft a reasonable piece of legislation to address a true and concerning business dynamic.

## Connecticut

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### Advocacy Highlights

**State Ombudsman Bill**—[SB 129](#) was an act establishing the Office of Condominium Ombudsmen. Under the law, any unit owner or group of unit owners may file a request with the Office of Condominium Ombudsman to have the commissioner or the commissioner's designee review the complaint regarding alleged violations of any provision of chapter 825 or 828 of the general statutes. They can also review a bylaw of a condominium association or common interest community association concerning the budget and appropriation of funds, as well as the calling and conduct of meetings and access to public records of the condominium association or common interest community association. The state Condominium Ombudsman Bill was the primary bill of focus during the 2010 legislative session. The bill was tabled by the Senate for the end of the legislative session.

**Animal Roaming Bill**—[HB 5109](#) was the LAC's fourth attempt to propose a "roaming animal" bill. The proposal simply seeks to extend the power of the animal control officers to include the common elements of common interest communities. In situations where there is a dangerous animal roaming on association property, animal control officers typically will not go onto association property, as it is considered private. The LAC will make another attempt in 2011 to seek approval of this important bill.

**Governance**—[HB 5434](#) was an act concerning the common interest ownership act and was signed by Governor Rell in June of 2010. This act amends the Connecticut Common Interest Ownership Act revisions which were passed in 2009. The CIOA provisions, which are automatically applied to common interest communities created in Connecticut before January 1, 1984; will apply requirements for declaration amendments affecting the priority of a security holder's interest to bylaw amendments on the same issue; provide for the election of officers by either unit owners or the executive board, unless otherwise specified in the declaration; provide that association rules that restrict residential leasing are unenforceable unless the restriction is recorded in land records; modify requirements for resale certificates, including changes regarding disclosure of the number of owners delinquent in paying their common charges and deleting a requirement regarding itemized costs; and reduce the required days'

notice for executive board meetings from 10 to five, except for meetings called to adopt, amend or repeal a rule, and specifies the notice requirement for meetings concerning a rule.

## District of Columbia

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### Advocacy Highlights

**Establishment of Condominiums**—focusing on the proposal of amendments, DCLAC addressed different elements of DC Code § 42-1902, dealing with the establishment of Condominiums. DCLAC proposed that the DC code adopt the business judgment rule to govern decisions of the Board of Directors, rather than the reasonableness standard currently adopted by the DC Court of Appeals. DCLAC also proposed to amend the DC Code to allow for the relocation of unit boundaries unless prohibited by the Condominium Instruments. Further proposals included allowing for the subdivision of units unless prohibited by the Condominium Instruments providing 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.

**Control and Governance of Condominiums**—The DCLAC also intends to place a major focus on control and governance issues of condominiums contained within § 42-1903. Among the changes proposed would include requiring all meetings of the Board to be open to members in good standing; permitting notice of board meetings to be delivered electronically, requiring minutes of Board meetings to be reviewable by the members; providing members with the right to examine minutes of the Association upon a written request and five days notice; making a copy of the agenda available for review by members prior to a board meeting; allowing Board members to participate in Board meetings by teleconference; creating a right for the Board to enter executive session; creating an open forum section during each Board meeting and permitting the Association to deliver notices to unit owners electronically.

## Florida

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### Advocacy Highlights

**Community Associations**—[SB 1196](#), and its companion bill, [HB 561](#), related to community associations; it exempts certain elevators from specific code update requirements, relates to fire alarm systems and revises the limitations on the right of members to vote on corporate matters for certain not-for-profit corporations that are regulated under specified provisions. It also specifies the maximum amount of any unit owner's loss assessment coverage that can be assessed for any loss and creates the Distressed

Condominium Relief Act. SB 1196 was the primary bill supported by the LAC during the legislative session. The bill was passed into law.

Elevators in condominiums, cooperatives, or multifamily residential buildings are exempted under the bill. The legislation also required residential condominium unit owner coverage and loss assessment coverage. For policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy must include at least \$2,000 in property loss assessment coverage for all assessments made as a result of the same direct loss to the property. In regard to the fire alarm provision, the bill establishes that a condominium, cooperative or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system.

Changes were also made to the collection portion of the Condominium Statute, resulting in an increase in the First Mortgagee's cap for assessments from six months to 12 months. The bill also removed the requirement that all owners provide evidence of insurance and stipulated that associations will no longer be an additionally named insured party on a homeowner policy. Also updated were regulations regarding election qualifications of expiring board members. Under the revision, board members with expiring terms and co-owners will be permitted to serve as long as they own more than one unit or there are no other candidates for election.

During the last month of the legislative session the community association bill was locked-down and no amendments could be added to it for any reason. This was a political move to keep damaging amendments from being written into the bill. The LAC is attempting to remove unfavorable aspects of the bill, but was unable to achieve any progress because of the lock-down. In 2011 the LAC will be working on a "glitch bill" to fix those sections that were not completely corrected and to try for greater relief from the statutory cap on first mortgage foreclosures.

# Georgia

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## Advocacy Highlights

**Super Lien Legislation**—One of the LAC’s goals going into the 2009-2010 session was to promote and facilitate the enactment of “super lien” legislation that would protect community associations in foreclosure situations. Early in the session, the LAC drafted provisions which would amend the Georgia Condominium Act and the Georgia Property Owners Association Act to expressly provide that the association’s assessment lien is superior to the lien of any mortgage in an amount equal to half of the common expense assessments that came due during the 12 months immediately preceding the date of the foreclosure. The LAC then approached the sponsor of a bill that had been introduced in the Senate to address situations where a condominium developer fails to comply with the condominium documents prior to turnover. The LAC worked with the sponsor to improve the bill’s provisions and was able to secure agreement to include the LAC’s “super lien” provisions in the bill. Unfortunately, by the time agreement was reached on all issues, it was too late in the session to obtain final passage. The LAC is optimistic that final passage will be achieved in the first year of the next session.

**Special Process Servers in Gated Communities**—[SB 491](#) added new provisions to O.C.G.A. §9-11-4, which address service upon persons residing in gated and secured communities. The new provisions require that any person authorized to serve process be granted access to gated and secured communities for a reasonable period of time during reasonable hours for the purpose of performing lawful service of process provided they (i) identify to the guard or managing agent the person, persons, entity or entities to be served; (ii) display a current driver’s license or other government issued identification which contains a photograph; and (iii) display evidence of current appointment as a process server. Any person authorized to serve process is required to promptly leave the gated community upon perfecting service of process or upon a determination that process cannot be affected at that time.

**Other Proposed Legislation**—Legislation was introduced during the session which would have detrimentally impacted community associations. This included bills that would have suspended owner assessment obligations if a board failed to comply with the association’s governing documents and a bill that would have made it unlawful for an association to prohibit a property owner from displaying the official flag of the United States, the State of Georgia or both through the use of an attachment to the structure of a building or by erecting a pole in order to display the flags, except in very limited circumstances. The restrictions on community associations imposed by this bill would have been substantially greater than those currently contained in the federal flag statute. Fortunately, neither of these bills were enacted into law.

**State Capital Meet & Greet**—In an 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 3, 2010. Members of the LAC served breakfast and handed out promotional materials to invited legislators. The LAC will be organizing a similar event during the next legislative Session.

# Hawaii

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## Advocacy Highlights

**Solar Energy—[HB 2197](#)**, provided boards of directors the authority on behalf of their associations to install solar or wind energy devices because associations can benefit from installing solar or wind energy devices on the common elements to reduce Hawaii's dependence on fossil fuels. Some companies are now proposing to lease areas of the common elements from associations to install solar energy or wind energy devices, thereby reducing the association's energy costs and dependence on fossil fuels. The purpose of this act is to amend sections 514A-13.4 and 514B-140, Hawaii Revised Statutes, to specifically provide boards of directors with the authority to install or allow the installation of solar or wind energy devices on the common elements under appropriate circumstances to further reduce Hawaii's dependence on energy generated from fossil fuels. The LAC supported the bill on the grounds that it lowers association and owners by lowering energy costs. The bill passed the legislature and passed into law.

**General Excise Tax—[HB 2595](#)** created a situation in which homeowner associations that fail to register to do business and file a general excise tax reconciliation return may be adversely affected. The act states that no one shall not be entitled to any general excise tax benefit (*e.g.* an exemption) unless the person claiming the general excise tax benefit: (i) obtains a license to engage in/conduct business, as required by law; and (ii) files the annual general excise tax reconciliation tax return required by law not later than 12 months from the due date prescribed for the return. Under this requirement, homeowner associations could find that they lose or are denied the general excise tax exemption to which they are

entitled under the law if they fail to register and file a tax return. The bill passed although the LAC expressed concerns over the effect of the law on HOAs.

**Private Roads**—[HB 2020](#) expanded county enforcement of traffic regulations: (i) on public streets, roads, or highways whose ownership is in dispute between the state and the county; and (ii) on certain other private streets or highways. The enforcement authority includes laws relating to county vehicular taxes, motor vehicle safety responsibility, traffic violations, use of intoxicants while operating a vehicle, motor vehicle insurance, motorcycle and motor scooter insurance and odometers. The bill was pushed by Big Island but affects all parts of the state. The LAC was silent on the bill and it was passed into law by the legislature.

**Graffiti**—[HB 2129](#) imposed appropriate penalties to deter graffiti. The act requires a person sentenced for an offense in which the damage is caused by graffiti, in addition to any other penalty, to: (i) remove the graffiti from the damaged property; and (ii) for a period of time not to exceed two years from the date of sentencing, perform community service to remove any graffiti applied to other property within one hundred yards of the site of the offense for which the person was sentenced, even if the property was damaged by another person. In either case, the consent of the property owner or owners must first be obtained before removal begins. Graffiti is defined as any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye or similar substances. The LAC was not actively involved in this process and the bill was passed into law.

**Private Transfer Fees**—[HB 2288](#) prohibited real property deed restrictions or other covenants running with the land from requiring transferees to pay fees for the future transfer of the property. This bill, however, exempts certain usual and customary fees, assessments or charges that are typical for various real property transactions, including payments to a condominium association, cooperative housing corporation, limited-equity cooperative or planned community association pursuant to a declaration, covenant or law applicable to the association or corporation. The LAC supported the bill with the proper exemptions for common interest communities and the bill passed into law.

**Private Guards**—[SB 2165](#) raised standards for the guard industry by specifying educational, criminal history and training requirements for all guards and employees of guard companies who act in a guard capacity. The act results from a legislative finding that the education and training requirements in the existing law for guards are inadequate to protect the public and to provide for high-quality guard services. The act deletes one exemption that used to apply to associations that employed their own guards. Specifically, under the old law, a person was exempt from regulation if: the person was employed exclusively and regularly by one employer in connection with the affairs of that employer only, in an employer-employee relationship. Effective July 1, 2013, this exemption no longer applies. The bill passed with no direct involvement of the LAC.

**Electric Vehicles**—[SB 2231](#) prohibited associations from preventing the installation of an electric vehicle charging station on or near the parking stall of any multi-family residence or townhouse. The purpose is to help meet the Hawaii Clean Energy Initiative goal of 70 percent clean, renewable energy by 2030, thereby greatly reducing Hawaii's dependence on fossil fuels. The act is very similar to recent legislation

allowing homeowners to install solar energy devices and clotheslines on the common and limited common elements. As a result, it has similar provisions, including but not limited to: (i) any provision in any lease, instrument or contract contrary to the intent of the act is "void and unenforceable," (ii) the association may adopt rules that reasonably restrict the placement and use of electric vehicle charging systems but cannot prohibit the placement or use of electric vehicle charging systems altogether; and (iii) the association cannot assess or charge any homeowner any fees for the placement of any electric vehicle charging system but can require reimbursement for the cost of electricity used by such electric vehicle charging system. The installer of such a charging station must also receive approval from the association and be in compliance with any association rules and specifications. The bill was passed into law. The LAC did not oppose the bill because it places burdens similar to the solar and clothesline laws on anyone wishing to install an electric vehicle charging system on the common or limited common elements.

**Mortgage Foreclosure Task Force—[SB 2472](#)** resulted from a legislative finding that a comprehensive evaluation of Hawaii's mortgage foreclosure laws is necessary before the enactment of meaningful legislation on the issue. The act creates a mortgage foreclosure task force to conduct an extensive analysis of all factors affecting mortgage foreclosures in the state and to recommend appropriate legislation. The mortgage foreclosure task force must submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than 20 days prior to the convening of the 2011 and 2012 regular sessions, and must participate in a joint informational session upon request by the Legislature. The bill was passed and received no opposition from the LAC.

**Hawaii Civil Rights Commission—[SB 2565](#)** was intended to extend the timeframe in which the Hawaii Civil Rights Commission must complete the rulemaking process to conform state law protections against disability discrimination to the federal Americans with Disabilities Act Amendments Act of 2008 (Act), from December 31, 2010, to 12 months after the United States Equal Employment Opportunities Commission publishes final rules interpreting the act; and to authorize the commission to make a determination regarding whether a witness's identity or statement may be kept confidential and establish the process by which and the factors that the commission must consider when it makes this determination, including: (i) the relevance and materiality of the statement; (ii) whether the statement could be obtained some other way; or (iii) a witness's legitimate fears of retaliation, etc. The bill passed into law with no opposition from the LAC.

**Real Estate License Continuing Education—[SB 2602](#)** recognized "that the continual evolution of the real estate industry requires that real estate brokers and salespersons regularly update their knowledge of changes to the real estate industry." The Legislature further finds that an increase in continuing education hours will advance the level of professionalism in the real estate industry. The act increases the minimum required continuing education hours for real estate brokers and salespersons from 10 hours to at least 20 hours in each two-year licensing period.

**General Excise Tax**—[SB 2643](#) corrected a problem which exempted the following from the general excise tax:

- (1) Amounts received by a sub-manager of an association of apartment owners or of certain nonprofit homeowners or community associations for reimbursement of sums paid for common expenses.
- (2) Amounts received by an operator of a hotel from the owner of the hotel or from a timeshare association for employee wage and benefit costs disbursed by the operator.
- (3) Amounts received by a sub-operator of a hotel from the owner of the hotel, timeshare association or operator of the hotel, for employee wage and benefit costs disbursed by the sub-operator.

That general excise tax exemption was supposed to put those payments on the same footing as similar payments to condominium managing agents, *i.e.* to exempt them from the general excise tax.

**Solar Energy Devices**—[SB 2817](#) requires every homeowners association to adopt new rules that do not impose conditions or restrictions that: (i) increase the cost of installation, maintenance, and removal of a solar energy device by more than 15 percent; or (ii) require an encumbrance on title because of the installation of a solar energy device. The rules must still facilitate the installation of solar energy devices but also must not increase the cost of “installation, maintenance, and removal” of the device by more than 15 percent. A homeowners association can also no longer require an encumbrance on title as a condition for the placement of any solar energy device (although that limitation is to be automatically repealed (“sunsetted”) on June 30, 2015). The LAC monitored the bill and it passed into law.

## Illinois

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### Advocacy Highlights

**Condominium Smoking Restrictions**—[SB 3175](#) and [HB 5522](#) proposed legislation that provides that an association's bylaws restricting the use of the units may include prohibitions on smoking tobacco products. The LAC approved the bill, which was then referred to the Committee on Assignments.

**HOA Dredging**—[SB 3064](#) amended the General Not For Profit Corporation Act of 1986 and provides that a homeowners association organized under the act may not, in its own capacity or through its member or any other entity, dredge any sediment or silt from a body of water located, in whole or in part, within a common area of the association or redeposit any of that sediment or silt on property within any area of the association unless certain notice, testing and compensation requirements are met. The bill authorizes members of the association to obtain injunctive relief if the requirements of this provision are not met. The LAC opposed the bill which passed the Senate and was then referred to the House Rules Committee.

**Common Interest Community Association Act**—[SB 3180](#) created a separate act which would govern community associations not governed under the Illinois Condominium Property Act. The bill was passed into law.

**Condominium Rent Provisions**—[HB 5125](#) provided that if a community association's bylaws (both condominium and non-condominium) are changed to prohibit leasing, a unit owner incorporated as a 26 USC 501(c)(3) as charitable organization and is leasing the unit at the time of the amendment, may continue to rent the unit until sale. The LAC opposed the bill which passed the House and has been assigned to the Senate Committee on Assignments.

**Amendment to the Community Association Manager Licensing and Disciplinary Act**—[HB 4934](#) proposed legislation that would allow the Department of Financial and Professional Regulation to determine the moral character of an applicant for licensure by taking into consideration whether the applicant has

engaged in conduct or activities that would constitute grounds for discipline under this act. The LAC supported the bill which passed the House and is pending in the Senate.

**Amendment to the Community Association Manager Licensing and Disciplinary Act—[HB 5281](#)** proposed legislation that provides that all community associations that have 10 or more units and are registered in the State as not-for-profit corporations shall pay a fee of \$50 plus an additional \$1 per unit within 30 days after July 1, 2010, and every 5 years thereafter instead of every 2 years. The LAC opposed the bill which passed the House and was referred to the Senate Committee on Assignments.

**Solar Rights Act—[HB 5429](#)** created the Solar Rights Act which applies to buildings 30 feet in height or less. The LAC had no position and the bill passed into law.

**Amendment to the Illinois Condominium Property Act—[HB 6082](#)** proposed legislation that provides that when making a determination of any percentage or aggregate number of votes, a garage unit, storage unit or both, in total, have no more votes than their aggregate percentage of ownership; this shall mean that if garage units, storage units or both are to be given a vote, that the association must add the total of garage units, storage units or both and divide the total by the number of garage units, storage units or both to determine the vote of each garage unit or storage unit (instead of a unit shall not include a garage unit or a storage unit). The LAC supported this bill and it was signed into law by the governor.

## Maine

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### Advocacy Highlights

**Priority Lien**—In response to [LD 961](#), the Maine LAC tried to win approval of a priority lien for community associations, but bank opposition defeated that effort. Lawmakers substituted a voluntary system under which community associations, if they choose, can require owners to escrow funds to apply toward unpaid common expenses in the event of a foreclosure, but the process isn't very popular. No association has used this process previously. The LAC will try again next year to make the case for the priority lien.

**Right-To-Dry**—The LAC was instrumental in winning relief from a “right-to-dry” bill, [LD 73](#), that generally prohibited local governments or property owners from enacting rules barring the use of clothes lines which some consumers view as an energy-conscious alternative to clothes dryers. At the urging of the Maine LAC, lawmakers added language exempting communities with common areas, from the legislation, leaving intact the authority of association boards to restrict or prohibit these installations in their communities.

**Foreclosure** – The LAC wasn't able to obtain the clarification it sought in another measure, [LD 728](#), approved last year that requires mediation as part of the foreclosure process. The LAC sought the addition of language that makes it clear this requirement does not apply to community associations exercising their right to foreclose for non-payment of common area expenses, but lawmakers didn't act on that request.

## Maryland

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### Advocacy Highlights

**Priority Lien**—[HB 842](#) and [HB 29](#), the Residential Association Sustainability Act of 2010, initially drafted and sponsored by the LAC, did not make it through both houses of the Maryland General Assembly. The legislation provided that, in the event of a mortgage foreclosure, up to six months of past due assessments, along with costs associated with filing the lien, including attorneys' fees, would have a priority over the holder of a first mortgage or deed of trust. The bill passed the House of Delegates with an amendment added by the Environmental Matters Committee requiring condominiums to establish escrow accounts of two months of assessments and permitting a priority of only four months of assessments for condominiums and homeowners associations. The MD-LAC opposed the escrow-type account provision and lobbied the Senate Judicial Proceedings Committee (JPR) to remove the provision from the bill, or in the alternative to give the bill an unfavorable report. Following a somewhat contentious hearing, which was attended by the MD-LAC members and its professional lobbying team, the bill received an unfavorable report from the JPR.

**Clotheslines or "Right to Dry"**—[SB 224](#) authorized an owner or tenant to use a clothesline or other "similar laundry drying device" notwithstanding any terms in the declaration, bylaws or other documents. The bill authorizes the governing body of the association to adopt reasonable rules and regulations regarding the timing, placement, appearance and manner of use of clotheslines. The act

does not apply to buildings with more than four dwelling units. The MDLAC opposed this bill on the grounds that it invaded the power of the governing body of a condominium or homeowners association. The bill was successfully passed.

**Homeowners Association Annual Budget Legislation**—[HB 695](#) and [SB 416](#) required homeowners associations to prepare and submit an annual proposed budget to lot owners at least 30 days before its adoption (the Maryland Condominium Law already had such a provision). The bill sets the specified budget items to be included and requires its adoption at an open meeting of the governing body. [Note: This legislation will not affect homeowner associations in Montgomery County, Md, as Chapter 10B of the County Code already requires such publication of the draft annual budget.] The MD-LAC supported this legislation. The bill was successfully passed.

**Cancellation of Insurance Notification**—[HB 1514](#) altered the time in which a notification of cancellation of property and casualty insurance, which must be maintained by the council of unit owners of a condominium, to the time permitted by §27-603 of the Insurance Article of the Annotated Code of Maryland (45 days or 10 days for non-payment of premium). The MD-LAC supported this bill and it was successfully passed.

**Common Elements and Common Areas Implied Warranties**—[SB 597](#) applied to condominium and homeowner associations created *after* October 1, 2010. They relate to the requirements for the description of the common elements of a condominium and alters the duration of a specified implied warranty in condominiums to three years on completed common elements at the time of first transfer of title or two years after a homeowner board of directors is elected, whichever is later. They also allow homeowners associations to two years on completed common elements at time of first transfer of title or two years after a board of directors is elected, whichever is later. The MD-LAC supported this legislation and it passed into law.

**Fidelity Insurance or Fidelity Bond**—[HB 702](#) authorized a governing body to satisfy the requirement of purchasing fidelity insurance by purchasing a fidelity bond. This was a minor technical amendment to a MD-LAC supported bill that was successful in the 2009 legislative session. The MD-LAC supported this legislation and suggested amendments. The bill was successfully passed.

**Fidelity Insurance Exemption**—[SB 800](#) provided that the requirement to maintain fidelity insurance does not apply to associations with four or fewer members, and when an association has three months of gross common charges [assessments/fees] that are less than \$2,500. Essentially this was an amendment to a bill passed in the 2009 legislative session, and promoted by the MD LAC, to require fidelity insurance for condominium and homeowners associations and co-operatives. The MD-LAC supported this legislation, and suggested amendments. The bill was successfully passed.

**Annual Registration of Common Ownership Communities**—[HB 1124](#) would have required all common ownership communities to register annually with the Division of Consumer Protection of the Office of the Attorney General of Maryland and pay an annual registration fee. This bill had MD-LAC support but failed to pass.

**Reserves and Reserve Studies**—[HB 28](#) and [SB 345](#) would have required condominium and homeowner associations to conduct a reserve study on a regular basis of not less than every five years and added a requirement that budgets of homeowners associations provide for reserves. [Note: HB 695 and SB 416

regarding homeowner association budgets, as noted in the passed bills section, requires that the budgets include “Reserves.” The Maryland condominium statute already had a provision of this kind]. This bill, for the third year in a row, had MD-LAC support but once again died.

**Dispute Settlement Mechanism—[HB 54](#) and [SB 184](#)** would have removed a provision of the Maryland Condominium Act stating declaration and bylaws could provide other provisions for a dispute settlement mechanism than that’s found in §11-113. The MD-LAC took no position on this bill and it failed to pass.

**Pool Lifeguards—[HB 273](#) and [SB 879](#)** included a requirement that at least one lifeguard be “on duty” for each group of 25 or fewer individuals in the water. The Senate version would have required at least one lifeguard *and* one “adult” with current first aid/lifesaving and CPR certifications to be on the premises during all hours of pool operations. The MD-LAC took no position on this bill and it failed to pass.

**Surcharge on Assessments for Non Owner-occupied Condominium Units—[HB 460](#)** would have permitted that the bylaws of a multi-family (garden, mid or high rise) condominium to contain a provision establishing a 10 percent assessment surcharge for rental or vacant units. The MD-LAC supported the idea of this bill, and suggested amendments. The bill failed to pass.

**Common Interest Community Managers Licensing and Regulation—[HB 1300](#) and [SB 931](#)** would have created the State Board of Common Interest Community Managers in the Department of Labor, Licensing and Regulation. The bill would have provided for the composition of the board and the appointment, terms and expenses of board members; for the election of officers, size of a board quorum and for meetings of the board. Additionally, the bill would have authorized the board to sue in the name of the state with the approval of the attorney general, to enjoin specified conduct, etc. The MD-LAC advocated for referring this bill to summer study. This legislation was modeled after manager licensing legislation passed in 2008 in Virginia. The MD LAC sought to work with the bill’s sponsors to address shortcomings in the legislative draft. It is expected this legislation will resurface in 2011.

**Recycling for Apartment Buildings and Condominiums—[SB 156](#)** would have required owners or managers of apartment buildings or condominiums that contain 10 or more dwelling units to provide recycling for residents on or before October 1, 2014. [*Note: This legislation would not have affected condominiums in Montgomery County, Md; as local code already has this requirement.*] The MD-LAC took no position on this bill and it failed to pass.

**Prohibited Restrictions on Exercise of Free Speech—[SB 212](#)** among other things, this bill would have prohibited associations from regulating “noncommercial” signs, posters, flags or banners, “peaceful assembly,” engaging in constitutionally protected activity or denying entry (including gated communities or secured buildings) to political campaigners. This bill, originated allegedly by a senator upset that he could not have absolutely free passage through a private residential community, was successfully fought by the MD LAC through great efforts by CAI’s National G&PA Staff and last-minute action by the LAC’s professional lobbyist. The MD-LAC vigorously opposed this bill which failed to pass.

**Overriding Restrictions Against the Rental of Homes—[SB 945](#)** would have rendered a provision in a condominium or a homeowners association governing document or rule that restricts the right of an owner from renting their residential property as null and void until June 30, 2013. The MD-LAC took no position on this bill and it died.

**Prince George's County Registration of Community Association Property Management**

**Services**—[HB 566](#) required community association management service providers to register annually with the Prince George's County Office of Community Relations and pay a specified fee. This county, one of the 24 highest-level local government entities in the State of Maryland, now has annual registration of both associations (via a county bill of 2008) and management services. The bill was successfully passed.

## Massachusetts

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### Advocacy Highlights

**Tax Reform** – [SB 760](#) was introduced and sought to reverse the unintended consequences of a tax measure enacted last year. Designed to equalize federal and state tax filing requirements for corporations, the measure had the effect of requiring condominiums to pay taxes not just on the interest earned on their reserves but on the reserves themselves. The Massachusetts LAC persuaded legislators to roll back that requirement for condominiums, which they did at the end of last year before it took effect. The bill successfully passed with the assistance of the LAC.

**Common Area Fees** – [HB 1235](#), secured House approval of a measure clarifying the method for assessing common area fees in communities that contain both market-rate and affordable units. Some condominium owners have complained that owners of affordable units enjoy full access to shared amenities in the community while paying a smaller share of common area fees, which is based on their reduced purchase price. The legislation makes it clear that the factors used to calculate a unit's fair value include the deed restrictions imposed on affordable units, which reduce their value. The LAC is in full support of the measure, but is still waiting on Senate action to pass the bill.

**Board Meetings**—[HB 1240](#) was another bill the LAC had been watching closely which would have required boards to hold open meetings, an issue that lawmakers in many states (including Vermont and Maine) have also been targeting. The LAC opposed the measure because its broad wording would have required open discussions of many legitimately confidential issues, including pending or possible litigation, where confidentiality is needed to protect the association’s interests. The committee also argued that the Legislature should not enact sweeping changes in the state condominium statute based on the complaints of a small number of “disgruntled” owners unhappy with their boards. With the LAC’s support, the bill has been left behind in committee.

**Homeowner Bill of Rights**—[HB 3569](#), a homeowner bill of rights that had been in circulation previously, despite being deflected this year, would require buyers to receive a form outlining their rights and responsibilities as condominium owners. Although the LAC had some concerns about the wording of this bill, the LAC does strongly support education for condominium owners and is working closely with legislative leaders to address concerns. One alternative the LAC is considering is a requirement that buyers sign a certificate verifying that they have read the condominium documents and are aware of the association’s rules and restrictions before they buy.

# Michigan

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## Advocacy Highlights

**Assessments**—The Michigan LAC is actively pursuing legislation concerned with the Michigan Business Tax and the need to have the assessments defined for tax purposes in accordance with IRC 61. This will benefit the tax status of HOA assessments while protecting the homeowners and the community associations. The bill has yet to be introduced but is a high priority for the LAC.

**Manager Certification**—The LAC is also continuing its pursuit of the adoption of a manager certification program based on the model developed by the Community Associations Institute. The LAC is working with a lobbying firm in seeking sponsors. Community association managers would be required to receive certification through the National Board of Certification for Community Association Managers. 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.

## Minnesota

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### Advocacy Highlights

**Common Interest Ownership Act**—The Minnesota LAC collaborated with a committee of the Minnesota State Bar Association regarding extensive amendment of the Minnesota Common Interest Ownership Act, Minnesota Statutes Chapter 515B (MCIOA). The amendment was introduced as [HF 3393](#) and [SF 2985](#) and enacted as [2010 Minnesota Laws Chapter 267](#). Highlights of the amendment include the following:

**Common Element Licenses**—[Minn. Stat. § 515B.2-109](#) was amended to provide that a declaration may authorize a declarant to grant exclusive licenses to unit owners for the use of common element garage stalls, storage lockers or similar common element spaces. The amendment also addresses license requirements, payments, transfer restrictions and record keeping.

**Mortgagee Consent**—[Minn. Stat. § 515B.2-118](#) was amended to provide that if a secured party does not object in writing to a proposed amendment to the declaration, bylaws or articles of incorporation within 60 days after receiving notice and a copy of the proposed amendment by certified mail, postage prepaid and return receipt requested, then the amendment is deemed approved, unless the amendment affects the priority of the secured party's security interest or its ability to foreclose its security interest.

**Hearings by Committee** – [Minn. Stat. § 515B.3-102\(a\)\(11\)](#) was amended to authorize a committee appointed by the board to conduct hearings regarding alleged violations of the declaration, bylaws, and rules and regulations, subject to the provisions of the declaration and bylaws.

**Enforcement by Officers and Directors Appointed by Declarant**—[Minn. Stat. § 515B.3-103\(a\)](#) was amended to provide that officers and directors appointed by the declarant must comply with the declaration, bylaws, articles of incorporation and MCIOA and enforce against all unit owners, including the declarant and its affiliates, in a uniform and fair manner. The same standards of conduct apply to officers and directors of master associations.

**Turnover Meetings**—[Minn. Stat. § 515B.3-103\(d\)](#) was amended to provide that if the board fails or refuses to call a timely meeting to elect non-declarant directors, then the unit owners other than a declarant and its affiliates may call the meeting.

**Annual Reports**—[Minn. Stat. § 515B.3-106\(c\)\(2\)](#) was amended to provide that the annual report must include a statement of the association’s total replacement reserves, the components of the CIC for which the reserves are set aside and any allocations for particular components.

**Quorums**—[Minn. Stat. § 515B.3-109](#) was amended to provide that a master developer or declarant, or their affiliates, shall be deemed to be present for purposes of establishing a quorum at a meeting called to elect non-declarant directors, regardless of their failure to attend the meeting.

**Electronic Voting**—[Minn. Stat. § 515B.3-110\(c\)](#) was amended to authorize electronic voting, if authorized by the statute under which the association was created and not prohibited by the governing documents. Electronic voting may be used in combination with mailed ballots, but electronic voting may not be used in combination with a vote taken at a meeting of unit owners.

**Replacement Reserves**—[Minn. Stat. § 515B.3-114](#) was amended effective January 1, 2012, to require an association to include in its annual budgets, for fiscal years commencing on or after January 1, 2012, replacement reserves projected by the board to be adequate, along with past and future contributions. These reserves are to fund the replacement of those components of the CIC which the association is obligated to replace due to ordinary wear and tear or obsolescence. The projections must be based on the estimated remaining useful life of each component, but replacement reserves need not be segregated for specific components. Unless the declaration provides otherwise, replacement reserves are not required for (i) components with a remaining useful life of more than 30 years (ii) limited common elements if their replacement cost will be assessed against the units to which they are assigned, (iii) certain other components that an association plans to fund by other assessments, subject to statutory requirements or (iv) non-residential CIC’s. The association may not borrow from replacement reserves or comingle them with operating funds, but may pledge replacement reserves as security for a loan.

**Accounting Controls**—[Minn. Stat. § 515B.3-121](#) was amended to provide that votes by a declarant or its affiliates do not count toward the 30 percent approval required to waive annual review of the association’s financial statements.

**Disclosure Statement for Conversion CIC**—[Minn. Stat. § 515B.4-105](#) was amended to list detailed information that must be included in the opinion of a professional architect or engineer regarding the condition of a building that was occupied before the creation of the CIC.

**Declarant’s Liability for Failure to Deliver Disclosure Statement**—[Minn. Stat. § 515B.4-106\(d\)](#) was amended to increase the declarant’s liability to a purchaser for failure to deliver a disclosure statement that substantially complies with MCIOA from \$1,000 to \$5,000, in addition to any damages or other amounts recoverable by the purchaser.

**Resale Disclosure Certificate**—[Minn. Stat. § 515B.4-107](#) was amended to require the seller provide the buyer with copies of the master declaration, articles of incorporation, bylaws and rules and regulations, if the CIC is subject to a master declaration. The Resale Disclosure Certificate form is amended to require the disclosure of additional information regarding common elements, reserves and warranties.

# Missouri

## LAC Members

Michael Gill (**Chair**)

Harper Pointe Homeowners Association

Gary Rottler

Rottler Pest Control

Brett Shelton (**Vice-Chair**)

Pro Pool Management & Service

Linda M. Schweppe

Community Managers Association, Inc

Stephen P. Ahlheim, Esq.

Ahlheim & Dorsey, LLC

Michelle St. Cin, CMCA, AMS, PCAM

Metropolitan Management Services

Bill Guinther

Lake Sherwood Estates Association

## Advocacy Highlights

**Property Tax Assessment**—[HB 1316](#), made a number of changes to property tax assessment and collection procedures relating to tax sales. In particular, the bill required that a bid in a third-year sale must cover all outstanding taxes, penalties and costs and provides that a post-third-year sale of the property extinguishes all other liens or encumbrances. Of concern to the LAC is a change in section 52.230 which may have unintended consequences because a collector is authorized to refuse to accept a payment of delinquent taxes if the payment is not accompanied by a copy of the tax statement; this could prevent a lender from curing a deficiency or, potentially, prevent an owner's association from curing the developer's failure to pay taxes on common property still controlled by the developer. The observed the bill's progress, which resulted in it being passed into law.

**Property Assessment Clean Energy**—[HB 1692](#), [1209](#), [1405](#), [1499](#), [1535](#) & [1811](#) was an amalgamation that makes up the omnibus bill; while nominally about "real estate," the bill encompasses numerous areas of general law. The LAC is most concerned with the section addressing the "Property Assessment Clean Energy Act," which authorizes the financing of energy-saving improvements by a special assessment collected annually as a part of property taxes for up to twenty years. While this is currently structured as purely a municipal function, it seems likely that a large subdivision could implement the program with the municipality's cooperation. In the alternative, this could be amended in future sessions to extend the authority to neighborhood improvement districts or even to homeowners' associations. The bill also includes section 339.503 defining a "boat slip" as a part of the real property of the owner in a common interest community for the purpose of determining the appraised value of the owner's unit. While the LAC expressed doubt over some legal and logical flaws in assuming that a boat slip could be included in the unit's value without any reference to the declaration or indentures, the banks and realtors were happy with the language. In turn, since this is a definitional section in a portion of the statutes relating to appraisers, it creates no substantive change in the law and will make it easier to obtain financing for a unit-buyer. This same language is found in SB 777. The bill also contains the mechanic's lien provisions described in HB 2058, which requires that all notices that are required to be published must be

published in a newspaper of general circulation. The LAC had expressed concern that this provision is burdensome, vague and adds unnecessary expense and will spend more time in analysis in the upcoming session to determine a direct course of action on the bill. The bill was passed into law by the legislature.

**Residential Construction—[HB 2058](#)**, was a revision to mechanic's lien laws applicable to residential construction. The LAC participated in the authorship of this bill; however, there are internal inconsistencies and conflicts that could generate years of litigation in its final product. The LAC believes that the bill will be a benefit to homeowners. It provides that all subcontractors, suppliers and others seeking to maintain their mechanic's lien rights must record a Notice of Rights with the Recorder of Deeds at least five days prior to the scheduled sale of the property once the residential property developer/owner records a Notice of Anticipated Sale of that property. Failure to record the Notice of Rights after the triggering event results in the forfeiture of any mechanic lien rights once the property is sold to a good faith purchaser for value. The bill also authorizes cash, a letter of credit or similar collateral in an amount of at least 150 percent of the claim as substitute security for the residential real property. The bill was passed into law.

**The Uniform Common Interest Owners Bill of Rights Act—[HB 2407](#)** died shortly after introduction into the state legislature. The LAC did not receive adequate information regarding the purpose of the bill to make a decision on whether to support it or to oppose it.

## Nevada

### LAC Members

Donna Erwin, AMS, LSM, PCAM **(Chair)**  
Capital Consultants Management

Kay Dwyer **(Vice-Chair)**  
Sun City Anthem Community Association

Sara E. Barry, CMCA, PCAM  
Wolf, Rifkin, Shapiro & Schulman, LLP

Mark Coolman, CIRMS  
Western Risk Insurance

Mary Davis  
LAC Delegate

Judy Farrah, CMCA, LSM, PCAM  
Capital Consultants Management  
Corporation

Gayle A. Kern, Esq.  
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John E. Leach, Esq.  
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Sheri Rios, CMCA, PCAM  
Summerlin North Community Association

Michael T. Schulman, Esq.  
Wolf, Rifkin, Shapiro & Schulman, LLP

Pamela Scott, CMCA, PCAM  
The Howard Hughes Corporation

David Stone  
Nevada Association Services, Inc.

Michael Veatch  
LAC Delegate

Randel E. Walker  
Truckee Meadows Properties, Inc.

### Advocacy Issues

The Nevada Legislature did not hold a 2010 legislative session. Therefore, the Nevada LAC did not introduce or advocate for or against any legislation during the calendar year. The LAC is currently preparing for the 2011 legislative calendar.

## New Hampshire

### LAC Members

Ed Michalosky (**Chair**)

Kings Court Condominium

Deana Cowan

Locke Lake Colony Association

Thomas E. Ducharme, CMCA, AMS, PCAM

(**Vice-Chair**)

Evergreen Management, Inc.

Cal Davison

Cardiff Management, Inc.

Janet Aronson, Esq.

Marcus, Errico, Emmer & Brooks, P.C.

Christopher Snow

Hub International New England, LLC

### Advocacy Highlights

**Priority Lien**—[HB 1340](#) provided that certain condominium liens for unpaid monthly common expenses may be granted priority over the first mortgage and may form the basis for a foreclosure sale initiated by the unit owners' association. The bill was supported by the LAC and was signed into law. The law will apply to all new mortgages dated January 1, 2011, and later.

**Condominium and HOA Study**—[HB 1470](#) established a committee to study laws relating to condominium and homeowners associations. The bill passed and was supported by the LAC. The committee will begin reviewing the laws for condominium and homeowners associations during the 2011 session.

**Clotheslines**—[HB 1180](#), would have allowed the use of clotheslines and drying racks within community associations. The bill was opposed and successfully defeated by the LAC.

**Abutter's Notices**—[HB 1200](#), 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.

## New Jersey

### LAC Members

Mary Faith Radcliffe, AMS (**Chair**)  
RCP Management

James Magid, CMCA, PCAM  
Wentworth Group

Thomas C. Martin, Esq. (**Vice-Chair**)  
Nowell, Amoroso, Klein & Bierman

Karen J. Mesler, CMCA, PCAM  
LeisureTowne Association, Inc.

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Eric Frizzell, Esq.  
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Ronald L. Perl, Esq.  
Hill Wallack, LLP

Bruce Gunther  
Brandon Farms Condominium Association,  
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Paul A. Leodori, Esq.  
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Caroline Record, Esq.  
Berman, Sauter, Record & Jardim, P.C.

Christine F. Li, Esq.  
Greenbaum, Rowe, Smith & Davis, LLP

Audrey Wisotsky, Esq.  
Pepper Hamilton

### Advocacy Highlights

**Bed Bug Infestations**—[AB 2072](#), as originally introduced, made “landlords” entirely responsible for the prevention and eradication of bedbug infestations. The legislation would have imposed a financial penalty upon a landlord who does not take immediate action upon notice that bedbugs have infested a property. The bill did not make the necessary distinction between “real” owners (landlords) of residential dwelling units and community associations. The LAC was successful in amending the bill to impose responsibility for eradication upon the parties that are most responsible and are in the best position to promptly and fully address infestation, namely, the resident and the owner of the multiple dwelling residential unit. In fact, this bill as amended exempts community associations entirely from the bill. This bill passed the Assembly in May and is currently pending in the Senate Community and Urban Affairs Committee.

**Enabling Act**—[AB 2971](#) was introduced in June of 2010 and has yet to receive a hearing. It creates an enabling act for certain homeowners associations and provides standards for governing documents, membership and management. This bill was introduced in response to testimony provided by a group of individuals from a particular association in northern Bergen County. They testified at a hearing conducted by the Assembly Housing Committee back in the early part of May about the lack of fair election procedures. The bill, as drafted, reflects a fundamental lack of knowledge and understanding of

the manner in which community associations function. The LAC is working against passage of this bill, but will meet with the sponsor to fully discuss the problematic aspects of the bill.

**Debt Collection**—[AB 1700](#) was intended to rein in abusive collection practices of consumer debt, and provide consumers with an avenue for disputing and obtaining validation of debt information in order to ensure the information's accuracy. The bill creates guidelines under which debt collectors may conduct business. The LAC met with the bill sponsor and testified at an Assembly Consumer Affairs Committee hearing about the unintended consequences this bill may have on an Association's ability to collect fees and assessments. We also worked with officials at the Division of Consumer Affairs and representatives from the State Attorney General's Office. As a result, this bill was amended to exempt community associations from the bill's provisions. It passed the Assembly in June and is currently pending in the Senate Commerce Committee.

**In-House Security Officers**—[SB 1635](#) would have required any person who is employed as an in-house security officer by a company that maintains a proprietary or in-house security function to register with the State police and complete an education and training course as part of the Security Officer Registration Act. This bill would have significantly raised costs for associations and their homeowners. It would also create numerous practical implementation issues. The bill was scheduled for consideration in early December. However, the LAC and many other organizations were able to prevent the bill from being considered. In the event that this bill should come up again, the LAC will continue to vigorously oppose the measure.

**LAC Testimony**—In May 2010, members of the LAC testified before the Assembly Housing and Local Government Committee which conducted a hearing to provide the public with the opportunity to testify before the Committee about homeowner associations. While some residents asked state lawmakers for help in reining in what they described as governing boards that trample their rights and operate without accountability, members of the LAC shared best practices and recent Zogby International poll numbers with the Assembly Panel, which are generally positive regarding residents living in homeowner associations. Most of the lawmakers recognized the need to be balanced and fair in approaching efforts at reform. The LAC will continue to communicate with legislators and policy makers in the development of legislation that may arise regarding community associations.

## New York

### LAC Members

George Gati (**Co-Chair**)

Dalton Farm HOA

Mary Fildes, CMCA, AMS  
LMM Properties Enterprises

Robert H. Schwarting, PCAM (**Co-Chair**)

NY LAC CO-Chair

Jean B. Kough, CMCA, AMS  
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Carlson Realty, Inc.

Mary Ann Rothman  
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Kelly Charleston, Esq.

Braverman & Associates

Ronald S. Shubert, Esq.  
Phillips Lytle, LLP

Ruth V. DeRoo

De Roo Associates, Inc.

Edward M. Taylor, Esq.  
Law Office of Edward M. Taylor

### Advocacy Highlights

**Carbon Monoxide Detectors**—[SB 2791A](#) and [AB 6093A](#) required the installation of carbon monoxide detectors in new and existing residences. The bills passed in February of 2010 with the support of both the New York LAC and the CAI-Western New York Chapter.

**Property Assessments**—The LAC focused its efforts on monitoring the legislative landscape for any legislation which would have had a negative impact on property assessments for existing and new condominium communities. The LAC met with members of local Associations of Realtors and Builders who were drafting a compromise to an existing bill that would have reversed decades-long assessment procedures found in [NYS Real Property Code, section 339y](#). All related bills being monitored by the LAC expired at the end of the 2010 session but will most likely be reintroduced in 2011.

**FHA Guidelines**—During the year, the LAC continued to monitor and inform state membership on the proposed changes to FHA lending guidelines with respect to condominium ownership and its potentially negative impact on future condominium financing. The LAC relied heavily on the direction provided by CAI-National to promote this effort.

**Forecast**—In the upcoming 2011-2012 legislative session, the LAC will continue its vigilance in two major areas; namely, the balance between condominium assessments and services received and the appropriate registration, credentialing or licensing of community managers. The LAC process in New York is made difficult because of legislators' practice of filing thousands of special interest bills while

expecting that no more than one hundred advance through the legislature.

## North Carolina

### LAC Members

John McInerney, AMS, LSM, PCAM **(Chair)**  
Talis Management Group, Inc.

John Lawton, CMCA, PCAM  
HRW, Inc.

Henry W. Jones, Esq. **(Vice-Chair)**  
Jordan, Price, Wall, Gray & Jones

Paul Mengert  
Association Management Group, Inc.

Greg Asbelle  
North State Bank

Tina Frazler Pace, Esq.  
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Robert H. Baer, Jr., CMCA, AMS, PCAM  
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Michael Wm. Shiflett

Samuel B. Franck, Esq.  
Ward and Smith, P.A.

John Stone, CMCA, AMS, PCAM  
Community Association Services, Inc

### Advocacy Highlights

**Manager Licensing**—[HB 762/SB 516](#), the Community Managers Licensing Bill, supported by the LAC, did not advance during the North Carolina legislature’s “short session.” It will be reintroduced in the 2011 “long session.”

**Transfer Fee Covenants**—[SB 35](#), as initially introduced, would have prohibited any fees related to the issuance of estoppel letters or other fees that homeowners associations or management companies might charge for work performed as part of a transfer of ownership. Lobbying efforts were successful on the LACs part in removing these prohibitions.

**House Select Committee on Homeowners Associations**—This committee was created late in 2009 to “study issues concerning the protection and participation of homeowners in the governance of their homeowners associations, particularly as to assessments and record keeping of the associations.” The committee began meeting in January and it held one public hearing. Many LAC and CAI members spoke at this hearing. The LAC had several representatives at each of the meetings of this committee, which took place throughout the year. A final report will be issued in 2011. The committee co-chairs have indicated that the LAC will have an opportunity to review and provide input to the report before it is issued.

**North Carolina Law Day**—In cooperation with the North Carolina CAI chapter, the LAC sponsored the first NC Law Day in February. More than 150 members, primarily homeowners, attended.

# Ohio

## LAC Members

Charles T. Williams (**Chair**)  
Williams and Strohm, LLC

James Dicks  
Towne Properties

Darcy Mehling Good, Esq. (**Vice-Chair**)  
Kaman & Cusimano

Amy Schott Ferguson, Esq.  
Cuni, Ferguson & LeVay Co., L.P.A.

James P. Case  
The Case Bowen Company

Richard Landis, CMCA, AMS, PCAM  
R. N. Landis Management Company

## Advocacy Highlights

**Planned Community Act** – In June 2010, the Ohio legislature passed [SB 187](#), the Ohio Homeowners Association Act. The Act was signed into law by the governor and becomes effective on September 8, 2010. The Ohio LAC presented testimony both in the Senate and House committee hearings. This is the first time Ohio has regulated the governance of homeowner associations and is landmark legislation. Ohio now joins most other states in regulating homeowner associations. The new law likely will effect every homeowner association in Ohio. It will require that all associations file their existing bylaws with the County Recorder within 180 days of the effective date of the act. For the first time it gives association boards a plan for governance and sets out specific board powers in cases where there is no mention of these items in the deed restrictions or bylaws. It requires new associations to have a declaration and bylaws which must be recorded at the time of creation of the association by the developer. For the first time, the law makes it clear that the association has lien rights and enforcement rights for failure to pay homeowner assessments or to follow the deed restrictions. Finally, it provides a method for amending the deed restrictions and bylaws where there is no provision for amendment set out in the documents. The new law will be numbered ORC 5312.

**Super Lien**—[HB 408](#) was introduced in the Ohio legislature this session as an attempt to pass the Ohio super lien common in many other states. HB 408 was assigned to the House Civil and Commercial Law Committee. It had not moved out of committee at the end of the session after proponent testimony. Under current Ohio law, liens on association assessments are always secondary to mortgage liens. If passed, a super lien law essentially would make six months of missed assessment payments superior to all other liens placed on a foreclosed property. This would ensure that a community association would not be saddled with as large a deficit for foreclosed properties. Efforts by the Ohio LAC are ongoing with regard to the passage of this important piece of legislation.

## Oregon

### LAC Members

Denise Bower, CMCA, AMS, PCAM **(Chair)**  
Community Management, Inc.

John C. Herring  
McNary Estates Homeowners Association

Cheryl Brendle, CMCA, PCAM  
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David T. Schwindt, CPA, RS  
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Frank Elsasser, Esq.  
Levin & Stein

Richard L. Thompson  
LAC Delegate

Karna Gustafson, Esq.  
Landye, Bennett & Blumstein LLP

A. Richard Vial, Esq.  
Vial & Fotheringham, LLP

### Advocacy Highlights

The Oregon Legislature did not hold a regular 2010 legislative session, instead convening for only 29 days. Therefore, the Oregon LAC did not introduce or advocate for or against any legislation during the calendar year. The LAC is currently preparing for the 2011 legislative calendar.

# Pennsylvania

## LAC Members

Carl N. Weiner, Esq. **(Chair)**  
Hamburg, Rubin, Mullin, Maxwell & Lupin

Gregory M. Malaska, Esq.  
Young & Haros, LLC

Steven L. Sugarman, Esq. **(Vice-Chair)**  
Steven L. Sugarman & Associates

Edward E. McFalls  
Wooldridge Construction

Bryn Cushman  
Mid-Atlantic Management Corporation

James Ott  
Appletree Management Group, Inc.

Alan Dolge  
Traces of Lattimore Community Assoc.

Stefan Richter, Esq.  
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Marianne C. Fein  
The Wentworth Group

David Sylvester  
F. David Sylvester & Associates, Inc.

Janet Heinis  
Knob Hill Homeowners Association

Diane Wohlfarth, Esq.  
Papernick & Gefsky

Rhonda Mayer Huet, AMS  
CSK Management, Inc.

## Advocacy Highlights

**Solar Panel Restrictions**—[HB 2234](#), introduced in late 2009, would have essentially removed all restrictions on the installation of solar panels in community associations and prevented the ability of an association board to deny an owner's request to install a solar panel. PA LAC successfully lobbied for amendments to the bill to preserve the right of the association to reasonably regulate location, size, liability and other important factors in the installation of a solar panel. The bill, as amended, passed the House in July, 2010 but never came to a vote in the state senate.

**Building Permit Extension**—PA LAC worked with the Pennsylvania Builders Association to insert language in the state's fiscal code [SB 1042](#), passed in July 2010, as part of the state budget, extending building permits for two years in order to support the recovery of the home building industry. Language favorable to associations, including a provision that prohibited the extension of the period of declarant control for communities still in the build-out phase, was included in the bill, which was signed by the governor.

**Municipal Services Tax Equalization**—[HB 675](#) sought to allow a unit owner in a planned community to deduct 75 percent of association assessments from his or her state income tax return. The LAC supports the legislation and it was the second legislative session in which this bill was introduced. The bill, which seeks to reduce the tax burden on unit owners in private communities that do not receive certain

municipal services for which they pay for in taxes, has never had a legislative hearing due to severe budget shortfalls in the state the last few years. A study on this very issue, supported by CAI and including an attempt by the state to catalogue every community association in Pennsylvania, is scheduled to be completed in March 2011. CAI testified at a public hearing on the study in September 2010 and provided important data to the state to help the study along.

**Prohibition on Private Transfer Fees**—[SB 1481](#), introduced in October 2010, sought to prohibit the use of certain private transfer fees in the sale of real property. PA LAC successfully lobbied for a stronger exclusion for community association-based fees. However, in an attempt to force the bill through in the closing days of the session, the sponsors of the bill dropped CAI’s amended language. The bill passed the State Senate but did not come to a vote in the State House. CAI has secured a commitment from the bill’s sponsor to include CAI’s amended language when the bill is reintroduced in 2011.

**Legislative Cure for Pennsylvania Supreme Court Decision**—The LAC authored a bill, [HB 2764](#), and secured a primary sponsor to correct what CAI believes was an erroneous decision by the Pennsylvania Supreme Court not to review a lower court decision which created a conflict between the state’s Municipalities Planning Code and the state Condominium and Planned Community Acts. CAI submitted an Amicus brief to the court in the fall of 2009 but the court opted to let the lower court decision stand. The issue concerns the creation of a condo/planned community, conveyance of ownership rights in a community and the applicability of municipal zoning and planning codes. PA LAC will continue to push this bill and plans to have it re-introduced in the next legislative session.

## Rhode Island

### LAC Members

Edmund Allcock, Esq. **(Co-Chair)**

Marcus, Errico, Emmer & Brooks, P.C.

Charles McNamara

Seawatch Condominiums

Frank A. Lombardi, Esq. **(Co-Chair)**

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Joseph A. Mirra, CMCA, AMS, PCAM

LAC Delegate

David Abel, CMCA

First Realty Management Corporation

Brian Schlitzer

First Realty Management

Janet Aronson, Esq.

Marcus, Errico, Emmer & Brooks, P.C.

Marian Styles-McClintock

LAC Delegate

Mark S. Einhorn, Esq.

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Barbara Vieira, CMCA, AMS

Bilodeau Property Management Service

Allison E. Field, CMCA

Bilodeau Property Management Service

### Advocacy Highlights

**Unincorporated Condominium Registration**—[HB 5906](#), legislation relating to condominium management, is a bill which required unincorporated condominiums to register in the city or town in which they are located. Incorporated condominiums file annual reports with the secretary of state, identifying the association's board members, officers and its property manager. Because unincorporated condominiums aren't subject to that filing requirement, there is no easy way for third parties to identify the individuals who should be contacted to inform them of owner bankruptcy filings, pending foreclosure actions, slip and fall injuries and the like. As a result, boards often receive critical information at the last minute, making it difficult to organize an appropriate defense (in a slip and fall suit) or provide a timely response in a bankruptcy or foreclosure proceeding. With the LAC's support, the bill passed into law.

**Association Asset Collateral**—[HB 5906](#) also clarified that unless condominium documents have language to the contrary, boards have the authority to pledge future association assets (mainly common area fees) as collateral for a bank loan. Because the state's condominium statute was silent on that issue, associations seeking a bank loan first had to obtain owner approval to amend their documents. As a result, a minority of owners could block a loan the association needed to fund essential repairs. The new law addresses that concern. The LAC supported the bill and it passed.

**Common Areas**—[HB 7363](#) would have made it easier for condominium owners to alter limited common areas (by enclosing a porch or extending a patio, for example). 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 was stalled in the Senate.

## South Carolina

### LAC Members

John Thompson, CMCA, AMS, PCAM (**Chair**)  
Seabrook Island Property Owners  
Association

Beverly Griffin  
LAC Delegate

Robert E. Barlow, AMS, PCAM, CIRMS  
K.A. Diehl & Associates, Inc.

T. Peter Kristian, CMCA, LSM, PCAM  
Hilton Head Plantation POA, Inc.

Terri Barry, CMCA, AMS  
Community Management Group, LLC

Todd Lindstrom, PCAM  
Hilton Head Plantation POA, Inc.

Joe Bunting, CMCA, AMS, LSM, PCAM  
Kiawah Island Community Association

Kevin McCracken, CMCA, AMS  
Keowee Key Property Owners Association

William Press Courtney  
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J. Thomas Mikell, Esq.  
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Joseph DaPore, Esq.  
Young Clement Rivers

Lee Roeber  
LAC Delegate

Michael Eisenrauch  
LAC Delegate

Jerry P. Watson, CMCA, AMS, PCAM  
Community Management Group, LLC

### Advocacy Highlights

**Community Associations**—[SB 30](#), was a sweeping bill that was proposed last year and addressed topics from dictating how assessments can be levied to turning over disputes arising out of community associations to the Department of Consumer Affairs in Columbia (and charge a per unit registration fee for the privilege). The LAC opposed the bill and it died in committee.

**Record Keeping**—[SB 1219](#) was a bill that would have mandated community associations maintain a detailed ledger of income and expenses that would be available upon the request of a member. The bill also mandated the publication of the association's income and expense ledger once a year to all members. This bill died in committee after the LAC pointed out that financial disclosure is already mandated in the SC Non Profit Corporations Act and that distribution of such detailed financial information to all members annually would be an unnecessary and costly expense to the members.

**Manager Certification**—The LAC sought to introduce the Manager Certification Act (MCA) and had secured several Senators willing to sponsor the bill; however, it was advised that the leadership in the Senate wanted the MCA to become part of SB 30. The LAC did not agree with this strategy and chose to pursue a stand-alone MCA bill. Due to priorities in the Senate, it was advised that the Manager

Certification Bill, if introduced, would not receive appropriate attention during this session. The LAC intends to continue advocacy for the MCA during the 2011 session.

**Capital Improvement Fees**—The Association of Realtors tried to introduce a bill, [HB 4808](#), to outlaw Capital Improvement Fees that were designed to enrich a third party. Improper usage of these fees encouraged the Realtors to seek a ban. Unfortunately, the wording in the bill was such that it could be construed to outlaw all Capital Improvement Assessments, even those legitimately defined in a community association’s documents or subsequently adopted by a vote of the membership. The bill seemed to be on a fast track until the LAC pointed out the problems with the bill to lawmakers. It was pulled and appeared to have died in the House since it missed the crossover deadline to be considered by the Senate. However, the bill was attached as an amendment to a tax bill that had already been heard and passed in the House. The LAC was alerted to this maneuver and worked with lawmakers to modify the original language of the bill to narrow it to the point where it only pertained to Capital Transfer Fees (not Capital Improvement Assessments) that were designed to enrich a third party and provided no benefit to the community association in which the fee was derived. However, in the end, the language regarding Capital Transfer Fees was dropped entirely and subsequently killed when the President of the Senate, Glen McConnell, chastised his colleagues for circumventing the hearing and transparency process through the use of “bobtailing.”

## Tennessee

### LAC Members

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Hillmont Homeowners Association

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Scott Ghertner, PCAM  
Ghertner & Company

### Advocacy Highlights

The Tennessee LAC did not pursue a significant legislative agenda during the 2010 session because of the exclusion of any relevant bills from consideration in the state legislature. The LAC is currently preparing for a busy 2011 legislative calendar.

## Texas

### LAC Members

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RTI/Community Management Associates, Inc.

Dean A. Riddle, Esq.  
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Fred Shapiro, PCAM  
SBB Management Company

Debbie Yeats  
Color Innovations Painting, LLC.

### Advocacy Highlights

The Texas Legislature did not hold a 2010 legislative session. Therefore, the Texas LAC did not introduce or advocate for or against any legislation during the calendar year. Texas is currently preparing for the 2011 legislative calendar.

## Utah

### LAC Members

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David C. Houston, CMCA, AMS  
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Michael Johnson, CMCA, AMS, PCAM  
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Sabine Liedel, CMCA  
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Marla Mott-Smith  
Ivy Terrace Condominium

John Richards  
Richards, Kimble & Winn, PC

Derek A. Tarries, CMCA, AMS, PCAM  
Capital Consultants Management

Lamond Woods  
Sentry West Insurance Service

### Advocacy Highlights

**Uniform Common Interest Ownership Act (UCIOA)**—The LAC completed a draft sufficient for introduction. Consistent with the advice of its lobbyist, the bill was introduced through sponsors both in the House and Senate, [HB 399](#) & [SB 182](#), but was not submitted for a vote. This was done to “smoke out” any remaining opposition or comments and provide the maximum chance of the bill passing in the 2011 session. The LAC continues to work on this legislation and is optimistic that it will pass in the 2011 session.

**Transfer Fees—[SB 161](#)**, a transfer fee bill, received the LAC’s early involvement in the legislative process but was met with a setback when several other constituencies banded together to run legislation that helped their own constituencies, but had collateral and detriment effects on community associations and the industry. The Utah LAC learned many political lessons in dealing with this legislation and was able to rally at the last minute to prevent some of the more egregious problems in the proposed legislation.

**Reserves and Reserve Studies**—[SB 278](#) concerned the implementation of a reserve study in the state of Utah. The LAC participated in the process and conceptually supported legislation promoted by another community association organization that is centered in one Utah region. The LAC is currently working toward building a relationship with that organization so that the two organizations can work together both technically and politically on issues and legislation affecting community associations.

# Vermont

## LAC Members

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Paul Carroccio

TPW Management

Jon Readnour

Readnour Associates, PC

John Watanabe

Winterplace Condominium HOA

Larry Wohler

Stratton Association Management

## Advocacy Highlights

**Common Interest Ownership Act**—[HB 689](#), Vermont’s Common Interest Ownership Act, was the key legislative development within the state during the 2010 legislative year. Specifically, the Legislature approved 2008 amendments to the model Common Interest Ownership Act, recommended by the National Conference of Commissions on Uniform Laws. Those provisions were combined with a separate “Uniform Common Interest Owners’ Bill of Rights” that the National Conference also approved. Most of the changes are intended to make condominium governance more professional and more transparent. But in practice, many of the new requirements will create significant administrative burdens for association boards and managers without producing essential or significant improvements in association governance.

The change that is likely to prove most problematic for many communities is a requirement that boards allow owners to attend their meetings, give them sufficient prior notice of the sessions and distribute the agenda and other meeting-related materials in advance.

One change that is likely to affect both residential and recreational communities prohibits any board member from controlling more than 15 percent of the undirected proxies in a community-wide vote. This is another example of attempting to prevent proxy abuses but being restrained by community association realities. Because so few owners typically attend annual meetings, proxies are often the only way many large associations can achieve the quorum required to hold a valid election. Curbing the use of proxies, could potentially make it more difficult for many associations to conduct elections and make essential decisions. The LAC opposed the changes made in the Ownership Act but it managed to pass and will become law on January 1, 2012.

# Virginia

## LAC Members

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South Riding Proprietary, Inc.

## Advocacy Highlights

**Clarification for Complaints**—[HB 191](#) and [SB 270](#) specified that each association shall establish a procedure for resolution of complaints and must adhere to the created procedure. These bills were recommended by the Virginia Housing Commission. The LAC supported these bills and both passed.

**Exemptions from Licensure; CICB Composition**—[HB 468](#) provided that a resident of a common interest community who provides bookkeeping, billing or record keeping services to his association is not required to be licensed as a common interest community manager so long as the fidelity bond coverage maintained by the association insures against losses. The bill also requires that of the three citizen members of the Common Interest Community Board, one member must serve or have served on the governing board of an association that is not professionally managed at the time of appointment, and the two remaining appointments must reside in a common interest community, at least one of whom resides in a common interest community that is not professionally managed at the time of appointment. The bill contains technical amendments. The LAC supported the bill with amendments, and the bill passed.

**Annual Assessment by Common Interest Community Board**—[HB 348](#) changed from the lesser of \$1,000 to \$2,000 and from five hundredths of one percent (0.05 percent) to two hundredths of one percent (0.02 percent), the amount of the annual assessment owed to the Common Interest Community Board to support its operation. This change is reflected in both the Condominium Act and the statutes relating to the Common Interest Community Board, but is not reflected in the Property Owners’ Association Act. The LAC monitored this bill, addressing only drafting issues. The bill was left in committee and did not pass.

**Provisional Licenses for Property Managers**—[HB 439](#) required the Common Interest Community Board to issue a provisional license to any person, partnership, corporation or other entity offering management services to a common interest community on or before December 31, 2010, to anyone who makes application for licensure prior to January 1, 2011. Such provisional license shall expire on June 30, 2012. Currently, such dates are December 1, 2008, January 1, 2009, and June 30, 2011, respectively. The LAC opposed this bill, and the bill was left in committee and did not pass.

**Common Interest Community Board; Powers and Duties**—[SB 665](#) clarified the authority of the Common Interest Community Board to impose monetary penalties and enter into consent agreements related to investigations and disciplinary proceedings. In addition, the bill authorizes the Board to use informal fact-finding conferences in lieu of formal hearings. The LAC monitored this bill, and it passed.

**Display of the Flag of the United States**—[HB 956](#) and [SB 151](#) provided that, in accordance with the Federal Freedom to Display the American Flag Act of 2005 (“Federal Flag Act”), a unit owners' or property owner's association shall not prohibit or otherwise adopt or enforce any policy restricting a unit or lot owner from displaying the flag of the United States when such display is in compliance with the Federal Flag Act upon property that owner has separate ownership interest or a right to exclusive possession or use in. The bill also provides that the unit owners' or property owners' association may establish reasonable restrictions as to the size, place, duration and manner of placement or display of the flag provided the restrictions are necessary to protect a substantial interest of the unit owners' or property owners' association. Under the bill, if an action is brought by a unit owners' or property owners' association to enforce a rule pertaining to the display of the flag, the association has the burden of proving that its restrictions are necessary to protect a substantial interest. The bill also provides that the unit or lot owner may assert as an affirmative defense that the required disclosure of any limitations pertaining to displaying of flags was not contained in the resale certificate or disclosure packet. The LAC supported this bill, and it passed.

**Covenants Regarding Solar Energy Collection Devices**—[HB 881](#) 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. Community associations may establish reasonable restrictions as to the size, place and manner regarding the placement of such devices on private property and community areas. The LAC opposed this bill, and the bill was continued to 2011 and did not pass.

**Covenants Regarding Natural Drying Devices**—[SB 221](#) provided that effective July 1, 2010, no community association shall prohibit an owner from installing or using a natural drying device on their

property. The bill provides that a community association may establish reasonable restrictions concerning the size, placement, time and manner of placement of such natural drying device. The LAC supported this bill with changes. The bill was left in committee and did not pass.

**Property Owners' Association Act; Authority of Board of Directors; Parking**—[HB 1102](#) provided that to the extent the declaration gives the board of directors the authority to adopt rules and regulations relating to the parking of motor vehicles by lot owners, such rules may establish a parking space designation plan which makes parking spaces available to less than all of the lot owners. The bill provides that if such a plan is adopted, the common expenses attributable to such parking spaces may be specially assessed against the lot owners involved. The LAC supported this bill, but with concerns regarding constitutionality. The bill passed, but with the Governor's amendment that it does not become effective unless reenacted by the General Assembly in 2011.

**Rules Regarding the Operation of Motor Vehicles**—[HB 812](#) provided that, except to the extent otherwise provided by the condominium instruments or declaration, no unit owners' or property owners' association may establish rules or restrictions concerning the operation of privately owned motor vehicles within the common areas or other areas under the authority of the association. The LAC opposed this bill, and the bill was referred to the Virginia Housing Commission and did not pass.

**Property Owners' Association Act; Fees for Disclosure Packet**—[HB 702](#) Clarified that, with respect only to associations not managed by a common interest community manager, all fees for providing the required disclosure packet shall be collected at the time of delivery of the disclosure packet and, if unpaid, shall be an assessment against the lot and collectible as any other assessment. The LAC supported this bill, and it passed.

**Amending Association Documents Using Technology**—[HB 1058](#) provided that unless declaration or condominium instruments expressly provide otherwise, any notice required to be sent or received, or any signature, vote, consent or approval required to be obtained under any condominium instrument declaration or provision of the Virginia Condominium Act or Virginia Property Owners' Association Act may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. This bill also authorizes electronic signatures where signatures are required. This bill does not apply to any notice related to an enforcement action by an association, such as an assessment lien or foreclosure proceedings in enforcement of an assessment lien. The LAC supported this bill with minor technical changes, and the bill passed.

**Stormwater Management; Immunity from Civil Liability**—[HB 1100](#) provided that common interest community landowners who cede responsibility for the maintenance, repair and replacement of a stormwater management facility to the Commonwealth or political subdivision thereof shall be immune from civil liability in relation to such stormwater management facility. In order for the immunity to apply, (i) the common interest community must cede such responsibility by contract or other instrument executed by both parties and (ii) the Commonwealth or the governing body of the political subdivision shall have accepted the responsibility ceded by the common interest community in writing or by

resolution. The immunity does not extend to cases of intentional or willful misconduct or gross negligence. The LAC supported this bill as written and it passed with amendments from the floor.

**Rental Property; Civil Penalty Imposed on Certain Property Owners**—[HB 232](#) allowed a locality to adopt an ordinance to impose civil penalties on a property owner of four or fewer rental units who allows tenants to create certain outlined nuisances against the community within a 12-month period including disorderly conduct, indecent exposure, profane swearing and intoxication in public and excessive noise. This bill has been recommended by the Housing Commission. The LAC supported this bill, but the bill was left in committee and did not pass.

**Civil Penalties for Violations of Noise Ordinance**—[SB 246](#) and [HB 297](#) authorized the governing body of a locality to adopt civil penalties for violations of noise ordinances. Initial violation penalty shall not exceed \$250.00; penalties for subsequent violations not to exceed \$500.00. The LAC supported these bills and the bills passed.

**Nonstock Corporation Act; Conforms Revisions to Model Business Corporation Act**—[SB 131](#) conformed provisions of the Virginia Nonstock Corporation Act and revisions to the Model Business Corporation Act prepared by the Business Law Section of the American Bar Association, and makes several technical or clarifying revisions. Provisions (i) expand the governing of electronic transmission of notices and other communications; (ii) provide that notice to a member that is sent by U.S. mail is effective upon deposit in the U.S. mail; currently, such mailings to members are effective five days after mailing; (iii) require words in communications to be in the English language, unless otherwise agreed; (iv) permit a board of directors to establish separate record dates for determining members entitled to notices of, and to vote at, meetings; (v) allow members to participate remotely in members' meetings; (vi) repeal the existing provision that limits the power of the board of directors to alter the board's size to an amount not greater than 30 percent of its existing size; (vii) confirm the authority of a board of directors to require the corporation to provide indemnity, including advancement and reimbursement; (viii) authorize a corporation to obligate itself to provide indemnification, and advance funds to pay for or reimburse expenses, in advance of the act or omission giving rise to a proceeding; and (ix) correct cross-references. The bill also provides that, if inspectors for elections are utilized, the report of the inspectors is presumed correct in any court proceeding. The LAC supported this bill and it passed.

**District and Circuit Courts; Increases Court Fees**—[SB 329](#) increased the court fees in both district and circuit court from \$27 to \$75 in a district court civil action and from the current scale of \$60-\$160 to \$500-\$1,000 in civil actions in circuit court. The fee increases under this bill in district court are allocated to the sheriffs' departments, and the increases in circuit court are split between the sheriffs' (80 percent) and the clerks' (20 percent) offices to be used exclusively for achieving the current staffing standards of the two constitutional offices. The \$10 fee for the Courts Technology Fund is removed from civil cases. The Fund still receives fees applicable to other filings in the circuit and appellate courts. The LAC opposed this bill, and the bill was left in committee and did not pass. However, the subject matter of the bill was addressed in House Bill 30, below.

**District and Circuit Courts; Increases Court Fees-Budget Bill**—[HB 30](#) increased the court fees in district court from \$22 to \$30 for civil action and amends the filing fee for civil actions in circuit court seeking monetary awards as follows: from \$60 to \$100 for cases seeking \$49,000 or less; from \$110 to \$200 for cases seeking more than \$49,000 to \$100,000; and from \$160 to \$250 for cases seeking more than \$100,000 to \$500,000.

**Foreclosure on Lien for Unpaid Assessments; Priority of Certain Liens**—[HB 470](#) 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 bill also provides that such portion of the unpaid assessments directly attributable to the maintenance and upkeep of the common areas and other areas of association responsibility expressly provided for in the declaration, including capital expenditures, shall be prior to all other liens and encumbrances. The bill contains technical amendments. The LAC supported this bill with modification to establish Uniform Act limited lien priority. The bill was left in committee and did not pass.

**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 the bill was stricken at the request of the patron and as a result did not pass.

**Virginia Property Owners' Association Act; Control of Association by Declarant**—[SB 419](#) provided that a declaration may provide for declarant control of an association and its board of directors until no later than three months after 80 percent of all lots development have been conveyed to a person other than a declarant or builder. The bill also provides 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 or a builder. The LAC supported this bill, but it was continued to 2011.

# Washington

## LAC Members

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## Advocacy Highlights

**Dissolution of Limited Liability Companies**—[HB 2657](#) addressed the interpretation by the Washington State Supreme Court in *Chadwick Farms Owners Association v. FHC, LLC* that only preserves claims against development LLCs after “dissolution” of an LLC, but it does not preserve claims against “cancelled” LLCs. The new law, as signed by the Governor, will preserve claims against “cancelled” LLCs. The LAC observed the bill’s process through the legislature.

**Resale Certificates**—[SB 6460](#) required resale certificates for the purchase of condominiums; only four states regulate the fees charged. Washington’s fee, established in 1990 with the adoption of the Condominium Act, is capped at \$150. The LAC advanced legislation that increased the cap to \$275 and ties future increases to the Consumer Price Index. The bill did not pass, but the LAC will pursue it in 2011.

**Records Access**—[HB 2440](#) allowed HOAs to access motor vehicle records. This bill, under specific requirements, would have authorized a homeowners association to request information regarding the

name and address of an individual vehicle owner in connection with driver and pedestrian safety. This bill did not pass, but is expected to come back again in some form in 2011. The lack took an observer role in the legislative process.

**Association Liens**—[SB 6735](#) addressed association liens. Currently, under the Washington Condominium Act, associations may have a lien on a unit for any unpaid assessments against a unit from the time the assessment is due. The act provides a priority to the extent of certain assessments that would have become due during the six months immediately preceding (i) the date of sheriff's sale in judicial foreclosure; (ii) the date of a trustee's sale in a non-judicial foreclosure; or (iii) the date of recording the declaration of forfeiture on a real estate contract. The act also provides that this priority is reduced to three months for an eligible mortgagee. Eligible mortgagee means that the holder of a mortgage on a unit has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees. The proposed legislation would have created a lien priority for certain assessments that would have become due during months immediately preceding (i) the recording of a lis pendens in an action for judicial foreclosure; or (ii) the date of the trustee's sale in a non-judicial foreclosure; or (iii) the date of recording the declaration of forfeiture on a real estate contract. This lien priority would have included assessments made against a unit for any period of time during which the unit owner is default on his or her obligation to the condominium association, the association notified the mortgagee of the default and the mortgagee failed to enforce his or her rights to foreclose on its mortgage. In addition, the lien priority of 12 months would have been reduced to six months for an eligible mortgagee. Because the legislation never received a hearing, the LAC did not take a position on the bill.

**Reserve Funds**—[HB 2820](#) would have required that by January 1, 2015, associations with twenty-five or more unit owners be encouraged to establish a reserve account and maintain at least a 70 percent funding level in the reserve account as determined by using the association's most current reserve study. This legislation did not receive a hearing and did not pass, but it is an illustration of legislators beginning to hear more and more from their constituents about underfunded reserves.

# Wisconsin

## LAC Members

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## Advocacy Highlights

**Established Wisconsin LAC**—CAI-WI established a Wisconsin Legislative Action Committee (LAC) to provide regular communications to CAI members regarding state legislative, regulatory and case law activities of relevance to the creation and operation of community associations.

**Appeared Amicus Before the Wisconsin Supreme Court**—The Wisconsin Supreme Court reviewed and issued a decision in the case of the *Saddle Ridge Corporation v. Board of Review for Town of Pacific*, 210 WI 47, in which the court adopted the position advanced by LAC and held that unbuilt units must pay property taxes, and developers cannot argue that no construction means no obligation.

**Wisconsin Condominium Law**—The LAC reviewed and responded with proposed changes that ultimately became part of a bill introduced to the State Assembly regarding comprehensive amendments to the current condominium law. Although the bill was not passed during the Spring 2010 session, it is anticipated that the same bill or similar one will be reintroduced.

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