

2015 **advocacy**
activities

2015 ADVOCACY ACTIVITIES

State Legal and Legislative Report

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CAI Government Affairs represents the interests of the 65 million people living and working in America's community associations on legislative and regulatory issues at the local, state and federal level of government. CAI's Government Affairs Department may be reached at (888) 224-4321.

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AMICUS CURIAE

In addition to legislative and regulatory advocacy, CAI's government & public affairs efforts also extend to the legal arena. Most of CAI's legal activities involve amicus curiae, or "friend of the court" briefs, that CAI files in both federal and state cases that address issues of significant importance in community association law. CAI's Amicus Curiae Advisory Group evaluates proposals for briefs and makes recommendations to CAI's Board of Trustees Amicus Curiae Review Committee regarding the appropriate level of involvement in any given case.

Amicus curiae briefs allow CAI to educate a court about important legal issues in cases related directly to the community association industry. These amicus brief submissions give CAI the opportunity as an organization to help shape the outcome of matters of importance to community association law. The CAI name represents a level of expertise, knowledge, and professionalism in community association matters that adds weight to a community association-related submitted brief.

February

Zgabay v. NBRC Property Owners Association (Texas)

This case addresses a short-term rental case on appeal at the Third Court of Appeals in Austin, Texas. The trial court held correctly that a use restriction prohibiting anything other than "single family residential use" unambiguously prohibits short-term rentals. The trial court's rationale was that a short-term rental is not a residential use because the short-term tenant does not have the requisite intent to remain.

Many community associations are now having to deal with transient housing uses and the deleterious effects such uses have on residential neighborhoods. Given that many associations are governed by restrictive covenants adopted prior to short-term rentals becoming popular, and given that those covenants usually require a super-majority to amend to be more specific, an appellate level decision affirming that the covenants as they stand prohibit this type of nonresidential activity would be beneficial to community associations throughout Texas.

The importance of this ruling has strong ramifications for the interpretation of covenants that are created for residential purposes and then leased out for short periods of time by the owner. The lower courts have held these short term rentals – often just a few days in length – to not be a residential purpose but more commercial.

[Brief](#)

Prior Ruling: Lower Court Decision

Status: Pending

CAI Amicus Brief Author: Darryl, W. Pruett, Esq.

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Richard Ekimoto, Esq; Steven Sugarman, Esq; Gary Kessler, Esq; Jennifer Loheac, Esq.

March

1010 Lake Shore Association vs. Deutsche Bank (Illinois)

This case addresses the interpretation and application of the final sentence in Section 9(g)(3) of the Illinois Condominium Property Act. 9(g)(3) provides: The purchaser of a condominium unit at a judicial foreclosure sale, or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois

Mortgage Foreclosure Law, shall have the duty to pay the unit's proportionate share of the common expenses.

The argument made by the association's attorneys was that where Deutsche Bank purchased the unit at a judicial foreclosure sale, which sale was confirmed, and failed to make payment of assessments for more than two years, Deutsche Bank had failed to "confirm the extinguishment" of the association's lien for pre-foreclosure assessments. A majority of the First District Appellate Court agreed with the association. The judgment in this case included approximately \$43,000 in pre-foreclosure assessments. While the judgment itself was positive for the association, there is a bigger benefit to the community association industry at large. Namely, the banks (and foreclosure purchasers) will likely come forward more readily and rightfully pay their assessments moving forward.

[Brief](#)

Prior Ruling: Appeals Court Modified Opinion

Status: [Supreme Court Ruling for CAI's Position](#)

CAI Amicus Brief Sponsor: David Bloomberg, Esq.

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Tom Moriarty, Esq; Lara Anderson, Esq; James Strichartz, Esq; Damien Bielli, Esq.

[May](#)

[Walworth State Bank v. Abbey Springs Condominium Association \(Wisconsin\)](#)

This brief request addresses the case of a lender, who owned a unit as a result of a foreclosure, filed suit to recover \$13,000 that it was required to pay in order for its purchaser to use recreational equipment that was owned or controlled by the Association. The recreational equipment was not common element and prior to the bank even lending on the unit years earlier, the association had adopted a policy that the assessments had to be paid to use the recreational equipment. The association utilizes the policy to manage the use of its assets and facilities, which are oversubscribed. In this case, the bank argues that this policy runs afoul by resurrecting assessments previously wiped out or eliminated through foreclosure and that denial of the use of recreational facilities to a new unit owner affects the quality of the unit's title or marketability.

This case requires the Court to interpret certain provisions of Chapter 703 of the Wisconsin Statutes. Condominium associations may acquire and hold real property, and the board of directors for an association has the right to make policies for the association, including the requirements for the use of association-owned assets. Like Abbey Springs, many other condominium associations throughout Wisconsin and the United States have recreational facilities and other assets owned by the association, which facilities and assets are not common elements and which the boards of those associations must have the authority to control.

[Brief](#)

Prior Ruling: Lower Court Decision

Status: Pending

CAI Amicus Brief Author: Daniel Miske, Esquire

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Richard Ekimoto, Esq; Stephen Marcus, Esq; Lara Anderson, Esq; Gary Kessler, Esq; Marc Markel, Esq.

June

[“Whispering Woods Condominium Association, Inc. v. Mark William Rones and Ronda Jacqueline Rones \(New Jersey\)”](#) The debtors are owners of a unit located within the association.

The owners failed to pay their assessments and a Notice of Lien was filed by the association in the amount of \$18,761.76. After three prior failed attempts to confirm a Chapter 13 plan, the debtors filed this Chapter 13 bankruptcy on December 30, 2014, proposing payment in full of \$1,494 of that lien with the balance treated as unsecured debt in the plan. The \$1,494 represents the statutory six-month priority over the mortgage as codified under state law.

The debtors argue that the unsecured portion is subject to modification while the association argues that the entire lien is secured and thus ineligible for modification pursuant to the anti-modification provisions of the Bankruptcy Code. The Association is consistent with precedent – that so long as there is security in the primary residence of the debtors, the entire lien is protected from modification. The court correctly held that the condominium lien was a security interest, created by the recording of the master deed and made effective upon the acceptance of a unit deed. However, the court incorrectly analyzed the lien in determining that the lien was still not protected by the anti-modification clause, which has the effect of categorizing the lien as both a security interest and a statutory lien, something that Congress has prohibited.

The issue is one of both local and national consequence as the decision is the first in the nation to determine that condominium assessment liens are eligible to be stripped off as wholly unsecured liens despite being classified as security interests in Chapter 13 cases.

[Brief](#)

Prior Ruling: Lower Court Decision

Status: [District Court Opinion](#)

CAI Amicus Brief Author: Steven G. Mlenak, Esquire

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Tom Moriarty, Esq; Karyn Kennedy Branco, Esq; Jennifer Loheac, Esq; Jim Strichartz, Esq.

[Metropolitan Homes v. Vallagio at Inverness Residential \(Colorado\)](#)

CAI previously filed an amicus brief in this same case back in October 2014. The case has now been directed to the Colorado Supreme Court and a follow up brief has been filed on behalf of the association. The Vallagio at Inverness development is a 197-unit condominium community in Arapahoe County, Colorado. It is suffering from serious construction defects, which it lacks the financial means to repair, and which it has attempted to address by filing a construction defect lawsuit against its developer. The developer filed a motion to compel arbitration in the trial court, arguing that the purported declaration amendment removing its arbitration provisions was invalid because the developer did not consent to the amendment.

The Association argued that, as a matter of law, the developers consent was not required to effect the declaration amendment because Colorado’s Common Interest Ownership Act prohibits any declaration provision purporting to give a declarant a unilateral right to control the Association over turnover. The Association also argued, because it is not a party to the individual unit owner purchase agreements, it

cannot be bound by arbitration provisions in such agreements.

The trial court agreed with the association's arguments, but the appeals court overturned that ruling and sided with the developer. The association has appealed to the Colorado Supreme Court. The developer makes the same arguments in the Supreme Court as in the appeals and trial court. The association's arguments on appeal are also the same arguments made in the prior courts.

Brief: Pending

Prior Ruling: Lower Court Decision

Status: Pending

CAI Amicus Brief Author: Jeffrey P. Kerrane, Esquire

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Stephen Marcus, Esq; Jennifer Loheac, Esq; Damien Bielli, Esq; Steven Sugarman, Esq; Gary Kessler, Esq.

August

[The Travelers Property Casualty Company v. USA Container Co. \(New Jersey\)](#)

CAI holds the position that USA Container's inadvertent faulty workmanship constitutes an "occurrence" (an accident or unintentional harm) in as much as insurers frequently take that position that there is no "occurrence" because the coverage policy was not intended to provide coverage where liability arises from the breach of contract or faulty workmanship, regardless of whether harm/damage was intended.

For condominium associations involved in transition litigation, obtaining coverage through the general contractors Commercial General Liability insurance policy may be the only means of obtaining a meaningful remedy for construction defects. Many courts have determined that *Weedo v. Stone-E-Brick* compels a no "occurrence" finding, defeating coverage regardless of whether coverage would be defeated by a policy's exclusions, and notwithstanding that contractor negligence would appear to fall within the ordinary meaning of an "occurrence." Compounding the collectability problem, some courts have adopted *Weedo's* narrow view of an "occurrence." USA Container obtained a favorable coverage determination which found that there was an "occurrence," notwithstanding Traveler's position that there was no "occurrence" pursuant to *Weedo*.

Brief: Pending

Prior Ruling: Lower Court Decision

Status: Pending

CAI Amicus Brief Author: Traci Rea, Esquire and Jay Levin, Esquire

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Tom Moriarty, Esq; Jennifer Loheac, Esq; David Ramsey, Esq; Gary Daddario, Esq.

[Parker Estates Homeowners Association v. Pattison \(Washington State\)](#)

The Court of Appeals will decide whether this association's governing documents and the Washington Non-Profit Corporation Act provide board members with the authority to continue in their positions on the board and to fill vacancies in the board as a result of a failure to achieve quorum at Association meetings.

The plain language of the Nonprofit Act provides an opportunity for the board of a corporation to

continue managing and administering the corporation even if members fail to participate in meetings and voting. The Trial Court's interpretation of this language leaves the corporation without a governing entity to make and implement decisions on behalf of the corporation for any period of time during which a quorum of the members cannot be achieved. If boards are prohibited from taking action on behalf of the corporation during that time, the corporation is incapable in conducting its daily business activities. For a homeowner's association like Parker Estates, this means there would be no one authorized to address immediate needs like consulting with professionals, renewing insurance policies, arranging for necessary maintenance and repairs, paying bills, and collecting assessments from owners for shared expenses.

[Brief](#)

Prior Ruling: Lower Court Decision

Status: Pending

CAI Amicus Brief Author: Ken Harer, Esquire

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Henry Goodman, Esq; Mary Howell, Esq; James Strichartz, Esq; Steven Sugarman, Esq.

Meanwhile, the Aqua Master Association foreclosed on its lien in early 2011 and took title subject the first mortgage. The bank appealed to the 3rd District Court of Appeal and on December 17, 2014, an opinion favorable to the association was issued. The 3rd District Court of Appeal upheld the statute of limitation making the debt unenforceable but reversed the lower court as to the decision to extinguish the lien. The bank requested and was granted a motion of rehearing en banc and oral arguments are scheduled for November 12, 2015. The court sitting en banc should receive a broad view on this issue that will undoubtedly affect not only homeowners but associations as well.

[Brief](#)

Status: [District Court of Appeal's Opinion](#)

CAI Amicus Brief Author: Matthew Estevez, Matthew Estevez, P.A.

CAI Amicus Brief Review Committee: Robert Diamond, Esq; Mary Howell, Esq., Stephen Marcus, Esq.

September

[Deutsche Bank v. Harry Beauvais and Aqua Master Association, Etc., ET. AL \(Florida\)](#)

In this case, the lower court ruled in favor of the Aqua Master Association. Deutsche bank is appealing the ruling.

After waiting years for the bank to prosecute their lien interest in this case, Aqua Master Association proceeded to foreclose on the subject property and took title on February 22, 2011. The Beauvais case presents an all too common set of facts. The first foreclosure action was filed on January 23, 2007 and was later dismissed without prejudice on December 6, 2010. By the time the lender began the foreclosure process on December 18, 2012, the five (5) year statute of limitations had run and the lower court granted a summary judgment in favor of the association and extinguished the lien.

SUMMARY OF STATE LEGISLATION

The following summaries were provided by CAI's state legislative action committees (LACs) or pulled directly from the state legislature. CAI monitored over 800 pieces of state legislation in 2015, all of which applied directly to community associations.

ALABAMA

HOA Act (HB 241): requires certain associations to organize under the Alabama Nonprofit Corporation Act. Requires the filing of certain association documents with the Secretary of State; and to require the Secretary of State to implement and maintain a public searchable electronic database of association filings. Provides for the election of a board of directors; to require the declarant to deliver certain information to the board upon election; to provide for notice of meetings to members of the association. Authorize a homeowners' association to adopt and enforce rules regarding the use of the common areas. Provide for the enforcement of rules against tenants of a member of the association. Authorizes the association to assess charges for certain violations of the declaration and association rules. Provides for liens on a lot for unpaid assessments; to provide for judgments enforcing liens and releases for satisfaction of liens. Provides for an award of attorney's fees to prevailing parties in certain actions to enforce certain rights. Provides for dissolution of the nonprofit corporation and the liquidation of assets. **The bill was signed into law.**

ARIZONA

Disclosure to county (HB 2084): Requires that condominium and homeowners' associations submit a separate statement including the HOA's name, address and contact information as well as the name and contact information of the HOA's designated agent or management company with their annual report to the Corporation Commission. This bill also removes the requirement for an HOA to record similar information with the office of the county recorder. CAI supported this measure. Passed the House 57:0. Passed the Senate 28:0. **The bill was signed into law.**

Purchaser dwelling actions (HB 2578): Various changes to statutes regulating purchaser dwelling actions. The statute of limitations for actions or arbitrations against a person who develops or develops and sells real property is reduced to six years after substantial completion of the improvement to the property, from eight years. This limitation applies to any action or arbitration with respect to an improvement to real property that was substantially complete on or after the effective date of this legislation, and the eight year limitation applies to improvements to real property that were substantially complete before the effective date. A seller who receives a written notice of claim has a right to repair or replace any alleged construction defects after providing written notice to the purchaser of the seller's intent to do so, and a purchaser cannot file a dwelling action until the seller has completed all intended repairs and replacements. Sellers are authorized to offer cash or other consideration instead of or in addition to a repair or replacement. CAI opposed this measure. Passed the House 39:19. Passed the Senate 24:5. **The bill was signed into law.**

Architectural review (HB 2614): Prohibits a homeowners' association from reviewing or approving plans for the interior portion of any structure in a community. CAI opposed this measure. **The bill failed upon adjournment.**

Court fees (SB 1048): A party is permitted to make an amended request for the superior court to designate a pro se litigant a vexatious litigant if specified conditions are met. The court is prohibited from granting a waiver of court fees or costs for civil actions filed by a pro se litigant who has previously been declared a vexatious litigant. **The bill was signed into law.**

Director removal (SB 1452): After the removal of a member of a condo or HOA board of directors, the board is required to hold an election for the replacement of the removed director at a separate meeting of the membership, which must be held within 30 days of the meeting at which the director was removed. The director who was removed cannot be appointed or elected to the board for two years after the date of removal. CAI opposed this measure. **The bill failed in third House read.**

Elections and meetings (SB 1453): Removes the requirement that assessments must be overdue by 30 days or more before condominium associations can charge a late assessment fee. If absentee ballots are used in a community association vote, the completed ballot must include the name, address and signature of the person voting. Ballots must be retained and made available for unit owner review for at least one year after the election. CAI opposed this measure. **The bill failed in third House read.**

CALIFORNIA

Construction defect claims (AB 54): Existing law prohibits discrimination on the basis of various specified personal characteristics, including disability. The Construction-Related Accessibility Standards Compliance Act establishes standards for making new construction and existing facilities accessible to persons with disabilities and provides for construction-related accessibility claims for violations of those standards. Existing law requires that a copy of the demand letter and the complaint be sent to the California Commission on Disability Access. *This bill would, in addition, require that information about the demand letter and the complaint be submitted to the commission in a standard format specified by the commission.* **CAI was neutral on this measure and the bill was carried over to 2016.**

Minimum wage (SB 3): Existing law provides that it is the continuing duty of the Industrial Welfare Commission to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees. Existing law establishes the Division of Labor Standards Enforcement in the Department of Industrial Relations for the enforcement of labor laws, including minimum wage fixed by statute and the wage orders of the Industrial Welfare Commission. Existing Law requires that, on and after July 1, 2014, the minimum wage for all industries be not less than \$9 per hour. Existing law further increases the minimum wage, on and after January 1, 2016, to not less than \$10 per hour. This bill would increase the minimum wage, on and after January 1, 2016, to not less than \$11 per hour, and on and after July 1, 2017, to not less than \$13 per hour. *This bill would require, commencing January 1, 2019, the annual automatic adjustment of the minimum wage to maintain employee purchasing power diminished by the rate of inflation during the previous year. The adjustment would be calculated using the California Consumer Price Index, as specified. The bill would prohibit the commission from reducing the minimum wage and from adjusting the minimum wage if the average percentage of inflation for the previous year was negative. The bill would require the Division of Labor Standards Enforcement to publicize the automatically adjusted minimum wage. The bill would provide that its provisions not be construed to preclude an increase in the minimum wage by the commission to an amount greater than the formula would provide, to result in a reduction in the minimum wage, or the preclude or supersede an increase of the minimum wage by any local government or tribal government that is greater than the state minimum wage. The bill would apply to all industries, including public and private employment.* **CAI was neutral on this measure and the bill was carried over to 2016.**

Earthquake safety (SB 602): Existing law establishes the California Earthquake Authority, which is authorized to transact insurance in the state as necessary to sell policies of basic residential earthquake

insurance, as provided. Existing law provides that a public purpose will be serviced by a voluntary contractual assessment program that provides the legislative body of a public agency with the authority to finance the installation of seismic strengthening improvements that permanently fixed to residential, commercial, industrial, agricultural, or other real property. For purposes of financing the installation of seismic strengthening improvements, "public agency" means a city, county, or city and county. *This bill would include the California Earthquake Authority as part of the definition of "public agency" for this purpose.* The Improvement Bond Act of 1915, provides authority for the legislative body of any city to determine that bonds may be issued to pay for specified works of improvement. *This bill would include the California Earthquake Authority as part of the definition of "city" or "municipality" for the purposes of this act.* Existing law authorizes the Earthquake Loss Mitigation Fund, a continuously appropriated fund, to be applied to supply grants and loans or loan guarantees to dwelling owners who wish to retrofit their homes to protect against earthquake damage. *This bill would authorize the money in the fund to be used to fund seismic strengthening improvements permanently fixed to residential, commercial, industrial, agricultural, or other real property and an account for related loan losses, and to acquire debt obligations issued to fund these seismic strengthening improvements, thereby making an appropriation. The bill would require the California Earthquake Authority to establish a loan loss reserve account in the fund for the deposit of moneys to be expended for loan losses incurred in connection with financing seismic strengthening improvements. This bill would (1) revise or waive certain notice and reporting requirements generally applicable to contractual assessments for contractual assessments that finance seismic strengthening improvements, (2) absent specified conditions, presume statewide scope of any California Earthquake Authority programs of contractual assessments for seismic strengthening improvements, and (3) provide for payment of assessments pursuant to the contractual payment schedule for any California Earthquake Authority program, notwithstanding any bonds secured by those assessments. The bill would require the California Earthquake Authority, prior to entering into a voluntary contractual assessment with a property owner to finance seismic strengthening improvements, to disclose the terms and conditions of the voluntary contractual assessment, and to notify the property owner, in writing, that he or she may be required to pay the remaining principal balance of the voluntary contractual assessment when he or she refinances or sells the property. The bill would specify that the California Earthquake Authority shall require each property owner to sign a document acknowledging his or her receipt of this written disclosure. The bill would also require that seismic strengthening improvements that are permanently fixed to real property and that are financed pursuant to the program comply with all applicable state and local building standards. CAI supported this measure and the bill was carried over to 2016.*

Earthquake insurance (SB 336): Existing law establishes the California Earthquake Authority and authorizes the authority to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance. Existing law requires that the rates established by the authority be actuarially sound so as to not be excessive, inadequate, or unfairly discriminatory. Existing law provides that policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the governing board of the authority shall enjoy a premium discount or credit of 5 percent on the authority-issued policy of residential earthquake coverage. Existing law authorizes the board to approve a premium discount or credit above 5 percent if the discount or credit is determined by the authority to be actuarially sound. *This bill would instead provide that those policyholders shall enjoy a premium discount or credit of at least 5 percent on the authority-issued policy of residential earthquake coverage. CAI supported this measure and the bill was carried over to 2016.*

Water-efficient landscaping (AB 349): The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law makes void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of low water-using plants, or prohibits or restricts compliance with water-efficient landscape ordinances or regulations on the use of water, as specified. Existing law also prohibits an association, except an association that uses recycled water for landscape irrigation, from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought. *This bill would make void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of artificial turf or any other synthetic surface that resembles grass. This bill would also prohibit a requirement that an owner of a separate interest remove or reverse water-efficient landscaping measures, installed in response to a declaration of a state of emergency, upon the conclusion of the state of emergency. This bill would declare that it is to take effect immediately as an urgency statute. CAI opposed this measure but the bill was signed into law.*

Annual budget report (AB 596): Existing law governing common interest developments, the Davis-Stirling Common Interest Development Act, requires the association of a common interest development, which includes a condominium project, to prepare and distribute to all of its members certain documents, including an annual budget report that includes, among other items of information, a pro forma operating budget. The act requires a notice to be provided if an insurance policy described in the annual budget report lapses, is canceled, or is not immediately renewed, restored, or replaced, or if there is a significant change as to the policy. *This bill would, beginning January 1, 2016, require the annual budget report of a condominium project to also include a separate statement describing the status of the common interest development as a Federal Housing Administration (FHA)-approved condominium project and as a federal Department of Veterans Affairs (VA)-approved condominium project. CAI sought to amend this legislation but the bill was signed into law.*

Water-efficient landscaping (AB 786): The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments. Existing law provides that, unless otherwise provided in the common interest development declaration, the association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to that interest. Existing law makes void and unenforceable any provision of the governing documents or architectural or landscaping guidelines or policies that prohibits use of low water-using plants, or prohibits or restricts compliance with water-efficient landscape ordinances or regulations on the use of water, as specified. Existing law also prohibits an association, except an association that uses recycled water for landscape irrigation, from imposing a fine or assessment on separate interest owners for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency or the local government has declared a local emergency due to drought.

This bill would revise that exception to instead authorize the imposition of a fine or assessment against the owner of a separate interest that receives recycled water from a retail supplier, as defined, and fails to use that recycled water for landscaping irrigation. This bill would incorporate additional changes to Section 4735 of the Civil Code proposed by AB 349 that would become operative if this bill and AB 349

are enacted and this bill is enacted last. *This bill would declare that it is to take effect immediately as an urgency statute. CAI was neutral on this measure and the bill was signed into law.*

Recorded documents and real estate transfer fees (AB 807): Existing law defines a transfer fee as a fee payment requirement imposed in any covenant, restriction, or condition *contained in any deed*, contract, security instrument, or other document affecting the transfer or sale of real property that requires a fee be paid upon transfer of the real property, with specified exceptions. Existing law, with regard to a transfer fee imposed upon real property on or after January 1, 2008, requires the person or entity imposing the transfer fee, as a condition of payment of the fee, to record a specified document describing the transfer fee concurrently with the instrument creating the transfer fee requirement. Existing law requires these recorded documents to include information on the amount of the fee and actual dollar examples of the fee for a residential property, among other things. Existing law requires a transferor of residential real property subject to transfer fees to make a specified disclosure regarding those fees. This bill would specify that the required information on the recorded document include the method for calculating the amount of the transfer fee, if not a flat amount or a percentage of the sales price and include the actual dollar examples of the fee for a residential property if the amount of the fee is based on the price of the real property. The bill would also require the transferor of residential real property subject to transfer fees to make the specified disclosure regarding those fees if the recorded document describing the transfer fees has not already been provided. The bill would also clarify the definition of a transfer fee. Existing law excludes from the definition of a transfer fee any fee reflected in a document recorded against the property on or before December 31, 2007, that is separate from any covenants, conditions, and restrictions, and that provides a prospective transferee notice of specified information, including the amount or method of calculation of the fee. *This bill would specify that the information shall be set forth in a single document and may not be incorporated by reference from any other document. This bill would provide that a fee reflected in a document recorded against the property on or before December 31, 2007, that is not separate from any covenants, conditions, and restrictions, or that incorporates by reference from another document, constitutes a transfer fee for the purposes of requirements relating to these fees. The bill would make unenforceable a transfer fee recorded against a property on or before December 31, 2007, that complies with the provisions described above and that incorporates by reference from another document unless it is recorded against the property on or before December 31, 2016, in a single document that complies with the provisions described above. CAI supported this measure and the bill was signed into law.*

Electric vehicle charging stations (AB 1236): The Planning and Zoning Law, among other things, requires the legislative body of each county and city to adopt a general plan for the physical development of the county or city and authorizes the adoption and administration of zoning laws, ordinances, rules, and regulations by counties and cities. Existing law, the Electric Vehicle Charging Stations Open Access Act, prohibits the charging of a subscription fee on persons desiring to use an electric vehicle charging station, as defined, and prohibits a requirement for persons to obtain membership in any club, association, or organization as a condition of using the station, except as specified. *The bill would require a city, county, or city and county to approve an application for the installation of electric vehicle charging stations, as defined, through the issuance of specified permits unless the city or county makes specified written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.* The bill would provide for appeal of that decision to the planning commission, as specified. The bill would provide that the implementation of consistent statewide standards to achieve the timely and cost-effective installation

of electric vehicle charging stations is a matter of statewide concern. The bill would require electric vehicle charging stations to meet specified standards. The bill would require a city, county, or city and county with a population of 200,000 or more residents to adopt an ordinance, by September 30, 2016, that creates an expedited and streamlined permitting process for electric vehicle charging stations, as specified. The bill would require a city, county, or city and county with a population of less than 200,000 residents to adopt this ordinance by September 30, 2017. By increasing the duties of local officials, this bill would create a state-mandated local program. **CAI opposed this measure and sought to amend it, but the bill was signed into law.**

Clotheslines (AB 1448): Under existing law, any provision of a governing document, as defined, that effectively prohibits or unreasonably restricts the use of a homeowner's backyard for personal agriculture, as defined, is void and unenforceable, unless it imposes a reasonable restriction, as defined, on the use of a homeowner's backyard. *This bill would make any provision of a governing document, as defined, void and unenforceable if it effectively prohibits or unreasonably restricts the use of a clothesline or a drying rack, as defined, in an owner's backyard, except that reasonable restrictions, as defined, would be enforceable. The bill would specify that these provisions would only apply to backyards that are designated for the exclusive use of the owner.* **CAI supported this measure and the bill was signed into law.**

Post-earthquake financing (AJR 6): This measure would recognize a need for federal legislation that would establish guarantees of post-earthquake financing for prequalified, actuarially sound state earthquake insurance programs, including the California Earthquake Authority, and would urge the President and Congress of the United States to enact that Legislation. **CAI supported this measure and the bill was signed into law.**

Neighborhood electric vehicles (SB 241): Existing law, until January 1, 2017, authorizes the County of Orange to establish a neighborhood electric vehicle (NEV) transportation plan for the Ranch Plan Planned Community in that county. Under existing law, operation of a neighborhood electric vehicle in violation of certain provisions is an infraction. *This bill would extend the operative period of these provisions until January 1, 2022. By extending the operative period of a crime, the bill would impose a state-mandated local program.* Existing law requires NEV lanes to be classified, as specified, for the purposes of the NEV transportation plan for the Ranch Plan Planned Community. Existing law requires that a lane used by both NEVs and conventional vehicle traffic on a street with a speed limit of 25 miles per hour or less be classified as a Class III NEV route. *This bill would, instead, require that a lane used by NEVs and conventional vehicle traffic on a street with a speed limit of 35 miles per hour or less be classified as a Class III NEV route.* Existing law requires the county to provide a report to the Legislature, by November 1, 2015, if the county adopts a plan as authorized. *This bill would, instead, require the county to provide that report by November 1, 2020.* The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. *This bill would provide that no reimbursement is required by this act for a specified reason.* **CAI supported this measure and the bill was signed into law.**

Mold (SB 655): Existing law requires the lessor of a building intended for human occupation to repair dilapidations, as specified, rendering it untenable. Existing law permits tenants to repair dilapidations, under specified circumstances. *This bill would provide that a lessor is not obligated to repair a dilapidation relating to mold, as specified, until he or she has notice of it or of the tenant is in violation of specified affirmative obligations. The bill would authorize a landlord to enter a dwelling to repair a dilapidation relating to mold, under specified conditions.* The State Housing Law, which is administered

by the Department of Housing and Community Development, prescribes standards for buildings used for human habitation and establishes definitions for this purpose. The law provides that a building, or a portion of it, in which certain conditions are found to exist, such as a lack of sanitation, as specified, is substandard. The law provides that a violation of these provisions is a misdemeanor. *This bill would specify that visible mold growth, excepting mold that is minor and found on surfaces that can accumulate moisture as part of their proper and intended use, is a type of inadequate sanitation and therefore a substandard condition. The bill would define mold as microscopic organisms or fungi that can grow in damp conditions in the interior of a building. By expanding the definition of a crime, this bill would impose a state-mandated local program.* **CAI opposed this measure but it was signed into law.**

Construction-related accessibility claims (AB 52): Existing law allows a plaintiff to collect statutory damages in a construction-related accessibility claim against a place of public accommodation only if the plaintiff was denied full and equal access to the place of public accommodation on a particular occasion, as specified. Existing law imposes a minimum liability of \$1,000 on these statutory damages for each offense when a defendant demonstrates that the defendant has corrected the construction-related accessibility violation within 60 days of being served with a complaint and the defendant demonstrates that the structure or area of the alleged violation was determined to meet standards or was subjected to an inspection, as specified. Existing law also imposes a minimum liability of \$2,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 30 days of being served with the complaint and the defendant is a small business, as specified. *This bill would instead provide that a defendant's maximum liability for statutory damages in a construction-related accessibility claim against a place of public accommodation is \$1,000 for each offense if the defendant has corrected all construction-related violations that are the basis of the claim within 180 days of being served with the complaint and the defendant demonstrates that the structure or area of the alleged violation was determined to meet standards or was subjected to an inspection, as specified.* **CAI was neutral on this measure and the bill died in committee.**

Turf removal tax credit (AB 603): The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. *This bill, under both laws, for taxable years beginning on and after January 1, 2016, and before January 1, 2021, or an earlier date in the event of a specified occurrence, would allow a credit to a taxpayer participating in a lawn replacement rebate program, as defined, in an amount equal to 25 percent of the costs paid or incurred by the taxpayer to replace conventional lawn on the qualified the taxpayer's property during that taxable year, not to exceed \$1,500, as specified.* The bill would make findings and declarations in this regard. *This bill would take effect immediately as a tax levy.* **CAI was neutral on this measure and the bill died in committee.**

Construction defects (AB 1152): Existing law regulates actions seeking recovery on construction defects, as specified, on original construction intended to be sold as an individual dwelling purchased new after January 1, 2003. Existing law provides that general contractors, subcontractors, material suppliers, product manufacturers, and design professionals may be liable for damages for construction defects if they caused, or contributed to, the violation of a particular standard as the result of a breach of contract or through negligence. Existing law also establishes certain pre-litigation procedures for both the homeowner and defendants to engage in to attempt to resolve the claim prior to filing a lawsuit for construction defects, and also establishes the parameters of a legal action seeking recovery for construction defects. *This bill would establish these provisions as the sole and exclusive remedy available for claims seeking recovery on construction defects, as specified.* **CAI opposed this measure and the bill died.**

Property insurance surcharge (AB 1203): Existing law required, by September 1, 2011, the State Board of Forestry and Fire Protection to adopt emergency regulations to establish a fire prevention fee of not more than \$150 for the necessary fire prevention activities of the state that benefit the owners of structures within a state responsibility area. *This bill would repeal the fire prevention fee. The bill would instead create the Disaster Response Fund in the State Treasury. The bill would require all insureds in the state to pay a special purpose surcharge on each commercial and residential fire and multiperil insurance policy issued or renewed on or after January 1, 2016, as specified. Moneys from this surcharge would be deposited in the fund and be appropriated by the Legislature for the purposes of funding emergency activities of the Office of Emergency Services, the Department of Forestry and Fire Protection, and the Military Department, and local public entities for disaster preparedness response. The bill would also require every admitted insurance company in the state to collect the surcharge and separately identify the surcharge on each affected insurance policy. The bill would provide that the failure of an insured to pay the surcharge would result in the cancellation of his or her policy.* Because the payment of the special purpose surcharge, under the bill, would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, the bill will require for passage the approval of two-thirds of the membership of each house of the Legislature. **CAI was neutral on this measure, but the bill died in early 2016.**

Building Homes and Jobs Act (AB 1335): Under existing law, there are programs providing assistance for, among other things, emergency housing, multifamily housing, farmworker housing, and home ownership for very low and low-income households, and down payment assistance for first-time homebuyers. Existing law also authorizes the issuance of bonds in specified amounts pursuant to the State General Obligation Bond Law. Existing law requires that proceeds from the sale of these bonds be used to finance various existing housing programs, capital outlay related to infill development, brownfield cleanup that promotes infill development, and housing-related parks. *This bill would enact the Building Homes and Jobs Act. The bill would make legislative findings and declarations relating to the need for establishing permanent, ongoing sources of funding dedicated to affordable housing development. The bill would impose a fee, except as provided, of \$75 to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded.* By imposing new duties on counties with respect to the imposition of the recording fee, the bill would create a state-mandated local program. The bill would require that revenues from this fee, after deduction of any actual and necessary administrative costs incurred by the county recorder, be sent quarterly to the Department of Housing and Community Development for deposit in the Building Homes and Jobs Fund, which the bill would create within the State Treasury. The bill would provide that moneys in the fund may be expended for supporting affordable housing, home ownership opportunities, and other housing-related program, as specified. The bill would impose certain auditing and reporting requirements. *This bill would declare that it is to take effect immediately as an urgency statute.* **CAI sought to amend this measure but the bill died in committee.**

Taxation (SB 8) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. The Personal Income Tax Law imposes taxes on personal taxable income at specified rates, and the Corporation Tax Law imposes taxes upon, or measured by, corporate income. *This bill would state legislative findings regarding the Upward Mobility Act, key provisions of which would expand the application of the Sales and Use Tax law by imposing a tax on specified services, would enhance the state's business climate, would incentivize entrepreneurship and business creation by*

evaluating the corporate tax, and would examine the impacts of a lower and simpler personal income tax. This bill would, on and after January 1, ____, expand the Sales and Use Tax Law to impose a tax on the gross receipts from the sale in this state of, or the receipt of the benefit in this state of services at a rate of ____%. CAI did not take a position on this measure in 2015. **It carried over 2016.**

Water-efficient landscaping (SB 47): Existing law regulates certain behavior related to recreational activities and public safety, including, among other things, playgrounds and wooden playground equipment. This bill would require the Office of Environmental Health Hazard Assessment, by July 1, 2017, in consultation with the Department of Resources Recycling and Recovery, the State Department of Public Health, and the Department of Toxic Substances Control, to prepare and provide to the Legislature and post on the office's Internet Web site a study analyzing synthetic turf, as defined, for potential adverse health impacts. *The bill would require the study to include certain information, including a hazard analysis of exposure to the chemicals that may be found in synthetic turf, as provided.* The bill would prohibit a public or private school or local government, until January 1, 2018, from installing, or contracting for the installation of, a new field or playground surface made from synthetic turf within the boundaries of a public or private school or public recreational park, unless three specified conditions are met, including that the public or private school or local government has obtained at least one estimate from a company that does not use crumb rubber in its turf field and playground products, as provided. CAI supported this measure. **The bill failed.**

Assessment collection, foreclosure notice (SB 290): The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and requires that a development be managed by an association. The act requires specified procedures for the collection of delinquent assessments, including, but not limited to, a procedure for giving notice to an owner of a separate interest of foreclosure of a lien for delinquent assessments. The existing procedure requires the board of directors of an association to provide notice by personal service to an owner of a separate interest who occupies the separate interest, or to the owner's legal representative, if the board votes to foreclose upon the separate interest, as specified. This bill would additionally allow the board to serve an owner or owner's representative with notice by substituted service, as provided. **CAI supported this measure. It carried over to 2016.**

COLORADO

Exempt Small Limited Expense Community (HB 1095): Allows a common interest community created before the 1992 enactment of the Colorado Common Interest Ownership Act (CCIOA) to be exempt from certain provisions of CCIOA if the HOA's annual assessments do not exceed a statute threshold of \$300. To qualify for the new exemption, the \$300 limit must be established in the HOA's recorded declaration. CAI supported this measure. Passed the House (64:0). Passed the Senate (21:14). **The bill was signed into law.**

Manager licensing (HB 1343): Clarifies that individuals who are not actually managing associations are not required to be licensed as community association managers. Each management company will be required to designate a licensed manager who is responsible for supervising the management practices of the management company. Creates an apprenticeship classification to facilitate entry into the profession which is good for one year and is non-renewable. To protect against disruption of the industry during the transition into the licensure scheme, permits the Director of the Division of Real Estate to grant a provisional license for those applicants who have not passed both portions of the licensure exam by July 1, 2015; Clarifies that managers who hold in good standing specified certifications and designations,

have fulfilled the “general competency” portion of the exam and are only required to sit for and pass the Colorado law portion of the licensure exam. CAI supported this measure. Passed the House (64:0). Passed the Senate (35:0). **The bill was signed into law.**

Budget Reporting Exemption for Pre-CCIOA Communities ([HB 1362](#)): Makes rules concerning the budget of a common interest community applicable to such communities created before the 1992 enactment of the Colorado Common Interest Ownership Act (CCIOA). An affected HOA executive board must provide notice to unit owners and hold a meeting about the HOA's proposed budget. CAI opposed this measure. Passed the House (33:31). Introduced in the Senate. Senate referred to Committee on State, Veterans, and Military Affairs—**Postponed Indefinitely.**

Reduce statute of limitations construction defects ([SB 91](#)): Reduces from eight years to six years the statute of repose for construction professionals in Colorado. The statute of repose is the maximum period for a legal action against any construction professional (architect, contractor, builder, builder vendor, engineer, or inspector) performing or furnishing the design, planning, supervision, inspection, construction, or observation of construction of any improvement to real property. Construction professionals involved in any of the outlined processes related to single-family home construction, the statute of repose is five years, unless the cause for legal action arises in the fourth or fifth year after substantial completion of the improvement, in which case the legal action may be brought in the sixth year. CAI opposed this measure. Passed the Senate (18:17). House referred to Committee on State, Veterans, and Military Affairs—**Postponed Indefinitely.**

Construction defect lawsuit approval timelines ([SB 177](#)): Requires that a homeowners' associations (HOA) use mediation or arbitration before a lawsuit can be filed in disputes involving construction defects against a development party. In addition to submitting to mediation or arbitration before filing a construction defect lawsuit, the HOA's executive board must send advance notice to all unit owners that includes a general description of the claim, the relief sought, and a good-faith estimate of the benefits and risks involved in a format outlined in the bill. The HOA's executive board must obtain signed, written consent from a majority of the unit owners acknowledging that the owner has received the notice required under the bill and approves of the board's proposed action. Prior to the purchase and sale of property in an HOA, the bill requires that, a disclosure notice inform the purchaser that he or she is required to become a member of the HOA, and be subject to its rules and bylaws, effective January 1, 2016. Adds notice requirements for lawsuits initiated by HOAs in matters other than construction defect claims. Specifically, the HOA must provide notice to unit owners at least 30 days prior to commencement of the legal action. CAI opposed this measure. Passed the Senate (24:11). House referred to Committee on State, Veterans, and Military Affairs—**Postponed Indefinitely.**

CONNECTICUT

Criminal Justice Statutes ([SB 1105](#)): Clarifies that the period of probation for an incarcerated individual begins after the completion of the period of incarceration. Facilitates the return of fugitive defendants in criminal cases who have absconded to another jurisdiction after having bond posted through a bail bond agent to Connecticut. Includes home invasion as a predicate offense to the crime of felony murder. Provides an appropriate penalty for assault that results in serious physical injury. Clarifies that the 10-year period of registration for certain sexual offenders commences after any term of incarceration is completed. Provides for a more appropriate means of disposition in certain cases of simple trespass. Amends the statutes concerning tampering with a witness. CAI supported this measure. Passed the

Senate (33:0). Amended by the House (139:0). Amendment adopted by the Senate (36:0). **The bill was signed into law.**

Mediation of condominium-related disputes (HB 7031): requires the probate court administrator, within available appropriations, to establish a three-year pilot mediation program for disputes between one or more unit owners and an association of a condominium or other common interest community. He must select two administrative regions (i.e., groups of two or more probate districts) in which the program will operate and consult with the probate judges when doing so.

The bill establishes procedures for the mediation. Participation is voluntary for both parties, and either party may withdraw at any time. The requesting party must pay a \$250 filing fee.

Under the bill, special assignment probate judges will conduct the mediation. If mediation is successful, the judge must help the parties prepare a written agreement, which the parties and judge must sign. Either party may enforce the agreement in court. The bill limits the disclosure of information obtained during the mediation.

The bill also potentially increases the maximum compensation of special assignment probate judges.

The bill failed upon adjournment.

Solar panels (SB 1121): allows the unit owner of a common interest community to install one or more solar panels to the roof of his or her unit, and holds unit owners liable for property damage caused to a unit that is attributable to such owner's negligence. **The bill failed upon adjournment.**

Solar panels (SB 730): provided that the general statutes be amended to prohibit homeowner or condominium associations from interfering with or preventing the installation of solar photovoltaic systems by member residents on their units. **The bill failed upon adjournment.**

DELAWARE

Arbitration of Disputes (HB 49): This Act gives business entities formed in Delaware greater capacity to resolve business disputes in a rapid and efficient manner through voluntary arbitration conducted by expert arbitrators under strict timelines.

To that end, the Act requires resolution of arbitrated matters in no more than 120 days, subject to extension of up to no more than an additional 60 days, by unanimous consent of all parties to the arbitration. The Act provides significant flexibility to select an appropriate arbitrator. If the parties do not select an arbitrator, or the selected arbitrator refuses to serve, the Act truncates the process for appointing arbitrators, where necessary, ensuring a rapid and public initiation of the process in the Delaware Court of Chancery.

The Act vests exclusive jurisdiction to determine the scope of the arbitration to the arbitrator, thus eliminating in arbitrations under the Act the role of the Courts in determining substantive arbitrability in certain cases. Neither the joinder of persons not parties to the arbitration agreement nor the assertion of non-contractual claims deprives the arbitrator of the authority to determine what is subject to the arbitration and what is not. To further speed the ultimate resolution of disputes under the Act, it provides for a single direct challenge to the Delaware Supreme Court, where challenges are not otherwise waived by the parties' agreement, or conducted by agreement before an arbitral appellate panel. Where challenges are taken to the Delaware Supreme Court, those proceedings are public and limited to review under the standards of the Federal Arbitration Act.

To ensure that no person is subject to the Act without his or her express and voluntary consent, the Act precludes its use in cases where there is a danger that vulnerable parties' rights are at stake. Thus, this Act may not be used to adjudicate controversies between business entities and consumers of their goods and services, or controversies involving persons who have not expressly agreed to arbitrate the matter at issue. **The bill was signed into law.**

Public utilities (HB 177): This bill requires utilities to maintain a third party notification system that allows a customer to designate a third party to receive notice prior to a termination of service. This bill also specifically allows condominium and common interest communities to adopt bylaws that require unit owners to designate the unit owners' association as a third party to receive notification prior to a termination of utility service. Finally, this bill directs the Common Interest Community Ombudsman to promulgate a form bylaw for use by common interest community associations and unit owners to designate the Home Owners' Association as a third party to receive notification of a termination of service pursuant to any third party notification system. **The bill was signed into law.**

Pre-CIOA Communities (SB 5): This Act affirmatively authorizes preexisting common interest communities and approved common interest communities to comply with any or all of the provisions of the Delaware Uniform Common Interest Ownership Act that they are not already required to comply with. This Act may be cited as the Benjamin Kuntz Act. A dedicated Delawarean who spent countless hours chairing the Kent County Levy Court's Homeowners Associations Resolving Problems (HARP) Committee. He advocated tirelessly for homeowner associations. **The bill was signed into law.**

FLORIDA

Service animals (HB71): Florida law provides that an individual with a disability, defined as a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled, is entitled to equal access to public accommodations, public employment, and housing accommodations. The individual may be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy. Any person who denies or interferes with the right of a person with a disability or a service animal trainer to access a place of public accommodation commits a second degree misdemeanor. The bill revises the definition of the term "individual with a disability" to add an individual with a physical or mental impairment that substantially limits one or more major life activities. A "physical or mental impairment" is defined in part as a physiological disorder or condition that affects at least one bodily function or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders. The term "major life activity" is defined as a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The bill expands the definition of the term "public accommodation" to include a timeshare that is a transient public lodging establishment and exempts air carriers covered by the Air Carrier Access Act of 1986 under the definition of "public accommodation." The bill requires a public accommodation to modify its policies to permit the use of a service animal by an individual with a disability. The bill further specifies that a public accommodation may not ask about the nature or extent of an individual's disability in order to determine if an animal is a service animal or pet. However, a public accommodation may ask if the animal is a service animal required because of a disability and what work the animal has been trained to perform. Additionally, the bill requires a service animal to be kept under the control of its handler. The bill authorizes a public accommodation to remove the animal if the animal is not under the handler's control, is not housebroken, or poses a serious threat to others. The criminal penalty for interference with the right of a disabled individual or service animal trainer to use a place of public accommodation is modified to include the requirement that a person also perform 30 hours of community service for an organization

that serves individuals with disabilities or for another entity, at the court's discretion. Finally, the bill provides that knowingly and willfully misrepresenting oneself as being qualified to use a service animal or being a trainer of a service animal is a second degree misdemeanor. It also requires the person to perform 30 hours of community service for an organization that serves individuals with disabilities, or for another entity, at the court's discretion. The bill may have an insignificant, fiscal impact on state and local governments. **The bill was approved by the Governor** on June 11, 2015, ch. 2015:131, L.O.F., and became effective on July 1, 2015.

Construction defect claims (HB 87): The bill changes the current procedures for filing a notice of construction defect claim. Current law requires that a person who intends to sue regarding a construction defect must notify the contractor of the claim to provide the contractor an opportunity to fix the problem before suit is filed.

The bill includes a "temporary" certificate of occupancy in the definition of "completion of a building or improvement."

The bill requires that the notice of claim identify the location of each defect, based upon at least a visual inspection, sufficient to enable the responding party to locate the alleged defect without undue burden. A claimant is not required to perform destructive or other testing before providing a notice of claim.

The bill requires that the contractor's response to a notice of claim indicate whether he or she is willing to make repairs, settle the claim with a monetary offer, or both, whether the contractor disputes the claim, or whether the contractor's insurer will cover the claim.

The bill provides that furnishing a copy of the notice of claim to an insurance company does not constitute a claim for insurance purposes unless provided for under the terms of the contractor's insurance policy.

The bill adds "maintenance records" and other documents to those records to be exchanged by the claimant with the contractor related to the defect claim. However, a party does not have to disclose privileged documents or records.

The bill was approved by the Governor on June 16, 2015, and became effective on October 1, 2015.

Timeshares (HB 453): The Florida Vacation Plan and Timesharing Act establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers. Authority to implement the Act has been granted to the Division of Florida Condominiums, Timeshares and Mobile Homes within the Department of Business and Professional Regulation.

The bill makes the following changes to the Act:

- Provides that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust is required for such interests to qualify as timeshare estates;
- Expands the definitions of nonspecific and specific multisite timeshare plans to provide that the plans may include interests other than timeshare licenses or personal property timeshare interests;
- Limits the required disclosure of public offering statements and amendments to timeshare instruments for component sites located in this state;
- Expands the limitation on liability for developers who, in good faith, attempt to and substantially comply with all the provisions of the Act;

- Requires the disclosure of unexpired lease terms in timeshare trusts;
- Repeals the requirement for judicial approval of transactions involving timeshare trust property;
- Creates a procedure for the extension or termination of certain timeshare plans;
- Creates new procedures for the transfer of reservation system and owner data when a managing entity is terminated;
- Requires all multisite timeshare plans to disclose the term of each component site plan and prominently disclose the term of component sites that are shorter than the term of the plan;
- Excludes component site common expenses and ad valorem expenses from the cap on annual increases in common expense assessments;
- Allows for substitute and replacement accommodations that are better than the existing accommodations; and
- Revises the limitations on substitute accommodations.

The bill was approved by the Governor on June 11, 2015, ch. 2015:144, L.O.F., and became effective on July 1, 2015.

Termination (HB 643): passed the House on April 24, 2015, and subsequently passed the Senate on April 27, 2015. The bill amends laws related to condominium terminations.

A condominium may be terminated at any time if the termination is approved by 80 percent of the condominium's voting interests and no more than 10 percent of the voting interests reject the termination. The bill provides that if at least 80 percent of the voting interests are owned by a bulk owner, the following terms govern the termination:

- Unit owners must be allowed to lease their units if the units will be offered for lease after termination;
- Any unit owner whose unit was granted homestead exemption must be paid a relocation payment;
- Unit owners must be paid at least 100 percent of the fair market value of their units;
- Certain owners who voted to reject the plan of termination must be paid at least the original purchase price paid for their units;
- The outstanding first mortgages of unit owners current on association assessments and mortgage payments must be satisfied, and such mortgages are deemed satisfied in full upon payment of the lesser of the unit's share of the proceeds of the termination or the outstanding balance of the mortgage;
- A notice identifying any person or entity that owns 50 percent or more of the units and the purchase and sale history of any bulk owners must be provided to owners; and
- Unit owners other than the bulk owner may elect at least one third of the members of the board of administration before the approval of any plan of termination.

The bill also makes changes to condominium termination proceedings that are not specific to those owned by bulk owners, including:

- If a condominium association fails to approve a plan of termination another termination may not be considered for 18 months;
- A condominium formed by a conversion cannot be terminated for five years, unless there are no objections to the termination;
- A plan of termination may be withdrawn or modified under certain circumstances;

- A termination trustee may reduce termination proceeds to a unit for unpaid fines, costs, and expenses;
- Unit owners may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the liens of the first mortgages of unit owners will not be satisfied, or that the required vote was not obtained;
- An arbitrator may void a plan of termination if it determines that the plan did not apportion the sales proceeds fairly and reasonably, that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed.

The bill was approved by the Governor on June 16, 2015, ch. 2015:175, L.O.F., and became effective on that date.

Residential Properties (HB 791) passed the House on April 22, 2015, and subsequently passed the Senate on April 24, 2015.

The bill includes CS/CS/CS/HB 1211. The bill amends similar statutes relating to condominiums, cooperatives, and homeowners' associations (collectively referred to as "residential properties").

Specifically, the bill:

- regulates the order of application of payments received by a condominium or cooperative association for past due assessments;
- revises provisions related to fines and penalties assessed by associations;
- provides that a homeowners' association may only levy fines up to \$100, unless otherwise provided in the association's governing documents;
- provides that a homeowners' association member that fails to pay a fine may be suspended from the board of directors or barred from running for the board;
- creates a mechanism for electronic voting of the membership of a condominium, cooperative, or homeowners' association, provided that the association's board adopts a resolution to allow for electronic voting;
- authorizes a condominium, cooperative, or homeowners' association to provide electronic notice of certain meetings without amending the association's bylaws;
- provides that a homeowners' association's failure to provide notice of the recording of an amendment does not affect the validity or enforceability of the amendment;
- authorizes non-profit corporation proxy voting based on a reproduction of the original proxy;
- updates the definition of "governing documents" for homeowners' associations to include the rules and regulations that have been adopted by the association; and
- extends the time limitation for classification as bulk assignee or bulk buyer under the Distressed Condominium Relief Act from July 1, 2016 to July 1, 2018.

The bill was approved by the Governor on June 2, 2015, ch. 2015:97, L.O.F., and will become effective on July 1, 2015.

Deed restrictions (HB 1263): Authorizes local governing authority to enforce deed restrictions on certain property that is not part of homeowners' association; provides reporting requirements for community association manager, management firm, and association; authorizes department to arbitrate certain homeowners' association-related disputes at its discretion; authorizes mediator or arbitrator to conduct mediation or arbitration only if he or she has been certified; requires DBPR to provide training and educational programs for homeowners' association members, directors, and officers; authorizes

department to enforce and ensure compliance with certain provisions and rules; provides that department has complete jurisdiction to investigate complaints relating to homeowners' associations; provides limitation on certain homeowner fees for transfer of title. **The bill failed upon adjournment.**

GEORGIA

Civil action for damages (HB 153): relating to the regulation of the practice of law, so as to authorize certain activities involving real estate transactions; to provide for a civil action for damages; to provide for exceptions; to provide for related matters; to repeal conflicting laws; and for other purposes. **The bill went into effect July 1, 2015.**

Special assessments (HB 245): limits the permissible amount of special assessment increase without receiving approval by a majority of unit owners to one-sixth of the annual common expense assessment for the unit. **The bill went into effect July 1, 2015.**

Property lien (SB 117): would require the purchaser of a condominium development at a foreclosure sale take title subject to lien. **The bill failed to pass.**

HAWAII

Smoking and electronic smoking devices (HB 34): Allows condominiums and cooperative housing corporations to adopt rules to prohibit smoking, including electronic smoking devices, in units, common elements, or limited common elements. CAI opposed this measure. Last Action: Passed Second House Reading as Amended (50:0).

Electric vehicle parking requirement (SB 99): establishes fines beginning January 1, 2016 for owners of parking facilities with at least one hundred parking spaces that do not provide at least one parking space equipped with a charging system exclusively for electric vehicles. **The bill failed.**

Clotheslines (SB 646 and SB 688): permits the installation of clotheslines in any residential dwelling, apartment, condominium, or townhouse, under certain conditions. Defines a reasonable restriction on the placement and use of clotheslines as any restriction that is necessary to protect public health and safety, buildings from damage, historic or aesthetic values, or shorelines under certain circumstances. **The bills failed.**

Condominium ombudsman (SB 1007): establishes the office of the condominium ombudsman, to be headed by the condominium ombudsman, within the department of commerce and consumer affairs. Appropriates funds for administrative costs associated with the establishment of the office of the condominium ombudsman. **The bill failed.**

Medical marijuana (SB 1291) Prohibits discrimination against medical marijuana patients and their caregivers by schools, landlords, courts with regard to medical care or parental rights, planned community associations, condominium property regimes, or condominiums.

Electric vehicle charging system installation (SB 1316): Establishes a working group to examine the issues regarding requests to the board of directors of an association of apartment owners, condominium association, cooperative housing corporation, or planned community association regarding the installation of electric vehicle charging systems. CAI supported this measure. Passed the Senate (25:0). Passed the House (51:0). **The bill was signed into law.**

ILLINOIS

Meeting notice and electronic voting (HB 2640): Makes changes in provisions governing: portions of board of managers' meetings which may be closed to the unit owners; participation by board members in meetings via acceptable technological means; and notice requirements for board of managers meetings. CAI supported this measure. Passed the House (113:0). Passed the Senate with amendments (55:0). House Concurred amendments. **The bill was signed into law.**

Emergency actions by board (HB 2641): Provides that the bylaws of a condominium shall provide for the ratification and confirmation by the board or managers of actions taken the board without a meeting in response to an emergency. Provides that the bylaws shall include specified procedural requirements relating to the ratification and confirmation. CAI supported this measure. Passed the House (114:0). Passed the Senate with amendments (54:0). **Carried over to 2016.**

Common interest community instruments (HB 2642): Deletes language providing that all provisions of the declaration, bylaws and other community instruments severed by the Act shall be revised by the board of directors independent of the membership to comply with the Common Interest Community Association Act. CAI supported this measure. Passed the House (114:0). **Carried over to 2016.**

Instrument amendments (HB 2643): Provides that the condominium instruments may be amended with the approval of, or notice to, any mortgagee or other lienholder of record, if required under the provisions of the instruments. Provides that if there is an error in an instrument such that the instrument does not conform to the Act or other law, the association may correct the instrument by an amendment adopted by two-thirds of the Board of Managers, without a unit owner vote. Deletes language allowing such corrections to be adopted by a majority vote of unit owners at a special meeting, unless the instruments provide for greater percentages or different procedures. Provides that a provision in a condominium instrument requiring or allowing unit owners, mortgagees, or other lienholders of record to vote to approve an amendment to a condominium instrument, or for the mortgagees or other lienholders of record to be given notice of an amendment to a condominium instrument, is not applicable to an amendment to the extent that the amendment corrects an omission, error, or inconsistency to conform the condominium instrument to the law. CAI supported this measure. Passed the House (106:5). **Carried over to 2016.**

Board of managers rights (HB 2644): Restricts the applicability of a Section concerning the rights of the board of managers to actions taken und provisions stating that the board of managers has standing and capacity to act in a representative capacity in relation to matters involving the common elements or more than one unit, on behalf of the unit owners, as their interests may appear. Deletes language providing that a provision that a provision in a declaration which would otherwise be void and ineffective may be enforced if it is approved by a vote of not less than 75 percent of the unit owners at any time after the election of the first unit owner board of managers. CAI supported this measure. Passed the House (63:50). Passed the Senate (54:0). **Vetoed by Governor Rauner.**

Common interest community incorporated as municipalities (SB 1344): Provides that no action to incorporate a common interest community as a municipality shall commence until an instrument agreeing to incorporation has been signed by 51 percent of the members. CAI supported this measure. Passed the Senate (47:0). Passed the House (115:0). **Vetoed by Governor Rauner. Motion to override veto passed in the Senate but failed in the House.**

Terms (SB 1374): Adds certain common interest community associations owned by limited liability companies (LLC) to the list of associations subject to specified provisions of the code of Civil Procedure.

Makes associations organized as LLCs subject to the Common Interest Community Association Act. Adds references to articles of organization. In places where the Act addresses an association's declaration or bylaws, add operating agreements. CAI supported this measure. Passed the Senate (49:0). Passed the House (115:0). **The bill was signed into law.**

INDIANA

Resale disclosure packets (HB 1286): Requires the seller of a property within a homeowners association to make certain disclosures to the purchaser. Requires that an association's governing documents allow owners to make amendments, no more than 75 percent of votes may be required to amend governing documents. Requires the minutes of an association's board's meetings to be made available to unit owners for review upon request. Makes a provision under which a condominium's common areas can be conveyed or encumbered only with the votes of at least 95 percent of the condominium unit apply to all condominiums. Establishes a procedure for the resolution of grievances involving an association through negotiation, mediation, or arbitration, and requires that an attempt be made to resolve a claim through this procedure before legal proceedings can begin. Requires grievance resolution provisions to be included in the association's government documents. Requires a homeowners association or a member of the board to retain financial documents for at least two years after receipt, and during that period to make available to a member of the homeowners association at the member's request, any written or electronic communication received by the homeowners association or board member. Requires that if an association initiates communication with any member about another member's lot, the association must give a copy of the communication to the member whose lot was being discussed. Implements certain requirements must be met in order for a proxy to be used at an association meeting. Outlines the circumstances under which the attorney general may bring legal action against an association or member and the penalties the court may impose. CAI supported this measure. Passed the Senate 36:14. Passed the House 90:0. **The bill was signed into law.**

Registration of privately certified individuals (HB 1303): Establishes a pilot project under which individuals who practice a certain occupation that is not a regulated profession under Indiana law can become "state registered" (if they hold a certification or credential from a supporting organization) and be listed as practitioners of their occupation on the electronic registry of professions. CAI supported this measure. Passed the Senate 29:20. Passed the House 91:6. **The bill was signed into law.**

Property tax (HB 1388): Specifies the procedure and timeline for taxpayers who file and amended personal property tax return. Provides that the maximum amount allowed for an operating balance in a debt service fund is the sum of the maximum allowable operating balance for each debt included in the debt service fund. Provides that a common area is exempt from property taxation. Defines "common area" as a parcel of land in a residential development that: (1) is legally reserved for the exclusive use and enjoyment of all lot owners; (2) is owned by the developer, or each lot owner, or a person or entity that holds title to the land in a fiduciary capacity for the benefit of the lot owners; (3) cannot be transferred for value to another party without the approval of the lot owners; (4) does not include a Class 2 structure; and (5) is not designed or approved for the construction of a Class 2 structure. Specifies that certain tangible property is exempt from property taxation if the property is owned by an agricultural organization that is exempt from federal income taxation as well as the procedure and timeline for taxpayers to file for such an exemption. The statute governing homeowners associations established after June 30, 2009, applies only to homeowners associations authorized to impose mandatory dues on their members. CAI supported this measure. Passed the Senate 50:0. Passed the House 60:33. **The bill was signed into law.**

KENTUCKY

Planned Community Act (HB 531): After spearheading the drafting of the Kentucky Condominium Act in 2011, which became law and modernized Kentucky's condominium legislation for the first time since 1962, the LAC sought to introduce the Kentucky Planned Community Act.

In an attempt to cover common interest planned communities the LAC pushed for the proposed act. Many subdivisions, patio home and townhome communities are organized as Homeowners Associations and operate in a similar manner as condominiums, but they are currently without the proper disclosure and other consumer protections offered under the Condominium Act. The purpose of the Kentucky Planned Community Act is to provide umbrella legislation for all planned communities within the Commonwealth. The nature of planned communities is not as complex as condominiums. Therefore, this proposed Act is not as comprehensive as the Condominium Act, yet it contains the essential elements for planned communities and their respective owners associations to operate and provide the public with the necessary consumer disclosures and protection that should be provided. **The bill failed.**

MAINE

Notice and assessment provisions (LD 820/SP 294): Amending the condo act to allow e-mail notice to unit owners for annual and special meetings (to an e-mail address "specifically designated by the unit owner"); make the notice period for the proposed annual budget consistent with the notice period for the annual meeting; and specify the procedures for authorizing special assessments. CAI supported this measure. Passed the House under the hammer. Passed the Senate under the hammer. **The bill was signed into law.**

Political signs (LD 955): Determines that an association may not include in its bylaws or declaration, any rule that prohibits a unit owner from displaying political signs on their unit that support or oppose a candidate for a public office during a period of six weeks before and one week after the election. CAI opposed this measure. Passed by the House under the hammer. Passed by the Senate under the hammer. **Vetoed by Governor LaPage. Veto was overridden by a House vote of 97:45 and a Senate vote of 29:6.**

MARYLAND

Resale disclosure fees (HB 1007): Limits the amount that a condominium council of unit owners may charge a unit owner to furnish a certificate with the information necessary for the unit owner to comply with specified resale disclosure requirements; requires a homeowners association or specified officers or agents to provide the specified fee information necessary to comply specified resale disclosure requirements within 20 days after a written request from a unit owner is received. CAI opposed this measure. Passed the House 140:0. Passed the Senate 47:0. **The two versions of the bill were not reconciled so the bill failed.**

Workers' compensation (SB 368/HB 358): Extends the time period from 30 days to 45 days within which an insurer (except under specified circumstances) must serve a specified notice on an employer and file a copy of the notice with a specified individual if the insurer is cancelling or refusing to renew a workers' compensation insurance policy before its expiration. CAI supported this measure. Passed the Senate 47:0. Passed the House 138:0. **The bill was signed into law.**

Watershed protection (SB 863): Repeals the requirement that a specified county or municipality adopt and implement local laws or ordinances necessary to establish a watershed protection and restoration program; authorizes the State or a unit of state government to be charged a storm water remediation fee

by a county under specified circumstances; requires a specified county or municipality to file a specified financial assurance plan in accordance with specified requirements. CAI supported this measure. Passed the House 138:1. Passed the Senate 47:0. **Approved by Governor Hogan.**

Abandoned residential property (HB 372): Requiring specified mortgage lenders to inspect specified residential properties for evidence of abandonment and to maintain specified vacant and abandoned properties; requiring the Department of Labor, Licensing, and Regulation to establish and maintain a Vacant and Abandoned Property Registry; establishing the Vacant and Abandoned Property Registry Fund as a special, non-lapsing fund administered by the Department. CAI supported this measure. **The bill failed upon adjournment.**

Candidates and campaign volunteers access to private residential areas (HB 373): Prohibiting a person from preventing a candidate or any campaign volunteer accompanying a candidate from accessing specified private residential areas to campaign for elected office, register votes, or distribute campaign materials, except under specified circumstances; authorizing a person to impose specified limitations on the ability of a candidate or a campaign volunteer to access a private residential area. CAI opposed this measure. **The bill failed upon adjournment.**

Delinquency period for purpose of eviction (HB 741): Repealing a condition that a member of a cooperative housing corporation be delinquent in paying assessments for three months or more before the governing body of the cooperative housing corporation may bring an action in court to evict the member. CAI supported this measure. **The bill failed upon adjournment.**

Construction defect and warranty claims (HB 829/SB 570): Establishing that, notwithstanding any provision in the declaration, bylaws, or rules and regulations of the condominium, a council of unit owners has the right to be involved in a specified manner in specified litigation or administrative proceedings affecting the condominium and to enforce implied warranties made to the council of unit owners by the developer. Makes unenforceable a provision of a declaration, a bylaw, a contract for the initial sale of a unit, or any other instrument made by a developer or vendor in accordance with certain provisions of law relating to certain claims that purports to shorten the statute of limitations applicable to the claim, purports to waive the application of a certain rule, or requires a unit owner or the council of unit owners to assert a certain claim within a certain period of time under certain circumstances, or that requires a certain vote of unit owners as a precondition to the institution or maintenance of certain proceedings unless the council of unit owners adopts the provision under certain circumstances. CAI supported this measure. **The bill failed upon adjournment.**

Maryland Collection Agency Licensing Act (HB 951): Exempting from the Maryland Collection Agency Licensing Act a management company or community manager, or a person acting on behalf of a management company or community manager in the collection of specified assessments, fees or any charges. CAI supported this measure. **The bill failed upon adjournment.**

Overwork Prohibition Act (HB 1027): Requiring an employer to pay an employee a specified overtime wage for specified hours worked; prohibiting an employer from requiring an employee to work specified hours except under specified circumstances; authorizing an employee to decline an employer's request to work more than a specified number of consecutive days, or number of hours during a workweek or during specified hours; requiring the Commissioner of Labor and Industry to enter a place of employment for specified purposes. CAI opposed this measure. **The bill failed upon adjournment.**

Foreclosure Relief Act of 2015 (HB 1184/SB 835): Prohibiting a lender from maintaining an action to foreclose a mortgage or deed of trust on residential property in the State for a specified period of time; requiring the Office of the Attorney General to study, evaluate, and make recommendations regarding specified foreclosure alternative and report its findings to the attorney general on or before January 1, 2016; and providing for the termination of specified provisions of the Act. CAI opposed this measure. **The bill failed upon adjournment.**

Debt collection (SB 678): Altering the amount of wages of a judgement debtor that are exempt from attachment; altering the exemption from execution on a judgement for specified items necessary for the practice of any trade or profession; altering the exemption from execution on a judgement for specified items that are held primarily for personal, family, or household use. CAI opposed this measure. **The bill failed upon adjournment.**

MASSACHUSETTS

Condominium ombudsman (HB 1110): establishes an office of the condominium ombudsman and a mediation pilot program. **The bill carried over to 2016.**

Clotheslines (SB 1056): provides municipalities may put to the voters a ballot question to prohibit an association from prohibiting tenants from installing and using clotheslines. The bill allows for reasonable restrictions. **The bill carried over to 2016.**

Recycling requirements (SB 1073): provides condominium associations with three or more units must provide the means and materials necessary to allow for recycling recyclables designated by the local legislative recycling program. **The bill carried over to 2016.**

Construction defect claims (SB 815): provides actions of tort for damages arising out of any deficiency, in the design, planning, construction, or general administration of an improvement to a condominium, as defined in including any deficiency in the condition of the common area at the time the Declarant records a master deed, shall be commenced only within three years next after the cause of action accrues, unless the Declarant shall remain in control of the organization of unit owners at the time the cause of action would otherwise accrue, in which case the cause of action shall not accrue prior to the Declarant Control Termination Date; provided, however, that in no event shall actions be commenced more than six years after the later of the dates of: (1) the Declarant Control Termination Date; (2) the opening of the improvement to use; or (3) substantial completion of all phases of the condominium or expiration of the phasing right (whichever is earlier) and the taking of possession for occupancy by the owner. **The bill carried over to 2016.**

Repair of construction defects (SB 925): Creates a new chapter in law to require the notice and an opportunity to repair certain construction defects. **The bill carried over to 2016.**

MINNESOTA

Office of ombudsman for common interest communities (SF 339/HF 1959): creates the Office of ombudsman for common interest communities. In the LAC's discussions with officials they were able to educate those about concerns that are/were overlooked with the language and what potential pitfalls might be. Over the summer CAI-MN met with authors of SF 339 and HF1959 and continued talks and discussions with all stakeholders to try and find common language that assist everyone with issues. **The bills carried over to 2016.**

Political signs (HF 1142): provides that an association document that limits the display of a political campaign sign during a specified political election period was void and unenforceable. Provides for limitations and restrictions. The LAC fought HF 1142 over the summer and will continue to do so as legislators prepare for reelection after next year's session. **The bill carried over to 2016.**

Construction defect: The LAC also received word of a local issue in Minneapolis regarding housing warranties and common interest communities. While no language has been proposed at the Capitol it sounds like a bill could be coming next spring as a result of action that the Minneapolis City Council is exploring. This summer members of the LAC will be planning to meet and work with Council Member Frey who has been discussing concerns around the issue.

MISSISSIPPI

Homeowners association act (HB 1183 and SB 2567): provide for the formation and legal administration of homeowners associations. The bills provided guidelines for membership and organization of associations, and guidelines for developers retaining an interest. The bills specify the association formation and powers, provided for a board of directors, and invalidated unconstitutional restrictions in governing documents. The bills provided for bylaws, the creation of developer liability for misappropriation of association funds, and created a lien for unpaid assessments. **The bills died in committee.**

MISSOURI

Solar panels (HB 231, SB 47 and SB 631): all sought to prohibit planned communities from barring the installation of solar energy systems. **They were carried over to 2016.**

NEBRASKA

Dissolved homeowners association act (LB 304): the Act provides a mechanism for a municipality to be appointed as custodian over a dissolved homeowners association (HOA), allowing the municipality to take over maintenance of any common areas which had previously been maintained by the HOA. The Act also provides a simple process for a dissolved HOA to apply for and achieve reinstatement. **The bill was signed into law.**

NEVADA

The bills summarized below passed and were signed into law with LAC support. With the tireless effort of its members and our lobbyist, Garrett Gordon, the LAC was able to work with legislators to amend many of these bills to make them workable for Nevada Community Associations, thereby allowing the LAC to support passage.

Notice requirements (AB 141): Requires notice to be sent to all holders of a security interest in a property, and rescinds the requirement for them to request notice. **Signed by the governor, effective October 1, 2015.**

Deed in lieu of foreclosure (AB 183): Establishes a penalty of up to \$500 plus attorney fees and any actual damages to the grantor or any senior lien holder if the grantee for a deed in lieu of foreclosure sale fails to record a deed within 30 days. **Signed by the governor, effective October 1, 2015.**

Declarant control period (AB 192): Makes changes to declarant control periods for associations of 1,000 units or more. Does not change the declarant control period for association of less than 1,000 units. For 1,000 or more units, the declarant control period ends 60 days after conveyance of 90 percent of the units to unit owners other than declarant. For associations under 1,000 units, the declarant control period

terminates 60 days after conveyance of 75 percent of the units to unit owners other than declarant. For 1,000 or more units, no later than 60 days after conveyance of 15 percent of the units that may be created, at least one member and not less than 25 percent of the members of the board must be elected by unit owners other than declarant. For associations of less than 1,000 units, no later than 60 days after conveyance of 25 percent of the units that may be created, at least one member and not less than 25 percent of the members of the board must be elected by unit owners other than declarant. **Signed by the governor, effective October 1, 2015.**

Bid requirements (AB 238): Requires, when reasonably possible, at least three bids for projects expected to cost (1) in an association of less than 1,000 units, three percent or more of the annual budget of the association (2) in an association of 1,000 or more units, one percent or more of the annual budget of the association. The three bid requirement was also expanded to include professional services, such as engineering, accounting, and legal services. Finally, bids must be open and read aloud at a board meeting. **Signed by the governor, effective July 1, 2015.**

Flag display (AB 301): Requires associations to permit flying and display of the State of Nevada flag under the same rules as the US flag. Requires governing documents to be amended by October 1, 2015 to be in compliance with this bill. **Signed by the governor, effective July 1, 2015.**

Registration fees (AB 474): Raises the limit for fees charged annually to associations by the Real Estate Division from \$3.00 to \$5.00. **Signed by governor, effective date July 1, 2016.**

Business license fee (SB 39): Exempts associations formed under Chapter 81 from having to pay the annual state business license fee, an exemption which associations formed under Chapter 82 already enjoyed. **Signed by the governor, effective October 1, 2015.**

Manager licensing credits (SB 154): Allows managers to satisfy up to five hours of continuing education law credits in one hour increments for observing disciplinary hearings before the Commission or an NRED ADR proceeding with the permission of the parties involved. **Signed by the governor, effective date June 1, 2015 for adopting regulations by the Commission, January 1, 2016 for all other purposes.**

Candidate requirements (SB 174): Provides that, unless appointed by declarant, a person may not be a candidate for or member of the board or an officer if that person resides with, is married to or domestic partners with, or is related within the third degree of consanguinity to a member of the board or officer. These restrictions do not apply if the number of candidates is equal to or less than the number of seats to be filled. Additionally, if the person stands to gain personal profit or gain from a matter before the board, this person may not be a candidate or member of the board or an officer. The bill also imposes some modest restrictions on investor owners serving on the board. **Signed by the governor. Effective date October 1, 2015.**

Priority lien (SB 306): This bill is one negotiated between all interested parties since September of 2014. Provides for the recovery of certain collection costs in addition to up to nine months of assessments as part of the Super Priority Lien, revises notice provisions relating to foreclosure process and sale, requires financial institutions to provide the name and street address of a person to whom notices may be sent to the Financial Institution Division (to be posted on its website) and provides for a 60 day redemption period following an HOA foreclosure. Requires 30 days for owner to respond to the 60 day collection letter. **Signed by the governor, effective October 1, 2015.**

Tax assessment of common areas (SB 377): If an association does not provide such information that the county assessor determines to be necessary to identify each unit in the community in order to assess each

unit for its share of common areas, any taxes on real property must be assessed upon the common elements of the association. **Signed by the governor, effective date July 1, 2015.**

Not all bills proposed in the 2015 Legislative Session were good for community associations. Working with legislators who understand common interest communities, the LAC was able to defeat the bills summarized below.

Repeal of uniform act (AB 233): This bill would have repealed the Uniform Common Interest Ownership Act in its entirety and left associations without many of the necessary protections the law provides. The bill failed.

Priority lien and non-judicial foreclosure (AB 240): This bill would have stripped associations of the right to non-judicially foreclose on delinquent owners and eliminated the super-priority lien which gives Nevada associations the right to up to 9 months of assessments in the event of a lender foreclosure. **The bill failed.**

Retaliatory action (AB 149): This bill would have redefined prohibited retaliatory action so broadly as to potentially make board members liable for the levy of fines or other sanctions for covenant violations. **The bill failed.**

Capital expenditures (AB 317): This bill would have required a majority of owners to approve a capital expenditure in excess of one percent of the association's annual budget and would have given the state administrative agency which oversees common interest communities the authority to issue citations for alleged violations of law. **The bill failed.**

Installation of fences (SB 221): This bill would have permitted residents to install "coyote rollers" on walls and fences which they did not own and were not responsible to maintain. **The bill failed.**

NEW HAMPSHIRE

Records (HB 158): requires the managing agent to return the records of a condominium association upon the request of the association. **The measure was signed into law.**

Manager licensing (HB 220): requires community association property managers to be licensed by the board of property managers. **The bill carried over to 2016.**

Short-term rentals (HB 531): establishing a committee to study short-term rentals by homeowners and owners of residential properties. **The measure was signed into law.**

Dispute resolution board (HB 570): establishes a condominium dispute resolution board. **The bill carried over to 2016.**

Financial information (SB 235): defines the financial statements required if the declarant or subdivider is not a natural person. The bill also describes the type of financial information required to provide reasonable assurance that all proposed improvements and amenities will be completed. **The measure was signed into law.**

NEW JERSEY

The following legislative summaries were pulled from the bill statements provided by the New Jersey Legislature.

Tax credit for energy efficiency property (AB 1005 and SB1454): This bill gives New Jersey gross income taxpayers, for a two-year period starting on January 1, 2011, a credit for expenses incurred for the

performance of an energy audit and the purchase and installation cost of “property that conserves energy or promotes energy efficiency,” as that term is defined in the bill, that has been purchased, installed by a certified contractor, and put into use in this State at a taxpayer’s single-family dwelling or commercial, industrial, institutional or multi-family residential building in existence on the effective date of the bill. The credit shall be allowed in the taxable year in which the audit is performed or the property is placed in service. An unused credit may be carried forward, if necessary, for use in the first taxable year following the taxable year for which the credit is allowed. The purpose of this bill is to encourage taxpayers to install property that conserves energy or promotes energy efficiency to increase the energy efficiency and environmental friendliness of New Jersey’s homes and businesses.

Under this bill, gross income taxpayers may receive a tax credit not exceeding the applicable amounts as follows: 1) for the performance of an energy audit or for the cost of purchasing and installing property at a single-family dwelling owned by the taxpayer, an amount up to \$7,500; and 2) for the performance of an energy audit or for of the cost of purchasing and installing property at any commercial, industrial, institutional or multi-family residential building owned by the taxpayer, an amount up to \$15,000.

The bill limits the number of times property that conserves energy or promotes energy efficiency may generate a credit to one. To ensure the technical expertise necessary to administer this bill, the Director of the Division of Taxation is required to consult with the Commissioner of Environmental Protection and the Board of Public Utilities to promulgate technical eligibility specifications for property that conserves energy or promotes energy efficiency. **The bill failed upon adjournment.**

Solar panels ([AB 1514](#)): this bill would revise current law concerning the installation of solar collectors in common interest communities.

Under current law (subsection a. of N.J.S.A.45:22A:48.2), a homeowners’ association cannot adopt or enforce a restriction, covenant, bylaw, rule, or regulation prohibiting the installation of solar collectors on roofs of two types of housing: a roof of a single: family dwelling solely owned by an individual or individuals which is not designated as a common element or common property in the governing documents of the association; and a roof of a townhouse dwelling unit, where the repair of the roof is designated as the responsibility of the owner and not the homeowners’ association in the governing documents.

Apparently, the homeowners’ associations of some senior communities have determined that the language of the statute does not prohibit restrictions on the installation of solar collectors on the roofs of single family homes and townhouses in these communities, as the Legislature intended in 2007 when the statute was enacted.

This bill would revise the language of subsection a. of N.J.S.A.45:22A:48.2 to make clear that homeowners’ associations in common interest communities cannot adopt or enforce a restriction, covenant, bylaw, rule or regulation prohibiting the installation of solar collectors on the roof of any single family home or any townhouse located within such a community. **The bill failed upon adjournment.**

Manager licensing ([AB 2908](#) and [SB 1367](#)): this bill provides for the licensing of common interest community managers and establishes the Common Interest Community Manager Board within the Department of Community Affairs to oversee their licensure. The board, to be appointed by the Governor, is to consist of nine members as follows: six licensed common interest community managers, except for those managers first appointed; two public members; and one member from a department in the Executive Branch of State Government.

As defined in the bill, “common interest community manager” means an individual who for compensation provides management services to a common interest community. “Provide management services” in the bill means to: (1) act with the authority of a community association in its business, operational, legal, financial and other transactions with association members and with non-members; (2) execute the resolutions and decisions of the governing body of a community association or, with the authority of the association, enforce the rights of the association secured by statute, contract, covenant, rule or bylaw; (3) collect, disburse or otherwise exercise dominion or control over money or other property belonging to a common interest community association; (4) prepare budgets, financial statements or other financial reports for a community association; (5) arrange, conduct and coordinate meetings of a community association or the governing body of a community association; or (6) negotiate contracts or otherwise coordinate or arrange for services or the purchase of property and goods for or on behalf of a community association.

To be eligible for licensure as a common interest community manager, an applicant shall fulfill the following requirements: be of good moral character; be at least 18 years of age; and (1) have completed a training program approved by the board and successfully passed an examination approved or developed by the board; or (2) have passed an examination that is developed in accordance with national standards accredited by the National Commission for Certifying Agencies.

The bill further provides that for 180 days after the board initially establishes procedures for licensure as a common interest community manager, upon payment to the board of a fee and the submission of a written application provided by the board, the board shall issue to an individual of good moral character a common interest community manager license provided the individual: (1) has been actively engaged in providing management services for at least 12 months before applying for such license; and (2) successfully demonstrates completion of a training program and examination that is the same or substantially similar, as determined by the board, to that which is required for an individual who is applying for licensure after the aforementioned 180-day period is elapsed.

Furthermore, the bill provides for a biennial license renewal of common interest community managers.

The bill also requires licensed common interest community managers to complete continuing education courses as a condition of license renewal. The board shall: (1) establish standards for continuing common interest community manager education, including the number of credits, which shall not exceed 18 credit hours biennially, of which not less than three credit hours shall be in professional practice ethics; (2) approve educational programs offering credit towards continuing common interest community manager education requirements; and (3) approve other equivalent educational programs and establish procedures for the issuance of credit upon satisfactory proof of the completion of these programs.

In the case of continuing education courses and programs, each hour of instruction shall be equivalent to one credit.

The bill stipulates that no person shall engage in the practice of providing, or hold himself out as being able to provide management services to a New Jersey community association unless licensed in accordance with its provisions.

The bill further provides that no licensed common interest community manager or the common interest community management agency with which the manager is employed shall control, collect, have access to, or disburse funds of a community association unless there is in effect employee dishonesty insurance as specified in the bill. The bill also states that a common interest community manager or common

interest community management agency that provides common interest community management services for more than one community association shall maintain separate, segregated accounts for each community association.

The bill also provides for the Commissioner of Community Affairs to establish uniform standards for revocation, suspension and other disciplinary sanctions for applicants and licensees of the Common Interest Community Manager Board. The bill also gives the commissioner the authority to assess a civil penalty for violations of the act of not more than \$2,500 for the first offense and not more than \$5,000 for the second and each subsequent offense. **The bills failed upon adjournment.**

Priority lien (AB 477 and SB 175): This bill would permit planned real estate development associations to record a lien with limited priority over prior recorded mortgages and other liens (except for municipal liens or liens for federal taxes) for unpaid assessments to planned real estate development associations. Under the provisions of the "Condominium Act," N.J.S.A.46:8B:21 provides a limited priority lien for unpaid condominium association assessments, but not for associations of other forms of common or community ownership. **The bills failed upon adjournment.**

Homeowner Bill of Rights (SB 1938): CAI-NJ has been working with both Senator Shirley Turner (D – Mercer) and Assemblyman Jerry Green (D – Union) on reforms that would address the concerns tackled in this bill without the one-size-fits-all approach in SB 1938, which we have consistently opposed. With the hard work of our volunteers on the Legislative Action Committee, and the support of Assemblyman Green, CAI-NJ is proposing a nine bill package that should accomplish this goal in a much more pragmatic and effective fashion.

As introduced, SB 1938 would enact 58 pages of one-size-fits all rules for common interest communities, covering everything from records requests, board elections, to association bylaws and beyond. By breaking the bill down to nine key elements, CAI-NJ hopes—over time—to enact many of the reforms the legislature unsuccessfully sought in the previous UCIOA and CARA efforts.

The bill revises the manner in which information should be provided prospective purchasers through the Public Offering Statement, (POS) a document required to be provided to prospective purchasers by developers of such communities. Although New Jersey's statutes require certain disclosures by a developer during the sales phase of shared ownership communities, these disclosures have too often been inadequate to properly inform prospective purchasers. Items which are likely to be of extreme importance to a purchaser, such as obligations, governance structures, potential future liabilities, restrictions, or, even in some cases, hidden loans on the part of a developer to the association, may be buried deep within the document, and not disclosed adequately, if at all. The sheer volume of information, which varies widely by developers on matters which could be standardized, also hinders adequate review by the State.

The bill requires the POS, and the registration of developments process, to be revised and streamlined. A developer will be required to submit information on standardized forms and in an electronic format. Governance structures will be standardized and developers allowed to highlight variations that they wish to apply.

Processing times for registrations of developments will be reduced under the bill from 90 to 45 days for standardized submissions. The information in the Public Offering Statement to be disclosed to a prospective purchaser will be revised to be quickly accessed by the reader, as well as indexed under logical headings, such as pets, parking, restrictions and fees. An executive summary of the offering is

required to be made in plain language, explaining the rights, liabilities, obligations and governing form applicable to the association.

The bill also addresses the problem that planned communities with fewer than 100 units have been exempted from registration under the act. This has been interpreted by the administering agency as exempting developers from providing a POS, thus providing no protections for purchasers in smaller communities. The exemption has also been extended by regulations to all low and moderate income (Mount Laurel) communities of any size.

Exemption from the PREDFDA also clouds many other issues, such as when a developer of a planned community must turn over the assets to the homeowners. The bill removes these exemptions, and requires a Public Offering Statement for every prospective purchaser in a planned community. The regressive flat rate development charge currently charged to developers of planned communities is replaced under the bill with a per unit fee of 3/100 of one percent (.0003) of the sales price. These fees are currently required to be used to defray the costs of the State's review under the statute, and will continue to be used for that purpose, as well as to offset costs for other homeowner protections added by the bill. The change from a flat rate fee to a per unit fee will result in lower fees on lower priced homes, and in most instances will result in decreased fees being paid per development than is the case now.

In addition, the bill addresses problems which arise in what may be termed the "governance" stage of a homeowners' association. After the developer has sold at least 75 percent of the homes planned for the community, total control of the management of the commonly-owned property is transferred from the developer to the home owners in the community. Experience shows that owners are not adequately prepared for this event.

The bill allows owners to have earlier exposure to operational issues and input into governance matters, as well as requires boards to adopt principles of democratic and transparent governance. The bill requires the creation of an owners' coordinating council in each association, consisting of at least three owners, during the time period that the developer controls the voting interest of the association governing board. The owners' coordinating council will function as a steering committee for owners, and serve as the election monitor when owners other than the developer are entitled by statute to be elected as voting members of the governing board. In addition, the owners' council will be permitted to bring claims to a commission formed under the bill, on matters affecting construction deficiencies in the common elements during the period of developer control. The inability of owners to file warranty claims concerning defects in common elements was found to be a problem by the State Commission of Investigation in its report of abuses in the new home construction industry.

The bill addresses the inconsistency in various statutes affecting owners' rights in different types of shared ownership communities, by amending the laws to eliminate these inconsistencies. The bill creates a commission in, but not of, the Department of Law and Public Safety, to serve as a State resource center, liaison and educational resource to owners and their shared ownership community associations, and to coordinate low cost, reliable alternative dispute resolution (ADR) services to these associations.

The commission will also serve as a hearing entity concerning violations of statutory law pertaining to associations. The commission is modeled after a very successful program created by Montgomery County, Maryland for homeowner associations under its jurisdiction. The bill addresses a critical need of the many owners whose associations have not provided any ADR or ADR which is not impartial. Many associations have adopted a process too biased or expensive to serve as a viable alternative to litigation.

Because associations can charge each owner the cost of the board's attorney as a common expense, many boards are quick to invite litigation, rather than amicably resolve disputes. In some instances, even when a board's actions blatantly violate bylaws, or are flagrantly illegal, State and local officials are often unwilling or unable to get involved, citing the "private" nature of such communities. This places an undue financial burden on individual owners, many of whom are senior citizens on fixed incomes. The bill also addresses the general lack of information about community associations, and a lack of standards for the manner in which they may operate. The commission created by the bill and the State entity responsible for oversight of marketing of new homes is charged with creating a booklet providing detailed information to owners concerning general information, State and federal laws, resources available, and the standards of governance established for association governing boards. The commission will also be responsible for posting the information to a web site. The commission is also required under the bill to promulgate standards for transparent and democratic governance in the operation of shared ownership communities. The standards may be more specific than the provisions of the bill, but must comport with the Legislature's intent to foster open, democratic processes in such communities.

The funding for the activities of the commission and the alternative dispute resolution services will come from fees already collected and earmarked for protections of owners under the "The Planned Real Estate Development Full Disclosure Act." The bill requires that all associations provide certain information annually to the Commission on Shared Ownership Communities. There is no fee to file under the bill, but those associations that do not provide the information will not be eligible as qualified private communities to seek reimbursement from their municipality for services provided to them, such as trash, leaf and snow removal, and, in addition, will not be permitted to impose fines upon members, or to receive approval to file liens based on fines imposed.

In order to recognize the governmental nature of homeowners associations, and to provide the best enforcement of statutory protections for prospective homebuyers in shared ownership communities, the bill moves the responsibility for the "The Planned Real Estate Development Act" to a new bureau within the Division of Consumer Affairs in the Department of Law and Public Safety, to be known as the "Bureau of Homebuyers Protection." The Division of Consumer Affairs currently has significant experience in administering consumer protection programs; for example it has the responsibility for overseeing the "Home Improvement Contractor's Registration Act" and "the consumer fraud act." In addition, relocating homebuyer protections will help to minimize conflicts of interests concerning builders under other programs in the Department of Community Affairs, such as its role as the enforcer of construction codes, licensing of code inspectors, and overseeing the "New Home Warranty Program." **The bills failed upon adjournment.**

Foreclosure reform (SB 2545 and AB 3793): CAI-NJ has been working with a number of legislators, most notably Senator Ronald Rice (D – Essex) and Assemblyman Carmelo Garcia (D – Hudson) on foreclosure reforms that should help our member communities deal with abandoned properties and association fee delinquencies. Amongst the several proposals under consideration are:

- A statewide task force, consisting of representatives from CAI-NJ, the Bankers Association, and the Realtors Association amongst others, charged with making recommendations to assist lawmakers develop a comprehensive response to the foreclosure crisis;
- An process for expediting uncontested foreclosures;
- Legislation allowing for rent receivership statewide;
- A uniform process for the recording of deeds so Associations know who is responsible for foreclosed properties;

- Requiring lenders to assume responsibility for the maintenance of properties and association fees upon foreclosures.

These bills provide an expedited process for residential mortgage lenders to foreclose vacant and abandoned residential properties and enhances the remedies available to common interest communities when lenders delay the foreclosure of vacant and abandoned properties.

The bill provides that a residential mortgage lender may file a motion to proceed summarily to foreclose vacant and abandoned property if the foreclosure action is uncontested as defined pursuant to R.4:64:1(c) of the Rules Governing the Courts of the State of New Jersey.

The bill requires any defense or objection to an application to proceed summarily to foreclose vacant and abandoned property to be accompanied by an affidavit stating that the defense is not made solely for the purpose of delaying the relief requested pursuant to the summary action. The defense or objection must be presented within 30 days of the filing of the service of the application. Any defense or objection that is presented without the affidavit, or that is not presented within the 30 day time period, shall not be considered by the court, except for good cause shown.

The bill requires the Superior Court to order payment by a plaintiff of \$1,000 as a fee for costs associated with the use of the summary process for vacant and abandoned properties, which shall be retained by the Administrative Office of the Courts in a non-lapsing account for use by the Office of the Superior Court Clerk.

Under current law, a residential mortgage lender may commence a summary action to foreclose a mortgage debt in Superior Court if the court finds that at least two out of 15 conditions exist that indicate the property is abandoned. This bill adds to this list a certification from the board of a planned real estate development stating with specificity that the property has been observed to be abandoned.

This bill also provides that, when a lender is entitled to proceed through the foreclosure process in a summary manner, but has not done so, the board of a planned real estate development may file a motion to compel expedited judgment and sale, or in the alternative, payment of association fees. The bill requires the motion to be accompanied by an affidavit from a person having personal knowledge of the contents and shall contain the facts necessary to establish that the action is uncontested. The Superior Court shall subsequently enter an order compelling the lender to file an application to proceed in a summary manner within 30 days or, where the lender declines to file that motion, to pay to the planned real estate development the assessments for periodic payments due for regular and usual operating and common area expenses coming due on or after the thirty-first day following entry of the order to pay.

Alternatively, the court may approve an application for an Order Appointing a Fiscal Agent. The bill allows the board of a common interest ownership association to apply to the Superior Court for an Order Appointing a Fiscal Agent over an abandoned or unoccupied unit. The fiscal agent will be responsible for maintaining the unit and paying, through a licensee or otherwise, maintenance fees and assessments for benefits such as utilities, common element expenses, amortization of common elements, administrative costs and maintenance of the physical structure in order to protect, preserve and maintain the unit for the benefit of the planned real estate development, the unit owners in the common interest community and any others with an interest in the unit, including, without limitation, mortgage holders. The fiscal agent is also intended to prevent the impairment of the utility of the unit for the association, the other unit owners in the planned real estate development, and others with an interest in the unit such as mortgage holder.

The bill failed upon adjournment in 2016.

NEW MEXICO

Flag display (HB 320): amends the Homeowner's Association Act, Section 47:16:1 5, to prohibit a Home Owner's Association (HOA) from adopting or enforcing "a restriction related to the flying or displaying of flags that is more restrictive than the applicable federal or state law or county or municipal ordinance."

The measure was signed into law.

Resale disclosure fees (HB 380): amends the Homeowner Association Act (HAA), Sections 47:16:1 through 15, NMSA 1978, to eliminate the certain disclosure requirements from a "disclosure certificate" or "disclosure statement" to be provided by a selling lot owner to a prospective buyer.

HB 380 also amends Section 47:16:12(G) NMSA 1978 to place a cap of \$150 on the fee an association may impose for preparation of an HAA-required disclosure certificate.

The bill failed upon adjournment.

NEW YORK

Tax credit and electric vehicle charging outlets (AB 110): Establishes a tax credit for the installation of electrical outlets for charging electric cars in certain parking garages owned by condominium management associations or cooperative housing corporations. **The bill carried over to 2016.**

Ombudsman (AB 1855 and SB 2832): Creates the office of the cooperative and condominium ombudsman and authorizes the residential unit tax and establishes the office of the cooperative and condominium ombudsman fund. **The bill carried over to 2016.**

Manager licensing (AB 5693): Requires residential real property managers or any firm employing a property manager, contracting with a property manager or contracting to provide a property manager to file a registration statement with the secretary of state and to be certified from an approved certifying organization. **The bill carried over to 2016.**

Solar panels (AB 6081 and 6878): Prohibits condominium associations from banning the installation of solar arrays in their by-laws or rules and regulations. **The bill carried over to 2016.**

Manager licensing (SB 198): Requires residential real property managers or any firm employing a property manager, contracting with a property manager or contracting to provide a property manager to file a registration statement with the secretary of state and to be certified from an approved certifying organization. **The bill carried over to 2016.**

NORTH CAROLINA

Manager licensing and registration for community associations (HB 514 and SB 563): requires those managing community associations to obtain a license. The qualifications included the following:

1. The applicant must be at least 18 years of age.
2. The applicant must satisfactorily complete within three years preceding the date the application is made, at a school approved by the Commission, a course of instruction prescribed by the Commission that may consist of at least 45 hours of classroom instruction, or equivalent, in subjects determined by the Commission.
3. The Commission may require the applicant to pass a licensing examination to demonstrate competency. The examination may be provided by the Commission or by a vendor selected by the Commission.

4. Pay an application fee for each application filed in an amount to be determined by the Commission, but not to exceed two hundred dollars (\$200.00). In addition to the application fee, the applicant may be required to pay a fee for a license examination not to exceed the actual cost of administering the examination.
5. Before a license is issued, the applicant shall provide to the Commission evidence of coverage by a fidelity bond in accordance with G.S. 93A-113.
6. Each applicant shall demonstrate to the Commission that the applicant possesses the competency, honesty, truthfulness, integrity, good moral character, and general fitness, including mental and emotional fitness, necessary to protect the public interest and promote public confidence in the community association management business.
7. An applicant may be required to provide the Commission with a criminal record report from one or more reporting services designated by the Commission, or to provide fingerprints and consent to a criminal history record check to be conducted by the North Carolina Department of Public Safety.

The bill is carried over to 2016.

Fidelity bond requirement and the creation of the state community association commission to regulate community associations and manager licensing (HB 731): creates a commission to regulate community associations and community association managers. It requires the registration of community associations as well as the licensing and insurance coverage of community association managers. **The bill is carried over to 2016.**

Contents of declarations and association records (HB 882): originally this bill provided for the licensure of community association managers under the real estate commission. The bill was amended to provide for requirements for declaration provisions and requirements for associations to maintain specific records. **The bill carried over to 2016.**

OHIO

Priority lien (HB 226): provide that a portion of a condominium or planned community assessment is prior to other liens on condominium units and planned community lots and to provide that a condominium unit owners association lien is a continuing lien. **The bill carried over to 2016.**

OKLAHOMA

Sex offenders (SB 167): modifies the definition of “park” as used to determine the zone of safety by clarifying that the park must be operated or supported by an incorporated homeowners’ association. The measure also includes parks operated or supported by a tribal government.

OREGON

Electric vehicle charging stations (HB 2585A): Modifies the authority granted to an owner of a lot in a community association to install and use an electric vehicle charging station for personal, non-commercial use. CAI supported this measure. Passed the House 52:6. Passed the Senate 23:5. **Signed by Governor Brown.**

Sale of real property subject to declaration (SB 367A): Makes the purchaser at an execution sale of real property within a community association solely liable for assessments imposed against said real property during the redemption period. CAI supported this measure. Passed the Senate 30:0. Passed the House 54:4. **Signed by Governor Brown.**

PENNSYLVANIA

Investigation and mediation of complaints (HB 1774): assigns the investigation and mediation of complaints regarding planned communities, cooperatives, and condominiums under Title 68 (Real Property), to the Office of Attorney General's Bureau of Consumer Protection. **The bill carried over to 2016**

Consent by owners (HB 1340): Specifies when unanimous consent by unit owners is required. States that proceedings to enforce an action for delinquent assessments must be brought within four years after assessments become payable. A "Yes vote supports CAI's position. Passed the House 195:0. Sent to Senate. Last Senate action: **Laid on the table (Pursuant to Senate Rule 9).**

Shaffer v. Zoning Hearing Board of Chanceford Township Supreme Court Decision (SB 687): This legislation will make it clear that the creation of condominium associations and planned communities out of existing land or facilities does not require municipal approval unless and until new structures or buildings are constructed within the association or planned community. This legislation will eliminate the unnecessary conflict of legal statutes to which condo associations and planned communities are now exposed and remove a potential impediment to the viability of residential and commercial associations and communities throughout the Commonwealth. CAI supported this measure. Passed the Senate 48:1. Passed the House 193:0. **Approved by Governor Tom Wolfe.**

RHODE ISLAND

Religious objects (HB 5986 and SB 348): Prohibits condominium bylaws or management committees from instituting any rule or regulation that would prohibit attaching religious objects to the front door of a condominium unit. **The bill was signed by the governor.**

Foreclosure (HB 6264): substitutes the word "voidable" for the word "void" relating to mediation proceedings held to avoid foreclosure proceedings when a mortgage is in default. **The bill was signed by the governor.**

Tax (SB 559): Exempts from taxation residential property developments not completed or, if completed, not sold and occupied. This exemption does not affect taxes on common areas for residential condominiums. **The bill was signed by the governor.**

SOUTH CAROLINA

Manager licensing (SB 13): creates a 9-member "Commission for Common Interest Community Education and Manager Certification" and requires managers of community associations to become certified by meeting certain education and coursework requirements as determined by the Commission. **The bill carried over to 2016.**

TEXAS

Solar-powered stop signs (HB 745): Allows a property owner's association to install a speed feedback sign. Also allows a "solar powered light-emitting diode (LED) stop sign". CAI supported this measure. Passed the House 146:0. Passed the Senate 31:0 via voice vote. **Filed without Governor Abbott's signature.**

Standby electric generators (HB 939): A POA may not adopt or enforce a dedicatory instrument provision that prohibits, restricts, or has such an effect on an owner from owning, operating, installing or maintaining a permanently installed standby electric generator as long as they are in compliance with the

manufacturers' specification and applicable health, safety, electrical and building codes. CAI opposed this measure. Passed the Senate 31-0. Passed the House 140-0. **Signed by Governor Abbott.**

Construction defect or design claim (HB 1455): Requires condominium associations to obtain an engineer's report prior to filing a construction or design defect lawsuit or arbitration. The report must be given to owners and each party involved, parties have 90 days to cure. Owners must approve the claim by 67 percent of the interests in the condominium. The association must get an estimate from a licensed appraiser of the impact on the value of each unit if the claim is prosecuted and the impact on the value of each unit after resolution. The association must procure an estimate from a licensed real estate broker of the impact on marketability. CAI opposed this measure. Passed the House 98:44. Passed the Senate 23:8. **Signed by Governor Abbott.**

Rental agreementsError! Bookmark not defined. ([HB 2489](#)): A POA may not charge a fee in connection with the leasing or rental of a unit or lot. A POA may not require that a lease or lease application be reviewed or approved by the POA. A POA may not require production of a copy of a lease, a rental application, or a consumer/credit report if production of such a document would violate applicable state or federal law. CAI opposed this measure. Passed the Senate 31:0 via voice vote. Passed the House 143:1. **Signed by Governor Abbott.**

Fire sprinkler systems ([HB 3089](#)): Requires that certain high-rise residential buildings in which 50 percent or more of the residents are elderly or disabled, located within specified counties with specified population levels within certain municipal areas are required to install and maintain a fire protection sprinkler system that meets the standards of the National Fire Protection Association. CAI opposed this measure. Passed the House. Passed the Senate. **Filed without Governor Abbott's signature.**

Voting ([SB 862](#)): A POA/HOA is not required to provide an owner with more than one voting method unless it is required to do so by their governing documents. CAI supported this measure. Passed the Senate 31:0 via voice vote. Passed the House 146:0. **Signed by Governor Abbott.**

Secret ballots, voting ([SB 864](#)): A POA may adopt rules to allow for voting by secret ballot but "must take measures to reasonably ensure" that a member cannot cast more votes than the member is eligible to cast in an election or vote. CAI supported this measure. Passed by the Senate 31:0 via voice vote. Passed by the House 146:0. Signed by Governor Abbott.

Resale certificates ([SB 1168](#)): The selling unit owner must provide the purchaser a current copy of the community association's declaration, bylaws, rules and resale certificate which cannot be more than three months old when delivered to the purchaser. The resale certificate must be issued by the association and must contain the current operating budget, as well as other specified financial information about the community association and the specific unit. CAI supported this measure. Passed the House 142:0. Passed the Senate 26:5. **Signed by Governor Abbott.**

TENNESSEE

Homeowners Association Act ([HB 610](#) and [SB 405](#)): This bill, the Tennessee Homeowners Association Act, will apply to all common interest communities that may be used for residential purposes. This bill may not be varied by agreement, and rights conferred by this bill may not be waived.

This bill does not apply to condominiums governed by the Tennessee Condominium Act of 2008, or to timeshare arrangements governed by the Tennessee Time-Share Act of 1981.

The following provisions of this bill will apply to all common interest communities, and other provisions of this bill will apply to all common interest communities, but only with respect to events and circumstances occurring after July 1, 2015, (however, the application of this provision to the events and circumstances does not invalidate existing provisions of the declaration, bylaws, or plats or plans of those common interest communities):

- 1) Meetings of the executive board and committees of the association authorized to act for the association must be open to the unit owners except during executive sessions. The executive board and committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:
 - a) Consult with the association's attorney concerning legal matters;
 - b) Discuss existing or potential litigation, mediation, arbitration, or administrative proceedings;
 - c) Discuss labor or personnel matters;
 - d) Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or
 - e) Prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person;
- 2) No fee, late charge, or fine may be levied against a unit owner unless the fee, late charge, or fine is reasonable. The association must make a schedule of any fees, late charges, and fines that may be imposed available to the unit owners, either by inclusion in the declaration or by other reasonable means of notice. No fee, late charge, or fine may be levied against a unit owner unless the fee, late charge, or fine appears on the schedule previously made available to the unit owners;
- 3) The association has a lien on a unit for any assessment levied against that unit or late charges or fines imposed against its unit owner from the time the assessment, late charge, or fine becomes due, which lien may be foreclosed by judicial action. The declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale; provided, the association must give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to this bill are enforceable as assessments under this provision. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due;
- 4) Except to the extent expressly permitted or required by other provisions of this bill, no amendment may change the boundaries of any unit, or the allocated interests of a unit, or prohibit the leasing of any unit, in the absence of the consent of all affected unit owners; and
- 5) The association, upon request from a unit owner, a purchaser, or any lender to a unit owner or a purchaser, or their respective authorized agents, must provide to the requesting party certain information specified in this bill, to the extent applicable, such as the contact information of the declarant, association and common interest community; a copy of the current rules; and the most recent balance sheet. The association may charge a reasonable fee for providing the information which, if not paid, may be assessed against the unit whose owner, lender, or purchaser requested the information. If the declarant prepared or caused to be prepared all or part of the information required by this bill, the declarant may be held liable for any materially false or misleading statements, or for any material omissions of any required information, with respect to that portion of the information that the declarant prepared. If the association or declarant, as applicable, fails to

provide the information, then the association or declarant, as applicable, will be liable for and must pay a fine or penalty of:

- a) \$250 to the party on whose behalf the request is made, following the first request;
- b) \$500 if the association or declarant does not supply the information within 10 business days following the second request; and
- c) All costs, including reasonable attorney's fees, incurred in obtaining the information or enforcing the fines.

This bill details other requirements regarding the information to be provided in accordance with this item (5) and penalties for failure to provide the information, including remedies for prospective buyers.

This bill specifies that the declaration, bylaws, or plats and plans of any common interest community created before July 1, 2015, may be amended to achieve any result permitted by this bill, regardless of what applicable law provided prior to July 1, 2015.

This bill also provides the following:

- 1) This bill describes various arrangements between an association and other parties and specifies that those arrangements do not create a separate common interest community;
- 2) An association must be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times must consist exclusively of all unit owners. The association must be organized as a profit or nonprofit corporation or limited liability company, or in the case of a common interest community with four or fewer units, the association may be organized as an unincorporated association;
- 3) This bill details certain powers and duties of the association and specifies that, generally, any of such powers may be delegated by the bylaws to the executive board;
- 4) In most cases, an association must have an executive board created in accordance with its declaration or bylaws. This bill details the powers of the board;
- 5) This bill details what the bylaws of the association must provide. The bylaws for any association and any amendments to the bylaws may be, and the bylaws of any association formed after July 1, 2015, and any amendments to the bylaws must be, recorded in the county or counties where the property or any part of the property lies;
- 6) This bill requires an annual meeting of the association and provides for other special meetings necessary to address any matter affecting the common interest community or the association, in certain circumstances. This bill describes requirements for the meeting notice, and requires that the notice specifically state if certain items are on the agenda, such a proposed amendment to the bylaws or budget changes;
- 7) This bill details the requirements applicable when the declarant still has control of the association and the requirements for transfer of control. This bill also specifies the voting requirements for an association;
- 8) This bill imposes requirements on an association regarding the keeping of certain financial records;
- 9) This bill details the requirements for breach by a tenant;
- 10) This bill delineates the requirements for the executive board and the process for removing a member from the board;
- 11) This bill requires the annual adoption of a budget and details specific requirements regarding the budget. This bill also specifies the requirements for assessments;
- 12) This bill specifies that the liability of a unit owner in an unincorporated association for a judgment against the association is limited to the percentage that the vote in the association's affairs applicable

to that owner's unit bears to the total number of votes in the association's affairs applicable to all units in the association;

- 13) This bill provides that in addition to any other remedy provided by the declaration, any right or obligation declared by this bill is enforceable by judicial proceeding. Parties to a dispute arising under this bill, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution in certain situations; and
- 14) This bill details the circumstances under which an association will be deemed to be an inactive association.

The bills carried over to 2016.

Fire sprinklers (HB 787 and [SB 474](#)): The bill prohibits the requirement of fire sprinkler systems for townhouses by any local or statewide adopted building codes.

Present law requires the state fire marshal to promulgate rules establishing minimum statewide building construction safety standards, designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration, and repair of buildings or structures. Present law precludes the standards from including mandatory sprinkler requirement for one-family and two-family dwellings. However, more stringent requirements for those structures as adopted by two-thirds vote by local government on an ordinance or resolution are permitted.

This bill clarifies that a townhouse, defined as a single-family dwelling unit constructed in a group of three or more attached units that extends from foundation to roof, not more than three stories in height, with a separate means of egress, and an open space or public way on at least two sides, will be considered a separate building with independent exterior walls and must be separated by a two-hour fire-resistance-rated wall assembly. This bill specifies that a townhouse must be built according to local and statewide adopted building codes, but that a fire sprinkler system will not be required for a townhouse. **The measure was signed into law.**

UTAH

Association amendments ([HB 98](#)): Modifies the Condominium Ownership Act and the Community Association Act. Addresses the requirements and restrictions that apply to rules of a community association. Rules such as the methods by which a community may restrict or prohibit rentals, the circumstances under which a community association may assess a fine and the procedures by which a lot or unit owner may appeal an assessed fine. CAI supported this measure. Passed the Senate 27:1. Passed the House 66:0. **Signed by Governor Herbert.**

Open meetings ([HB 99](#)): Enacts and modifies provisions relating to meetings of the governing body of an association of unit or lot owners. Requires that a management committee meeting and a board meeting shall be open to each owner and include time for comment from the owners. Outlines circumstances under which a management committee or a board may close a meeting. Requires that upon request, the management committee or the board send written notice of a meeting to each owner by email. CAI supported this measure. Passed the House 66:6. Passed the Senate 28:0. **Signed by Governor Herbert.**

Governing documents ([SB 118](#)): Modifies provisions relating to a homeowners association's governing documents including: defining terms, addresses procedures, requirements, limitations, and enforcement mechanisms that apply to a request to review or copy association records; prohibits certain restrictions on when an association may amend the association's governing documents. The provisions of this bill apply

regardless of when the association was created. CAI supported this measure. Passed the House 72:0. Passed the Senate 16:0. **Signed by Governor Herbert.**

VIRGINIA

Worker's compensation (HB 1285): Amends the definition of employee within the Virginia Workers' Compensation Act to exclude non-compensated employees, directors, and executive officers of any entity that constitutes a property owners' association under the provisions of the Property Owners' Association Act. **The measure was signed into law.**

Best practices (HB 1632): Requires the Common Interest Community Board to develop and publish best practices for declarations consistent with the requirements of the Property Owners' Association Act. **The bill was signed into law.**

Voting rights (HB 2055): Provides that except to the extent that the condominium instruments provide otherwise, the voting interest allocated to the unit or member that has been suspended by the unit owners' association or the executive organ pursuant to the condominium instruments shall not be counted in the total number of voting interests used to determine the quorum for any meeting or vote under the condominium instruments. The bill contains a technical amendment. **The bill was signed into law.**

Sale under deed of trust (HB 2080 and SB 1157): Clarifies that the required notice of sale under a deed of trust applies to individual residential lots located in a development subject to the Property Owners' Association Act. The bill also provides that upon receipt of such notice, the governing body of a unit owners' association or of a property owner's association, on behalf of the association, shall exercise whatever due diligence it deems necessary with respect to the unit or lot subject to such sale to protect the interests of the association. **The bill was signed into law.**

Rental of units (HB 2100): Conforms the Condominium Act to the Property Owners' Association Act with regard to the prohibition on a unit owners' association from charging any fees not expressly authorized by law or in the declaration. The bill also (i) provides that an association may not limit or prohibit an owner from renting his unit or lot and may not charge fees for any rental or other processing fee in excess of \$50 as a condition of approval of the rental, (ii) sets new rules for providing association disclosure documents electronically, (iii) prohibits an association or its managing agent from putting a lien on a unit or lot where the association or its managing agent have failed to submit invoices for the payments of certain fees before settlement, and (iv) requires an association to maintain a website link for 12 months where the disclosure packet is delivered through the link. The bill contains technical amendments. **The bill was signed into law.**

Homeowner Bill of Rights (SB 1008): Provides that every unit under the Virginia Condominium Act and every lot owner under the Property Owners' Association Act, who is a member in good standing of the unit owners' association or property owners' association has the right (i) of access to all books and records kept by or on behalf of the association, (ii) to cast a vote on any matter requiring a vote by the association's membership in proportion to the unit or lot owner's ownership interest, (iii) to have notice of any meeting of the executive organ or board of directors and to participate in such meeting, (iv) to have notice of any proceeding conducted against the unit or lot owner to enforce any rule or regulation of the association and the opportunity to be heard and represented by counsel at such proceeding, and (v) to have all funds of the association managed in accordance with generally accepted fiduciary standards. **The bill was signed into law.**

Quorums (SB 1390): Provides for a unit owners' association or unit owner to petition the circuit court to order a meeting of the unit owners' association for the purpose of the election of officers if (i) no annual meeting has been held due to the failure to obtain a quorum of unit owners as specified in the condominium instruments and (ii) the unit owners' association has made good faith attempts to convene a duly called annual meeting of the unit owners' association in three successive years that have been unsuccessful due to the failure to obtain a quorum. **The bill was signed into law.**

WASHINGTON

Update to Uniform Common Interest Ownership Act (SB 5263): This bill was introduced by request of the Uniform Law Commission and is a result of a 2007 legislative taskforce that found that there were substantial defects in the HOA act and bar association work for eight years. There have been constituent complaints about the HOA act. The bill was crafted to address many of those problems. The bill is based on a uniform act but modernized to make it appropriate for Washington. The drafters avoided changing the warranties because that is better suited for a different legislative forum. The bill expands consumer protection to planned communities by requiring a public offering statement or resale certificate so the purchasers received all the documents, and understand the financial situation, and the rules and regulations. Many HOAs have poor governing documents, which do not allow the HOA to function properly. The bill provides relief to ambiguities and technical inadequacy in the statute and embraces the modern arena by allowing electronic transmission of documents. This is a balanced bill, providing advantages to associations, consumers and developers and lessening litigation. It is helpful that this is a single, retroactive act. **The measure carried over to 2016.**

Construction defect (SB 5961): A homeowner must allow a construction professional to inspect the construction defect before rejecting a settlement proposal or before filing a lawsuit. If a homeowner does not comply with the statutory requirements prior to filing a lawsuit, the lawsuit is dismissed without prejudice and will not be recommenced until the requirements have been complied with. **The measure carried over to 2016.**

WASHINGTON, D.C.

Condominium Owner Bill of Rights Amendment (B21-443): As introduced, this bill requires that an officer or member of the executive board shall exercise their powers and duties ethically and in good faith. It establishes a Condominium Association Advisory Council (CAAC), composed of eleven members, to serve as advisors to the Mayor, the Council, and District of Columbia agencies on matters relating to ownership of condominiums in the District of Columbia. It requires mediation prior to a unit owners' association seeking foreclosure on a unit. It also requires that a Condominium Association Bill of Rights and a copy of the responsibilities of members of the executive board of condominium associations be furnished to purchasers of condominiums.

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