



# 2012 ADVOCACY ACTIVITIES

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## *Federal and State Legislative and Regulatory Report*

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## Federal Issues

CAI's Government and Public Affairs Committee, alongside the Federal Legislative Action Committee, addressed a host of issues brought on by the continuing reformation of the mortgage and housing industry. In 2012, the industry saw sweeping changes in federally-backed mortgage guidelines in addition to the first bulk sale of Fannie Mae and Freddie Mac's Real Estate Owned (REO) portfolio.

To help CAI members understand such changes, we expanded the reach of the Mortgage Matters initiative in two key additional policy areas that are of concern to community associations. Information on the newly constituted Consumer Financial Protection Bureau (CFPB) was made available on CAI's website that explains the Bureau's authority and relevance to CAI members. CAI also expanded its advocacy regarding lender REO in community associations under the Mortgage Matters Initiative. Additionally, CAI's efforts in 2012 included:

### **Government-sponsored Enterprises Reform**

CAI submitted comments to the Federal Housing Finance Agency (FHFA) regarding the agency's proposed five-year strategic plan. CAI's comments urged the agency to view community associations as a separate housing market that requires additional study, and tailored policy responses by Fannie Mae and Freddie Mac to ensure these homeowners continue to have access to mortgage credit on fair and appropriately priced terms. CAI also cautioned FHFA against moving unilaterally to develop national mortgage underwriting standards, noting the Qualified Mortgage (QM) and Qualified Residential Mortgage (QRM) regulations have yet to be finalized. CAI also urged FHFA to move slowly on any plans to reshape the housing finance system, pointing out that there was no consensus within the market place or the federal government on the future of housing finance.

### **Real Estate Owned (REO)**

#### *Bulk Sales of Fannie Mae REO*

FHFA announced the sale of 699 housing units from Fannie Mae's real estate owned portfolio. This was the first of several planned bulk sales transactions for both Fannie Mae and Freddie Mac. In response, CAI developed materials to help communities work with investors purchasing foreclosure properties and will disseminate this information.

#### *Distressed Asset Stabilization Program*

FHA announced it was accelerating the sale of seriously delinquent mortgages to investors through the Distressed Asset Stabilization Program (DASP). Under the program, investors who purchase troubled loans must work with the borrower to avoid foreclosure and may not move to foreclose on a home within six months of acquiring the note.

CAI wrote the Federal Housing Administration (FHA) to urge that DASP transactions be tailored to account for the unique aspects of community associations. CAI recommended that FHA work with community associations to ensure that these communities remain fiscally strong and that investors are informed of property owner rights and responsibilities in a community association.

#### *Fannie Mae, Freddie Mac and FHFA on Short Sale Policies*

CAI reached out to Fannie Mae and Freddie Mac regarding incentive payments for subordinate lienholders in short sales. The companies will pay up to \$6,000 per property to incentivize subordinate lienholders to release their liens. CAI was concerned about association losses in short sales and arranged further conversations with Fannie Mae regarding this policy.

CAI wrote FHFA encouraging the agency to consider the community association housing model when establishing guidance for short sales. CAI expressed member frustration regarding the short sale process and inadequate compensation for association losses. CAI urged that FHFA require agents listing short sale properties are certified as short sale specialists. Additionally, CAI urged that FHFA take into consideration the unique aspects of community associations when establishing short sale policies.

#### *U.S. House Financial Services Subcommittee Hearing*

CAI testified before the U.S. House of Representatives Financial Services Subcommittee on Capital Markets and Government Sponsored Enterprises regarding the FHFA's Real Estate Owned (REO) to Rental pilot program. CAI was represented by Mr. Dick Pruess, the 2012 chair of the California Legislative Action Committee. Mr. Pruess was well received by the subcommittee members.

#### *National Foreclosure Settlement*

CAI wrote the U.S. Department of Justice, the Department of Housing and Urban Development, and the state attorneys general urging that the national foreclosure settlement include protections for community associations. CAI requested the settlement agreement include language directing servicers with REO in a community association to contact the association to settle outstanding assessment delinquencies and agree on a plan to ensure timely payment of future assessments. CAI also asked that the settlement include language directing servicers to notify a community association when the servicer opts to release the lien on a property and forego any future claim on the property.

#### **FHA Condominium Guidelines**

#### *Congressional Mortgage Matters Meetings*

CAI members continued to build on the success of the Mortgage Matters grassroots outreach program launched in 2011 by meeting with members of Congress from several. The meetings offered members and congressional staff access to CAI's member expertise on mortgage issues and increased the profile of CAI on Capitol Hill.

In January, the office of Sen. Mike Lee (R-UT) reached out to CAI for information and technical assistance to understand FHA's condominium guidelines in Mortgagee Letter 2011-22. CAI met with Sen. Lee's staff and continued to engage with the office on potential changes the Senator may request to FHA's condominium program requirements.

In Colorado, Rep. Ed Perlmutter(D-CO) reached out to CAI for assistance on FHA condominium guidelines and to share information as a partner in the effort to modify the guidelines. Staff from Rep. Perlmutter's office shared a response to a letter (drafted with CAI's assistance) written in response to FHA, which inquired about FHA's condominium program. Rep. Perlmutter's staff agreed with CAI that FHA's response did not appropriately address the concerns raised.

Working closely with CAI, Rep. Perlmutter wrote a strong letter to FHA expressing concerns about the agency's condominium project approval guidelines. Members of the Colorado Legislative Action team worked with Rep. Perlmutter's communications staff to publicize the congressman's letter, resulting in positive new coverage for CAI and Rep. Perlmutter.

In Virginia, LAC members conducted meetings with the offices of Sen. Mark Warner and U.S. Rep. Rigell discussing FHA's condominium project approval process. CAI members were well received at both meetings, with staff expressing an interest in working to address concerns about FHA's treatment of condominiums.

Additionally, Rep. Mike Fitzpatrick (R-PA) organized a joint letter working with Rep. Emmanuel Cleaver (D-MO) to FHA regarding the agency's condominium project approval standards. Led by CAI members in Pennsylvania, CAI discussed condominium project approval with Rep. Fitzpatrick and provided assistance to the congressman's staff in drafting the joint letter. Rep. Fitzpatrick and Cleaver were joined on the letter by 67 other House members.

### *Condominium Coalition Expands, Moves Toward Legislative Solution*

CAI's FHA condominium coalition, comprised of the National Association of Realtors (NAR) and the National Association of Home Builders (NAHB), welcomed the National Association of Housing Cooperatives to the group. CAI continued to seek out additional industry partners to advocate for revisions to FHA's condominium project approval guidelines. The condominium coalition considered legislative options to respond to FHA's slow pace of change on its condominium guidelines.

### **FHFA/FHA Private Transfer Fee Regulation**

In March, FHFA substantially altered its final rule to comply with CAI's numerous requests. These changes addressed all substantive concerns raised by CAI, exempting community associations with transfer fees in place before February 8, 2011, from the regulation while permitting continued transfer fee use by associations after this date. The FHFA final rule also contains important protections for association homeowners by ensuring that transfer fees benefit the property. This protection should halt transfer fees payments to third parties, such as the developer or investors, who have no interest in the property or provide no benefit to the property.

In May, CAI was joined by NAR, NAHB and the Institute of Real Estate Management in a joint letter to FHA, urging it to avoid creating a conflicting federal standard on transfer fees, by accepting a lender's compliance with FHFA's transfer fee regulation as compliance with FHA transfer fee standards.

## **Qualified Residential Mortgages (QRM)/Qualified Mortgages (QM)**

CAI joined nearly 30 housing and civil rights organizations to urge the Consumer Financial Protection Bureau (CFPB) to write a QM rule that does not needlessly restrict access to mortgage credit or make mortgages more expensive for borrowers. The letter urged the Bureau to ensure that credit is available to qualified borrowers and may be used to finance the purchase of all types of housing. CAI worked with the coalition to educate industry partners and federal regulators about the unique impacts of federal housing and mortgage regulations on community associations.

The CFPB reopened the QM proposal for additional comment in an attempt to collect further industry opinion regarding litigation risk associated with the rule. Under the Dodd Frank Act, violations of the QM rule trigger certain lender liabilities outlined in the Truth in Lending Act. The CFPB sought, among other things, information regarding actual lender liability as it considered whether or not to provide lenders a safe harbor (and greater level of protection for lenders) or a rebuttable presumption for cases where a borrower alleges that a lender violated QM requirements. CAI submitted comments regarding the potential liability associations incur when responding to lender questionnaires.

Subsequent to CFPB's action on the QM rule, other federal financial regulators involved in crafting the QRM rule told lawmakers during a Senate Banking Committee hearing that a final QRM rule would be delayed to accommodate the CFPB's reopening of the QM rule. This pushed a final regulation for QM and QRM into 2013.

## **HUD/FHA Seller Contributions Proposed Rule**

CAI submitted comments on a FHA proposal to limit seller contributions at FHA mortgage closings. In February 2012, FHA proposed to limit the total dollar amount of seller contributions for FHA loans to a maximum of three percent of the loan amount. FHA also proposed to prohibit sellers from offering to pay any amount of association assessments for buyers. CAI's letter voices support for limiting seller contributions for FHA-insured loans used to purchase certain high-priced homes. FHA loan data show a clear correlation between mortgage default rates and high dollar loans with substantial seller contributions. However, CAI strongly objected to FHA's proposal to prohibit seller payment of association assessments when a buyer uses FHA-insured mortgage financing.

FHA's initial proposal to limit total seller contributions was released in July 2010. This proposal did not mention that FHA was considering a change to the list of acceptable seller contributions. FHA's proposal in February 2012 was substantively different, as FHA announced it would prohibit association assessments as seller contributions. FHA offered no evidence this change would benefit buyers and sellers; nor did FHA show how the change would stop mortgage defaults.

CAI argued that FHA improperly expanded the scope of its rulemaking, offering residents of community associations only 30 days to consider the impact of prohibiting association assessment payments from buyers. FHA also failed to show any statistical evidence that prohibiting association assessments benefits buyers or taxpayers. CAI was supported in its comments by NAR and NAHB. Both organizations joined CAI in opposing the exclusion of sellers contributing association assessment payments as well as in questioning the benefits of the overall proposal.

## **FCC Announces Study on HAM Radio Towers/Antenna in Community Associations**

The Federal Communications Commission (FCC) announced a study on covenants, conditions and restrictions (CC&Rs) that impede the installation of amateur (HAM) radio towers and antenna. The FCC sought public input on the study and requested comment on questions about the role of HAM radio towers in disaster response and how antenna restrictions in CC&Rs may impede the federal response to national emergencies.

The FCC study was required by the Middle Class Tax Relief and Job Creation Act of 2012. In addition to the study, the FCC developed recommendations on the voluntary deployment of HAM radio operators in national emergencies and identified “unreasonable or unnecessary” private land-use restrictions on HAM radio antenna installation. The study and the required recommendations were forwarded to the U.S. Senate Commerce Committee and the U.S. House Committee on Energy and Commerce.

CAI submitted comments to the FCC objecting to the study and encouraged the Commission to continue its long-standing position that CC&Rs are private contractual obligations that may not be set aside by the Commission.

*For more information on these and future efforts, go online to [www.caionline.org](http://www.caionline.org) and look under our Issues and Advocacy section.*

## Alabama

### LAC Delegates

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### Advocacy Highlights

**Task Force on Homeowners Associations**-The legislature passed [HJR 28](#) in order to form a task force to study all facets of homeowners associations, which included the possible enactment of legislation. Members of the LAC served on the task force, which investigated topics such as owner disclosure, manager licensing and revitalizing the condominium act. The task force was disbanded.

**Homeowners Bill of Rights**-The legislature enacted [HB 166](#), titled the Alabama Homeowners Bill of Rights Act. Insurance carriers are now required to provide homeowner policyholders with an outline of policy coverage and a standard checklist of policy contents, within 30 days after issuance of the policy under separate cover, or included in the policy when issued or mailed. Additionally, insurers are required to provide policyholders specific rights regarding pricing, advertising, financial assurances, readable policies, balanced regulation by the Department of Insurance, inquiring about licensing status insurance personnel of insurance personnel, cancellation rights, timely claim payment, receiving copies of reports relating to claim estimates, filing complaints, fair treatment, and rejection of settlement offers. Insurers who violate the bill's provisions may be subject to suspension or revocation of their certificate of authority and/or administrative fines which could offset any expenses incurred by the Department. Further, this bill allows policy holders to cancel their policies and receive a refund for any unearned premium.

## Arizona

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### Advocacy Highlights

**Construction Review**-With respect to planned communities, [SB 1476](#) sets forth new guidelines for architectural committee composition, architectural security deposits and the construction review process. Originally, this bill mandated that HOA declarations may only be amended by a vote from the HOA membership, and HOA committee members must be elected to office during an election that is open to all HOA members. However, those two provisions were deleted. The final version that was signed by the governor, and stated that in planned communities at least one member of the Board of Directors shall serve as the Chairperson of the Architectural Review Committee. Also, if an HOA requires

a member to pay a security deposit to secure a construction project's completion or compliance with approved plans, the deposit must be placed in an escrow account that meets specified requirements. An HOA must also provide for at least two on-site formal reviews during construction to determine compliance with approved plans.

**Public Roadways**-An issue that seems to surface every year is the limiting of an HOA's authority to restrict parking on public streets. This year, a problematic bill was introduced in both the House and the Senate. [HB 2030](#) stated that after the period of declarant control, an HOA has no authority over and cannot regulate any public roadway. Thankfully, the Senate version never went anywhere and the House Bill failed in the Final Read.

**Election Procedures**-[HB 2160](#) would have established requirements for homeowners and condo association elections, including requiring secret balloting, allowing candidates to designate an observer to witness tallying, and prohibiting HOA boards from including endorsements in any office materials. While the bill had some best practices that we supported, it contained a provision where violations would have been a Class 1 misdemeanor. It failed on the Senate Third Read.

**Nonprofit Corporation**-[HB 2764](#) provided that beginning January 1, 2013, HOAs would have been required to register with the Secretary of State instead of record information with the County Recorder. The Secretary of State would be authorized to charge a fee to HOA registrants. Beginning March 1, 2013, the Secretary of State would be required to post HOA information online. As session law, the Secretary of State would be required to solicit proposals to provide for the establishment of an HOA registry operated by a nonprofit corporation meeting specified requirements. This bill was vetoed by the Governor because HOAs already register with the county offices.

**Community Ombudsman**-[SB 1222](#) would have required HOAs to have an ombudsman elected in the same manner as other members of the HOA board. The ombudsman is a unit owner who serves as an impartial decision maker in resolving disputes between the board and one or more unit owners. The bill failed on the Senate Third Read.

## California

### LAC Members

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### Advocacy Highlights

**Transfer Fees-[AB 771](#)**, as introduced, would have prohibited a third party disclosure company from earning any profit. After the bill was amended, it required HOAs to disclose transfer fees to third party disclosure companies in order to protect those companies from possibly going out of business. As

amended, new disclosure requirements were imposed and as such, little adverse financial impact would result for the companies. Initially the LAC opposed the bill but after the final draft was submitted the LAC decided to support it. It passed the Legislature and was signed into law.

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

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

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

**Delinquent Assessments-**[SB 561](#) required payments for delinquent assessments to be made first to the association and then towards collection costs. HOAs would effectively have to pay collection costs and might not have been able to collect late payments. The LAC strongly opposed the bill, which eventually was struck by a non-germane amendment.

**Electric Vehicle Charging Stations-**[SB 209](#) was modeled after the Hawaii law, but the measure was fraught with problematic language regarding common areas, exclusive use areas, costs to install and operate, and liability. The LAC was successful in making significant amendments to the measure. The bill was signed and became effective January 1, 2012.

[SB 880](#) was an urgency follow up measure that the LAC used to further correct deficiencies in SB 209; as such it is in effect now.

**HOA Solvency and Real Estate Transparency Act-**[AB 2273](#) was sponsored by the California LAC and the Conference of County Bar Associations. As signed into law, it requires, for the first time, foreclosing parties to record the sale within 30 days. It further requires them to notify the HOA that they own the property and their mailing addresses within 15 days of the sale, provided that the HOA recorded a Request for Notification prior to the Notice of Default on the property being served. (Previously, the foreclosing party needed to provide this information within 30 days of property sale recordation which, as the LAC documented, was not happening for more than three years.) The LAC created a coalition of supporters-including realtors, developers, seniors, CA League of Cities-and its grassroots campaign resulted in more than 2,500 letters of support. With this combined support, the lobbying effort overcame the vigorous opposition of the lending community, trustees, land title companies and mortgage brokers. This new law will greatly assist associations in timely collecting assessments and remaining solvent, as well as requiring real estate transaction transparency. AB 2273 becomes effective January 1, 2013.

**Transfer Fees-**[AB 1838](#) ultimately, after numerous controversial amendments, became a bill that requires a ten point font in transfer fee notifications and also disallows document providers from collecting fees for services and documents they did not provide or which were no longer requested. The LAC supported the measure, which was signed into law and will go into effect January 1, 2013.

**Rewrite of the HOA Governance Laws-**[AB 805](#) and [AB 806](#), are two bills that were written over the course of five years by the Law Revision Commission, and received with the considerable input from the LAC. The bills are intended to make the Davis-Stirling Act more readable and consistent. LAC supported the bills, which were signed into law and will become effective on January 1, 2014, to allow time for everyone to become accustomed to the new statutory formatting. A follow up measure is expected in 2013 to clarify terms and other non-controversial substantive changes that the bills made.

**Swimming Pools-**[SB 2114](#) specified anti-entrapment devices for public pools, including association pools. The LAC secured amendments to the measure in order to remain neutral. The law takes effect January 1, 2013.

**Blight Prevention-**[AB 2314](#) extends the sunset date indefinitely for local agencies to be able to fine owners who fail to maintain their property and are creating a public nuisance. The CA Attorney General was the sponsor. LAC supported the measure as a companion to its own AB 2273, above. The bill was signed and will take effect on January 1, 2013.

**Private Investigators' Access-** [AB 1720](#) allows private investigators through the gates when they are acting as a process server and produce evidence of their license, as well as authorization to act as a process server. The law takes effect January 1, 2013.

## Colorado

### LAC Member

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### Advocacy Highlights

**Records-[HB 1237](#)** addresses record keeping and records inspection to clarify existing law, provide that deliberations and votes for actions taken outside a meeting must be kept and allowed to be inspected, and provides for reasonable charges (for labor and material) to be assessed for copying. The bill is based on recommendations of a commission on uniform state laws, and responds to complaints filed at the HOA Information Office and concerns of owners and legislators. CLA was instrumental in advocating for HOA interests on this bill, and supported the measure because existing law on records was not clear enough.

**Notaries Public**-[HB 1274](#) modifies the Secretary of State's regulation on notaries public by disallowing the use of a seal embosser, allowing electronic filing for applications and renewals, clarifying the disciplinary and non-disciplinary actions that may be taken. The LAC monitored this bill which passed into law.

**Roofing Contractors**-[SB 38](#) protects consumers who hire roofing contractors by requiring contractors to sign a written contract with the consumer detailing the scope of services and materials, the approximate dates of service, the cost, the contractor's contact information, and the identification of the roofing contractor's surety and liability coverage insurer and their contact information. The LAC monitored the bill which passed into law.

**Timeshare Resales**-[HB 1116](#) required entities that provide timeshare resale services to disclose certain information to the owner of the resale time share and makes failure to disclose a deceptive trade practice. The bill also defined certain activities in the advertisement or sale of a time share or the provision of a resale time share service. The LAC monitored the bill which failed upon adjournment.

**Manager Licensing**-The LAC decided not to pursue a bill concerning manager licensing this year after the state regulatory agency concluded through a sunrise review that the best course of action is to regulate management companies, not managers. The legislature may bring the issue up for review in 2013.

## Connecticut

### LAC Members

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Robert Gourley  
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Joe Corlis  
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Richard E. Mellin  
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### Advocacy Highlights

**Manager Licensing**-The Connecticut Chapter applauded the legislature for passing [HB 5536](#), an act which provides for community association manager certification, long favored by CAI-CT. This bill promotes and requires that these professionals be certified with the National Board of Certification for Community Association Managers (NBC-CAM). The key features of the act require managers to: complete a criminal records check, the complete a community association management course and pass the NBC-CAM exam; and for realtors, upon license renewal, to submit proof of continuing education including, but not limited to, practices and laws concerning common interest communities.

**Budget and Special Assessments**-The chapter had many challenges with [HB 5511](#), an act concerning HOA budgets, special assessments and assignment of a future income approval process in common interest communities. The initial versions of this bill would have made it much more difficult for associations to obtain unit owner ratification for budgets. The chapter worked with the bill's sponsor to limit the bill to affect only associations over the size of 2,480 units, of which there is only one in the state. Although the bill was passed by both the House and Senate, it was vetoed by the governor.

## District of Columbia

### LAC Members

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### Advocacy Highlights

On October 4, 2011, D.C. Councilmembers Mary Cheh, D-Ward 3, and Michael Brown, At Large, introduced legislation before the council to amend the D.C. Condominium Act. The proposed legislation, which has been assigned bill number [B19-0509](#), results from the LAC's efforts and cooperation with Cheh and Brown and their staffs. The bill has been referred to the Committee on Housing and Workforce Development, which is chaired by Brown.

The LAC has been re-examining the portion of the bill that focuses on amendments to the insurance section of the Condominium Act. Recently, the LAC approved a revision to the bill, which the LAC asked the co-sponsors to facilitate. Specifically, the new insurance provision, if passed, will amend § 42-1903.10, to do the following:

- Require unit owners to obtain condominium owner's insurance coverage with dwelling property coverage—whether residential or commercial—at a minimum of \$10,000, and condominium owner personal liability insurance coverage at a minimum of \$300,000 or such other amount as may be determined by the executive board.
- Unless the bylaws provide otherwise, if the cause of any damage to or destruction of any portion of the condominium originates from the common elements, the association's property insurance deductible is a common expense. If the bylaws do not indicate who shall be responsible for payment of any such deductible amount, if the cause of any damage to or destruction of any portion of the condominium originates from a unit, the unit owner is responsible for the association's property insurance deductible not to exceed \$5,000. If the owner is responsible for the association's property insurance deductible or an uncovered loss up to \$5,000, such amount shall be an assessment against the owner's unit.

In addition, the proposed amendments to the Condominium Act will do the following if passed by the D.C. Council:

- Adopt the business judgment rule to govern decisions of the board of directors, rather than the reasonableness standard currently applied by the D.C. Court of Appeals. Currently, district common law imposes a reasonableness standard to review the decisions of a condominium's board of directors.
- Make technical amendments to permit the relocation of unit boundaries and subdivision of units unless prohibited by the association's condominium instruments.
- Change the process for amending the condominium instruments by providing mortgagees with 60 days to respond to a notice of a proposed amendment to the condominium instruments. Any failure to respond within 60 days will be deemed consent with the proposed amendment.
- Require all board meetings to be open to members in good standing.
- Permit board meeting notice to be delivered electronically.
- Require minutes of board meetings to be reviewable by the members and provide members with the right to examine association minutes upon a written request and five days' notice.
- Require that a copy of the agenda be made available for review by members prior to a board meeting.
- Allow board members to participate in board meetings by teleconference.
- Create a right for the board to enter executive session for certain purposes.
- Create an open forum section during each board meeting.
- Permit ballots and proxies to be submitted electronically.
- Provide certain clarifications regarding the association's right to specially assess benefited members for costs of maintaining limited common elements.
- Permit condominium boards to pledge as collateral for a loan or otherwise assign the association's assessment income unless prohibited by the condominium instruments.
- Amend the statute's lien section to specify that the lien includes late fees, interest, expenses and attorney fees, and clarify that the super priority of the association's lien extends back six months from the date of recordation of a memorandum of lien or filing of suit.
- Clarify the association's power to convey title upon nonjudicial foreclosure.
- Require the association to maintain financial books and records subject to the unit owner's right to examination, except certain confidential documents that may be excluded from review by unit owners.
- Require the declarant to record with the condominium instruments an affidavit reflecting that the warranty bond has been posted in an amount equal to 10 percent of the construction costs of the condominium building.

The LAC believes the council will pass the bill, which is expected to significantly improve the state of condominium law in the District of Columbia.

## Florida

### FLA Members

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### Advocacy Highlights

**Sovereignty Submerged Lands** - [HB13/SB88](#) address the issue the Florida Legislative Alliance (FLA) has been working on, which was initiated via concerns raised by the CAI Suncoast Chapter to FLA in 2010. FLA's first two attempts to pass the bill failed. This legislation begins to create fairness, parity between commercial residential dock owners and single family dock owners. Currently, the state's sovereign submerged land lease program treats commercial residential as commercial, profit-generating property such as marinas, resorts, etc. FLA was successful in passing this bill and it received governor approval.

**Mortgage Foreclosure Proceedings** - The most important legislation for community associations are the Mortgage Foreclosure Proceedings bills. For the first time, associations would be able to use the Order to Show Cause provisions currently available only to first mortgage holders. Cases that are now taking 24-36 months could be completed in nine or ten. Consumers win by reducing the amount of time to receive a final judgment. Also, an expedited process is created for abandoned property. FLA combined [HB 213](#) and [HB 1149](#) and passed them as [213](#) out of the House the last week of February. There was a special meeting called the last week in February of the Senate Banking and Insurance Committee to hear only one bill, [SB 1890](#), to get it out of committee. The bill was to be heard on the Senate Floor. The FLA tried to get the legislature to just take up the House Bill and send it to the Governor the last week of the session. This was a major accomplishment; however, the legislation did not pass. The FLA lobbyist redrafted it as an amendment in the Senate onto [HB 671](#), a lien bill which the Real Property Section of the State Bar has been working on for three years, and the Senate and House sponsors gave the FLA permission to try this approach. [SB 670/HB 671](#) was not brought up either and they died on the Special Order calendar.

**Community Association Omnibus Bill** - [HB 319/SB 680](#) passed the House during the last week of March with a vote of 114-1. There was only one contentious issue, and that was the clarification of the 20 year old Safe Harbor provision which Florida is one of only a handful of states (6) to have. One bill ([HB 319](#)) clarified the provision to say that the current safe harbor does not include attorney fees, interest, late fees and costs and the companion bill ([SB 680](#)) said it does. On the one side HB 319 was supported by virtually every legal practitioner, the Real Property Section of the State Bar, all the banks, lenders, realtors, title insurers, and association advocacy groups, and opposed by collection firms. Before the session started, the FLA provided the bills' sponsors a written document outlining CAI's concerns about the other provisions in the bill and a separate document requesting additions to the bills. Because this was the only viable vehicle to get the additional issues accomplished and because HB 319 made "one side" happy and SB 680 "the other side" happy, FLA figured that one conflicting section would get resolved or removed. FLA's lobbyist turned in an appearance card in support of the bill at the very first committee meeting. Again, the original filed version of HB 319, which was heard at that pre-session committee meeting, did not have the safe harbor language in it that a few collection firms oppose. Since then, FLA did not testify in support or opposition to either of the approaches. That decision was made due to the fact that CAI has members on both sides of the issue. Since we are seen as an association resource, we were asked by legislative staff and members to explain the intricacies and history of the safe harbor provisions so they can make informed decisions and to maintain relevance while in the middle. There are issues in both bills, such as elevator retrofitting, election modifications, which are helpful to associations and were not controversial which we did point out. The bills failed upon adjournment.

**Implied Warranty Liability** - [HB 1013/SB 1196](#) were harmful bills which remove implied warranty liability from developers. The FLA was successful in removing condos and co-ops from the bills but HOAs remained. This bad legislation did pass. The FLA led a veto campaign, which was unsuccessful.

**Resale of Timeshares**-The legislature, with FLA's administrative help, passed [HB 1001/SB 1408](#). The bills require the full and fair disclosure of terms, conditions and services offered by timeshare resale service providers. The FLA was successful in passing this bill.

**Management Collections**-The FLA had a difficult time in getting management collection language to stick in [HB 517/SB 762](#). The Department of Business and Professional Regulation (department) went back and forth in opposing the language because it felt the language would kill the bill due to House opposition. A strike all amendment was drafted to SB 762 to take the language, but FLA kept working the Senate to support an amendment to keep the language in the bill. The language provided that the reasonable collection costs incurred by an association via the use of their licensed manager or management firm can be included in their claim of lien if part of the written management agreement. Due to intense opposition from realtors, the department, and the chambers the amendment was not sponsored. The bills were enacted without FLA's amendment.

## Georgia

### LAC Members

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### Advocacy Highlights

**Declarant Turnover**-[SB 136](#) passed the legislature this session and became law on July 1, 2012. This new law amends the Georgia Condominium Act to provide a mechanism for condominium owners to take control of their association if the declarant fails to do any of the following: (1) incorporate the association; (2) cause the board of directors to be duly appointed and the officers to be elected; (3) maintain and make available to owners, upon request, a list of the names and business or home addresses of the association's current directors and officers; (4) call association member meetings in accordance with the bylaws and at least annually; or (5) prepare an annual operating budget and establish the annual assessment, and distribute the budget and assessment notices to the owners no later than 30 days after the beginning of the association's fiscal year. The LAC believes this new law will empower owners in condominiums whose developers have abandoned the property to more easily take control and begin operating their associations.

**Duration of Covenants**-[HB 728](#) passed the legislature this session and became law on July 1, 2012. This new law amends Georgia Code Section 44-5-60 to provide that covenants adopted prior to a county adopting zoning ordinances may continue in accordance with the duration provision of the recorded declaration if the later adopted zoning ordinances approve such continuation. This bill will not likely have broad application, but the new law clarifies and corrects vagaries in the law and will benefit at least one large-scale community in Ellijay, GA, which has been a big supporter of CAI and the LAC.

**Foreclosure Registry**-[HB 110](#) passed the legislature this session and became law on July 1, 2012. This new law amends Georgia Code Section 44-14-14 to provide procedures for counties and cities to follow to maintain registries for foreclosed and vacant properties. The law does not force counties and cities to institute foreclosure registries, but provides requirements to do so should they choose to establish such a registry. The purpose of such a registry is to identify responsible parties that can be held accountable for properly maintaining foreclosed properties in order to minimize the adverse impact on communities in which they are located. Hopefully, this new law will enable community associations to obtain much needed information on the owners of foreclosed properties.

**For Sale Signs**-[HB 1182](#) proposed to amend the Georgia Condominium Act to prohibit condominium associations from restricting for sale signs from being displayed within any individual units. The LAC opposed this bill and it never made it out of committee.

**Homeowners' Solar Bill of Rights**-[HB 961](#) proposed to adopt a Homeowners' Solar Bill of Rights for homeowner associations in Georgia. The bill proposed to prohibit associations from restricting solar energy devices on individual owner's properties except in limited circumstances. This bill was narrowly defeated on the House floor and the LAC expects that it will be reintroduced next year. If so, the LAC intends to work with the sponsors to ensure that the common interests of communities are protected, as well as individual owner's rights to utilize solar energy.

**Priority Lien**-The GA LAC continued with its effort to adopt a Georgia priority lien for the benefit of Georgia's condominiums and property owners associations after foreclosures. [SB 479](#) was introduced during this second year of a two-year session. SB 479 would have amended the Georgia Condominium Act and the Georgia Property Owners' Association Act to expressly provide that an association's assessment lien is superior to the lien of any mortgage in an amount equal to half of the common expense assessments that came due during the 12 months immediately preceding the date of the foreclosure, or six months of assessments for condominiums. SB 479 was heard by the Georgia Senate Judiciary Committee in early March but no vote was taken on the bill. There was substantial opposition from the banking lobby and realtors. Georgia House Judiciary Committee Chair, Wendell Willard, agreed to hold a Study Committee after the session to bring all constituencies interested in the bill together and, hopefully, reach a compromise. The LAC has engaged its lobbyist for another full scale effort for the 2013 session and is already reaching out for alliances and support to make a final push for a Georgia super lien bill. With the support of a full-scale lobbyist and early planning, the LAC is optimistic that final passage will be achieved in 2013.

**Transfer Fees**-[HB 129](#) proposed to prohibit any type of private transfer fees upon conveyance of real property in Georgia. The LAC spent considerable time working with the sponsors of the bill, the Georgia Real Property Law Bar, to carve out transfer fees provided for in governing declarations for Georgia's condominiums and property owners associations. The proposed legislation provided express exclusion for fees paid to communities formed pursuant to the Georgia Condominium Act, the Georgia Property Owners' Association Act and Georgia common law homeowner associations. However, the bill retained language that would have prohibited all association transfer fees after a foreclosure, which the LAC opposed. For the second year in a row, politicking by other interest groups slowed down this bill and,

while it passed the Georgia Senate on the last day of the session, it never made it to a vote in the House. The LAC expects for a similar bill to be re-introduced in 2013.

## Hawaii

### LAC Members

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### Advocacy Highlights

**Foreclosures**-The most significant legislation affecting associations in 2012 was [HB 1875](#), which further revised and overhauled foreclosure law. Act 48, enacted in 2011, began the process of substantial revision. Serious challenges to association autonomy were largely overcome, and now both condominiums and planned community associations have a distinct non-judicial foreclosure process. Associations have been spared from some of the burdensome foreclosure requirements imposed on mortgagees.

**Transient Accommodations**-[HB 2078](#) provides associations are obliged to report the transient vacation rental activities of owners to tax authorities, based on the legislature's perspective that some owners do not pay relevant taxes. This measure was enacted without the governor's signature. The LAC will seek amendments to the law in 2013, since the onerous provisions emerged in conference committee and deficiencies have since been recognized.

**Metering of Utilities**-[HB 1746](#) applies requirement for separate utility metering of nonresidential and residential condominium units to all condominium projects, regardless of when constructed. Now boards are more clearly authorized to install submeters and to charge owners for actual utility usage, without owner approval.

## Illinois

### LAC Members

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### Advocacy Highlights

**Manager Licensing Fees-[HB 3202](#)** amends the Community Association Manager Licensing and Disciplinary Act, providing that all community associations that have 10 or more units, have a paid community association manager and are not master associations, shall pay the Department of Financial and Professional Regulation \$50 annually plus an additional \$1 per unit, not to exceed an annual fee of \$1,000. LAC members actively negotiated and drafted the language for the bill. The bill introduces cost limitations and financial review of the licensing program. It was signed into law and made immediately effective.

**Lake Associations-[SB 3572](#)** amends the Common Interest Community Association Act (CICAA) and contains minor changes to accommodate investment/vacation properties, mostly outside of Cook County. LAC members actively negotiated and drafted the language for the bill. It was signed into law and made immediately effective.

**Day Care-[HB 5513](#)** as proposed would have amended the Illinois Common Interest Community Association Act and would have allowed licensed day care centers to be permitted within community associations (not condominium associations), even if an association prohibited businesses from operating within a community association. This bill would have created a contingent insurance liability exposure that was not contemplated by an association's insurance and would have consequently increased a community association's insurance premium. The LAC opposed this bill, which was sent back to the Rules Committee.

**Smoking Ban in Private Units-**[HB 4134](#) as proposed would have amended the Illinois Condominium Property Act to allow a condominium association to amend its bylaws to prohibit smoking in units. This bill was sent back to the Rules Committee. However, this bill may be re-introduced in the future since there is a trend in other states to introduce similar bills due to the known adverse affects of second-hand smoke which are imposed on other residents within a condominium association. The LAC supported this bill.

**Proxy Voting-**[HB 3979/4438](#) as proposed would have amended the Illinois Condominium Property Act and required that a unit owner must vote by mail-in ballot and may not vote by proxy in a board officer election. The wording of this bill was incomplete and sent back to the Rules Committee. The LAC was neutral on this bill.

**Waiver of Reserve Requirement-**[SB 2817](#) as proposed would have amended the Illinois Condominium Property Act and deleted the provision requiring that an association's waiver of reserve requirements for capital expenditures and deferred maintenance be disclosed by the association. This bill also deleted the provision that members of the board of managers and the managing agent of an association were not liable for the lack or inadequacy of reserve funds in the association budget, and no cause of action may be brought against them for damages for the lack or inadequacy of reserve funds. If the above two provisions were removed, then it appears that a board of members and the association's managing agent may be liable for the lack or inadequacy of reserve funds. The LAC opposed this bill, which was sent back to Assignments.

# Kentucky

## LAC Members

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Patrick Hohman

## Advocacy Highlights

**Uniform Condominium Act Revision**-The LAC took a leadership role during the interim and worked with a multi-industry task force in reviewing and revising the 2010 Condominium Act. Representatives from the Kentucky Homebuilders Association, Kentucky Association of Realtors, Kentucky Bar Association, Kentucky Association of Certified Public Accountants, mortgage and banking industry, Kentucky Real Estate Commission, insurance industry, and community volunteers all participated with members from the Kentucky CAI Chapter and LAC.

[HB433](#), which was signed into Law on April 12, 2012, contained numerous significant changes including:

- A full revision of the resale certificate and clarification on the application of the certificate;
- Establish standards for the independent financial review of a condominium's annual finances;
- Define standards of conduct for association directors and officers that parallel Kentucky's Not-for-profit Corporations Act;
- Many technical corrections and clarifications.

**Deeds in Lieu of Foreclosure**-[HB 62](#) sought to amend KRS 381.110 to add a requirement for mortgage holders to file deeds obtained in lieu of foreclosure within 75 days of taking ownership. The LAC supported passage of this bill, which became law on July 1, 2012

**Expedited Process for Foreclosure on Vacant or Abandoned Property**-[HB 396](#) establishes a new provision requiring the master commissioner sale to be held within 70 days from the legal filing for foreclosure of any lien on all vacant and abandoned property. The bill establishes criteria for determining vacant or abandoned property, including lack of active utilities, overgrown vegetation or property damage. The LAC supported passage of this bill, which became law on July 1, 2012

**"Cooper's Playhouse"**-[HB 160](#) sought to prohibit HOAs from enforcing deed restrictions in a situation where a disabled child under the age of 13 required an enclosed structure for therapy. The bill also included amendments that prohibited HOAs from enforcing restrictions against flagpoles and the removal of all signs and banners displayed on an owner's lot. The LAC worked with the original bill sponsor to improve the language in an effort to provide HOA boards with some protection to enforce their deed restrictions. The bill failed to clear the house.

## Maine

### LAC Members

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### Advocacy Highlights

**Priority Lien**-In 2011, the LAC tried to win approval of a priority lien for community associations, but the bank opposition defeated that effort. The 2012 session was the second year of the biennium, so the legislature's focus was on the state's budget. No controversial issues for the community association industry were raised, so there are no legislative activities to report. The LAC will try again in 2013 to make the case for the priority lien.

## Maryland

### LAC Members

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### Advocacy Highlights

The LAC of CAI studied over seventy-five bills introduced in 2012. Of these bills, thirty-five were monitored to ensure nothing got added by amendment that would warrant the LAC taking a position. Initially, nine bills deemed harmful to common ownership communities in Maryland were actively opposed, seventeen beneficial bills were supported in whole or in part, and two of these were so dramatically, and negatively, changed by amendment that the LAC expended significant effort to defeat the changed bills after initially supporting them.

The LAC has asked associations to contribute funds to pay for the advocacy that the LAC does on behalf of common ownership communities. These funds are used to pay for lobbyists who are a vital part of the LAC team. The main effort has been to ask managers to encourage associations to contribute \$1 for each unit. We have had modest success in doing this.

**Right of Entry to Investigate Damage and Make Repairs**-The LAC asked Delegate Pamela Beidle to introduce legislation ([HB 126](#)) to authorize a council of unit owners to enter a condominium to investigate damage and make repairs, as the law only authorized entry to make repairs. The final version of the bill states the council shall have an irrevocable right and an easement to enter units to investigate damage or make repairs when the investigation or repairs reasonably appear necessary for public safety

or to prevent damage to other portions of the condominium. The bill passed and became effective October 1.

**Manager Licensing**-Over the past four sessions of the General Assembly, several bills have been introduced to require managers of common interest ownership communities to be licensed. The LAC, in an effort to have a positive influence on the ongoing deluge of licensing legislation, engaged with key members of the committees to shape the legislation so that it would be in line with CAI's public policy and not be a burden on managers or associations should the legislature pass the legislation. The Maryland Common Interest Community Managers Act ([HB 433/SB 372](#)) was introduced this year by Delegate Beidle and Senator Delores Kelley. The legislation would have established a State Board of Common Interest Community Managers, on which a majority of the members would be managers, to administer a program of licensing. The Department of Labor, Licensing, and Regulation (DLLR) supported the legislation and helped draft favorable amendments. In an effort to keep the cost of the licensing at a reasonable level should this be enacted, the LAC supported a proposal whereby Maryland associations would be required to register annually and pay a nominal and capped registration fee. The projected licensing fee (if the legislation had passed) for individual managers was substantially reduced from previous estimates. SB372 received an unfavorable report from the Senate Judicial Proceedings Committee, and HB433 was subsequently withdrawn.

The LAC works to inform, seek input from, and urge advocacy for members of the Chesapeake Region Chapter and the Washington Metropolitan Chapter by providing email updates, speakers on legislative issues at Expos, and end-of-session reports for publication. These efforts were particularly important in dealing with manager licensing legislation because the LAC found there was a lot of misunderstanding and misinformation about the LAC's position and what the legislation would accomplish. We anticipate the need for these efforts to continue if the legislation is re-introduced next year. In addition to this outreach, the LAC held several discussions with the Prince George's County Office of Common Ownership Communities to find common ground on manager licensing and most likely will continue this dialogue next session.

**Dispute Settlement Mechanism** - Two bills supported by LAC that would extend the dispute settlement mechanism to HOAs ([HB 76/SB 184](#)) were introduced. SB184 received an unfavorable report in the Senate, but an amended HB76 bill passed the House of Delegates on March 8, and subsequently met the same fate as SB184.

**Foreclosure of Certain Liens Prohibited** – [SB 78](#) would have altered the order in which payments are recorded, and might have prevented associations from being repaid legal fees and collection costs in collecting past due assessments. It was vigorously opposed by LAC, but passed in the Senate. The House version ([HB 77](#)) was given an unfavorable report, and the Senate version was also reported unfavorably by the House Environmental Matters Committee.

**Notice to Lot Owners**-The LAC supported a bill ([HB 155](#)) to require HOA boards to send proposed rules to all lot owners and hold a hearing at which owners could comment before adopting and enforcing a rule. The bill was given an unfavorable report by the Committee.

**Claims Provisions**-The LAC originally supported [HB 740/SB 725](#), which made it illegal for any provision of a declaration, bylaw, contract for a unit sale, or any other instrument that purports to shorten the statute of limitations for specified claims; purports to waive the application of a specified accrual date for specified claims; operates to prevent the filing of a lawsuit or other proceeding within an applicable

statute of limitations, or requires the assertion of a claim within a shorter time period than applicable. This bill was passed by the Senate, and a subsequent amendment was added by the House subcommittee, which changed the bill from one that disallowed developers from shortening the statute of limitations to allowing developers to disclaim all warranties protected in the Maryland Condominium Act by selling a unit "as is" and for a "discount" from a developer set price. The LAC expended significant effort, without success, to have the House bill revert back to the Senate version. The two versions could not be reconciled before the end of the legislature and therefore will have to be taken up again in the next session if they are to become law.

**Provision of Disclosure Documents**-[HB 75/SB 1015](#) provided that a seller of a residential condominium must provide resale disclosure documents without charge to a purchaser, and that a mortgagee or trustee designated under the deed of trust shall provide disclosure documents to the purchaser of a condominium unit at a foreclosure sale. The measure failed upon adjournment.

**Notice of Potential Special Assessments**-[HB 262/SB 75](#) required associations to list "potential special assessments" in a resale package if it had been mentioned in agendas, minutes, votes, or mailings sometime during the previous year. The measure failed upon adjournment.

**Required Contract for Management Services**-[HB 352](#) required that a service provider who assists in providing certain management services for a common interest community to enter into a written contract with the governing body of the common interest community in order to provide the management services. The measure failed upon adjournment.

**Fidelity Insurance Indemnification** – [HB 741/SB 74](#) required management companies that provide certain services to cooperative housing corporations, condominiums, or homeowners associations to purchase specific fidelity insurance. The measure failed upon adjournment.

**Bylaws Filed in Land Records**-[HB 1255](#) required the bylaws of a homeowners association to be filed in land records. The measure failed upon adjournment.

**District Court Jurisdiction of Homeowners Associations**-[HB 1243](#) granted exclusive jurisdiction to the District Court for enforcement of recorded covenants and restrictions, a declaration or by laws of a homeowners association. The measure failed upon adjournment.

**Foreclosure Sales**-[SB 98](#) required a purchaser in a foreclosure sale to, among other things, record a deed transferring title to the property. The measure failed upon adjournment.

**Termination of Contracts**-[SB 183](#) authorized a condominium board of directors, without liability for the termination and on 30 days' notice to the contractor, to terminate a contract entered into by the developer or previous board within 180 days after the board of directors is elected. The measure failed upon adjournment.

**Governing Bodies**-[SB 202/HB 79](#) required, among other things, the board of directors of a condominium, homeowners association or cooperative to hold at least two meetings each year; and the developer of a condominium to appoint a unit owner to the governing body within 30 days from the date 25 percent of units are conveyed. The measure failed upon adjournment.

**Payment of Assessments and Fees-**[SB 685/HB 850](#) authorized, among other things, a council of unit owners to petition the District Court for relief if a unit owner and is renting the unit to a tenant and had failed to pay assessments fees for 90 days or longer and to authorize the District Court to enter an order directing the tenant to pay rent due under the lease to the council of unit owners or a designated custodian. The measure failed upon adjournment.

## Massachusetts

### LAC Members

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**(Vice-Chair)**

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Catherine Wells, CMCA, AMS  
Mediate Management Company, Inc.

Peter Westhaver, CMCA, AMS  
Mediate Management Company, Inc.

### Advocacy Highlights

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

**Condominium Elections**-[HB 3278](#) would provide for mandatory procedural requirements for the election of condominium board members. Some of the procedural requirements include: no quorum requirement for an election; owners wishing to run must submit nominations not less than 20 days before the election; specifications about who can and cannot run for the board; and hiring election inspectors. The LAC opposed the bill because many of the provisions are unnecessary or onerous, particularly for smaller associations.

**Violations of the Sanitary Code**-[HB 3297](#) would provide condominium associations with certain rights and remedies in the event that a mortgagee in possession of a unit fails to properly maintain the unit in a sanitary condition. Specifically, the bill gives the association the right to institute an action in accordance with the state sanitary code, and provides that any judgment obtained by the association shall result in a lien on the property that is enforceable in the same manner as liens for common expenses. The LAC supports this bill, as it provides a useful tool for associations to hold mortgagees that foreclose on units accountable for these properties.

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

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

# Michigan

## LAC Members

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

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

Mark F. Makower, Esq. **(Vice-Chair)**  
Makower Abbate and Associates

Charles Hurton  
Cross Creek Village of Rochester

Richard Lance Govang, CMCA, AMS, PCAM  
Kramer-Triad Management Group

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

## Advocacy Highlights

**Auditing Requirements-**[HB 5197](#) sought to modify auditing requirements for condominiums to require that books, records and contracts concerning the administration and operation of association projects to be independently examined annually. The LAC monitored the bill carefully, but the bill did not make it out of its committee of referral.

**Arbitration-**[SB 901](#) revises the Condominium Act's arbitration provisions to reflect the adoption of the Uniform Arbitration Act.

## Minnesota

### LAC Members

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**(Chair)**  
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Walt Burris  
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Reserve Data Analysis

Deanna Price  
New Concepts Management Group, Inc.

Charles Schneider, AMS  
Community Development, Inc

Cheryl Selinsky  
Woodbridge Village Townhomes  
Association

### Advocacy Highlights

The LAC was hard at work at the Minnesota State Capitol lobbying on behalf of the interests of the roughly one-fifth of Minnesotans who live in common interest communities. This year's legislative session was another busy one, with many bills affecting the community association industry. The LAC worked hard to track all bills that pertain to common interest communities, and issued position statements, met with lawmakers and other interested parties, and testified at hearings in the House of Representatives.

Before the session had even begun, the LAC was working on fundraising efforts in order to retain lobbyist Bill Amberg of Ewald Consulting. Because of the influx of proposed legislation affecting the community association industry in the past few years, it became apparent that the support of a professional lobbyist would be necessary to increase CAI's presence on the hill and to keep tabs on bills coming down the pike. LAC members sent out letters to board members at the community associations they manage, asking for their support in CAI's legislative efforts. The LAC set a goal of raising \$7,000 to help fund the lobbyist's contract. With funding from CAI advocacy support fees, the Minnesota chapter of CAI, homeowners' associations, association management companies and a one-time grant from CAI National, we were able to surpass that goal and sign Bill Amberg on part-time.

With the LAC's lobbyist in place, it got to work at the Capitol, meeting with legislators in the House and Senate to let them know who we are and what CAI does. The main goal was to increase visibility among lawmakers so they would know that CAI is the foremost authority on community associations and to

educate legislators and their staffs on association issues, answer any questions they have and offer guidance on policy matters that affect the community association industry. LAC members met with several legislators prior to the session beginning, including Representatives John Lesch, Sheldon Johnson, Torrey Westrum and Joe Atkins and Senator Warren Limmer. The LAC also attended an informal hearing with the House Civil Law Committee regarding HF 1254, the so-called “flag-pole bill” that we began working on last year, and had a lengthy discussion with the author of the House file, Kurt Bills, regarding CAI’s opposition to the bill and concerns regarding its consequences.

**Flag Poles**-[HF 1254](#) and its companion, SF 926, were introduced in spring of 2011 and had several provisions, each of which was damaging to community associations’ ability to govern themselves and serve their members. The bill had been tabled in the House Civil Law Committee in May 2011, but was expected to reappear early this session. In its revised form, the bill sought to revoke a community association’s authority to enforce rules and regulations pertaining to the installation of flagpoles and political signs in areas where a homeowner has exclusive use. More devastating yet, the bill also would have removed the association’s ability to foreclose a lien on a property for unpaid fines for rule violations. This would have severely diminished an association’s ability to enforce the association’s governing documents, even though each owner in an association voluntarily agreed to abide by them at the time of purchase. After much work, including an impressive grassroots effort by CAI members to contact committee members regarding their opposition, the bill was referred without recommendation from the House Civil Law Committee by Representative Mary Liz Holberg to the House Commerce Committee, where it died due to a lack of hearing.

**Common Interest Ownership Act**-In January, the LAC learned of a proposed amendment to MN Statute 515B (MCIOA) that would have made it more difficult for an association to commence litigation for construction defect claims. A position paper outlining CAI’s concerns with the proposed language was forwarded to the party proposing the changes and the LAC was able to avert the bill from moving forward at its early stages.

**Utility Shut Off**-The LAC is still working to pass legislation that would provide notice of a pending utility shut-off to an association so that heat could be maintained in a vacant unit to prevent frozen and burst pipes and the subsequent water damage. The LAC learned of a proposal to set up a call center for utility shut-off notifications to banks that are foreclosing their mortgages. LAC member Dea Price sat on a work group on the issue and worked with Senator Bakk to get language included that would provide notice to CICs. The bill did not make the hearing deadline in the House this year, but the LAC will be working in the interim on getting language for CICs added, and hope to have a bill reintroduced next session.

**Insurance Claims**-Late in the session the LAC learned of [SF 2137](#), which was a bill on weather-related insurance claims regulations. The LAC had a number of concerns with the bill and went to work trying to get language removed from the bill that would have prevented contractors from negotiating on behalf of homeowners in insurance claims. The bill was passed as amended, with the removal of provisions that were of concern.

**Revisor Bill**-Each year, the Minnesota Revisor of Statutes drafts a bill to correct erroneous, ambiguous, and omitted text and obsolete references, to remove redundant, conflicting, and superseded provisions, and to make miscellaneous corrections to laws, statutes, and rules. The 2012 Revisor's Bill, enacted as 2012 [Chapter 187](#), makes several corrections to MCIOA. Most of the changes are technical in nature; however, the 2012 Revisor's Bill makes one significant change that applies to all condominiums, cooperatives and planned communities created under MCIOA on or after August 1, 2010. The 2011 amendment to MCIOA inadvertently changed Section 515B.1-102 (Applicability) to provide that Section 515B.3-116 (Lien for Assessments) applies only to common interest communities created before August 1, 2010. The 2012 Revisor's Bill amends Section 515B.1-102 to remove this limitation. Thus, all common interest communities that are subject to MCIOA will have a statutory lien for assessments under Section 515B.3-116.

**Cooperative Housing Act**-The LAC is keeping an eye on an issue known as the Cooperative Act, which seeks to carve cooperatives out of MCIOA by creating a new statute to govern them. The statute would apply to new residential cooperatives, and existing cooperatives could opt-in if they chose. [HF 2955](#) and SF 2543 did not pass this year, but the LAC expects similar bills to reappear next year and will be tracking them.

**Solar Panels**-The LAC expects solar panel and other energy-related bills to be a big issue in upcoming sessions and will be monitoring for activity on these issues.

# Missouri

## LAC Members

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Harper Pointe Homeowners Association

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Rod Hoffman, Esq.  
Slagle, Bernard & Gorman

Ed Varno, CMCA, AMS  
Lake Sherwood Estates Association

## Advocacy Highlights

**Common Interest Owners Bill of Rights**-For the LAC, this was a disappointing session because it did not get its version of the Missouri Common Interest Owners Bill of Rights introduced due to choice of sponsor. The chosen sponsor was the chairman of the committee which would hear the bill, and assisted in getting negotiations moving with the home builders. However, the sponsor chose to schedule a hearing on [HB 1047](#), a “pure” UCIOBOR bill, and was intimidated by the number of witnesses in opposition to that bill despite knowing that we were addressing many of those objections. The LAC intends to begin or renew discussions with the home builders, lenders and realtors.

**Political Signs**-[HB 1380](#) would have prevented homeowners’ associations from prohibiting political signs. One problem with the bill was that it allowed signs to be displayed for ninety days prior to the election. Another flaw was that the size limit of signs was four by six feet, even though this would almost certainly run afoul of local ordinances, which generally limit this size to commercial properties. However, the biggest flaw was that the bill indicated the sign was supposed to be on the owner’s property, the description of a political sign would clearly entail placement in the common areas of any condominium (i.e. in the lawn outside the unit). The provision was offered as an amendment to several bills and was included in one committee substitute, but all failed to achieve passage. The LAC expects to see this bill introduced again next session.

**Non-Profit Corporations**-[HB 1676](#) was opposed primarily because it mandated all current and future associations to be non-profit corporate entities. While that certainly has merit, it has the potential to create more problems than it solves, particularly since the bill allowed a homeowner to bring an action to enforce the bill’s provisions and recover attorneys’ fees if successful; this could quickly bankrupt a small association that is merely ignorant of the bills obligations. The bill wasn’t heard by the Local Government Committee until mid-April and never received a committee vote, which would have given the sponsor the ability to offer it as an amendment to a bill during floor debate.

**Solar Panels**-[HB 1739](#) which would have overridden any homeowner association restriction on installation of solar panels if over 50 percent of the homeowners signed a petition. The primary problem with the bill is the wording. First, it would apply to any homeowner association, including condominiums. Second, it appears that only the homeowner circulating the petition would be exempt from the restriction, rather than the restriction being lifted for all owners. The bill was heard in committee, but never voted on.

# Nevada

## LAC Members

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Michael P. Veatch  
Valley Realty and Management

Randel E. Walker  
Truckee Meadows Properties, Inc.

## Advocacy Issues

The Nevada Legislature did not hold a 2012 legislative session. Therefore, the Nevada LAC did not introduce or advocate for or against any legislation during the calendar year. The LAC is currently preparing for the 2013 legislative calendar.

## New Hampshire

### LAC Members

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Deana Cowan  
Locke Lake Colony Association

Cal Davison  
Cardiff Management, Inc.

Ed Michalosky  
Kings Court Condominium

### Advocacy Highlights

**Recovery of Delinquent Condominium Fees-[HB 1261](#)** would permit condominium unit owners' association to file multiple liens for unpaid condominium fees. The bill also removes the grandfathering provision for mortgages executed prior to January 1, 2011. House voted for an interim study committee to review this proposed bill.

**Waive Portions of the State Fire Code-[SB 335](#)** permits a high rise apartment building that are categorized as a condominium to opt-out of certain state fire code requirements that were adopted after the building was first occupied as an apartment building. The bill passed with adopted amendment.

## New Jersey

### LAC Members

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### Advocacy Highlights

**Manager Licensing-[AB 2658](#)** establishes the Common Interest Community Manager Licensing Act. The Assembly bill passed its chamber of origin in June 2012 and has been referred to the Senate Commerce Committee. The LAC, in conjunction with the chapter's manager's licensing task force, is working to identify Senate sponsors.

**Conflicts of Interest-**[AB 689](#) prohibits conflicts of interest by governing board members or management employees of homeowners' associations. The LAC is working closely with the sponsor of the bill and the state's Office of Legislative Services to strengthen the current bill language. This bill, which has been unanimously endorsed by the LAC, is not designed to prohibit associations from dealing with vendors affiliated with board members or community managers. Rather it seeks to bring those relationships into the open, with the hope that decisions concerning vendors are made solely in the best interests of the association. It is recognized that there are times when doing business with related or conflicted entities may in fact be advantageous to communities. This bill is designed to foster open bidding and remove improper influences from the decision-making process. The bill is pending consideration in its initial committee of referral.

**Federal Home Loan Insurance-**[AB 2592](#) requires condominium and homeowners' associations to provide information to federal home loan insurance providers at no cost to potential buyers. The LAC has some concerns regarding this bill, including its attempt to address problems with federal legislation at the state level. The chapter was fortunate to have Andrew Fortin, former Senior Vice President of Government & Public Affairs for CAI, attend a meeting with the bill sponsor to address certain elements of the bill. The meeting concluded with an agreement to work together on a public hearing on the FHA guidelines and their impact on the housing and realty industries in the Garden State. The LAC continues to work with the sponsor on this and other initiatives, including manager licensing. The bill remains pending for consideration in its initial referral committee.

**Stormwater Utilities-**[SB 1557](#) and AB 2641 authorize the creation of stormwater utilities for certain local government entities. The LAC opposes this bill, as it is yet another way for municipalities to generate additional revenue by separating out the stormwater system and imposing a separate tax/user fee on that system. Of particular concern is how the users of a stormwater system are going to be identified as using and owing for a stormwater system. The bill was reported out of the Senate Environment and Energy Committee, and is pending consideration before the Senate Budget and Appropriations Committee.

**Lobby Security-**[SB 672](#) and AB 3070 require lobby security for certain senior citizen high-rise buildings in areas with high violent crime rates. The LAC opposes this bill, as it prescribes in great detail the types of security these high-rise buildings would be required to install and maintain, including at least one licensed security guard stationed in the lobby on a 24-hour basis and video surveillance cameras operating 24 hours a day, trained on and recording all other building exits and entrances, as well as any other common areas, including parking lots. The bill was recently amended to include more high-rise buildings in its scope. The LAC is working with the New Jersey Apartment Association to oppose passage of this bill. The bill was reported out of the Senate Community and Urban Affairs Committee and is now pending consideration in the Senate Budget and Appropriations Committee.

## New York

### LAC Members

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Andruschat Real Estate Services, Inc.

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LMM Properties Enterprises

Jean B. Kough, CMCA, AMS  
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Cross Creek HOA

Mary Ann Rothman  
Council of New York Cooperatives &  
Condominiums

Ronald S. Shubert, Esq.  
Phillips Lytle, LLP

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

### Advocacy Highlights

**Manager Licensing**-The LAC in conjunction with CAI-National's Government and Public Affairs Department, met with the [AB 2582](#)'s legislative sponsor to discuss changes to the existing bill to encompass the community manager role, responsibilities and designations. Upon completion of the meeting, it was agreed that an amended version of the proposed legislation would be drafted and presented to the legislative staff for review and approval. An amended version of the proposed bill was prepared and sent to the legislator's office and is awaiting introduction during the 2013 session.

**Recovery Damages for Personal Injury**-[SB 6816](#) amends the civil practice law and rules in relation to employee injuries caused by the use of scaffolding and other devices. The LAC provided support for the bill which failed to receive a hearing.

## North Carolina

### LAC Members

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HRW, Inc.

Paul Hill  
Fairfield Harbour POA

Greg Asbelle  
North State Bank

Henry W. Jones, Esq.  
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Talis Management Group, Inc.

William Bittenbender  
Alliance of Brunswick County POAs

Floyd McKissick  
Bixler Management Group, LLC

Gordon Corlew  
St. James Plantation POA

Paul Mengert  
Association Management Group, Inc.

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York Properties, Inc.

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Hatch, Little & Bunn, LLP

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

Michael Wm. Shiflett  
InterNeighborhood Council

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

### Advocacy Highlights

**Managers Licensing**-[HB 1000/SB 373](#) would establish the North Carolina Community Association Managers Licensure Act, which would require the licensure of all individuals who manage community associations for compensation. This bill was not considered during the session and will need to be introduced again in 2013.

**Planned Community Act Amendments**-[HB 1084](#) was based upon a recommendation from the House Select Committee on HOAs, which finished its work in the spring of this year. While the bill had several redeeming features, CAI had concerns about this legislation as well. First, it allowed members to vote at meetings with absentee ballots in addition to proxies and in person. It also prohibited a member from voting more than 15 percent of the voting strength by proxy. A final problem with the bill involved an outright prohibition against board members voting proxies. The bill passed the House but failed in the Senate. It will need to be reintroduced in 2013 for any further consideration.

**Modify Taxation of HOA Property**-[HB 1105](#) allows counties and other taxing jurisdictions to tax non-profit homeowners' associations for common area located outside the taxing jurisdiction where all other homeowners have property and pay taxes on their lots. The governing board of a non-profit homeowners' association with property subject to taxation shall annually provide to each association

member the amount of tax due on the property, the value of the property, and, if applicable, the means by which the association will recover the tax due on the property from the members. Taxes will be assessed, pro rata, among the lot owners based on the number of lots in the association.

**Irrigation Contractors' Licensing-[SB 405](#)**, as introduced, would have required HOA's to hire only licensed irrigation contractors. It was subsequently amended to allow that HOA's must hire licensed contractors only if the value of the work is to exceed \$2,500. The bill failed in the House and will need to be reintroduced in 2013.

## Ohio

### LAC Members

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Richard Landis, CMCA, AMS, PCAM **(Vice-Chair)**  
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James P. Case  
The Case Bowen Company

Sandi Crnko  
Real Property Management

James Dicks  
Towne Properties

Brian Falkowski  
Players Club Condominium

Amy Schott Ferguson, Esq.  
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Tom Gemperline  
Woods at Big Bear Farms

David Kaman, Esq.  
Kaman & Cusimano

Charles T. Williams, Esq.  
Williams and Strohm, LLC

### Advocacy Highlights

**Super Priority Lien**-In 2012, the LAC continued working to find a sponsor for the state's own super lien bill, which had been introduced in the 2009-2010 legislative cycle but died without a vote in committee. With the codification of The Planned Community Act (ORC 5312), the legislation was re-written to apply to both condominium and homeowner associations in the state. Unfortunately, despite meeting with the chair and several interested and sympathetic members of the House committee who would have been assigned the legislation, the LAC was still unable to find a sponsor due to considerable opposition from the banking lobby and its advocates in both the House and Senate. While the LAC entertained discussions for alternative legislation to the super lien bill, the options presented were nothing the LAC could support.

**Manager Licensing and Amendments to Condominium Act**-In July, [HB 574](#) was introduced without consulting the LAC and was immediately deemed a "negative bill." Besides requiring managers, of any condominium associations with 10 or more units to be licensed as real estate brokers, the bill would create a dispute resolution board, that had the power to subpoena. The bill also did not protect associations' operational viability, especially since other parts of the bill required changes to board meetings, record retention, and, most notably, stripped the boards' authority to approve budgets without a majority approval of the owners. Within days of its introduction, the LAC Chair and lobbyist met with the sponsor to communicate the LAC's support of the concept of manager licensing, but strong opposition to the specifics of this bill. The LAC also coordinated a letter-writing campaign that effectively killed the bill, and no one co-sponsored the bill.

## Oregon

### LAC Members

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Community Management, Inc.

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Barbara Kanz **(Vice Chair)**  
Vial Fotheringham, LLP

John C. Herring  
McNary Estates Homeowners Association

Cheryl Brendle, CMCA, PCAM  
Community Management, Inc.

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Schwindt & Company

Deana Doney  
RE/Max Equity Group

Richard L. Thompson  
LAC Delegate

Frank Elsasser, Esq.  
Levin & Stein

A. Richard Vial, Esq.  
Vial Fotheringham, LLP

### Advocacy Highlights

This was the legislature's first session operating annually instead of meeting every other year. The legislature only accepted urgent bills. Therefore, the LAC did not introduce or advocate for or against any legislation during the calendar year. The LAC is currently preparing for the 2013 legislative calendar.

## Pennsylvania

### LAC Members

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Clemons, Richter & Reiss, P.C

Steve Mancini  
Belmont Community Association

Gregory M. Malaska, Esq. **(Vice-Chair)**  
Young & Haros, LLC

David Martin, CMCA  
Saw Creek Estates Community Association

Alan Dolge  
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Carl N. Weiner, Esq.  
Hamburg, Rubin, Mullin Maxwell & Lupin

Diane Wohlfarth, Esq.  
Papernick & Gefsky

### Advocacy Highlights

**Tax Credit**-Philadelphia City Council [Bill 110130](#) would provide a credit-all under certain terms and conditions-against the tax for owners of condominiums, cooperatives and planned community units who do not receive regular City refuse, recycling and bulk item collection services. Adopting the bill would provide momentum to statewide legislation to address this issue. The LAC supported the bill and provided testimony at a Finance Committee hearing in October, 2011. The Bill was approved by the City Council and promptly vetoed by Mayor Nutter in December, 2011.

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

**Records and Meetings**-[HB 419](#), [HB 950](#) and [SB 877](#) all addressed open meetings and open records in common interest ownership communities. CAI strongly agrees that sharing information and providing access to documentation are essential components of proper functioning of community association governance. However, there are laws and rules already in place that ensure openness and that unit owners have access to the records and documents of their community association. Furthermore, the

adoption of this legislation will likely have several unintended consequences that will adversely impact the ability of associations to function properly. Adopting certain provisions contained in these bills- including the use of recording devices during board meetings and the provisions regarding the application of fines for violations by board members-will have a serious chilling effect on the willingness of homeowners to serve on the board of directors within their communities. The LAC seeks amendments to these bills to address the above concerns.

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

**Business Improvement District (BID) Condominium Assessments-**[HB 1582](#) alters the billing of BID assessments to associations. The value of assessments for all units within the association would be aggregated and one bill would be sent to the association, meaning the BID assessment would now become a common expense apportioned to each unit owner based upon percentage of ownership in the condominium as opposed to assessed value. The association would be responsible for including the BID assessment in each unit owners' monthly assessment and for collecting the BID fee along with the monthly assessments. The LAC objected to various provisions of the legislation and sought an amendment that would allow the association to treat the BID assessment based on the actual assessment of each individual unit and not as a common expense allocated by a percentage of ownership. In addition, the amendment designates that the association is merely serving as the collection agent for the BID and that unit owners shall not be liable for delinquent owners who fail to pay their BID assessment. The BID would be responsible for directly pursuing any owners who do not pay. The bill, including CAI's amended language, was adopted by both houses of the legislature and signed into law by the Governor on February 14, 2012

**Office of Cooperative and Condominium Ombudsman-**[HB 2155](#) would establish the Office of the Cooperative and Condominium Ombudsman and provide for its powers and duties. The bill also seeks to impose a residential unit fee and establish the Office of the Cooperative and Condominium Ombudsman Fund. The bill was introduced in the House by Representative John Galloway on January 26, 2012, and has not had a hearing to date. While the LAC has not formally taken a position on the legislation, LAC delegates believe the bill would create more problems than it would solve. Delegates have met with members of both legislative chambers, including the bill's sponsor, regarding concerns with the legislation.

## Rhode Island

### LAC Members

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### Advocacy Highlights

**Transfer Fees**-The legislature passed a transfer fee bill, [SB 2215](#), which arguably impacted community association's ability to charge fees that are beneficial to associations. The LAC convinced legislatures to amend the legislation specifically exempting community associations, homeowner associations and cooperative associations from the impact of the legislation. The bill was amended and was subsequently passed into law.

## South Carolina

### LAC Members

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Seabrook Island Property Owners  
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The Woodlake Village Homeowners  
Association, Inc.

### Advocacy Highlights

In mid-December 2011, members of the LAC were invited to participate in a round table discussion regarding proposed manager certification and HOA legislation. Paula Benson, Senior Staff Counsel for the Senate Judiciary Committee, called the meeting, which included representation from the SC-LAC, the Home Builders, Consumer Affairs, AARP, The Association of Realtors, the SC Bar Association several community association residents and community managers from the up-State area.

The agenda was focused on the following six topics that were selected by Paula Benson:

- Notifying a buyer that he is purchasing a home in a community association.
- Allowing a homeowner access to the association's governing documents and records.
- Providing that fees and assessments must be authorized by the governing documents.
- Certification of managers/education of board members.

- Requiring that HOAs have an annual meeting and elections and that homeowners are given notice.
- Providing for alternative dispute resolution.

Representing the LAC were Press Courtney and Peter Kristian. Also in attendance was Tom Mikell who is a LAC Delegate but for this meeting was representing the State Bar Association's newly formed Community Association committee.

Due to time constraints, the number of participants and the diversity of opinions only the first three items on the agenda were addressed. It was clear that there were strong sentiments and inputs on both extremes for all agenda items covered. The LAC took the middle ground and although they were strong in the LAC's support for each concept they were also firm in the stance that the "devil is in the details."

The LAC followed up the meeting by emailing Paula Benson a copy of CAI's 2009 Zogby Survey on Community Associations and CAI's adopted Rights and Responsibilities of Living in a Community Association. The Zogby survey was a nationwide impartial survey of residents in Community Associations demonstrating extraordinary support for the benefits of owning property in planned communities.

Ms. Benson indicated that she will go back to Senators McConnell, Malloy and Jackson with the information she has gleaned from the meeting to ask how they wish to proceed. Some of the options discussed for proceeding included: having another meeting or meetings to gather further input on the remaining three topics (all agreed that the remaining three agenda items were the most controversial and would consume the most time for discussion), move forward with a combined Manager Certification/ Community Association Act bill based on the information gathered; and do nothing because 2012 will be an election year and the legislature will be reluctant to take on any bill that may be controversial.

Chairman, Thompson, Vice Chair Courtney and Secretary Kristian held a teleconference with the LAC Lobbyist Graham Tew in late December 2011 as a follow up. At the conclusion of the call it was the general sense that nothing would be moved forward in 2012 unless there was a major negative event that triggered the need for legislation.

**Transfer Fee Covenants**-The LAC immediately became involved in commenting on [HB 3095](#) to make certain such legislation would not affect a community association's ability to collect these funds. This bill was signed into law by Governor Nicki Haley with all the suggested amendments proposed by the LAC. The bill protects the rights of a community association to collect transfer assessments.

**Homeowners Association Act**-Some time ago a Community Association Act was introduced that if passed, placed a \$10 per door registration fee on all community associations across South Carolina. That registration fee-along with other burdensome provisions such as a dispute resolution procedure that would have rendered community associations almost unable to effectively enforce their covenants-was a top priority for the LAC. This onerous legislation was back again in 2012. The LAC along with the lobbying team was able to hold [SB 218](#) at bay during 2012.

**Manager Licensing-**[SB 699](#) would not get passed this year's not because of time constraints and reapportionment consuming much of the Senate's time. It was Mr. Tew's objective to get SB 699 as far along in the legislative process as possible before the legislature adjourns on June 1. Mr. Tew noted that Senator Rankin may be helpful in this effort and urged us to have constituents call Senator Rankin and stress the importance of this bill.

**Construction Defects-**[SB 431](#) indicates that construct defects were covered under a contractor's general liability insurance policy. The LAC was instrumental in the bill's passage.

**Alcohol License for Homeowners Associations-**[HB 3295](#) permits homeowners associations, with the proper license, to sell alcohol by the drink. The bill was signed into law by Governor Haley.

## Tennessee

### LAC Members

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Alvin L. Harris

Scott Weiss  
Christiansted Valley Homeowners  
Association

### Advocacy Highlights

**Insurance Requirement-**[SB 1143/HB 19](#), introduced during 2011, would have required HOAs to provide and maintain insurance, and to report information about such insurance in writing to residents on a quarterly basis, or as requested. The LAC members vigorously opposed this legislation during 2011 and 2012. When the House sponsor was not able to build momentum for the legislation, he withdrew the bill.

**Homeowner Association Study –**[HJR 219](#), introduced during 2011, proposed to create a special committee to conduct a comprehensive study of all laws relative to homeowners associations. This resolution did not gain enough support for passage because of a lack of funding. In an effort to limit the cost, the sponsor amended the resolution during the final days of the 2011 session to send the study to a special subcommittee of a standing committee. The LAC successfully blocked consideration of the amended house version by the Senate, which adjourned before taking action. The LAC continued to oppose the measure, which remained in the Senate Calendar Committee throughout the 2012 session and could have been scheduled at any time.

**Municipal Exemption for HOA Fees-**[SB 743/HB 882](#) was introduced during the 2011 session and would have created a study of Tennessee laws regarding collection of delinquent property taxes. The bill was filed at the request of the state comptroller who proposed a late amendment when the bill was scheduled for committee, which would have exempted local governments from restrictive covenants and assessments by HOAs. Because of the controversial nature of the proposal during the closing days of the 2011 session, the bill was deferred. In 2012, two new bills were introduced on the same topic.

**Municipal Exemption for HOA Fees-**[SB 3129/HB 2430](#) proposed to exempt state and local government entities from the obligation to pay HOA fees and assessments any time such government acquires title to property as a result of a delinquent tax sale. All HOA fees and assessments would have been suspended for the period of time the property was titled to the government entity. Local government representatives, delinquent tax attorneys and the state comptroller aggressively worked on this bill which ended in a show-down in the subcommittee of the House State and Local Government Committee. LAC representatives successfully delayed the measure until the last committee meeting, at which time proponents of the bill proposed a new amendment. LAC representative Doug Jones testified at the meeting about the impact to HOAs and the significant change it would make in state property law. Because of this testimony and the calls and letters from LAC members to legislators throughout the session, legislators understood the issue and stood up for homeowners who would have been responsible to cover the expenses for maintaining property held by the government following a delinquent tax sale. When the surprise amendment failed for lack of a motion, the bill sponsor withdrew further efforts to pass the bill for 2012. They vowed to push on with a new proposal next year.

**Municipal Exemption for HOA Fees-**[SB 3595/HB 3528](#) was another version of the HOA fee exemption for local governments. This bill was proposed by a newly formed group of delinquent tax attorneys, and sought to limit the period of time for the exemption as a conciliatory measure to obtain some relief for a few counties which had long rosters of delinquent property taxes due to failed real estate developments. Legislators, while sympathetic to the difficult situations, did not see fit to penalize property owners across the state because of problems in a few counties.

## Texas

### TCAA Members

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### Advocacy Highlights

The Texas Legislature did not hold a 2012 legislative session. TCAA is currently preparing for the 2013 legislative calendar. TCAA will face a new line-up as many freshmen lawmakers occupy seats in the Texas Legislature in 2013. The turnover presents a significant opportunity for the organization to build relationships and assess the public affairs climate for community associations in the Lone Star State.

## Utah

### LAC Members

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John Richards  
Richards, Kimble & Winn, PC

Keith Schoen

Jason Sucher  
Advantage Management & Real Estate  
Services, LLC

Val Weight  
Canyon Road Towers

Lamond Woods  
Sentry West Insurance Service

### Advocacy Highlights

**Condominium and Community Association Amendments**-[SB 219](#) bill was drafted and promoted by the LAC to introduce new provisions into both the condominium and community association acts and to make clarifications to significant legislation passed by the LAC in 2011. It deals with joining units, default maintenance, the merger and termination of associations, loans to associations, default design review criteria provisions, open board meeting requirements, and other provisions. Due to delays in drafting, the bill was not able to be heard in committee in time to be presented in the 2012 session. The LAC recently attended and testified at an interim committee hearing on this bill for the 2013 session, and the committee members were receptive to the concepts introduced. The LAC is engaged in drafting for early presentation of this bill and expects it to be passed in the 2013 session.

**Manager Licensing**-The LAC is vetting a proposed manager licensing bill among interest groups with the hope of establishing a baseline of competency for managers in Utah. Meetings have been held and the LAC hopes to introduce legislation for the 2013 session.

**Property Rights Ombudsman**-For the second year, a push was made by a local group to pass a bill that allows the existing property rights ombudsman's office to expand its scope to include community association disputes. The cost would have been paid for by an annual fee of two dollars per unit or lot to associations. The current ombudsman is limited generally to matters involving condemnation. [HB 56](#) would require the ombudsman to develop legal expertise in the community association industry, to advise owners who have disputes with associations, and then to conduct mediations or arbitrations of those disputes. The ombudsman would have the authority to force associations into both mediation and

nonbinding arbitration, with the ombudsman's employees acting as both the mediators and arbitrators.

The LAC opposed this bill on many grounds, and held several meetings with the sponsor and proponents of the bill. LAC members also testified against the bill in committee hearings. Ultimately, the bill was not passed out of committee. The proponents of the bill have suggested that they will try again in the next session.

As a result of conversations with the proponents of this bill, the LAC is developing a proposal for the Utah CAI Chapter for a chapter sponsored mediation program. Utah CAI members sought and obtained sample documents and ideas from other chapters around the country. It is anticipated that this proposal will be ready to present and may be implemented in 2012.

**Seismic Upgrades**-For roughly the third year running, this [HB 275](#) was introduced to require seismic upgrades when converting existing structures into condominiums. The LAC took the position that notice of seismic issues should be provided to potential purchasers of converted condominium structures. The bill was modified to provide for this notice, but failed to be passed out of committee.

**Reserves Studies**-[SB 56](#) revised the timing for reserve studies. It changed the requirement for reserve studies to once every six years and for updates to every three years. The LAC neither supported nor opposed this bill and it passed and was enacted into law.

**Economic Loss Rule**-A bill number was reserved but no bill was actually filed. A member of the LAC was granted access to a draft of the bill, which the sponsor ultimately said might be introduced next session. The bill would attempt to further clarify the scope of the economic loss rule in Utah, with likely application in the context of construction defect cases.

## Vermont

### LAC Members

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Simpson Development Corporation

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TPW Management

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Readnour Associates, PC

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Kenlan, Schwiebert, Facey & Goss, P.C.

Al Bridges  
Blake Hill Townhouses

John Watanabe  
Winterplace Condominium HOA

### Advocacy Highlights

**Taxation of CIC Property**-[HB 217](#) proposed to give a town the authority to tax common interest community property. The LAC monitored the bill, which failed upon adjournment.

**Leasing Restrictions**-[HB 101](#) proposed to authorize a common interest community-upon a vote of 67 percent of the unit owners-to change the number of units that may be leased. The LAC monitored the bill, which failed upon adjournment.

**Arbitration**-[HB 612](#) proposed to give unit owners of condominiums and common interest communities the ability to demand arbitration to challenge provisions, application, or enforcement of bylaws or rules of the association. The LAC monitored the bill, which failed upon adjournment.

**Foreclosure Arbitration**-[SB 224](#) proposed to require binding arbitration to settle disputes over assessments or liens prior to filing a foreclosure action. The LAC monitored the bill, which failed upon adjournment.

## Virginia

### LAC Members

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Tarley Robinson, PLC

Carol L. Teigen, LSM, PCAM  
Stone Ridge Association

### Advocacy Highlights

The LAC followed more than 30 bills during the 2012 session, 18 of which amended statutes directly affecting common-interest communities. The bills included legislation to amend the statutes establishing the office of the Common Interest Community Ombudsman, and to abrogate existing restrictive covenants related to solar panels. The bills also included legislation that has become perennial—efforts to address lien priority in foreclosure and declarant control. LAC representatives met with legislators and lobbyists representing groups with divergent interests, served as a subject matter resource for legislators, and hosted a Community Association Day at the Capitol – now a yearly tradition. In the LAC's years of service, they have found that the best work is done through compromise. Whenever possible, the LAC works with other interest groups and with the legislators to encourage legislation that achieves the intended purpose in a fair and logical manner. Sometimes, however, the LAC must oppose legislation that would have a negative impact on common-interest community associations and their members.

**Recovery of Attorneys' Fees and Costs**-Delegate Vivian Watts, with the support of the LAC, introduced several bills expanding the authority for community associations to collect late charges, attorneys' fees and court costs in assessment collection matters. [HB 410](#) provides that in a suit filed by a community association against an owner for nonpayment of assessments, a community association, if it prevails, shall be awarded reasonable attorneys' fees and costs expended in the matter – even if the proceeding

is settled prior to judgment, if the owner has failed to pay assessments levied by the association on more than one unit or the owner has had legal actions taken against him for nonpayment of any prior assessment. House Bill 410 also provides that a delinquent owner shall be personally responsible for reasonable attorney fees and costs expended in the matter by the association, whether any judicial proceedings are filed. The bill was enacted and became effective July 1, 2012.

**Expansion of Declarant Rights and Responsibilities**-Delegate J. Randall Minchew introduced [HB 902](#) with the support of the Homebuilders Association of Virginia. HB 902 increases from seven years to 10 years, from the date the declaration was recorded, and is the time limit in which the declarant of a condominium must exercise declarant rights to expand, contract or convert the condominium. HB 902 grants increased flexibility to condominium developers in Virginia and was supported by LAC. The bill was enacted. It is important to note that the bill does not affect the time limits set in the condominium instruments of existing condominiums and applies only to condominium instruments recorded after the effective date of the legislation, July 1, 2012.

**Limitations on Contracts**-The LAC worked closely with Senator Mark Herring to develop the language of [SB 628](#). SB 628 limits any management or employment contract entered into on behalf of a property owners' association during the period of declarant control to five years. SB 628 also provides that any management or employment contract entered into on or after July 1, 2012, may be terminated, without penalty, by the property owners' association or its board of directors upon at least 90 days' written notice to the other party, so long as such notice is given not less than 60 days after the expiration of the period of declarant control. The language of SB 628 mirrors existing law governing condominium declarants found in Section 55-79.74 of the Virginia Condominium Act.

In addition, SB 628 requires the declarant of a property owners' association to provide certain information to the newly elected board of directors upon transfer of control of the association:

- The number of lots that may be subject to the declaration upon completion of development;
- The number of members of the board of directors; and
- The number of such directors on the board that were appointed by the declarant, together with names and contact information of said board members.

**Common Interest Community Ombudsman**-[HB 1219](#) and SB 472, sister bills introduced in both houses by Delegate C. Matthew Farris and Senator Mamie E. Locke, respectively, clarify the role of the Common Interest Community Ombudsman. This was an administration bill—proposed by the Common Interest Community Board and the Department of Professional and Occupational Regulation. The bill was enacted.

**Common Interest Community Board**-[HB 917](#) provides that the Common Interest Community Board is required only to meet once annually, replacing a previous requirement that the Common Interest Community Board meets at least quarterly. Despite the reduction in number of required meetings there is no indication that the Common Interest Community Board intends to meet less than once a quarter. The board's responsibilities are expanding with a new registration requirement for time-share resale under comprehensive amendments to the Real Estate Timeshare Act. The bill was enacted.

**Common Interest Community Board-[HB 423](#)** required the Common Interest Community Board to develop and publish best practices for declarations and develop a model declaration consistent with those published best practices. The measure was opposed by the LAC and vetoed by the governor. The governor's explanation for the veto of HB 423 includes arguments very similar to those used by LAC during the session and provided that:

*“Virginia law already defines and outlines the minimum components required for declarations, those legal documents establishing the contract between members and their condominium, real estate cooperative or property owners’ association. Declarations are specific to each community and associations should rely on attorneys and other real estate professionals in creating those governing documents, rather than relying on a model declaration from a state government board. While perhaps well intentioned, this bill increases the Common Interest Community Board’s workload without any discernible benefit.”*

**Solar Panels-**Upon its passage by the Senate and House of Delegates, [SB 627](#) was labeled as the “Solar Freedom Bill” because the bill attempted to remove a provision from the Virginia Energy Plan that allows covenants restricting the installation of solar power devices to continue to be enforceable if they became effective prior to July 1, 2008. The LAC vigorously opposed it because the bill sought to abrogate existing restrictive covenants that were in violation of Article I of the Constitution of Virginia. Article I, Section 11 of the Virginia Constitution limits the applicability of law on existing contracts and provides that “the General Assembly shall not pass any law impairing the obligation of contracts.” Even upon the passage of SB 627, the LAC continued to voice its opposition to the bill, recognizing that even if the provisions related to the retroactive restrictions were removed from the statute, the effect of the Virginia Constitution remains unaltered. Existing covenants and restrictions would remain enforceable, even if the law related to their application became less clear. The governor ultimately vetoed the bill, providing in his veto explanation that:

*“The current statute bars community associations from prohibiting or restricting solar power devices, effective July 1, 2008. This bill alters the effective date by including language preventing the bar from being applied to restrictive covenants in effect prior to that date. By removing that language, Senate Bill 627 appears to contradict the general legislative rule that statutory enactments are applied prospectively. In addition to the problem of retroactive application, the legislation potentially violates both the United States Constitution (Article I, Section 10) and the Virginia Constitution (Article I, Section 11) by “impairing the obligation of contracts.” Existing law provides sufficient opportunity for community association owners to allow solar power devices if a majority so desires, by amending any applicable restrictive covenants.*

The governor's veto was touted as being “entirely correct” in an April 20, 2012, Richmond Times Dispatch editorial about the veto of SB 627.

**Sale at Auction – [HB 377](#)**, as originally drafted, would have required community associations and common-interest community managers to provide information requested by a lender within ten business days of the request. HB 377 included no limitation on the type of information that may be requested by a lender or the consequence for the failure by an association, or managing agent, to provide such information. Although HB 377 ultimately passed, provisions related to requests for information by lenders were removed.

**Charges for Rules Violations**-[HB 297](#) attempted to increase from \$50 to \$100 the charge that may be assessed by an association for a single violation of association rules and regulations, of a noncontinuing nature. The bill failed to pass.

**Duty of Care of Board of Directors**-[HB 605](#) was introduced to authorize an association board of directors to increase the total charges that may be assessed in the case of a member's continuing failure to comply with architectural guidelines pertaining to renovation or expansion. The bill failed to pass.

**Suspension of Rights for Rules Violations**-Delegate Robert Brink worked with the LAC and introduced [HB 901](#) in an attempt to clarify an association's authority to impose, by the adoption of rules, monetary charges for violations of the governing documents or association rules and regulations. HB 901 was pulled at the request of the patron in light of continuing litigation.

**Lien for Assessments**-[HB 1213](#) attempted to remove the cap on charges that an association may assess for rule violations, providing instead those charges must be reasonable in consideration of the seriousness of the violation and the history of previous violations. The bill failed to pass.

**Foreclosure on Assessment Liens**-[HB 412](#) attempted to limit the ability of an association to lien for assessments, unless directly attributable to providing maintenance and upkeep of the common areas and such other areas of association responsibility expressly provided for in the declaration. The bill failed to pass.

**Late Fees for Assessments**-[HB 418](#) was introduced to provide authority for community associations to impose a late charge, to the extent their governing documents were silent, of \$15 per installment or such other amount as determined by the board of directors not to exceed \$50 per installment. The bill failed to pass.

**Priority Liens**-[HB 1256](#) would have permitted property owners' associations to enjoy the same limited lien priority enjoyed by condominium associations in Virginia. The bill failed to pass.

**Posting of Documents**-[HB 668](#) would have required community association to post a copy of the governing documents, including all rules and regulations adopted by the board of directors, on any website maintained by the association. The bill failed to pass.

**Duty of Care for Board of Directors**-[HB 605](#) was introduced to clarify that a property owners' association board of directors owed a certain duty of care to its members and would have established an increased duty of care for declarant-appointed directors. The bill failed to pass.

**Rights of Owners**-[HB 1008](#) provided that no provision of a declaration or rules or regulations adopted by a board of directors may prohibit an owner from exercising his constitutionally protected right of freedom of speech upon property to which the owner or person entitled to occupy has a separate ownership interest or a right to exclusive possession. The LAC opposed the bill and offered to work with the sponsor to address the underlying issues from which the bill stems. The bill was carried over to the 2013 session of the General Assembly—the LAC will continue to monitor the bill and is prepared to oppose the bill unless it is amended significantly.

## Washington State

### LAC Members

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### Advocacy Highlights

**Manager Licensing-[SB 6325](#)** exempts common interest community managers from having to become a licensed real estate broker. The LAC drafted this legislation and worked with lawmakers to move it through the process. The legislation was necessary because the Department of Licensing notified the Washington State Chapter that if the legislature did not act this legislative session, the Department would enforce their interpretation of the law and require managers to be licensed real estate brokers. The Department's interpretation does not benefit the homeowners who hire managers, nor the managers themselves. This bill passed the House of Representatives and the Senate unanimously. Because of the testimony from outstanding managers, the LAC was able to articulate the differences between the professions.

Without the advocacy of Washington State CAI Members and active participation of those who came to Olympia, Washington, to testify before committees, the effort would not have been successful. The LAC thanks all who were active on this legislation.

**Electronic Notice of Meetings-[HB 1259](#)** was a carryover from the 2011 session. It would have allowed for meeting notices to be sent by electronic transmission as long as the owner provides written consent. The original bill allowed electronic transmission unless an owner elected otherwise. It was amended to

address the LAC's concern to require an 'opt in' as opposed to 'opt out' requirement for electronic notification. This bill failed to pass.

**Quorum Requirements-**[SB 6294](#) came from an HOA in Vancouver where most the homes are owned by a bank and fulfilling quorum requirements are nearly impossible.

Under the proposed legislation, if an association requires more than 34 percent of the votes of the association to be present for a quorum at a meeting of the association, any owner of that association who has at least 10 percent of the votes in the association (or at least three owners in associations with ten or less properties), may petition the court in the county where the association is located to lower the quorum requirement to 34 percent.

The LAC supported this legislation, but unfortunately it failed to pass.

## Wisconsin

### LAC Members

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Theodore J. Salgado, RS  
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### Advocacy Highlights

**Manager Licensing**-After preliminary investigation, the LAC decided to table its efforts and take no position on required manager licensing in the state for the time being. The LAC will revisit the issue should the need arise in the future.

**Amendments to the Condominium Act**-The LAC focused its attention this year on its proposed amendments to the Wisconsin Condominium Act. The LAC drafted the proposed statutory amendments based on the current needs of condominium associations in this changing market. The LAC is currently working on fostering its contacts with key legislators in order to make a push in the 2012-13 legislative calendar years to turn the committee's proposal into a bill.