2008 CAI
STATE LEGISLATIVE ACTION COMMITTEE
ADVOCACY REPORT
Community Associations Institute
Government and Public Affairs Department

April 7, 2009
2008 STATE ISSUES OVERVIEW

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

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

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

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

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

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Advocacy Highlights:


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

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

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Advocacy Highlights:

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

Ombudsman – Due to the successful efforts of the CLAC and CAI members, this third attempt to establish an ombudsman pilot program in California was vetoed by the Governor September 27, 2008. AB 567 proposed the creation of a new Common Interest Development Bureau/ Ombudsman Pilot Program. The Bureau would be empowered to (in part): offer training materials and courses to common interest development directors, officers, and owners; maintain a toll-free
telephone number and website for information and assistance purposes; and investigate and assist in resolving any dispute involving the law governing common interest developments or the governing documents of a common-interest development. The state would have levied an annual fee ranging from $10 to $20 per unit, for an estimated total of more than $107 million over five years.

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

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

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

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

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

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

Disabilities – Federal law requiring reasonable modifications to a disabled homeowner’s unit or common elements to ensure “full use and enjoyment of the unit” was incorporated into the Colorado Common Interest Ownership Act through the passage of HB 1135.
Mediation—HB 1135 also stressed the preference for the use and availability of the statewide Office of Dispute Resolution to resolve covenant enforcement issues.

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

Foreclosures, Timeshares – HB 1365, as enacted, allows more than one owner and more than one timeshare to be included in a foreclosure lawsuit in a timeshare association.
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Advocacy Highlights:

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

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

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

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

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

Among the provisions under ASSLA:

- An employee will not be entitled to paid sick leave unless he or she has been employed by his/her employer for at least one year and has worked at least 1,000 hours during the previous 12-month period immediately prior to the request for leave
- Employers with 100 or more employees must provide seven days paid sick leave per year to their employees
- Employers with 25 to 99 employees must provide five days paid sick leave per year to their employees
- Employers with less than 25 employees must provide three days paid sick leave per year to their employees
- Part-time employees are entitled to pro-rated sick leave
- The Mayor has discretion to exempt certain business from the application of the act upon demonstration of a hardship
- ASSLA shall not apply to independent contractors, students or classes of employees that earn their compensation primarily from tips and wages
- Employees bear the burden for procedural requirements prior to obtaining paid sick leave, where foreseeable
ASSLA also includes a section that makes it unlawful for employers to discriminate or retaliate against employees who use paid sick leave. Violations of ASSLA are punishable by civil fines of up to $500 for a first offense, $750 for a second offense and $1,000 for a third or greater offense. Condominiums and cooperatives in the District of Columbia now need to comply with ASSLA to the extent that a condominium or cooperative has its own employees. Moreover, management companies and other service providers who provide site staff to condominiums and cooperatives in the District of Columbia also need to comply with ASSLA.
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Advocacy Highlights:

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

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

- Imposing mandatory property insurance coverage provided by each condominium unit owner, and authorizing the association to purchase coverage and to bill the cost of the coverage to those owners who do not comply with the provision
- Prohibiting all board member terms of office from exceeding one year without a revote of the membership to approve a term of no more then two years
- Prohibiting co-owners, in associations of more than 10 units, from being on the board at the same time, and enacts provisions requiring all candidates for the board to sign a statement certifying they have read and understand the condominium statute and association documents
• Requiring that the association’s auditors state that the reserve calculation will be adequate to pay for capital repairs in the future, as well as a requirement for an audit to be done at least every fourth year
• Prohibiting owners delinquent in their payment of association assessments from being board candidates
• Providing that any board member who becomes 90 days delinquent in the payment of association assessments is considered as having abandoned his/her position on the board
• Broadening improvements to the emergency powers available to the association’s board in the event of a declared disaster. Powers authorized include the ability to:
  - Conduct board and membership meetings with notice given as is practicable, even if the statute or documents would otherwise require greater notice
  - Name as assistant officers persons who are not directors and provide that these assistant officers shall have the same authority as the executive officers they assist during the state of emergency in the absence or incapacitation of any association officer
  - Implement a disaster plan before or immediately following the event for which a disaster has been declared, including, but not limited to, disabling elevators, electricity, air conditioners, water, sewer or security systems
  - Declare any portion of the condominium property unavailable for entry or occupancy to unit owners, family members, tenants, guests, agents or invitees to protect health, safety and welfare
  - Cancel and reschedule any association meeting
  - Require the evacuation of the condominium property in the event that the local authority issues an evacuation order
  - Mitigate further damage, including the ability to contract for debris removal, removal of wet drywall, insulation, carpet, cabinetry or other fixtures inside the units to prevent or mitigate the spread of mold, mildew or fungus
  - Contract, on behalf of an individual unit owner, for items or services for which the owners would ordinarily be responsible but which are necessary to prevent further damage to the condominium property. Some of these services could include the drying of units, the boarding up of broken windows or doors, the replacement of damaged air conditioners or air handlers to provide climate control in the units as well as to other portions of the property
  - Levy special assessments without a vote of the membership, even if a contrary provision requiring such approval exists in the condominium documents
  - To borrow money, without owner approval, and pledge association assets as collateral to fund emergency repairs and carry out the association’s duties when the operating funds are insufficient
  - In the event the association chooses to undertake these emergency services, the unit owner(s) benefiting are responsible for reimbursing the association for the actual costs of the items or services
Georgia

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Advocacy Highlights:

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

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

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

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

Rental Restrictions – HB 261 would have prevented an association from enforcing rental limitations against any owner who did not approve them.
Hawaii

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Advocacy Highlights:

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

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

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

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

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Advocacy Highlights:

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

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

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

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Advocacy Highlights:

On November 17, 2008, Maine was approved as CAI’s 30th LAC.
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Advocacy Highlights:

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

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

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

Solar Collectors – HB 117 provides that any restriction on use regarding land may not impose unreasonable limitations on the installation of a solar collector system. Essentially, solar panels will be allowed in any area under the exclusive use and control of the owner of the property, a situation very similar to satellite dishes.
**Liens after Foreclosures** – A MD-LAC initiative regarding payment of assessment liens after a lender foreclosure did not pass. HB 682 would have required the purchaser (other than the lender) to pay up to six months of assessments due prior to the foreclosure sale. If the lender purchased the property, that amount would be paid by the person who acquires the property from the lender. HB 682 does not establish a “priority lien” to be paid before the lender gets paid from the foreclosure sale proceeds, but the bankers’ trade association vigorously opposed the bill. The LAC intends to pursue this legislation in 2009.

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

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

**Transition Procedures** – The Division proposed, but did not see pass, HB 950 that would have required various procedures to be followed at the time of turnover of control to the homeowners.
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Advocacy Highlights:

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

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

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

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

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

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

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

LAC Members

David A. Cowan, CMCA, PCAM (Chair)
In Rhodes Management, Inc.

Mark F. Makower, Esq. (Vice-Chair)
Dickinson Wright, PLLC

Daniel A. Herriman, CMCA
Herriman & Associates, Inc.

Charles Hurton
Cross Creek Village of Rochester

Linda R. Strussione
Owens & Strussione, P.C.

Advocacy Highlights:

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

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

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

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

LAC Members

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John R. Dorgan, Attorney at Law

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Severson, Sheldon, Dougherty and Molenda

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BEI Exterior Maintenance Corporation

Jackie Fink, CIRMS
RJF Agencies, Inc.

Alice D. Finley, CMCA, AMS
Joel A. Hilgendorf, Esq.
Hellmuth & Johnson, PLLC

Russell Lis, CMCA
Community Development, Inc.

Gregory Pettersen, RS
Reserve Data Analysis

Larry Teien
Old Shakopee Park North Association

Advocacy Highlights:

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

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

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

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

Missouri

LAC Members

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Harper Pointe Homeowners Association

Brett Shelton (Vic-Chair)
Pro Pool Management & Service

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Ahlheim & Dorsey, LLC

Bill Guinther
Lake Sherwood Estates Assn.

Larry Reutter
Brentwood Forest Condominiums

Gary Rottler
Rottler Pest Control

Linda M. Schwepp
Community Managers Association, Inc

Michelle St. Cin, CMCA, AMS, PCAM
Metropolitan Management Services

Advocacy Highlights:

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

### LAC Members

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
<th>Company/Association</th>
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<tbody>
<tr>
<td>Donna Erwin, AMS, LSM, PCAM</td>
<td>Chair</td>
<td>Capital Consultants Management</td>
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<tr>
<td>Kay Dwyer</td>
<td>Vice-Chair</td>
<td>Sun City Anthem Community Association</td>
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<td>Sara E. Barry, CMCA, PCAM</td>
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<td>Wolf, Rifkin, Shapiro &amp; Schulman, LLP</td>
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<td>Mark Coolman, CIRMS</td>
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<td>Western Risk Insurance</td>
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<td>Elizabeth Shannon Day, CMCA</td>
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<td>Shannon Day Realty</td>
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<td>Mike Dixon</td>
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<td>Sun City Anthem Community Association</td>
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<tr>
<td>Judy Farrah, CMCA, LSM, PCAM</td>
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<td>Capital Consultants Management Corporation</td>
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<td>John E. Leach, Esq.</td>
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<td>Leach Johnson Song &amp; Gruchow</td>
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<td>Jan Porter</td>
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<td>Sagecreek HOA</td>
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<tr>
<td>Sheri Rios, CMCA, PCAM</td>
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<td>Summerlin North Community Association</td>
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<tr>
<td>Michael T. Schulman, Esq.</td>
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<td>Wolf, Rifkin, Shapiro &amp; Schulman, LLP</td>
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<tr>
<td>Pamela Scott, CMCA, PCAM</td>
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<td>The Howard Hughes Corporation</td>
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<td>David Stone</td>
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<td>Nevada Association Services, Inc.</td>
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<tr>
<td>Randel E. Walker</td>
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<td>Truckee Meadows Properties, Inc.</td>
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### Advocacy Highlights:

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

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

- **Section 5** of the legislation would prevent associations from enforcing traffic restrictions (like speeding) on association roads. This would create dangerous conditions for families and burden already stretched police resources.

- **Section 8.5** would allow individual homeowners to alter common association property. This provision would allow the state to take property that belongs to all association residents and give it to an individual. Although an individual would be given the right to alter property he/she did not own, all association residents would be liable for any resulting expense or damage from such alteration.

- **Section 23** would weaken reserve funding requirements by allowing associations to only fund reserves for any anticipated expense in the coming five years. This would weaken associations’ ability to plan for future common element replacement costs, and lead to either large special assessments or the deterioration of common elements in the future.
Section 28 would extend state government editorial control over association newsletters by requiring an association to publish any and all opposing views on any “issue of interest.” The association would be required to run all submissions, without exception or edits, at the expense of all homeowners.

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

LAC Members

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Cardiff Management, Inc.

Theresa M. Robinson, AMS  
Island Shores Estates C.A.

Christopher Snow  
HUB International New England, LLC

Advocacy Highlights:

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

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

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

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

**LAC Members**

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

Thomas C. Martin, Esq., *(Vice-Chair)*
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Greenbaum, Rowe, Smith, Davis, LLP

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Wentworth Group

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LeisureTowne Association, Inc.

Donald J. Moskowitz
Riviera at East Windsor

Ronald L. Perl, Esq.
Hill Wallack, LLP

Michael Pesce, PCAM
Community Management Company

Caroline Record, Esq.
Berman, Sauter, Record & Jardim, P.C.

Audrey Wisotsky, Esq.
Pepper Hamilton

**Advocacy Highlights:**

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

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

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

**Hydrant Fees** – AB 3114, introduced mid-Fall, would prohibit the imposition of standby fees or charges for certain fire protection systems (hydrants) by public and private water utility providers. The LAC supports the bill. If enacted, it would prohibit the imposition of these charges upon community associations. Many community associations pay separate and substantial hydrant water fees. These fees are not paid by the owners of single family homes that are not located within community associations, and instead are typically borne by the municipalities where applicable.
**Bed Bugs** – AB 3203, is the “bed bug” bill. As originally drafted, the bill would treat community associations as landlords. CAI is seeking amendments which would clarify responsibility for eradication and to impose this duty upon the unit owner in connection with unit infestation, and the association in connection with common area or common element infestation. This bill is receiving a significant amount of press and attention, and comments have already been provided to the bill’s sponsors outlining CAI’s position and concerns.

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

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

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

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

LAC Members

Robert H. Schwarting, PCAM (Co-Chair)  
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LMM Properties Enterprises

George Gati (Co-Chair)  
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Jean B. Kough, CMCA, AMS  
Clover Management

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Ronald S. Shubert, Esq.  
Phillips Lytle, LLP

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

Advocacy Highlights:

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

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

Taxation – SB 7727 and AB10730, relating to the taxation of property owned by a cooperative corporation, were held for committee consideration.

Tax Credit – The LAC also followed SB 1053-a and AB 1575-a, known as the “Circuit Breaker Bills” that would establish a personal income tax credit for a portion of a taxpayer’s residential real property taxes which exceeds a certain percentage of taxpayer’s household gross income for
taxpayers that have resided in the residence for not less than five years. This legislation did not pass before the session ended.

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

**Liens** – The LAC successfully supported AB 3677 regarding the collection of liens, but this legislation did not see much action.

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

LAC Members

John McInerney, AMS, LSM, PCAM (Chair)  
Talis Management Group, Inc.  
Henry W. Jones, Esq. (Vice-Chair)  
Jordan, Price, Wall, Gray & Jones  
Greg Asbelle  
North State Bank  
Robert H. Baer, Jr., CMCA, AMS, PCAM  
Investment Properties Management  
Samuel B. Franck, Esq.  
Ward and Smith, P.A.  
John Lawton, CMCA, PCAM  
HRW, Inc.  
Michael Wm. Shiflett  
John Stone, CMCA, AMS, PCAM  
Community Association Services, Inc

Advocacy Highlights:

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

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

**LAC Members**

- **James Dicks (Chair)**
  Regency Community Management Group, Inc.

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

- **James P. Case**
  The Case Bowen Company

- **Charles Dozer, CMCA**
  Towne Properties Managing Partner

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

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

- **Kelly D. Smith, CMCA**
  Complete Property Management Group

- **Charles T. Williams, Esq.**
  Charles T. Williams Law Office

**Advocacy Highlights:**
Oregon

LAC Members

Denise Bower, CMCA, AMS, PCAM (Chair)  Community Management, Inc.  John C. Herring  McNary Estates Homeowners Association

Cheryl Brendle, CMCA, PCAM  Community Management, Inc.  Barbara Kanz  Vial Fotheringham, LLP

Dr. Michael Burton  Park Place Homeowners Association  David T. Schwindt, CPA, RS  Schwindt & Company


Karna Gustafson, Esq.  Landye Bennett Blumstein LLP  Vial Fotheringham, LLP

Advocacy Highlights:

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

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

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

Association Rights – HB 2666, another LAC-supported measure effective June 11, 2007, includes technical and substantive amendments to the PCA and the Oregon Condominium Act (OCA). It conforms to OCA the right of an association to initiate or intervene in litigation or administrative proceedings if the association has maintenance or certain other responsibility for property individually owned by members of the association; revises the definition of common property to include property designated on the plat to be transferred to the association; and establishes default provisions that would apply when documents are silent (i.e., makes windows and unit access doors, except for glazing and screening, general common elements, unless the declaration provides otherwise). HB 2666 also provides that an association is responsible for the maintenance, repair and replacement of common elements and that cost is a common expense unless otherwise provided in the declaration or bylaws. It requires that a condominium declaration recorded on and after September 27, 2007, to include disclosure regarding square footage areas stated in the declaration and plat.
Depositing Assessments – SB 543 requires the association of planned communities and condominiums to deposit assessments in a federally insured account at a financial institution. Removes the previous requirement that the account be located within the state.
Pennsylvania

LAC Members

Stefan Richter, Esq. (Chair)  
Clemons Richter Walsh & Reiss, PC

Rhonda Mayer Huet, AMS  
CSK Management, Inc.

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

Paul A. Leodori, Esq.  
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Alan Dolge  
Traces of Lattimore Community Assoc.

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

Janet Heinis  
Knob Hill Homeowners Association

Edward E. McFalls  
Wooldridge Construction

Marianne C. Fein  
The Wentworth Group

Steven L. Sugarman, Esq.  
Steven L. Sugarman & Associates

Advocacy Highlights:

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

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

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

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

Unfair Trade Practices – The legislature also introduced HBs 538 and 977 that would have applied the provisions of the state’s Unfair Trade Practices Law to community associations. The LAC opposed adoption of these provisions, stating that the legislation would have a chilling effect on volunteer board member participation and impact the availability and cost to associations for insurance coverage. The legislation died in committee.
Sunshine Act Exceptions – HB 977 would also have applied elements of the state’s Sunshine Act to community associations. The LAC offered various amendments to the bill and developed a position statement. As noted above, the bill did not move past committee.
Rhode Island

LAC Members

Edmund Allcock, Esq. (Chair)  
Marcus, Errico, Emmer & Brooks, P.C.

Mark S. Einhorn, Esq.  
Marcus, Errico, Emmer & Brooks, P.C.

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Bilodeau Property Management Service

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Advocacy Highlights:

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

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

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

Trash Collections – HB 7609 would require municipalities to provide trash collection services to condominiums comparable to the services provided to single-family homes. Municipalities that fail to provide collection services to condominiums would be required to reimburse associations for the fees they pay private trash services. This bill was held for further study.
Unexercised Rights – HB 7514 would authorize community associations to claim and renew the expired development rights of a developer or declarant and sell them to another developer to complete unfinished construction. The bill would require the approval of 75 percent of the owners and deletes an existing provision requiring associations also to obtain the approval of all unit owners’ mortgagees. The bill was held for further study.

Insurance Coverage – SB 2593 delineates the responsibility of unit owners and condominium associations relating to obtaining property insurance. The bill was held for further study.
South Carolina

LAC Members

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

Michael R. Parades, PCAM (Vice-Chair)  
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John Thompson, CMCA, AMS, PCAM  
Seabrook Island Property Owners Association

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

Advocacy Highlights:

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

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

Concurrent to the LAC’s development of a Planned Community Act, an unrelated SB 1283 introduced a Homeowners Association Act in the Senate. The bill did not move beyond the committee level.
Tennessee

LAC Members

Alvin L. Harris, Esq. (Chair)
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Advocacy Highlights:


The Condominium Act has four major parts.

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

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

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

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

LAC Members

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Sienna Plantation Residential Association, Inc.
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Color Innovations Painting, LLC.

Advocacy Highlights:

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

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

LAC Members

Marla Mott-Smith (Chair) Ivy Terrace Condominium
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Michael Johnson, CMCA, AMS, PCAM FCS Community Management
Sabine Liedel, CMCA Community Archives, Inc.
Michael Miller, Esq. Vial Fotheringham, LLP
John D. Morris, Esq. McKay, Burton & Thurman
Derek A. Tarries, CMCA, AMS, PCAM Capital Consultants Management

Advocacy Highlights:

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

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

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

LAC Members

Deborah Mancoll Casey, Esq. (Chair) Vandeventer Black, LLP
Paul L. Orlando, Jr., CMCA, PCAM (Vice-Chair) Armstrong Management Services, Inc.
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Wendy W. Taylor, CMCA, AMS, LSM, PCAM South Riding Proprietary, Inc.

Advocacy Highlights:

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

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

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

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

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

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

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

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

*More details about this legislation may be found in CAI’s Manager Licensing resource area.*
Washington State

LAC Members

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Michael D. Brandt, Esq.  Brandt Law Group
John Coe, Esq.  The Coe Law Group, PLLC
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Shelley L Murray, CMCA, AMS  WPM South, LLC
Michael Padilla, Esq.  Law Offices of James L. Strichartz
Jeffrey Rodgers  Northgate Plaza Condominium
Jeremy Stilwell, Esq.  Barker Martin, P.S.
Jim Talaga, RS  Association Reserves- Washington, LLC

Advocacy Highlights:

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

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

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

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