

SELECT TRENDS --- 2005 LEGISLATION & 2006 PREVIEW

CAI Government & Public Affairs Department

October 17, 2005

Looking back to the beginning of 2005, pre-Hurricanes Katrina and Rita, changes in the Supreme Court composition, and increasing gas prices, state legislatures began the year considering how the 2004 elections and the re-election of President Bush would impact state agendas. By year's end, with most state legislatures adjourned and/or in recess, state lawmakers can only be hopeful for a better 2006.

50-STATE SESSION SUMMARY (from State Net tracking service)

Week of 10/17/2005

IN SESSION

There are 5 states and DC in Regular Session; there is 1 state in Special Session.

In Regular Session: DC, MA, MI, OH, PA, WI

In Special Session: PA "a"

CONVENING:

No Regular Sessions are scheduled to convene this week.

LA "a" regarding Hurricane Recovery Measures convenes 11/06/2005.

ME "c" regarding Budget Tax and Revenue Issues is projected to convene 10/24/2005.

MN "c" regarding Pensions/Maple Grove Hospital is projected to convene 10/24/2005.

IN RECESS:

IL until 10/19/2005

OK "a" until 10/24/2005

DE "a" until 11/08/2005

NY until 11/09/2005

NJ until 11/10/2005

CA until 01/04/2006

CA "a" until 01/04/2006

PREFILING:

DE - Prefiling began: 07/02/2005

FL - Prefiling began: 06/24/2005

KS - Prefiling began: 09/19/2005

KY - Prefiling began: 04/14/2005

NH - LSR filing began: 09/12/2005

OK - Prefiling began: 09/23/2005

TN - Prefiling began: 06/29/2005

ADJOURNMENTS: No sessions are scheduled to adjourn in the next 30 days

Adjourned Sessions

AK, AK "a", AL, AL "a", AR, AZ, CO, CT, CT "a", CT "b", DE, FL, GA, GA "a", HI, HI "a", IA, ID, IN, KS, KS "a", KY, LA, MD, ME, ME "a", ME "b", MN, MN "a", MO, MO "a", MS, MS "a", MS "b", MS "c", MS "d", MS "e", MT, NC, ND, NE, NH, NM, NM "a", NV, NV "a", OR, RI, SC, SD, SD "a", TN, TX, TX "a", TX "b", UT, UT "a", VA, VT, VT "a", WA, WI "a", WV, WV "a", WV "b", WV "c", WV "d", WY

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GOVERNORS' ACTIONS:

GA "a" Governor's deadline is 10/20/2005.

MS "e" Governor's deadline is 10/28/2005.

MO "a" Governor's deadline is 10/30/2005.

NM "a" Governor's deadline is 11/01/2005.

SD "a" Governor's deadline is 11/04/2005.

SC Governor's deadline is 01/12/2006.

NH Governor's deadline is 07/06/2006.

Signing Deadlines Past

AK, AK "a", AL, AL "a", AR, AZ, CO, CT, CT "a", DE, GA, HI, HI "a", IA, ID, IN, KS, KS "a", KY, LA, MD, ME, ME "a", ME "b", MN, MN "a", MO, MS, MS "a", MS "b", MS "c", MS "d", MT, NC, NE, NM, NV, NV "a", OR, RI, SD, TN, TX, TX "a", TX "b", UT, UT "a", VA, VT, VT "a", WA, WI "a", WV, WV "a", WV "b", WV "c", WY



The 2006 Political Landscape

Just as states are looking toward 2006 activity, CAI's Legislative Action Committees (LACs) are organizing and preparing for the upcoming sessions. With over 150,000 bills (90,000 of those are expected to be introduced legislation, and the rest 2005 carryovers) estimated to be heard on a variety of issues in 2006, state sessions could see considerable activity at a fast and furious pace. And that staggering estimated bill intro number is with several states not in regular session: Arkansas, Montana, North Dakota, Nevada, Oregon, and Texas. Most states will prefile legislation, which could take the form of 2005 legislation rewritten to reflect constituent feedback, legislation formulated from study committees or commissions, and/or language drafted by special interest groups eager to get their respective needs addressed.

Just to make the 2006 political landscape more interesting, there will be elections taking place. At the federal level, all 435 House seats are up for election, while over on the Senate side, 33 seats are up (although it is expected a majority of these current seat holders will seek reelection). In the states, there will be 36 gubernatorial races, and depending on which candidates win, there could be a host of first-time governors taking office in 2007. Looming in the background of the 2006 elections is the 2012 nationwide redistricting work, which means that political parties can be expected to work even more aggressively to achieve majorities wherever possible. Materializing even closer is the 2008 presidential election that is impacting political questions and candidate decisions even now.

Bottom line: with all of the "bread and butter" issues states are expected to address in 2006, CAI members may see a flurry of legislation introduced dealing with broad industry issues, although how much action these issues will see is questionable. For example:

- States are grappling with tight budgets, expected to become even tighter with rising health care costs (for state employees and the uninsured), and a changing economic landscape as even the employed find things difficult with rising fuel and gas costs. And these are just the states without natural disaster worries and/or those states that are not

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- feeling the pinch of additional bodies due to these disasters. Those states facing special challenges will see activity devoted almost exclusively to getting matters back in order to resume some semblance of normalcy.
- Additionally, with the federally mandated No Child Left Behind Program, costs to comply with this directive will tax state education budgets: more money will be needed for further testing, collecting data, and retaining quality teachers.
 - Jobs retention --- and creation --- will also tie into a state's fiscal budget and operation. A strong tax base is paramount to a state's function and growth, and state legislatures will continue to view legislation not only with a fiscal eye, but also in terms of job retention and growth.
 - And finally, eminent domain. Given the June 24th Supreme Court 5-4 ruling, this is an issue that states may be forced to address. At the federal level, almost 100 eminent domain-related bills were introduced quickly after the decision, and 17 states also saw some type of bill introduced (an impressive number considering that the ruling came after many state sessions were either ended or ending). States may use this issue as a battle cry as they continue the fight to determine their own course of action, fighting the perceived Congressional push of "one size fits all [policy] approach."



It Takes a Village to Watch Industry Issues

Anticipating (hoping?) that states may not focus on many issues that could impact CAI members does not warrant passive attention. On the contrary: 26 states and the District of Columbia carry over 2005 legislation into 2006, and six states are in session either all year or almost all year. There also exists the prospect of CAI-impacting issues rolled into legislation that, on reading just the title or brief summary, may not be deemed germane to CAI (i.e., a licensing or registration requirement as part of an appropriations bill; a construction defects provision as part of a post-Katrina clean up proposal, etc.).

And finally, states are sharing legislative language and ideas --- no longer are individual states insular in nature. On the contrary: with the information sharing between states facilitated by technology and public policy groups, issues are crossing state borders with increasing frequency. In the past, it may have been easy to give industry-impacting legislation from a small state, with few members/interest, a low "watch" priority. However, that is not the reality today, and in fact, many innovative ideas have sprung from just this type of situation.

Identifying and tracking trends will help pro-actively address industry issues.

Industry Trends from 2005

Outlined below are some legislative examples of broad industry trends seen in 2005 that could resurface next year. While some of the examples have been signed into law, those that are either

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still pending or that did not progress very far still can provide a sense of legislators' intent. **Note:** Bills identified below are from CAI LACs and/or the CAI 2005 bills database. Summaries are, in some instances, as introduced, so please consult individual legislation of interest for complete history and full text. Also, some legislation may include more than one issue (i.e., a governing bill may also include provisions for assessments).

ASSESSMENTS/FORECLOSURE

Arizona Chapter 56 (SB 1255) In this legislation dealing with the disposition of proceeds of sales in a trustee's sale, Sec. 33-182(4) addresses payment of an association's lien(s). **SIGNED** (information provided by the CAI Arizona Legislative Action Committee)

California Chapter 452 (SB 137) The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a notice of delinquent assessment and follows a specified process. The act permits the association to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure. This bill would revise and recast the procedures for collecting delinquent assessments for certain debts that arise on and after January 1, 2006. The bill would provide that when an association of a common interest development seeks to collect delinquent assessments of less than \$1,800, not including accelerated assessments and specified late charges and fees, the association must either file a civil action in small claims court or record a lien upon which it would be prohibited from foreclosing until the amount equals or exceeds \$1,800 or the assessments are more than 12 months delinquent. The bill would delete provisions authorizing the owner of a separate interest to pay assessments that are in dispute in full under protest and requiring the board of directors of an association to respond to an owner's written dispute of a debt within 15 days. This bill contains other related provisions and other existing laws. **SIGNED** (summary provided by the CAI California Legislative Action Committee)

Virginia Chapter 0218 (SB 896) Amends the definition of an "open or common space" to include common areas that are part of a planned residential development initially recorded before January 1, 1959, that did not include automatic membership in a membership corporation or association in its declaration. The change will prohibit a locality from assessing real estate taxes against these membership corporations or associations for the common area. Instead, the value of the common area will be taxed through the increased value of the residential property that has an interest in the property. This is the approach that currently applies to residential and commercial property with automatic membership in a membership corporation or association. Today residential developments with common areas must include mandatory or automatic membership in the corporation or association charged with its upkeep; however, older developments did not necessarily have mandatory membership. **SIGNED** (summary provided by the CAI Virginia Legislative Action Committee)

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OTHER EXAMPLES:

California AB 619 The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and authorizes the association that manages the development to levy assessments to fulfill its obligations. The act provides that a regular or special assessment of the association, late charges, reasonable costs of collection, attorney's fees, and interest, as specified, are a debt of the owner of the separate interest at the time the assessment or other sums are levied, and are a lien on the owner's separate interest when the association records a notice of delinquent assessment and follows a specified process. The association is permitted to enforce the lien in any manner permitted by law including a sale by a trustee, also known as nonjudicial foreclosure. This bill would, for liens recorded on or after January 1, 2006, instead give an owner the right to require a meeting with the board of directors of the association to dispute the debt, and would require the board to meet with the owner, as specified. The bill would require the notice of delinquent assessment to include a payment plan request form for the owner to request a payment plan, and would require the association to provide the owner with the standards for payment plans and to offer a payment plan, as specified. The bill would require any notice of default to be served according to specified methods, and would require the board to approve the commencement of any judicial or nonjudicial foreclosure sale. August 30 in Senate; held at desk. (summary provided by the CAI California Legislative Action Committee)

Texas HB 927 Homesteads Exempted From Foreclosure This bill amends Chapter 202 of the Property Code by prohibiting any foreclosure by a property owners association if the foreclosure is on a piece of land designated as someone's homestead. This would effectively eliminate foreclosure as a meaningful tool for collection of assessments – it would no longer be a realistic incentive for members to pay delinquent dues. (summary provided by the CAI Texas Legislative Action Committee)

Texas HB 2215 POA (property owners association) Foreclosures This, along with SB 244, was the most dangerous bill of the session. The bill requires a property owner's association to give all notices in English and Spanish. It requires POAs to allow payment plans for delinquent owners. It says that an owner is not liable for any attorney's fees related to overdue assessments if the attorney's fees are incurred before the owner is offered a payment plan. It also says that unless a restriction created before September 1, 2003 provides for non-judicial foreclosure, judicial foreclosure is required in all cases. Judicial foreclosure is much more expensive, and would not only create more costs for POAs, but it would also make it much more difficult for owners who were foreclosed on to redeem (buy back) their property by paying all amounts owed.

It lengthens the right of redemption from 180 days to two years. In many cases, within this two year period, the owner's mortgage company would

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foreclose, wiping out the associations lien for prior amounts due, meaning as a practical matter that the association would lose at times more than two years of assessments. It applies the Open Records Act (Public Information Act) to all property owners' associations. In the bill amendment process, the HB 2426 language was added about no lawn watering requirements, and HB 1446 (SB 244) language was added regarding application of payments. This bill came very close to passing. (summary provided by the CAI Texas Legislative Action Committee)

Texas SB 244 Application of Debt Payments to HOA (Wentworth-San Antonio) This bill requires property owners associations to apply payments from its members in the following order of priority: (1) delinquent assessments, (2) current assessments, (3) fines, and (4) attorneys fees associated with fines. It could easily have the practical effect of preventing associations from being able to collect fines for deed restriction violations unless they file suit. According to CAI study, this would result in thousands additional small claims and other lawsuits per year. In the alternative, violations would simply have to remain uncorrected.

Also, the list of what payments could be applied to is not all-encompassing. For example, attorney's fees associated with collection work or non-fine related matters are not on the list and presumably could not be charged to the violating owner at all, rather, the entire POA would have to absorb those fees, raising dues for everyone.

This bill came within minutes of passing. (summary provided by the CAI Texas Legislative Action Committee)

Texas SB 1886 Foreclosure of Certain POA's (property owners association) Liens This bill requires judicial foreclosure in all cases. Judicial foreclosure is much, much more expensive, and would greatly increase costs for all POAs and make it much harder for owners trying to get together enough money to redeem their home. (summary provided by the CAI Texas Legislative Action Committee)

Virginia HB 2263 Requires a condominium or property owners' association to give notice to the owners in the association of an increase in a regular assessment and provides a mechanism for the owners to reduce or rescind the increase. Currently, notice and the opportunity to reduce or rescind is required only for special assessments. (summary provided by the CAI Virginia Legislative Action Committee)

CONSTRUCTION DEFECTS

California Chapter 40 (AB 662) Construction defects: County of San Diego Existing law specifies the rights and requirements of a homeowner of a new residential unit to bring an action

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for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner. (2) This bill would declare that it is to take effect immediately as an urgency statute. This bill contains other existing laws. **SIGNED** (summary provided by the CAI California Legislative Action Committee)

California Chapter 394 (AB 758) Existing law provides that, except as specified, agreements affecting any construction contract that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable. This bill would provide that, except as specified, all agreements affecting any residential construction contract and amendments thereto entered into after January 1, 2006, that purport to indemnify the builder by a subcontractor against liability for claims of construction defects or other injury to property arising from, pertaining to, or relating to the negligence of the builder or the builder's other agents, servants, or independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, or for claims that are unrelated to the scope of work in the agreement, are unenforceable, as specified. **SIGNED** (summary provided by the CAI California Legislative Action Committee)

Virginia Chapter 415 (HB 2446) Provides that no unit owners' association or property owners' association shall require reimbursement of any costs not expressly authorized in law or charge any other fee except as expressly provided in law for providing the required disclosure packets. The bill contains technical amendments **SIGNED** (summary provided by the CAI Virginia Legislative Action Committee)

OTHER EXAMPLES:

California AB 1038 Existing law regulates actions against contractors and subcontractors for residential construction defects, as specified. This bill would state the intent of the Legislature to enact legislation governing the use of indemnification and additional-insured provisions in construction contracts with respect to construction defect disputes. (summary provided by the CAI California Legislative Action Committee)

California AB 406 Existing law provides that provisions, clauses, covenants, or agreements regarding construction contracts that purport to indemnify a promisee against liability for damages for death or bodily injury to persons, injury to property, or other loss, damage, expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee or for defects in design furnished by those persons, are against public policy and are void and unenforceable, except as specified. Existing law also provides that provisions, clauses, covenants, or agreements relating to construction contracts with a public agency that purport to impose on the contractor, or relieve the public agency from liability for the active

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negligence of the public agency, are void and unenforceable. This bill would state the intent the Legislature to enact legislation governing the use of indemnification and additional-insured provisions in construction contracts with respect to construction defect disputes, as specified. (summary provided by the CAI California Legislative Action Committee)

Florida SB 1492 and HB 291 Condominiums/Administration Board; provides for effect of actions taken by members of board of administration of association designated by developer; requires examination & certification of certain defects by certain licensed individuals or entities. Amends 718.301

Pennsylvania SB 656 and HB 1467 An Act providing for dispute resolution procedures relating to residential construction defects between contractors and homeowners or members of associations. (Last actions: September 27)

Pennsylvania HB 362 An Act providing for civil actions or arbitration proceedings for damages or indemnity for injury or loss to a dwelling or personal property arising out of or related to the design, construction, condition, sale or remodeling of a dwelling, for notice and opportunity to repair, for insurance requirements, for contract of sale, for contractor notification requirements and for actions of associations. (Referred to Judiciary February 8)

GOVERNANCE

Arizona Chapter 269 (HB 2154) was a homeowners' association omnibus bill that included several governance-related reforms:



A.R.S. § 33-1243(H) and (I) (condominiums) and A.R.S. § 33-1813 (planned communities) provide new rules for the removal of board members by the members --- Board Removal:

If the Association has 1,000 members or fewer, a special membership meeting must be called and held within 30 days of the presentation to the Board of Directors of petitions calling for the removal of a director, directors or the entire Board of Directors signed by members holding 100 votes, or by members entitled to cast 25% of the votes in the Association, whichever is less. For example, if an Association has 900 units, and each unit has one vote, then a petition signed by owners entitled to cast 100 votes would be sufficient to require the membership meeting. If the Association has 80 members, then the petition would need to be signed by only 20 members [25% of 80 is less than 100].

If the Association has more than 1,000 members, a special membership meeting must be called and held within 30 days of the presentation to the Board of

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Directors of petitions calling for the removal of a director, directors or the entire Board of Directors signed by members holding at 1,000 votes, or by members entitled to cast 10% of the votes in the Association, whichever is less. For example, if an Association has 9,000 units, and each unit has one vote, then a petition signed by owners entitled to cast 1,000 votes would be sufficient to require the membership meeting. If the Association has 2,000 members, then the petition would need to be signed by only 200 members [10% of 2,000 is less than 1,000].

The number necessary to remove a director, directors, or the entire board of directors, with or without cause, is a simple majority of those voting, so long as a quorum is present. The quorum for the membership meeting called for the purposes of voting on the recall is 20% of the votes or 1,000 votes present, whichever is less.

If a lawsuit is filed, the winner will be awarded their attorneys' fees from the loser. A community association is obligated to keep the records of the meeting and the petition for at least one year from the date of the special meeting.

A petition to remove a director can only be submitted once during that director's term. If the removal is not successful, that director cannot be the target of a recall again for the remainder of his or her term.



Dealing with proxies and absentee ballots, A.R.S. § 33-1250(C) through (E) (condominiums) and A.R.S. § 33-1812 (planned communities) provide new rules for the use of proxies and absentee ballots for issues that come before the membership.

The use of proxies at condominium and planned community membership meetings is now prohibited. The Association must provide for votes to be cast by an absentee ballot and may provide for voting by some other form of delivery.

The "other form of delivery" allows a community association to use a "mail ballot", specifically authorized by A.R.S. § 10-3708, a provision of the Arizona Nonprofit Corporation Act.

The "Absentee Ballot" must:

1. Set forth each proposed action;
2. Provide a space to vote "for" or "against" each proposed action;
3. Specify the date and time for the ballot to be delivered to be counted [must be at least 7 days after the ballot is delivered to the owner]; and
4. Only be valid for one meeting.

The return of absentee ballots is sufficient to satisfy the quorum requirement. An absentee ballot cannot authorize any other person to cast votes on behalf of a member.

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The requirements for a “written ballot” by mail pursuant to A.R.S. § 10-3708 are identical to the requirements for the absentee ballot with the exception that a mailed solicitation for a “written ballot” [the cover letter] must indicate the number of ballots that must be returned to meet the quorum requirement.

HB 2154 **SIGNED** (summary provided by the CAI Arizona Legislative Action Committee)

California Chapter 116 (SB 702) Existing law sets forth certain requirements and other provisions applicable to unincorporated associations. Existing law exempts a member, director, officer, or agent of a nonprofit association from liability for contractual obligations of the association if specified requirements are satisfied. This bill would add provisions governing unincorporated associations, including provisions relating to termination or suspension of membership, member voting, amendment of governing documents, merger, and dissolution. The bill would also provide that a member, director, officer, or agent of a nonprofit association shall be liable for injury, damage, or harm caused by an act or omission of the association or an act or omission of a director, officer, or agent of the association if certain conditions are met. **SIGNED** (summary provided by the CAI California Legislative Action Committee)

California Chapter 450 (SB 61) Existing law creates and regulates common interest developments and requires them to have a recorded declaration containing specified information and permits them to levy assessments. Existing law establishes, in certain situations, voting requirements for amendments of the declaration and the levy of assessments. Existing law establishes the Common Interest Development Open Meeting Act. Existing law requires that a common interest development be managed by an association. Existing law regulates a broad range of activities associated with statewide, local, and special elections. This bill would require that an association adopt rules, pursuant to specified procedures, to provide equal access to various association media as part of election campaigns, as specified, and to establish qualifications for candidates and voting, as specified, among other things. The bill would also make a conforming change. The bill would require that elections within a common interest development regarding assessments, selection of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property be held by secret ballot, as specified. The bill would require that a common interest development select an independent 3rd party, as specified, as an inspector of election, who would be granted specified powers, for these elections. The bill would require that ballots and two preaddressed envelopes with instructions on how to return ballots be mailed to each member at least 30 days prior to the deadline for voting, be handled in a specified manner, and that votes be counted and tabulated by the inspector in public at a noticed meeting. The bill would establish additional procedures for storage and review of election results. The bill would prohibit association funds from being spent for campaign purposes, as specified, in connection with an association board election or in connection with any other association election, except as specified. The bill would permit a member of an association to bring a civil action, as specified, for violations of these provisions, and other provisions regarding open meetings, by his or her association, and would impose a civil penalty of up to \$500 per violation. This bill contains other existing laws. **SIGNED** (summary provided by the CAI California Legislative Action Committee)

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Texas HB 1631 Amendment of Restrictive Covenants The bill only applies to residential real estate subdivisions (including condominiums) located in whole or in part within an unincorporated area of a county of less than 65,000 population. If the declaration is silent as to amendment procedure or the declaration requires unanimous agreement to amend it, this bill “trumps” those provisions and says that a two-thirds vote of all owners in the subdivision to approve the amendment will suffice. It also addresses notice procedure and voting procedures. This bill addresses a big problem for associations. Many old deed restrictions were written so as to be silent on amendment, or require a quite unrealistic unanimous consent from all owners in order to amend. If yearly assessments were \$20 in 1975, in 2005 this cost may not come close to covering all of the association’s mandatory maintenance duties, such a pool maintenance, clubhouse maintenance, park maintenance, security, insurance for the common areas, etc. Members of associations need a realistic vehicle to update their restrictions when necessary. **SIGNED** (summary provided by the CAI Texas Legislative Action Committee)

Texas SB 1018 Extension of Restrictions This bill applies only to POA's (property owners association) located in a county with a population of more than 45,000 and less than 175,000. The bill allows a POA or a petition committee of at least three owners to circulate a petition proposing to extend, reinstate, modify or add to existing restrictions. It allows owners of 66% of the real property in the subdivision to vote in favor of the extension, amendment, etc. **SIGNED** (summary provided by the CAI Texas Legislative Action Committee)

Virginia Chapter 353 (SB 1200) Virginia Condominium Act and the Virginia Property Owners' Association Act meetings. Provides that notice of the time, date, and place shall be sent to any unit owner requesting notice (i) by first-class mail or e-mail in the case of meetings of the executive organ or (ii) by e-mail in the case of meetings of any subcommittee or other committee of the executive organ, or of a subcommittee or other committee of the unit owners' association. The bill also authorizes an executive organ or board of directors to require notice to be provided when a meeting is being recorded. **SIGNED** (summary provided by the CAI Virginia Legislative Action Committee)

LICENSING/REGISTRATION/OMBUDSPERSON

Florida Chapter 2005-70 (SB 2600) An appropriations bill that includes in section 2273 funding to aid the Department of Business and Professional Regulation to submit a quarterly report that includes data on: the number of training programs provided for condominium association board members and unit owners; the number of complaints received by type; the number and percent of complaints acknowledged in writing within 30 days; the number and percent of investigations acted upon within 90 days; etc. **SIGNED**

OTHER EXAMPLES:

California AB 770 Common interest developments: ombudsperson
Existing law requires a person who either provides or contemplates providing the services of a common interest development manager to a community association to annually disclose to the board of directors of the community

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association specified information, including whether or not he or she has met certain requirements to be called a certified common interest development manager and the location of his or her primary office. This bill would require this information to be disclosed in writing, and would additionally require the person to disclose whether or not he or she has read the governing documents of the community association. This bill contains other related provisions and other existing laws. (summary provided by the CAI California Legislative Action Committee)

California SB 304 Common interest developments: ombudsman The Davis-Stirling Common Interest Development Act requires the association that manages a development to provide a fair, reasonable, and expeditious procedure for resolving disputes between the association and members of the association involving their rights, duties, or liabilities under the act. The act also requires an association or an owner of a separate interest or a member of an association to endeavor to submit their dispute to alternative dispute resolution before they file certain enforcement actions in the superior court. This bill would establish the position of Common Interest Development Ombudsman in the Department of Consumer Affairs, to be designated by the Governor, to provide assistance in taking complaints, and helping to resolve and coordinate the resolution of those complaints, from any member of an association or owner of a separate interest against an association, or from an association against any member or owner of a separate interest. The bill would require the ombudsman to establish procedures to deal with complaints, including the publication of complaint forms and written materials that shall be made available to the public informing them of the functions of the ombudsman and providing information on common interest developments. (summary provided by the CAI California Legislative Action Committee)

California SB 551 Common interest developments: ombudsperson Existing law defines and regulates common interest developments, which include condominiums and planned developments. Existing law requires that a common interest development be managed by an association, and establishes requirements for association operating rules and meetings and for the resolution of specified disputes. This bill would, until January 1, 2011, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the ombudsperson to, among other things, offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties of an association or owner. The bill would require the ombudsperson to maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance, and would require an association director or agent to meet certain requirements in that regard. The bill would authorize the ombudsperson to provide assistance in resolving common interest development disputes, and would require a specified fee for that resolution. The bill would impose a biennial association

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fee on common interest development associations to fund the administration of the provisions of the bill, for deposit in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund. Because the funds in that account would be continuously appropriated, the bill would make an appropriation. (summary provided by the CAI California Legislative Action Committee)

Florida HB 1229 For Homeowners' & Condo Associations, revises qualifications of members of Regulatory Council of Community Association Managers; requires application to & licensure by DBPR of certain community association management firms or other like entities; provides that certain disciplinary actions against community association managers or management firms may be taken upon finding by Fla. Land Sales, Condominiums, & Mobile Homes Div. or department, etc. Amends Chs. 468

New York AB 177 and SB 4966 Requires residential real property managers [of cooperatives and condominiums] or any firm employing a property manager, contracting with a property manager or contracting to provide a property manager to file a registration statement with the Secretary of State and to be certified from an approved certifying organization. Legislation would add a new section to the Real Property Law. One section would require the Secretary to establish procedures for approving or disapproving applications from organizations to act as approved certifying organizations, and for periodically reviewing the certification programs of approved organizations.

Virginia House Joint Resolution 686 (HJ686ER) Requests the Virginia Real Estate Board to review the study performed by the Old Dominion University Center for Real Estate and Economic Development on common interest communities, which was funded through a grant from the Virginia Department of Professional and Occupational Regulation and the Virginia Real Estate Board. That study includes an analysis of the adequacy of training of, and disclosure of financial information to consumers by, financially compensated professional managers of condominium associations, property owners associations, and other similar common interest communities. The Board shall report its findings to the Governor and General Assembly by the first day of the 2006 Session of the General Assembly. (summary provided by the CAI Virginia Legislative Action Committee)

RESERVES

California Chapter 348 (AB 1754) Existing law governing common interest developments requires the association to prepare and distribute to all of its members certain documents, including a report on reserve calculations. Corrected a drafting error in provisions relating to common interest development reserve accounts. Deletes the term "rediscount rate" and replaces

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it with "discount rate". **SIGNED** (summary provided by the CAI California Legislative Action Committee)

Virginia Chapter 436 (HB 2820) Requires the board in a real estate cooperative to conduct a reserve study and make provision for a reserve account for capital components. The bill requires that disclosure of the reserve fund be made in the public offering and statement as well as the resale certificate. The bill defines capital components. Requirements for reserves are currently only found in the Condominium and Property Owners' Association Acts. The bill also contains technical amendments. **SIGNED** (summary provided by the CAI Virginia Legislative Action Committee)

SIGNAGE

Colorado (SB 100) SECTION 2. Part 1 Of Article 33.3 Of Title 38, Colorado Revised Statutes, Is Amended BY THE ADDITION OF A NEW SECTION To Read: 38-33.3-106.5. Prohibitions Contrary To Public Policy – Patriotic And Political Expression - Emergency Vehicles - Fire Prevention. Among other things, states that notwithstanding any provision in the declaration, bylaws, or rules and regulations of the Association to the contrary, an association shall not prohibit: (C) (I) the display of a political sign by a unit owner on that unit owner's property or in a window of the unit owner's residence; except that an association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day. An association may regulate the size and number of political signs that may be placed on a unit owner's property if the association's regulation is no more restrictive than any applicable city, town, or county ordinance that regulates the size and number of political signs on residential property. if the city, town, or county in which the property is located does not regulate the size and number of political signs on residential property, the association shall permit at least one political sign per political office or ballot issue that is contested in a pending election, with the maximum dimensions of thirty-six inches by forty-eight inches, on a unit owner's property. **SIGNED**

Texas HB 873 This bill gives owners in a POA (property owners association) the right to place political signs, on the owner's property (not in the common area) during the period from 90 days before to 10 days after any election. The bill specifically allows POAs to enforce rules that (1) require the sign to be ground mounted, (2) limit an owner to displaying only one sign per candidate or ballot item, (3) prohibit signage that contains balloons, lights, or other non-standard decorative components, (4) prohibit signs that attach to landscaping, traffic signs, vehicles, or other structures, (5) prohibits signs that would be a safety hazard, (6) prohibit signs larger than 4 feet by 6 feet, and (6) prohibit signs that would be offensive. A POA is given the specific right to remove signs displayed in violation of the POA's lawful rules. The Texas Community Associations Institute Legislative Action Committee recommends that each POA have its lawyer review this bill in detail and draft and adopt a political signage rule accordingly. **SIGNED** (summary provided by the CAI Texas Legislative Action Committee)

OTHER EXAMPLE:

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Texas HB 1344 Campaign Signs in POAs (property owners association)
This bill mandates that POAs have to allow political campaign signs 90 days before and 30 days after the election. A similar bill, HB 873, by Rep. Dukes passed instead. (summary provided by the CAI Texas Legislative Action Committee)

TOWING

OTHER EXAMPLES:

Texas HB 1465 HOA Towing Consent This bill requires that for condominium and townhome communities (any residential building with individually owned units), the actual consent of the person with the right to use that parking space must be obtained before a tow can be made. This would prevent HOA property managers from contracting with towing companies to come and tow on the basis of cars that are stickered or non-stickered, and it would mean that a towing company could not tow, and a property manager or other residents of a unit could not order a vehicle towed that is illegally parked in a resident's spot until they got hold of the resident, or the resident came home (perhaps in the middle of the night) and found a vehicle parked in that resident's spot and could give consent to the tow. (summary provided by the CAI Texas Legislative Action Committee)

Virginia HB 2141 Requires towing and recovery business operators to post signs indicating the maximum charge allowed by local ordinance, if any, for towing and recovery services and the name and business telephone number of the local official, if any, responsible for handling consumer complaints. The bill also prohibits imposition of charges for obtaining vehicle owner data from the Department of Motor Vehicles and vehicle release charges. (summary provided by the CAI Virginia Legislative Action Committee)

Virginia HB 2754 Requires towing and recovery operators to obtain licenses from the Department of Motor Vehicles (DMV). It further requires that towing and recovery operators have a permanent, fixed street address in Virginia and working telephones where they can be reached 24 hours a day. The bill provides that whenever any towing and recovery operator tows any vehicle without the express consent of its owner, he must tow the vehicle to a facility nearest to the place from which the vehicle was towed, and not to the towing and recovery operator's business address or any other location, and notify the vehicle owner that his vehicle has been towed. This notice must include the name, street address, and business house of the towing and recovery operator; his telephone number and 24-hour telephone number, if different from his ordinary telephone number; the location of the towed vehicle; and the vehicle's license number, make, and model. In order to facilitate providing this notice, the bill authorizes towing and recovery operators who tow vehicles without the express consent of their owners to

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enter into agreements with DMV to allow them direct on-line access to DMV's vehicle owner data.

This bill also prohibits towing and recovery operators from charging separate fees for obtaining vehicle owner data from the Department or for releasing towed vehicles, and limits charges for storage and safekeeping to no more than \$35 per day, with fractions of a day calculated on a pro rata basis. (summary provided by the CAI Virginia Legislative Action Committee)