

2014 **advocacy**
activities

2014 ADVOCACY ACTIVITIES

Federal and State Legislative and Regulatory Report

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

Contents

Amicus Curiae Briefs	5
Federal Report	17
Alabama	20
Arizona	21
California	25
Colorado.....	28
Connecticut.....	34
District of Columbia	39
Delaware	42
Florida	43
Georgia.....	49
Hawaii	52
Idaho	55
Illinois.....	56
Indiana	61
Kentucky.....	62
Maine	63
Maryland.....	64
Massachusetts	68
Michigan.....	69
Minnesota	70
Missouri	73
Nevada	74
New Hampshire.....	75
New Jersey	76
New York.....	78
North Carolina.....	79
Ohio.....	81
Oregon	82
Pennsylvania	83
Rhode Island.....	86
South Carolina.....	87

Tennessee 89
Texas 91
Utah..... 92
Vermont 94
Virginia 95
Washington State..... 99
Wisconsin 101
Index of Issues..... 104

Amicus Curiae Briefs

Bartram vs. U.S. Bank National Association (Florida)

The recent flood of mortgage foreclosures have negatively impacted community associations nationally and in Florida. Particularly affected are those community associations in states providing mortgage lenders with safe harbor protections prioritizing the lenders' lien interest in the units or homes governed by the associations to that of the associations' lien interests. Such limitations are further compounded by mortgage lenders that pursue foreclosures of their mortgages beyond the time that the applicable statute of limitations has run following the acceleration of the remaining payments on such lenders' mortgages.

In many cases of this type, community associations are forced to defend title they have acquired to the units after they have asserted their authority to take title pursuant to their own foreclosure process based upon delinquent monetary obligations owed to the association notwithstanding the lenders' delays in the foreclosure cases. This process is grim for community associations in terms of the obligation for unit owners to pay for the association's attorney's fees, both for asserting the associations right to foreclose upon the unit and for litigating against any lenders who attempt to institute foreclosure on their mortgages after the statute of limitations on same has expired, and based upon the fact that some courts are simply giving lenders an additional chance at the foreclosure after having slept on their rights for five years.

The Fifth District's decision in Bartram in effect gives lenders the ability to take title away from community associations and third-party bidders where the lenders have sat on their rights to foreclose for over five years after acceleration of a mortgage – a right which is not given to any other entity.

Brief: [CAI's Amicus Brief](#)

Prior Ruling: [Lower Court Decision](#)

Status: Pending

CAI Amicus Brief Author: Steven M. Seigfried, Esq. & Todd L. Wallen, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Mary Howell, Esq; Marc Markel, Esq; Laurie Poole, Esq.; Stephen Sugarman, Esq.

Bayview Loan Servicing vs. SFR Investments Pool 1, LLC and **SFR Investments Pool 1, LLC vs. U.S. Bank, N.A.** (Nevada)

Similar to the CAI amicus filing of Chase Bank v. Chase Plaza Condo in Washington, D.C. in 2013, the question raised in this case is whether a priority lien has true priority over a first security interest. Additionally, the trial courts that have decided that there is no extinguishment of a first deed of trust have done so on numerous, conflicting theories. For example, some have determined that "action to enforce the lien" means a judicial foreclosure is required, despite express language that allows non-judicial foreclosure. Some have stated that the priority amount is merely a "payment priority" to be paid

when the deed of trust forecloses, despite no mechanism in statute to pay the priority amounts from the sale proceeds. Some have decided it is a payment priority that is only triggered when the association files a lawsuit.

Simply put, there is no controlling law on the interpretation with approximately 100 cases pending before the Nevada Supreme Court and Ninth Circuit. The Nevada Supreme Court also recently issued an order to set oral argument in one case, but has not yet scheduled the date. Other fully briefed cases are receiving orders that they will be submitted on the brief without argument. Thus, the issue has reached a critical mass.

CAI is filing two similar, but separate, amicus briefs on the issue of extinguishment: one before the Ninth Circuit and one before the Nevada Supreme Court.

Brief (9th Circuit): [CAI's Amicus Brief](#)

Brief (Nevada Supreme Court): [CAI's Amicus Brief](#)

Prior Ruling (9th Circuit): [District Court - Order for Summary Judgment](#)

Prior Ruling (Nevada Supreme Court): [District Court Motions](#)

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

CAI Amicus Brief Author: Thomas Moriarty, Esq.; Loura Sanchez, Esq.; Henry Goodman, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Henry Goodman, Esq; Steve Weil, Esq; Jonathan Levine, Esq.; Gary Kessler, Esq.

Casey vs. Sudden Valley Community Association (Washington)

In Casey v. Sudden Valley Community Association an intermediate appellate court held in a case of first impression that a planned unit development's approval of a budget under statutory budget ratification procedures modeled after the Uniform Condominium Act did not give the association commensurate assessment authority; the association was required separately in accordance with its Bylaws to obtain an affirmative vote of 60% of owners appearing at a meeting to vote in favor of assessments.

The Washington State Supreme Court will decide whether statutory budget ratification procedures adopted in 1995 apply retroactively to a planned unit development formed in 1969. The appellant asserts that the procedures apply and that ratification of a budget gives the association authority to assess the owners in support of the budget; the respondent asserts that ratification of the budget does not substitute for a separate requirement that 60% of the owners in attendance at a meeting approve the assessments.

Assessments are the lifeblood of a community. The court wrongly construed legislative intent and embraced a misguided paradigm of individual rights at the expense of community interests. If less than a majority of owners can defeat an assessment increase, despite rising costs and underfunded reserves, then the budgeting process is flawed. If the court decision stands, then older communities with failing infrastructure, unfunded or underfunded reserves, and a defective budgeting scheme will be unable to maintain and preserve infrastructure and the developers general plan of development will fail.

Brief: Pending

Prior Ruling: [Superior Court Decision](#)

Status: Pending

CAI Amicus Brief Requestor: Brian P. McLean, Esq.; Stephan Fjelstad, Esq.; Terrence Leahy, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; David Ramsey, Esq; David Mercer, Esq; Karyn Kennedy Branco, Esq.; Robert Diamond, Esq.

Chanin Properties Investment vs. The Lodges at Eagles Nest POA (North Carolina)

The case involves Plaintiffs-Appellants' failure, or otherwise refusal, to pay assessments to the Association based upon language in the deeds from the developer to Plaintiffs-Appellants exempting Plaintiffs-Appellants from the obligation to pay assessments. At trial, Plaintiffs-Appellants sought a declaration from the Court confirming their alleged exemption.

All of the deeds at issue included language to the effect (or were otherwise subsequently reformed to include such language) that the grantee was exempted from paying maintenance or security fees until grantee completed construction of a residence on the lot and from paying initiation fees or dues, but "shall have full use and enjoyment of the amenities of the Association."

From a public policy perspective, it is extraordinarily dangerous if developers, anyone, or any entity claiming such authority individually exempts certain owners from payment of assessments. When third parties interested in purchasing a lot/unit or home in a community association commit to such purchase and search title, they are relying upon the well-founded assumption that all owners will be bearing their share of assessments for equally distributing the cost of maintaining the community among all owners. Certain owners do not want to have to subsidize such costs for other certain owners. Moreover, it would be overly burdensome for the third party purchaser to search the title to every single lot/unit in the planned community to determine who is and who is not obligated to pay their share of assessments. Similarly, the burden should not be placed on the Association Board to make the determination of who is obligated to pay assessments and alert potential purchasers. A negative outcome would make it difficult, at best, for an association to manage upkeep and maintenance of its amenities and infrastructure.

Brief: Pending

Prior Ruling: [Record on Appeal](#)

Status: Pending

CAI Amicus Brief Author: Matt Waters, Esq. and Henry Jones, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; David Ramsey, Esq; Karyn Kennedy Branco, Esq; Gary Kessler, Esq.; David Mercer, Esq.

Countryside Community Association vs. Pulte Home Corp. (Colorado)

The Countryside Community Association is a 186-unit townhome community in Colorado Springs. Pulte was the community's declarant and its builder-vendor. The case presents the questions of when a community is created and when a declarant becomes liable for maintenance assessments.

According to affidavits filed in the case, Pulte built all 186 homes in one operation, but many sat empty for as many as five or six years while Pulte attempted to sell them. During this time, Pulte relied on assessments collected from homeowners to pay for upkeep and maintenance on the private roads, building exteriors, and other real property surrounding Pulte's units. The homeowners received little benefit from this work, since most of the units in many of these structures were vacant. Pulte also used the homeowners' money to pay for capital improvements such as new street lighting. Pulte violated both the community's covenants and the Colorado Common Interest Ownership Act by using homeowner funds for these expenses.

Brief: Pending

Prior Ruling: [Appeals Court Ruling](#)

Status: Pending

CAI Amicus Brief Author: Jerry Orten, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Richard Ekimoto, Esq; Lara Anderson, Esq; Gary Kessler, Esq.; Gary Daddario, Esq.

Filmore vs. Unit Owners Association of Centre Pointe Condominium (Washington)

This case regards whether, under Washington law, the required supermajority percentage for a condominium owners association to pass a "rental cap" amendment to its declaration of condominiums is 67% or 90%. On February 8, 2013, the Whatcom County Superior Court granted a motion for summary judgment, ruling 90% was required and declaring the Twelfth Amendment to Centre Pointe's declaration of condominium "void". On September 2, 2014, the Court of Appeals of Washington, Division One, issued its opinion in the case affirming the summary judgment. It found that 90% was the required supermajority percentage because adding a restriction on leasing of a unit is a change of the use to which a unit is restricted.

Condominium owners associations will find it extremely difficult if not impossible to pass rental cap amendments to their declarations if a 90%, rather than 67%, supermajority is required. The great majority of existing rental cap amendments will be challenged and declared void, unless protected by the statute of limitations. Additionally, rental cap amendments serve a range of salutary purposes for condo unit owners and owners associations, including the fact they are important to obtaining or maintaining certification for FHA financing in the purchase and sale of a unit.

If the meaning of "use" is as broad as Filmore argued and the Court of Appeals held, then a wide subject matter of existing and future amendments to condo declarations regarding units will be challenged on grounds that 90% or more approval was required and not a lesser percentage such as 67% - for example, amendments that address subjects such as signage, animals, noise and smoking.

Brief: Pending

Prior Ruling: [Appeals Court Ruling](#)

Status: Pending

CAI Amicus Brief Author: Daniel Zemberoff, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Robert Diamond, Esq; Marc Markel, Esq; Jennifer Jacobsen, Esq.; Henry Goodman, Esq.

The Glens at Pompton Plains Condominium vs. Van Kleef (New Jersey)

The Glens at Pompton Plains filed a complaint against defendants based on their failure to pay common area maintenance. The defendants initially filed suit approximately two years prior against the association for “breach of fiduciary duty” which was dismissed with prejudice for failure to state a claim. The unit owners did not request ADR in that lawsuit. In the current case, the unit owners filed a motion seeking dismissal of the association’s case. The trial court dismissed the complaint and referred the case to ADR. It is the association’s position that the court erred in dismissing the complaint and that the defendant is not entitled to ADR.

The trial court referred to the Bell Tower v. Haffert case, a prior case in which CAI also filed an amicus brief, although the court ruled against CAI’s position. In interpreting the Bell Tower case, the court believed that an association is required to provide ADR since a dispute over the payment of common area maintenance is a “housing related dispute”. In New Jersey a “housing related dispute” is subject to ADR. The court took the position that since the Bell Tower case did not say that the dispute over common area maintenance is not subject to ADR, the court had the authority to do the same.

If the Appellate Division confirms the trial court’s decision, every instance where a unit owner raises an issue in their community and withheld common area maintenance, an association would be required to provide ADR. Additionally, withholding of maintenance would affect the financial viability of the association. In New Jersey, associations are required to pay the cost of ADR, so the allegation of a “housing related dispute” would be utilized by those persons not having the funds to pay maintenance and using their requests for ADR as a stall tactic.

Brief: [CAI's Amicus Brief](#)

Prior Ruling: [Lower Court Decision](#)

Status: Pending

CAI Amicus Brief Author: Michael Karpoff, Esq.

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

The Lake Chalet Owners Association, Inc. vs. Amber Homes, Inc. (Colorado)

The Lake Chalet Owners Association is a townhome community of 108 units located in Denver, Colorado. The Association is suffering from serious construction defects which the Association has attempted to address by filing a lawsuit against its developer/declarant, Amber Homes. Accordingly, in late 2009 and early 2010, the Lake Chalet owner-members amended the Declaration to remove the impediments which the declarant had placed there to prevent or impede the owner-members from suing them for construction defects.

The issue on this appeal is nearly identical to the issue presented in the Triple Crown at Observatory Village Association case for which CAI provided an amicus brief earlier this year. Based on the Triple Crown decision, the Lake Chalet Owners Association had their case dismissed. Lake Chalet appealed this decision with the Colorado Court of Appeals, but was unsuccessful on the central issue.

This case is primarily of importance in Colorado; however, there are implications that could extend nationwide for any state that has adopted UCIOA. Section 2-117 of UCIOA states that a declaration may be amended “only by vote or agreement of unit owners of units to which at least 67% of the votes in the association are allocated, or any larger majority the declaration specifies.” This provision allows a declarant to insert self-serving language into a declaration, such as arbitration provisions, and require a 100% vote of unit owners to amend the provision. This type of declarant control defeats the policy of association self-governance.

Brief: [CAI's Amicus Brief](#)

Prior Ruling: [District Court Decision](#)

Status: Pending

CAI Amicus Brief Author: Jesse Witt, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Laurie Poole, Esq; Henry Goodman, Esq; Steven Sugarman, Esq.

Metropolitan Homes vs. Vallagio at Inverness Residential (Colorado)

The Vallagio at Inverness development is a 197-unit condominium community in Arapahoe County, Colorado. It is suffering from serious construction defects, which it lacks the financial means to repair, and which it has attempted to address by filing a construction defect lawsuit against its developer/declarant Metro Inverness, LLC and its general contractor, Metropolitan Homes, Inc. Metro Inverness and Metropolitan Homes filed a motion to compel arbitration in the trial court, arguing that the purported Declaration amendment removing its arbitration provisions was invalid because Metro Inverness did not consent to the amendment, and that arbitration provisions in the purchase contracts entered into between Metro Inverness and certain of the Association’s unit owners required the Association to arbitrate its claims.

The Association argued that, as a matter of law, Declarant Metro Inverness’s consent was not required to effect the Declaration amendment because Colorado’s Common Interest Ownership Act prohibits any

Declaration provision purporting to give a declarant a unilateral right to control the Association over turnover. The Association also argued, because it is not a party to the individual unit owner purchase agreements, it cannot be bound by arbitration provisions in such agreements.

The trial court agreed with the Association's arguments, and denied the motion to compel arbitration. The defendants appealed the trial court ruling to the Colorado Court of Appeals. Defendants-appellees make the same arguments in the Court of Appeals as they did in the trial court. The Association's arguments on appeal are also the same arguments it made in the trial court.

Brief: [District Court Decision](#)

Prior Ruling: [CAI's Amicus Brief](#)

Status: Pending

CAI Amicus Brief Author: Jeffrey P. Kerrane, Esq.

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

The Palisades at Fort Lee Condominium Association, Inc. v. 100 Old Palisade (New Jersey)

The case deals with a construction defect and consumer fraud case that involves a luxury high rise condominium building located in Fort Lee. The construction defects are specifically leaks and poor waterproofing in the rear plaza. None of the foregoing defects were disclosed in the Public Offering Statement (POS) or engineering report that was included with the POS and approved by the New Jersey Department of Consumer Affairs.

Initially, the unit owners could not have known about the defects or taken action to remedy them because at that time, the association did not yet exist or was under control of the corporate sponsor. When the unit owners took control of the association, the first order of business was to get an engineering report after a series of leaks provided a basis for the association board of directors to be concerned and justified engaging an engineer to perform a thorough investigation.

During the course of this litigation, the Plaintiff settled with the Sponsor and original developer as well as other contractors. The claims that remained were based upon the contractor Defendant's defective work. Prior to trial, the contractor Defendants moved for Summary Judgment based upon the Statute of Limitations. By court order, the motion was granted, dismissing the Plaintiff's claims. The Plaintiff moved for reconsideration but was denied. The Plaintiff appealed the court's two prior orders with the hope of recovering the remaining claims.

Brief: [CAI's Amicus Brief](#)

Prior Ruling: [Superior Court Decision](#)

Status: Pending

CAI Amicus Brief Author: Randy Sawyer, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Mary Howell, Esq; Steven Sugarman, Esq; David Mercer, Esq.; Thomas Schild, Esq.

Polston vs. Pagosa Lakes Property Owners (Colorado)

CAI filed an amicus brief to join in an appeal of a recent district court judgment against the Pagosa Lakes Property Owners based on the court's (a) clear misinterpretation of the language, terms and provisions of the Association's governing documents, and (b) clear misapplication of the law as it relates to such nuisance provisions and owners as indispensable parties in matters in which the validity of restrictive covenants in declarations are at issue.

The plaintiff had rented his residence to a church group who had several (well over ten) people residing in the house for a short period. According to the complaint, the group left curtains open exposing the neighboring units to excessive lights from the residence, made considerable noise, parked numerous vehicles on the street, and strewn trash around the residence. Upon receiving the complaint, the Association sent violation notices to plaintiff and advised that they were considering fining him and that he had the right to a hearing before any fine was implemented. The plaintiff was fined and after losing his appeal, filed a lawsuit against the association.

The plaintiff owner asserted a single claim for declaratory judgment against PLPOA stating that the nuisance provisions in both the Declaration and the Community's R&Rs were ambiguous and unenforceable, and, therefore, PLPOA's enforcement against the plaintiff owner was invalid. The Association's appeal follows the district court's erroneous entry of an order denying PLPOA's motion to dismiss based on the failure of the plaintiff owner to name all owners in the Pagosa Lakes community as parties to the suit, and the district court's granting of the Plaintiff's Motion for Summary Judgment, based on a finding that the nuisance provisions of the Community's governing documents were void and unenforceable as vague, ambiguous and/or overbroad.

Brief: [CAI's Amicus Brief](#)

Prior Ruling: [District Court – Order granting motion for summary judgment](#)

Status: Pending

CAI Amicus Brief Author: Jesse Witt, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Richard Ekimoto, Esq; Jennifer Loheac, Esq; Marc Markel, Esq.; Steven Sugarman, Esq.

Ryan Ranch HOA vs. Kelley (Colorado)

The case arises from a dispute over community assessments and the requirements of the Colorado Common Interest Ownership Act (CCIOA), which is modeled after the 1982 Uniform Common Interest Ownership Act. CAI's two Colorado chapters lobbied for the enactment of CCIOA in 1991, and the chapters have frequently provided testimony and guidance to the legislature and courts on questions about CCIOA since then. The specific issue here is whether CCIOA invalidates the automatic annexation language that a developer or declarant may include when recording a declaration of covenants for a new community.

Recently, Colorado's intermediate court of appeals published a decision that effectively invalidated the annexation process that hundreds of Colorado associations have been using for many years to create common interest communities. The full ramifications of this decision are not yet known, but this case could have negative effects among communities if not overturned.

Supreme Court review is discretionary in Colorado. CAI's established position as both an original sponsor of CCIOA and as a continuing leader in community association law in Colorado makes it uniquely suited to provide guidance to the justices on this subject.

Brief: [CAI's Amicus Brief](#)

Prior Ruling: [Lower Court Decision](#)

Status: Pending

CAI Amicus Brief Requestor: Jesse Witt, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Jennifer Loheac, Esq; Marc Markel, Esq; Damien Bielli, Esq.; Robert Diamond, Esq.; Lara Anderson, Esq.

Rosso vs. Hallmark Homes (Minnesota)

The Rossos were the first purchasers of a single family home built by Hallmark Homes of Minneapolis, Inc. The home was used as a model by the builder for a period of months before selling it to the Rossos. At the time they signed the purchase agreement, they signed a Seller's Property Disclosure Form that indicated the house was in working order. One day prior to closing, Hallmark obtained a Certificate of Occupancy for the home. Both city and state law required a Certificate of Occupancy before a home could be occupied as a residence. Ten years and six days after signing the purchase documents, but less than 10 years after the Certificate of Occupancy for the home was issued, the Rossos discovered construction defects and extensive damage to the home.

The statute of repose starts to run "when construction is sufficiently completed to that the owner or the owner's representative can occupy or use the improvement for the intended purpose." Minnesota law provides that "no building or structure shall be occupied or used...until the building official has issued a certificate of occupancy thereof." This applies to single family and multi-family residences. The purpose

of this certificate of occupancy is to certify that a residence has been inspected by a local building official and has been determined to be safe for occupancy.

Brief: N/A

Prior Ruling: [Appeals Court Decision](#)

Status: [Court denied request to file an amicus brief](#)

CAI Amicus Brief Author: Dave Hammargren, Esq. & Jennifer Thompson, Esq.

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

SFR Investments Pool 1, LLC vs. U.S. Bank, N.A. and Bayview Loan Servicing vs. SFR Investments Pool 1, LLC (Nevada)

Similar to the CAI amicus filing of Chase Bank v. Chase Plaza Condo in Washington, D.C. in 2013, the question raised in this case is whether a priority lien has true priority over a first security interest. Additionally, the trial courts that have decided that there is no extinguishment of a first deed of trust have done so on numerous, conflicting theories. For example, some have determined that “action to enforce the lien” means a judicial foreclosure is required, despite express language that allows non-judicial foreclosure. Some have stated that the priority amount is merely a “payment priority” to be paid when the deed of trust forecloses, despite no mechanism in statute to pay the priority amounts from the sale proceeds. Some have decided it is a payment priority that is only triggered when the association files a lawsuit.

Simply put, there is no controlling law on the interpretation with approximately 100 cases pending before the Nevada Supreme Court and Ninth Circuit. The Nevada Supreme Court also recently issued an order to set oral argument in one case, but has not yet scheduled the date. Other fully briefed cases are receiving orders that they will be submitted on the brief without argument. Thus, the issue has reached a critical mass.

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Brief (9th Circuit): [CAI's Amicus Brief](#)

Brief (Nevada Supreme Court): [CAI's Amicus Brief](#)

Prior Ruling (9th Circuit): [District Court - Order for Summary Judgment](#)

Prior Ruling (Nevada Supreme Court): [District Court Motions](#)

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

CAI Amicus Brief Author: Thomas Moriarty, Esq.; Loura Sanchez, Esq.; Henry Goodman, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Henry Goodman, Esq; Steve Weil, Esq; Jonathan Levine, Esq.; Gary Kessler, Esq.

Triple Crown at Observatory Village Association vs. Village Homes (Colorado)

On November 7, 2013, the Colorado Court of Appeals issued an order in the Triple Crown case holding that the Non-Profit Act establishes the time limit for amending its declaration based on action taken without a meeting. The impact of this decision is that community associations would have only 60 days to gather the necessary votes to amend their declarations. This decision, if it is upheld by the Colorado Supreme Court, would make it extremely difficult for community associations to amend their declarations which were put in place before transition to homeowner control, and would frustrate Associations' attempts at self-governance.

Additionally, the Triple Crown decision runs counter to the common practices of Colorado general counsel firms who regularly assist Associations in amending their declarations. The Triple Crown decision therefore casts doubt on the legality of declaration amendments filed by several Colorado Associations over the past year.

This case is primarily of importance in Colorado; however, there are implications that could extend nationwide for any state that has adopted UCIOA.

Brief: [CAI's Amicus Brief](#)

Prior Ruling: [Lower Court Decision](#)

Status: [Motion to Dismiss](#)

CAI Amicus Brief Sponsor: Jeff Kerrane, Esq.

CAI Amicus Brief Review Committee: Henry Goodman, Esq; Stephen Marcus, Esq; Laurie Poole, Esq; Steven Sugarman, Esq.

TwentyEleven, LLC vs. Michael Botelho, et al (Rhode Island)

Similar in scope to the CAI amicus filings of Chase Bank v. Chase Plaza Condo in DC in December 2013 and the recently filed Nevada brief in of Bayview Loan Servicing v. SFR Investments Pool 1, LLC, the question raised in this case is whether a foreclosure of a statutory non-judicial condominium priority lien is a "true lien priority" and not merely a distributional preference in favor of the association. Additionally, the result of this appeal will have a dramatic effect on all states that have adopted a statutory non-judicial priority lien. The Rhode Island Superior Court has ruled that the foreclosure of a condominium's statutory non-judicial priority lien does not extinguish a first mortgage, regardless of the failure of the first mortgagee to either satisfy the priority portion of the lien prior to the association's sale, or exercise its statutory right of redemption.

If the Supreme Court of Rhode Island affirms the Superior Court ruling that an association's foreclosure of their priority of lien does not extinguish the first mortgage, there will be a chilling effect on association lien foreclosure sales. Individuals will not bid at an auction when the mortgagee may come back at any time to foreclose its mortgage and take the property. Also those who may take the risk of bidding at a foreclosure sale will not maintain payment of condominium assessments and will have no interest in expending money to preserve or otherwise improve the property that they could lose at any time.

Brief: Pending

Prior Ruling: [Lower Court Decision](#)

Status: Pending

CAI Amicus Brief Author: Edmund Allcock, Esq.

CAI Amicus Brief Review Committee: Stephen Marcus, Esq; Thomas Moriarty, Esq; Steve Weil, Esq; Jonathan Levine, Esq.; Gary Kessler, Esq.

Federal Report

2014 proved to be an exciting year for CAI's Federal Legislative Action Committee (FedLAC) and Government Affairs Department. The year saw a new level of CAI member engagement with members of Congress and federal agencies in support of CAI's federal advocacy agenda.

The year also was defined by challenges community associations will face in 2015 concerning the right of associations to establish and enforce standards concerning amateur radio towers and antennas and the future of association lien priority in a mortgage finance system dominated by the federal government.

Summary of 2014 federal advocacy activities—

Federal Housing Administration

- Condominium approvals—CAI supported the extension of key FHA condominium project approval policies (Mortgagee Letter 2012-18) to ensure condominium homeowners have access to FHA-insured mortgage credit.
- Blocked new FHA transfer fee policy—Through direct contact with senior FHA officials and by leading a coalition of interested national trade associations, CAI successfully blocked an FHA staff proposal to ban FHA mortgage insurance for homes in communities that use transfer fees. The College of Community Association Lawyers also provided key support to the FedLAC by preparing a legal opinion arguing against the FHA staff proposal.
- FHA handbook—The FedLAC submitted comments in support of an Office of Management and Budget review of FHA program rules, guidelines, and regulatory interpretations. The FedLAC called for consolidation of FHA rules for community association in a single, coherent compendium to facilitate access to credit for community association homeowners and greater lender compliance with FHA program rules.
- Servicing FHA-insured mortgages in community associations—The FedLAC submitted comments to FHA calling for improved coordination between mortgage servicers and community associations, particularly as servicers work with homeowners to cure defaults. The FedLAC stressed that communication between servicers and associations is key if all mortgage-related delinquencies are to be addressed and homeowners restored to good standing by both the servicer and the association.

Amateur Radio Legislation

- CAI opposed H.R. 4969, legislation introduced by U.S. Rep. Adam Kinzinger (R-IL) to pre-empt association rules prohibiting amateur radio broadcasting in community associations and to require that associations “reasonably accommodate” installation of amateur radio towers and antenna.
- CAI members participated in numerous calls to action in support of FedLAC advocacy activities to oppose formal consideration of H.R. 4969.

- CAI engaged in direct advocacy with members of the House of Representatives Energy and Commerce Committee to oppose consideration of H.R. 4969.
- Legislation concerning association architectural standards and limitations on amateur radio broadcasting will continue to be a high priority for 2015.

Mortgage Finance Reform

- The FedLAC closely monitored development of and debate on various legislative proposals to reform the mortgage finance system and to close down federal mortgage giants Fannie Mae and Freddie Mac.
- CAI lobbied in support of key reforms to the mortgage finance system that—
 - Recognize the community association model of housing and the basis of community associations under state law.
 - Implement a federal floor for association lien priority for all mortgages processed through a new federal mortgage finance system.
- While Congress did not enact mortgage finance reform in 2014, the issue remains a high priority for the FedLAC in 2015.
- The FedLAC supported enactment of legislation to eliminate fees charged to condominium unit homeowners refinancing a mortgage owned by Fannie Mae or Freddie Mac. While this legislation passed the House of Representatives, it failed to advance in the Senate.

Consumer Financial Protection Bureau

- *Comments on impediments to mortgage closings*—The FedLAC submitted comments to the CFPB in response to the Bureau’s request for information concerning consumer “pain points” in the mortgage closing process. The FedLAC called the Bureau’s attention to state mandated resale certificates and disclosures that inform and protect consumers purchasing a home in a community association.
- *Fair Debt Collection Practices Act*—The FedLAC submitted comments to the Bureau in response for a request for information concerning non-consumer credit-related debts. The FedLAC noted, among other things, that association assessment delinquencies do not meet the statutory definition of a consumer debt and are therefore largely outside the Bureau’s jurisdiction.

Association Lien Priority

- The FedLAC directly engaged with senior officials at the Federal Housing Finance Agency concerning agency views and legal actions related to association lien priority.
- FedLAC members traveled to Washington DC to meet with FHFA’s General Counsel to discuss lien priority and the importance of lien priority to the stability of associations and to protect association homeowners from special assessments and other costs.

- Protection of association lien priority will be a key advocacy goal of the FedLAC throughout 2015.

National Flood Insurance Program

- Reform of Biggert-Waters Act—As a member of the Coalition for Sustainable Flood Insurance (CSFI), the FedLAC lobbied for changes to the National Flood Insurance Program (NFIP) to protect community associations from exorbitant increases in flood insurance premiums. Through direct advocacy on Capitol Hill, member calls to action, and participating in CSFI advocacy efforts, CAI lobbied in support of key changes to NFIP premium structures. Congress adopted important reforms to the Biggert-Waters Act in early 2014, which were implemented throughout the year.
- Exemption from flood insurance premium escrow for condominium unit mortgages—The FedLAC submitted comments in support of regulations proposed by federal financial regulators that exempt condominium unit mortgages from a requirement that flood insurance premiums be escrowed. CAI supported an interpretation of federal statute that exempts individual homeowners from an escrow requirement for flood premiums when the association purchases a flood insurance policy and pays the premium as a common expense.

Terrorism Risk Insurance Act (TRIA) Extension

- As a member of the Coalition to Insure Against Terror, CAI supported legislation to secure a long-term extension of the TRIA program, which supports the market for terrorism risk insurance.
- When Congress allowed the TRIA program to temporarily expire, CAI members responded to a call to action in support of coalition efforts to renew the program, which was extended in early January 2015.

U.S. Mail Delivery Point Reform

- The FedLAC tracked legislation in the House and Senate that would reform delivery point locations for U.S. mail.
- CAI supported efforts to ensure that conversion from door delivery to cluster box delivery is voluntary and may not be compelled by local postmasters.
- Postal reform legislation failed to pass the Congress in 2014.

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Advocacy Highlights

Homeowners Association Act-[HB 137](#) would have required the declarant of a development to disclose financial and other information relating to the development to the board of directors. The bill would have required an association to maintain detailed records of receipts and expenditures affecting the operation and administration of the association, and would authorize the inspection of the records by members of the association under certain conditions. The bills provided for meeting requirements, would have required associations to register annually with the state Real Estate Commission. The bill granted powers to the board of the association and provided for lien details.

The measure was sponsored by Rep. Mac McCutcheon. It passed the House Commerce and Small Business Committee. The Substitute was amended on the House floor and was passed. On passage by the House, the bill was transmitted to the Senate and assigned to the Senate Judiciary Committee lead by Sen. Ward. Once assigned to the Senate Judiciary Committee this bill never made it onto the committee agenda for a vote and therefore **died in committee**.

While there was no legislation passed in 2014, the Alabama LAC and Dawn Bauman have continued discussions with Rep. McCutcheon and Sen. Ward about the benefits of adopting the Uniform Common Interest Ownership Act (UCIOA) as opposed to partial legislation that will need continued amendments. The LAC will continue to work with the bill's sponsors heading into the 2015 Session.

Arizona

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Advocacy Highlights

Arizona politics is anything but predictable. But, there does seem to be one thing we can always count on: the annual legislative assault on the laws governing Arizona's homeowners associations (HOAs). This phenomenon has become a perpetual aspect of every session.

It isn't too difficult to understand why this occurs. This is one area of law where legislators have the ability to directly impact what goes on in our homes, and in our neighborhoods. And, for many of them, the temptation to override local control is simply irresistible.

For Arizona HOAs, the best news may be what didn't happen.

By directly engaging policymakers, both during session and out of session, the Community Association Institute's (CAI) Legislative Action Committee (LAC) has eliminated many problems before they take the form of legislation. In just a short time, this year-round approach to legislating has reduced the number of bills with a direct impact on HOAs. For example, in 2012 the LAC identified at least 36 bills impacting

Arizona (cont.)

HOAs. In 2013, the number declined to 29, and in the session that just ended, the number dropped to 17.

That's the good news. The bad news is that, despite the reduction in the overall number, many of the bills that are eventually introduced by lawmakers are still quite onerous. In 2014, the most compelling example was SB 1334.

[SB 1334](#) would have prohibited the award of attorney fees to HOAs in administrative hearings. The passage of SB 1334 would have reversed the "loser pays" rule in HOA litigation, and opened the floodgates for frivolous lawsuits. HOAs unable to recover attorney fees would, in turn, be forced to look to their residents to foot the bill in the form of increased assessments. The bill was defeated in the Senate and, after being revived as the result of some parliamentary maneuvering, was defeated yet again in the House.

Of the bills that became law this year, the most significant changes can be found in [SB 1482](#). This bill specifies that local municipalities cannot require the establishment of planned communities, allows employees of an association to perform specific functions in small claims court, makes changes to voting in community elections, establishes rules for homeowners that rent their units, and regulates the display of political signs in planned communities, amongst other provisions. The content of this measure should be familiar, as similar provisions were added to an elections-related bill in the final hours of the 2013 legislative session. The courts ultimately struck down those provisions after concerns were raised that the bill violated the Arizona Constitution's "single-subject" rule, which specifies that legislation must "embrace but one subject and matters properly connected therewith..." So, we needed a "do-over."

The legislature successfully passed, and the Governor ultimately approved other HOA-related measures dealing with [golf carts](#), [common area valuation](#), [resale disclosures](#), and "[ranchette](#)" communities. These bills, as well as SB 1482, became effective 90 days after final adjournment of the legislative session. This year, most of Arizona's new law becomes operational on July 24, 2014.

Every legislative session, the LAC and its lobbying team strive to ensure that HOA-related legislation is both sensible and functional. As an advocate for HOAs and their residents, CAI's reputation continues to grow. The organization has set itself apart as one that supports straightforward and understandable HOA policy; a refreshingly unique approach acknowledged by both Arizona's policymakers and their staff.

These days, Arizona politics is much more of a "blood sport." In looking back at this and other recent sessions, it's almost impossible to overlook those instances in which today's legislators would have benefitted from the presence of legislative giants that – at one time – dominated the process.

Stan Turley, perhaps the last of these giants, passed away shortly after the Arizona Legislature adjourned in late April. Turley, the only Arizonan to serve as both Speaker of the House and President of the Senate since the late 1940s, was known for his rare ability to see issues through the eyes of others. The Republican lawmaker from Snowflake never considered his Democrat counterparts to be political enemies; they were colleagues and friends.

Arizona (cont.)

He would often describe his four-part philosophy to policymaking: “If it’s a moral issue, if it’s gambling, if it’s drugs, if it’s alcohol, if it’s what I consider to be a moral issue, I’m going to do whatever I feel like for myself. I don’t care what anybody else thinks or feels. I’m going to do what I want to do. Then I want to look at the state’s interest. I think if you identify a state interest that’s where you should be. Then you go to a district interest, your district where you represent. And then you go to your party. The Republicans don’t much like a guy putting the party down to number four but that’s my priority. I can get away with it because that’s just what it is.”

Imagine the impact that this type of philosophy would have in eliminating the “one-size-fits-all” approach to HOA policymaking!

It’s sometimes difficult to identify the impact that legislative giants like Stan Turley had on the process. However, it’s probably safe to say that SB 1062 – the most significant “crisis” of the 2014 session – would have been unlikely to occur under Turley’s leadership. The bill would have effectively given businesses the right to claim a religious objection to providing service to customers. And after garnering national attention, the measure basically paralyzed the state legislature.

Confusion over the bill’s impact fueled the controversy, and Arizona was – once again – thrust into the national spotlight. Companies ranging from Apple to American Airlines asked Governor Brewer to veto the legislation. The NFL even threatened to find a new location for the 2015 Super Bowl.

The Governor ultimately vetoed the bill, but the Arizona Legislature never fully recovered. For weeks, lawmakers and staff struggled to return to the familiar rhythm of the process, until a budget proposal for the coming fiscal year was introduced – almost a month later.

Budget negotiations carried on for weeks, and in early April, legislators successfully passed a budget proposal for fiscal year 2015 that met with the Governor’s approval. Typically, the successful passage of the budget signals the end of the legislative session. This year, however, there were still over 250 bills in the Senate, and 150 bills in the House remaining to be processed.

In the waning days of the 2014 session, there was a flurry of legislative activity on bills still in the pipeline that kept lawmakers working well into the night. Lengthy debates on issues ranging from redefining the regulation of taxi services to prohibiting anyone from aiming a laser pointer at an aircraft absorbed multiple hours of legislative action. While these proposals are not exactly cutting edge policy, these are the types of issues that occupy endless amounts of legislative floor time each year.

After 101 days, the Senate and House ended Arizona’s 51st Legislature, 2nd Regular Session on Thursday, April 24, 2014, at 1:46 AM.

In all, lawmakers introduced 1,205 bills. Of these, 303 received legislative approval and were transmitted to the Governor for her consideration. Governor Brewer ultimately signed 278 bills into law, while the remaining 25 were met with her veto stamp.

The LAC’s legislative efforts, reinforced by their lobbying team, do not often produce tangible results. But CAI should be proud that the organization successfully worked to ensure that a number of shortsighted proposals were defeated – and many never saw the light of day. The overall reduction in

Arizona (cont.)

the number of HOA-related measures introduced every session also speaks directly to the LAC's constituent-driven efforts, aimed at tackling HOA-related issues at the local level, before they take the form of legislation.

As we look ahead to the 2015 session, it's important to keep in mind that there will be a new Governor, and over one third of the Arizona legislature will be new to the process.

It is critical to educate these new policymakers about the best way to tackle HOA-related issues, while simultaneously preparing for the next legislative assault on the laws governing Arizona's HOAs.

Finally, it is important to recognize that the successes of each session would not be possible without the volunteers that serve on the LAC, and the time they dedicate to crafting better public policy.

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California (cont.)

Advocacy Highlights

Electronic Voting-[AB 1360](#) would amend the Davis-Stirling Common Interest Development Act to authorize associations to conduct elections using electronic voting systems, as specified, provided participating voters opt into using the electronic voting system and other required conditions are met. The measure was sponsored on behalf of the LAC; however, it **was defeated**, because the Secretary of State opposed the measure based on unsecure internet concerns.

Dispute Resolution-The Davis-Stirling Common Interest Development Act requires an association to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an association and a member involving their rights, duties, or liabilities under the act, the Nonprofit Mutual Benefit Corporation Law, or the association's governing documents. [AB 1738](#) requires the resolution or agreement under an association's procedure for resolving these disputes between an association and a member to be in writing and signed by both parties. The bill authorizes a member and an association to be assisted by an attorney or another person in explaining their positions at their own cost. The LAC opposed the bill, because it is already allowed in law, will drive up HOA costs since "lawyering up" will cost \$900 for each internal dispute resolution, allows anything said or written to be admissible in court, and provides no notice as to whether a party will be bringing its attorney. The measure was **signed into law**.

Yard Maintenance; Fines; Drought-[AB 2100](#) prohibits an association of a common interest development from imposing a fine or assessment against a member of a separate interest for reducing or eliminating watering of vegetation or lawns during any period for which the Governor has declared a state of emergency, or a local government has declared a local emergency, due to drought. The measure was **signed into law**.

Water-efficient Landscapes-The Davis-Stirling Common Interest Development Act provides that a provision of any of the common interest development governing documents that governs the operation of a common interest development, is void and unenforceable if it prohibits, or includes conditions that have the effect of prohibiting, the use of low water-using plants as a group, or if it has the effect of prohibiting or restricting compliance with a local water-efficient landscape ordinance or water conservation measure. [AB 2104](#) prohibits boards from unilaterally adopting new rules, policies, and guidelines (without getting members' approval) regarding which drought tolerant plants may be substituted for those that require a lot of water. The measure was **signed into law**.

Property Use and Maintenance- Current law makes void and unenforceable any provision of the governing documents of a common interest development or association that prohibits use of low water-using plants, or prohibits or restricts compliance with water-efficient landscape ordinances or regulations on the use of water, as specified. [SB 992](#) exempts from these prohibitions against imposing a fine or assessment an association that uses recycled water for landscape irrigation. The LAC succeeded in getting an amendment that allows associations and their members to continue to water during a declared drought if the irrigation system uses reclaimed, recycled, or non-potable water. The measure was **signed into law**.

California (cont.)

Solar Energy; Permits-[AB 2188](#) requires a city, county, or city and county to adopt, on or before September 30, 2015, in consultation with specified public entities, an ordinance that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems, as specified. The bill allows members to go directly to local government approving authorities with solar installation applications which must be acted upon in five days; and leap frogs over the HOA's architectural guideline process. The measure was **signed into law**.

Personal Agriculture-[AB 2561](#) allows members to plant personal gardens. The LAC secured three amendments that require such gardens to be in the backyard owned by the member, allowed for reasonable restrictions on the gardens, and stopped owners from commercially selling their produce on site to the public. The measure was **signed into law**.

Colorado

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Advocacy Highlights

As CAI's Colorado Legislative Action Committee ("CLAC") was planning for the 2014 legislative session in Colorado, we were told by the sponsors of the 2013 HOA Reform Package that they anticipated a quiet 2014 session for HOAs. Since five HOA bills were signed into law in 2013, key legislators were committed to see how implementation of those bills went before determining whether any further legislation regulating associations was necessary. The sponsors of the HOA Reform Package stuck to their word. However, a handful of other legislators had a different approach.

During the 2014 session, five bills were introduced which would have directly impacted HOAs. Of those bills, only two made it through the legislative process and were signed into law. A synopsis of the bills that passed and those that did not pass are outlined below.

Colorado (cont.)

HOA Records-On January 15, 2014, Rep. Diane Mitsch Bush (D-Steamboat Springs) introduced House Bill 14-1125 ([HB 1125](#)) in the Colorado House of Representatives. Sen. David Balmer (R-Centennial), at the request of CLAC, sponsored the bill in the Senate. The purpose of HB 1125 was to fix an inadvertent oversight in the association records law which was overhauled during the 2013 legislative session. At the time HB 1125 was introduced, CCIOA prohibited associations from publishing the telephone numbers and email addresses of members. Obviously, this statutory prohibition limited the information that associations could include in their membership directories.

HB 1125 easily made it through the legislative process and was signed into law by Governor Hickenlooper on March 27th. HB 1125 went into **effect on August 6, 2014** and permits an association to publish email addresses and telephone numbers of members and residents of the association, if those members or residents first provide written consent to their association to publish this information. Owners and residents may withdraw this written consent, but such withdrawal of consent does not require their association to go back and “change, retrieve or destroy” previously published telephone numbers or email addresses. Also, the bill permits owners and residents to electronically provide or withdraw their consent to their associations.

The LAC worked with Rep. Mitsch Bush in drafting HB 1125 and the LAC believes it’s an excellent fix to an inadvertent oversight in the HOA records law.

Management Company Transparency-Prior to the 2014 legislative session beginning, the LAC informed by Rep. Jeanne Labuda (D-Denver) that she intended to introduce a bill which would cap at \$50 (or possibly even prohibit) transfer fees which management companies charge for the work they perform relative to the sale of units in an association they manage. Based upon an impressive response by CAI members to a Call to Action from CLAC, Rep. Labuda agreed to not cap such transfer fees. Instead, CLAC worked with Rep. Labuda to introduce a bill to promote management company transparency. At our request, Sen. David Balmer (R-Centennial) agreed to sponsor the bill in the Senate and was pivotal in ensuring that the bill was not amended to cap the fees which management companies charge.

On April 18, **Governor Hickenlooper signed [HB 1254](#) into law**. The bill requires the disclosure of fees charged to HOAs in Colorado by management companies. HB 1254 will go into effect on January 1, 2015. Here’s what you need to know about the bill:

- it requires managers and management companies to disclose their fees and charges to associations during contract negotiations and on a yearly basis thereafter;
- these fees and charges must be disclosed as part of the written management contract in order to be enforceable;
- to be enforceable, the transfer fees which management companies charge relative to the conveyance of a home in an HOA must be disclosed in the management contract or specified on a line item in the real estate closing settlement statement; and
- management companies must also disclose any other remuneration the company or any subsidiary, affiliate, or related person or entity receives that is in any way connected to its relationship with the HOA.
-

Colorado (cont.)

Managers and management companies who fail to make these disclosures would be subject to investigation and discipline by the Division of Real Estate.

Construction Defects-With one week remaining in the 2014 legislative session, [SB 220](#) was introduced in the Colorado Senate. While at the time it seemed to some that this bill was introduced too late in the session to have any chance of passage, with relaxed rules in place for the end of the session, a bill can technically make it through the entire legislative process in three days. This bill was assigned to the Senate State, Veterans & Military Affairs Committee and the Senate Judiciary Committee.

Sponsored by Sen. Jesse Ulibarri (D-Commerce City) and Sen. Mark Scheffel (R-Parker), the bill sought to spur the construction of condominiums in Colorado. Unfortunately, the bill was so extreme that it would have guaranteed that owners of homes in HOAs would have no recourse against builders for defective construction. The bill was killed when the Senate Judiciary refused to take the bill up at the 11th hour.

As introduced, here's what the bill provided:

HOAs are not permitted to remove or amend mandatory arbitration provisions placed in declarations by developers.

The language of the bill says that a requirement within the declaration to mediate or arbitrate "represents a commitment on the part of the unit owners and the association on which a developer, contractor, architect, or other person involved with construction is entitled to rely." This choice of language is interesting; these mandatory arbitration provisions are placed in declarations unilaterally by developers and the homeowners have no ability to negotiate whether arbitration is an appropriate alternative to a jury trial.

Unless the association can prove that the arbitration provider is unqualified, construction defect claims must be resolved by the arbitration service provider named in the declaration by the developer.

It is not unusual for developers to require the use of arbitration service providers who are known for providing low awards for construction defects. This results in a very one-sided arbitration process and provides HOAs with no ability to participate in choosing the individuals who will sit on the arbitration panel. Further, in addition to the strong likelihood that the arbitration award for the defects will be much lower than a verdict from a jury, the association's responsibility for the costs of the arbitration panel are taken off the top of the award for the defects. Taken together, this means an association victimized by defects will not be awarded enough money to make the required repairs.

Regardless of what is required in the declaration, the arbitrator must be a neutral third-party as described by Colorado law.

Colorado law provides that an arbitrator "who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator if the agreement requires the arbitrator to be neutral." This added requirement in the bill provides slim consolation because there is no "agreement" between the HOA and developer that the arbitrator must be neutral. In addition, it is highly unlikely that arbitration panels would be found

Colorado (cont.)

not to be neutral, even when they are known for providing low awards to HOAs for construction defect claims.

If an HOA intends to institute any legal action (which would include proceeding to arbitration) for construction defects, the association would be required to prepare and provide the following disclosures to owners without the assistance of construction defect counsel:

The expenses and fees that the board anticipates will be incurred, directly or indirectly, in prosecuting the action, including:

- Attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which it may be liable if it is not the prevailing party or that the association will be required, pursuant to an agreement with its attorney or otherwise, to pay if it elects not to proceed with the claim;
- The impact on the value of the units that are the subject of the action, both during the pendency of the litigation and after its resolution;
- The impact on the marketability of units that are not the subject of the action, including the impact on the ability of owners to refinance and buyers to get financing, both during the pendency of the litigation and after its resolution;
- The manner in which the association proposes to fund the cost of the litigation, including any proposed special assessments or use of reserves; and
- The anticipated duration of the litigation and the likelihood of success.

Without the assistance of construction defect counsel, how could an association possibly answer these questions and provide owners with meaningful disclosures? In addition, without first going through the initial phases of testing and working through the Notice of Claims process with the developer, it would be impossible for the association to provide meaningful notice on many of these issues. Frankly, these disclosure requirements set boards up for breach of fiduciary duty lawsuits.

The mandatory disclosures outlined above must be provided to owners at least 60 days before the HOA is permitted to provide notice of potential claims to developers as required by the Construction Defect Action Reform Act (“CDARA”).

If the defects were discovered late, the timing of these disclosures could result in an association not complying with applicable statutes of limitations and repose. This means that the association would be barred from pursuing construction defect claims against the developer.

The disclosures outlined above must also be provided to owners before an HOA hires any experts or consultants or incurs or agrees to pay expert fees or consultant fees in connection with the construction defects.

It is impossible to comply with some of the required disclosures without first obtaining the input from experts and consultants. Not only would it be virtually impossible for a board that does not have construction background to advise the board as to the nature of defects, but without their help, how could an association possibly provide a disclosure regarding the costs of consultation fees, expert witness fees, and the likelihood of success against the developer?

Colorado (cont.)

Associations are not permitted to pursue developers for construction defects unless the association obtains written consents from owners holding at least a majority of the total voting rights in the association. This consent must be obtained directly from the owners and proxies are not permitted to be utilized.

Obviously, it's extremely challenging to obtain written consents in associations. This is magnified when attempting to obtain written consents from 51% of owners in large scale communities, mountain communities where owners literally can live all over the nation and the world, and communities that are largely made up of individuals in the military who may be deployed. In a recent case, the Court of Appeals held that if an association seeks an amendment by written consent, it must comply with the Nonprofit Act requirement that such consents be obtained within 60 days. This provision alone will make it impossible for many HOAs to ever pursue construction defect claims against developers.

Every purchase and sales contract for a home in an HOA must include the following disclosure in bold-faced type:

The property is located within a common interest community and is subject to the declaration for such community. The owner of the property will be required to be a member of the owner's association for the community and will be subject to the bylaws and rules and regulations of the association. The declaration, bylaws, and rules and regulations will impose financial obligations upon the owner of the property, including an obligation to pay assessments of the association. If the owner does not pay these assessments, the association could place a lien on the property and possibly sell it to pay the debt. The declaration, bylaws and rules and regulations of the community may prohibit the owner from making changes to the property without an architectural review by the association (or a committee of the association) and the approval of the association. The declaration for the community or the bylaws or rules and regulations of the association may require that certain disputes be resolved by mandatory, binding arbitration. Purchasers of property within the common interest community should investigate the financial obligations of members of the association. Purchasers should carefully read the declaration for the community and the bylaws and rules and regulations of the association.

While this disclosure is not objectionable, we all know that purchasers of new homes rarely read these types of disclosures.

When taking all of these provisions together, it became abundantly clear that this bill would successfully strip away all rights of homeowners living in HOAs from being able to hold developers responsible for their construction defects. This means that homeowners would have been left paying the tab to repair such defects through special assessments or significant assessment increases. Without taking these difficult financial steps, the defects would go unrepaired and owners would be required to disclose the defects as part of any sales transaction, which disclosure would likely negatively impact property values.

While **SB 220 was killed** during the 2014 legislative session, the LAC expects construction defects to be a focus during the 2015 legislative session.

Colorado (cont.)

Taxation of Residential Storage Condominium Units-In addition to the construction defects bill, two other bills that would have impacted associations were both filled during the legislative session.

[HB 1143](#) was introduced to address how storage condominium units are taxed. According to the bill, residential real property is taxed at 7.96% while commercial property is tax at 29%. As a result, the bill makes it possible to classify storage condominium units which are utilized for residential purposes as “residential improvements” clearing the way for those units to be taxed at the lower rate.

The LAC reviewed the bill and did not see any unintended consequences for common interest communities. While the LAC did not take a proactive approach to supporting the bill, we did not see any unintended consequences for common interest communities in Colorado. However, the bill was killed by the House Appropriations Committee.

CCIOA Exempt Associations-On January 28, 2014, Sen. Owen Hill (R-El Paso) introduced Senate Bill 14-140 (“[SB 140](#)”) which would have impacted the lien rights of those HOAs which fall within the Colorado Common Interest Ownership Act (“CCIOA”) exception for small new cooperatives and small and limited expense planned communities. In order to be permitted to record liens for past due assessments, to foreclose upon those liens and to collect related fees and charges permitted under the declarations for these associations, this bill would have required these HOAs to amend their declarations to adopt all provisions of CCIOA.

SB 140 was postponed indefinitely by the Senate Committee on State, Veterans & Military Affairs at the request of Sen. Hill. This meant that SB 140 was dead for the 2014 legislative session and could not be reintroduced during the session. Sen. Hill told the Committee that the bill needed more work before potentially being reintroduced next year.

Connecticut

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Advocacy Highlights

During the 2014 legislative session, the Connecticut General Assembly enacted two public acts concerning community associations, one of which also concerns managers.

Amendments to the Common Interest Ownership Act-[Public Act No. 14-215](#) amends a number of provisions to the Common Interest Ownership Act ("CIOA") as follows. The majority of these amendments **became effective on October 1, 2014**, and apply to all communities in Connecticut, regardless of when created. A small number of these amendments are more limited in scope. Some of these more limited amendments became effective immediately, while others did not take effect until January 1, 2015:

- A. Amendments Taking Effect on October 1, 2014. The following amendments apply to all common interest communities in Connecticut, regardless of when created:
 - a. Meeting Minutes and Voting Records. Public Act No. 14-215 amends Subsection 47-250(b) of CIOA to require that the minutes of all board meetings contain a record of how each board member cast his or her vote on any final action proposed to be taken by the board, unless:
 - i. The proposed action is approved by the unanimous consent of the board; or
 - ii. The proposed action is approved without objection by any member of the board.

Given these new requirements, it will be the duty of the secretary of the association, or whomever else is taking the minutes of the meeting, to carefully record a tally of how each board member cast his or her vote on any final action.

- b. Election of Directors by Plurality Vote. Public Act No. 14-215 amends Subsection 47-252(b) to permit associations to elect directors by a plurality vote.

Connecticut (cont.)

When there are more candidates seeking election than there are open seats, it is possible for one candidate to receive the greatest number of the votes, but for that number to still be less than a majority of the total number of votes cast. Plurality voting permits the candidate who receives the greatest number of votes to be elected, even if that number of votes is not a majority.

Many associations have long conducted elections by plurality vote. However, when the General Assembly amended CIOA in 2009, in part to clarify what constitutes a majority vote of the unit owners, it inadvertently called into question the permissibility of conducting an election by plurality vote.

Subsection 47-252(b) of CIOA presently states that at a meeting of the unit owners, a majority of the votes cast shall be the decision of the association, unless either the governing documents or CIOA requires a higher number. This provision works well when the unit owners are asked to vote either in favor of or against a certain action. However, Subsection 47-252(b) does not work as well when it comes to elections when there are more candidates seeking election than there are open seats.

Public Act No. 14-215 amends Subsection 47-252(b) to make it clear that associations may elect board members by a plurality vote.

The amendment to Subsection 47-252(b) also applies to the election of officers, but only if the governing documents of the community require that officers are elected by the unit owners, rather than the board members. In most Connecticut communities, the officers are elected by the board members, not by the unit owners.

- c. **Disclosing Financial Reports in Resale Certificates.** Public Act No. 14-215 amends Subsection 47-270(a) of CIOA to add a new disclosure that associations must include in any resale certificates that they issue.

If the association has had a certified public accountant report on its financial statement during the five years preceding the date on which the resale certificate is issued, then the certificate must disclose the following:

- i. The fiscal period represented by that financial statement; and
- ii. Whether the report prepared by the accountant was a compilation, review or audit.

If the association has not had an accountant report on its financial statement, then the certificate should state so.

- d. **Increase in the Maximum Amount of Fines That May Be Levied Against Managers.** Public Act No. 14-215 increases the maximum amount of fines that the Department of Consumer Protection may levy against managers, from \$500 to \$1,000.

Connecticut (cont.)

- e. Clarification on Permitting Private Transfer Fees. During the 2013 legislative session, the General Assembly enacted Section 47-17a of the General Statutes, which prohibits private transfer fees payable to third parties on the sale of real estate. This statute specifically excluded from the prohibition fees paid to a community association “organized under CIOA.” This means that the association of a community formed under CIOA could impose a transfer fee paid to the association on the sale of a unit. Unfortunately, the language of the statute left open the question of whether the association of a community created prior to the effective date of CIOA could also charge a transfer fee.

Public Act No. 14-215 amends Section 47-17a to clarify that the association of any common interest community, regardless of when created, may charge a transfer fee on the sale of a unit.

- f. Correction of Internal Cross-References. CIOA has been amended many times since it was first enacted 30 years ago. New provisions have been added, and existing provisions have moved. Public Act No. 14-215 amends CIOA to correct certain internal cross-references to account for these changes.

B. Amendments Taking Effect Immediately. Public Act No. 14-215 contains amendments to clarify the procedures by which only communities having 2,400 or more units adopt budgets and special assessments. These amendments will have no impact on any other association.

C. Amendments Taking Effect on January 1, 2015. Public Act No. 14-215 contains amendments that only apply to master associations that meet the following qualifications. Generally speaking, a master association is an association that is charged with operating a group of individually-formed common interest communities, referred to as constituent communities, which are governed and operated collectively, in whole or in part, as one single community:

- a. The constituent communities contain at least 400 units in total;
- b. The master association is governed by a board of directors consisting of one individual from each constituent community, who serves on the board of that community and represents its interests on the board of the master association; and
- c. The master association board members have votes that are weighted in proportion to the number of units in the constituent community that they represent.

These amendments will have no impact on any other association.

Optional Method of Foreclosure-[Public Act No 14-84](#), which **became effective on October 1, 2014**, creates a new process for conducting a foreclosure by market sale. The Act is purportedly designed to make it easier for homeowners and first mortgage holders to approve and complete short sales, by

Connecticut (cont.)

making it more difficult, if not impossible, for the holder of a junior lien to negotiate to receive at least some payment from the proceeds of the sale.

When the holder of a mortgage completes a foreclosure, the association will receive payment of its priority lien, equal to nine months' of common charges plus attorneys' fees and costs. Unfortunately, in many or most cases, the association is unable to collect the junior portion of its lien, which does not enjoy priority over the mortgage.

As an alternative to foreclosure, some homeowners will attempt to conduct a short sale. The owner will put the home on the market and hope to find a buyer that is willing pay an amount that is close to market value. The owner then asks the mortgage holder to accept, as payment in full, an amount that is less than what is owed on the mortgage.

Because there is no foreclosure, any liens that were junior to the mortgage have not been extinguished. The owner and the mortgage holder must negotiate with the junior lien holders to accept some amount, often discounted, as payment in full. If the homeowner, mortgage holder, and junior lien holders cannot reach an agreement, then the short sale will not be completed. Instead, the mortgage holder will proceed with a foreclosure and the junior liens will be extinguished in the process. Thus, junior lien holders have some incentive to negotiate with the homeowner and mortgage holder.

Public Act 14-84 essentially eliminates the need for homeowners and mortgage holders to reach an agreement with the junior lien holders. The Act will not have any impact on the ability of associations to collect their priority liens. However, it eliminates the possibility of negotiating for payment of at least a portion of the junior portion of the association's lien if the homeowner is able to complete a short sale.

The Act applies to situations that meet the following criteria:

- A. The homeowner has one or more mortgages on his or her home, which he or she is using as a primary residence. In other words, this bill does not apply to property held by someone for solely for investment purposes.
- B. The homeowner is delinquent in paying the first mortgage on the home, and the holder of the first mortgage intends to proceed with a foreclosure.
- C. The home is worth less than the total amount of the outstanding balance of the first mortgage plus any liens that enjoy priority over that mortgage, based on an appraisal obtained by the mortgage holder.

If these criteria are met, then the homeowner and the holder of the first mortgage may agree to attempt to sell the unit on the open market. Any proposed purchase and sale agreement must meet the approval of both the homeowner and the mortgage holder, and subsequently be ratified by the court. The process is designed to permit the mortgage holder to obtain a judgment within three or four weeks of filing the action, and for the sale to take place within a month or two thereafter.

If the home is a unit in a common interest community, the association should receive notice of the foreclosure, just as it does now with other mortgage foreclosures. When the court enters its judgment, the association and all other junior lien holders are given a right of first refusal. This means that a junior

Connecticut (cont.)

lien holder may choose to purchase the unit on the same terms and conditions as the proposed purchase and sale agreement already approved by the homeowner and mortgage holder. In most cases, it will likely make no sense to exercise this right.

If the association does not exercise this right, then the junior portion of its lien will be extinguished. The association will still collect the nine-month priority from the new owner of the unit after the sale is completed.

District of Columbia

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Advocacy Highlights

This year was a landmark legislative year in the District of Columbia. In March, the D.C. Council approved the [Condominium Amendment Act of 2013](#), which was primarily drafted by members of the District of Columbia's Legislative Action Committee.

The passage of the Condominium Amendment Act was the culmination of years of work by the DC LAC, which had an almost constant presence in the Wilson Building over recent years. Indeed, a number of members of the LAC testified on behalf of the Condominium Amendment Act, while the bill's passage arose out of extensive lobbying of members of the Council. The following is a summary of the significant changes to the Condominium Act arising out of this effort.

- Require unit owners to obtain condominium owner's insurance coverage with dwelling (whether residential or commercial) property coverage 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 owner of the unit where the cause of the damage or destruction originated 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.

District of Columbia (cont.)

- 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, D.C. 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.
- Amend the process for amending the Condominium Instruments by providing mortgagees with sixty (60) days to respond to a notice of a proposed amendment to the condominium instruments. Any failure to respond within sixty (60) days will be deemed to be consent to the proposed amendment.
- Require all meetings of the Board to be open to members in good standing.
- Permit notice of board meetings to be delivered electronically.
- Require minutes of Board meetings to be reviewable by the members and provide members with the right to examine minutes of the Association upon a written request and five days' notice.
- Require that a copy of the agenda be 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 lien section of the statute to specify that the lien includes late fees, interest, expenses and attorney fees and to clarify the super priority of the Association's lien extends back six (6) months from the date of recordation of a memorandum of lien or filing of suit.
- Clarify the Association's power to convey title upon non-judicial 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.
- Provide Associations with the power to adopt leasing restrictions following the approval of either the Executive Organ or a vote of the membership, provided, however, that the right of existing owners to lease their units shall be unaffected by any leasing cap.
- A change proposed by the development industry designed to allow condominium developers to use purchase deposits during the construction and development process provided they are backed up by bonds or other security.

District of Columbia (cont.)

Fees-The other major legislative effort before the LAC is defensive in nature. Towards the end of last year, Councilwoman Bowser introduced the [B20-648](#), entitled "The Condominium Fee Fairness Act of 2014," which, if adopted, will require all condominium associations to participate in a mandatory mediation process prior to foreclosing on a condominium lien. The LAC has gone on record in opposition to the Bill, and plans to aggressively lobby the D.C. Council. Public hearings were scheduled for May 7, 2014, at which a number of members of the DC LAC testified against the Bill.

The next positive legislative effort being pursued by the LAC is to adopt legislation for the growing number of property owners' associations in D.C. At a minimum, such legislation will include a statutory lien and foreclosure process, although it is possible that such legislation will include other provisions relating to property owners' associations. Also, we expect that the DC LAC will propose a bill to address certain issues relating to developing condominiums, which will include changes to the warranty bond and certain requirements for the transition of books and records to the Association.

Delaware

Advocacy Highlight

Ombudsman Office-[HB 308](#) creates an Office of the Common Interest Community Ombudsman. The bill would empower the Ombudsman to assist common interest communities to understand their rights and responsibilities and to resolve disputes without recourse to the judicial system. The bill also creates a Common Interest Community Advisory Council to advise and assist the Ombudsman and to undertake a review of the current common interest community system and make recommendations to the Ombudsman for changes to Delaware law and rules of court procedure to improve the system, with the hope these recommendations would be incorporated into legislation.

The bill was fast tracked through the House of Representatives following its late-April 2014 introduction. CAI submitted written and oral testimony opposing the bill to the Senate committee of consideration. In doing so, CAI was able to work with the sponsor to have the bill amended to address some of our concerns. Our amendments incorporated alternative solutions CAI offers in our white paper and executive summary. The amendments provided for the requirement that common interest communities adopt an internal complaint resolution process, the duties of the council should not explicitly provide for the consideration of fees on homeowners, and the removal of provisions that appeared to be redundant and could threaten the lien priority collection. CAI was also added to the membership of council. The bill ultimately passed as amended by the Senate late in the evening on June 30. CAI sent a letter to Governor Jack Markell's office applauding the General Assembly's efforts and responsiveness to our concerns, but requested that he veto the bill because the solutions we proposed would be effective as stand-alone legislation.

Florida

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Advocacy Highlights

Regulation of Community Association Management – [HB 7037](#) defines new management tasks and professional standards, alters the legal relationship between managers and associations, and provides for statutory forms for releases of liens, 30-day pre-lien letters, and 30-day notice of intent to foreclose letters. In 1996 the Florida Supreme Court issued an opinion in which it identified several tasks and activities then being performed by managers which it found to be the unauthorized practice of law. Recently, a committee of the Florida Bar requested that the Florida Supreme Court revisit that issue in light of the major changes in the law (e.g. pre-lien letters). In response to that Bar request, managers approached the Legislature and asked that it legislatively identify those tasks and activities which it believed could legally be performed by managers. The Supreme Court has not yet issued its new opinion.

Florida (cont.)

Under defining new management tasks, HB 7037 provides managers may, in addition to existing services: determine the number of days required for statutory notices; determine amounts due to the association; collect amounts due to the association prior to the filing of a civil action; calculate the votes required for a quorum; calculate the votes required to approve a proposition or amendment; complete forms related to the management of a community association that have been created by statute or by a state agency; draft meeting notices and agendas, calculate and prepare certificates of assessments and estoppel certificates; respond to requests for a certificate of assessment; negotiate monetary or performance terms of a contract subject to approval by an association; draft pre-arbitration demands; coordinate or perform maintenance for real or personal property and other routine services involved in the operation of a community association; and comply with the association's governing documents and the requirements of law as necessary to perform any of the foregoing.

HB 7037 amended Chapters 718, 719, and 720 to include statutory forms for releases of liens, 30-day pre-lien letters, and 30-day notice of intent to foreclose letters, and permits managers to prepare those documents.

HB 7037 also creates a new legal relationship between managers and community associations. The bill provides licensed managers and community association management firms will be deemed to act as agents on behalf of community associations. It provides licensed managers and community association management firms will be required to discharge their duties loyally, skillfully, and diligently; to deal honestly and fairly; and act in good faith; and with care and full disclosure. They must also account for all funds in their control. Additionally, it provides that contracts between licensed managers or community association management firms and community associations may still provide for community associations to indemnify and hold managers harmless for ordinary negligence resulting from the manager or management firm's acts or omissions that are the result of an instruction or direction of the community association. The new law also permits other negotiated indemnity or hold harmless provisions. However, the new law prohibits clauses which indemnify managers against acts or omissions which violate a criminal law; actions through which managers derive improper personal benefits, either directly or indirectly; gross negligence; recklessness; bad faith; maliciousness or, actions which are exercised in a manner which would exhibit wanton and willful disregard of human rights, safety, or property.

The measure went into effect on July 1.

Omnibus Community Associations Bill – Each year one bill typically becomes the platform for the proposed amendments which will impact community associations. [HB 807](#) impacts community associations by addressing the following subjects:

1. *Timeshares vs. Vacation Rentals*: Various sections of Chapter 509, Florida Statutes were amended to specifically provide that timeshare projects are to be treated as their own category for purposes of regulating public lodging establishments. This will be of special interest to timeshare hotels.
2. *Marketable Record Title to Real Property Act (HOAs only)*: Various sections of Chapter 509, Florida Statutes were amended to specifically provide that timeshare projects are to be treated

Florida (cont.)

as their own category for purposes of regulating public lodging establishments. This will be of special interest to timeshare hotels.

3. *Repair and Rental of Abandoned Units* (Condominiums only): Section 718.111(5) was amended to expand the existing right of condominium associations to access units by providing that they may now enter into abandoned units to: inspect the unit and adjoining common elements; to make repairs to the unit or to the common elements serving the unit, as needed; to repair the unit as mold or deterioration is present; to turn on the power for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. It provides the criteria for determining whether a unit is presumed to be abandoned and requires certain new notice requirements. Importantly, the association can now charge the abandoned units for all such costs and foreclose on the unit if the charges are not paid. Also important, associations are now statutorily permitted to request that a court appoint a receiver to lease abandoned units.
4. *Insurance-Repair Obligation Clarification* (Condominiums only): Section 718.111(11)(j) was amended to clarify that, if damage is not covered by the association's insurance carrier because it was not caused by an insurable event, the obligation to repair and/or replace the damaged items will be determined by looking to the requirements provided for in the governing documents.
5. *Additional Provisions Relating to the Production of Owners' Directories* (Condominiums, HOAs and Co-ops): 718.111(12)(c)5, 719.104(2)(c)5 and 720.303(5)5 were all amended to clarify that owners in a condominium, cooperative and homeowners' association can also voluntarily consent to the publication of other protected contact information when being used in an owner directory.
6. *Forced Relinquishment of Official Records And Property* (Condominiums and Co-ops only): Sections 718.111(12)(f) and 719.104(2)(e) were added to provide that outgoing board or committee members must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within five days after the election. It authorizes the Division to impose a civil penalty against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.
7. *Electronic Participation at Board Meetings* (Condominiums only): The bill provides that, in addition to use of speaker phones, condominium board or committee members may participate in a meeting by real time video conferencing, or similar real time electronic or video communication.
8. *Board Members' Right To Communicate by E-mail* (Condominiums Only): Section 718.112(2)(c) now permits Members of the board of administration to use e-mail as a means of communication, so long as they do not cast votes via e-mail.
9. *Removal of Condominium Associations From The Chain of Title For Assessment Purposes* (Condominiums only): To be consistent with similar language contained in Chapter 720 for HOAs, 718.116(1)(a) was amended to provide that condominium associations which acquire title to units through foreclosure or by deed in lieu of foreclosure are not considered to be previous owners for assessment purposes.

Florida (cont.)

10. *Limitations on Attempts to Terminate Condominiums* (Condominiums only): Section 718.117(9) was amended to provide that, a new attempt to terminate a condominium cannot be commenced within 180 days from the date that an earlier termination attempt failed.
11. *Elimination Of The Community Association Living Study Council* (Condominiums, HOAs and Co-ops) At the request of a Community Association Living Study Council member (Rep Woods), Section 718.50151, was repealed, thereby eliminating that council. This was done as a result of the lack of interest by homeowners.
12. *Continuation of The Bulk Sales Buyer Act* (Condominiums only): The automatic expiration (“sunset”) of Section 718.707 was extended from July 1, 2015 to July 1, 2016 to permit interested parties to see if that law could be made permanent by adopting amendments which would be beneficial to both unit owners and developers.
13. *Financial Reporting for Cooperatives* (Co-ops only): Section 719.104(4) was amended to be consistent with the financial reporting requirements for condominiums.
14. *Board Member Eligibility for Cooperatives* (Co-ops only): Section 719.106(1)(a)2 was amended to be consistent with the board membership requirements for condominiums.
15. *Emergency Powers for Cooperative Associations* (Co-ops only): Section 719.128 was created to grant Cooperative Associations the emergency powers already granted to Condominium Associations by Chapter 718.
16. *Handicap Accessibility for HOA Members to Board Meetings* (HOAs only): Section 720.303(2)(a) was amended to provide that all meetings of the board must be held at a location that is accessible to a physically handicapped person if so requested by a physically handicapped person who has a right to attend the meeting.
17. *Handicap Accessibility for HOA Members to Members’ Meetings* (HOAs only): Section 720.306(1)(a) was amended to provide that all meetings of the members must be held at a location that is accessible to a physically handicapped person if so requested by a physically handicapped person who has a right to attend the meeting.
18. *Notice Of Homeowners’ Association Amendments* (HOAs only): Section 720.306(1)(b) allows associations to provide notice of adopted amendments by email, if the owner has given permission for electronic notice. Also, if the association had previously provided a copy of an amendment to the members before it was adopted, the association can then simply notify the owners that the amendment passed and supply them with the recording data and advise them that a copy of the amendment is available at no charge in lieu of providing another copy of the document.
19. *Emergency Powers for Homeowners’ Associations* (HOAs only) Section 720.316 was created to grant to Homeowners’ Associations emergency powers which are consistent with the operation of an HOA.

The measure went into effect July 1.

Florida (cont.)

Residential vs. Commercial Condominiums – [SB 440](#) was prepared in an attempt to eliminate the confusion as to what sections of Chapter 718 apply only to residential condominiums and those which also apply to timeshare, commercial, and vacation condominiums. The bill provides that the following requirements will no longer apply to vacation, timeshare, or commercial condominium associations: the requirement to respond to certified written inquiries; the prohibition against voting by general proxy; limitations on board member terms; the prohibition of co-owners of a unit serving on the board; legal and financial eligibility requirements for board members; the requirement that the board elections take place via written ballot or voting machine; the requirement that new board directors certify within 90 days that they have read the governing documents and bylaws; swear to uphold their responsibilities, etc.; mandatory nonbinding arbitration; fire sprinkler opt-out provisions; opting out of the requirements of Section 553.509(2); Florida Statutes dealing with the Americans with Disabilities Act Standards for Accessible Design; and hurricane shutter specifications and hurricane protection provisions. **The measure went into effect July 1.**

Regulation of Vacation Rentals - Three years ago, lobbyists from the vacation rental industry convinced the legislature to create Section 509.032 which prohibits local governments from being involved in regulating short term vacation rentals. Sen. Thrasher, the sponsor of the legislation, heard from many residents in single-family home communities that they were having troubles with vacation homes but had no recourse because of this law. Accordingly, he filed a bill which would have given control back to local governments. The original version of [SB 356](#) amended Section 509.032(b) to again permit local governments to regulate vacation rentals, including the duration of rentals. However, as finally adopted SB 356 does far less and now repeals the provision in s. 509.032(7), F.S., that prohibits local laws, ordinances, or regulations from restricting the use of vacation rentals, prohibiting vacation rentals, or regulating vacation rentals based solely on their classification, use, or occupancy. **The measure went into effect July 1.**

Notice of Subsurface Rights - As a result of some developers retaining subsurface rights when selling homes to unwary purchasers, [HB 409](#) creates Section 689.29 which will now require sellers of new dwellings to provide written notification to prospective buyers of the seller's intent to retain subsurface rights prior to entering into any sales contract. **The measure went into effect October 1.**

Alternative Flood Insurance - As a result of the adoption of the Federal Biggert-Waters Flood Insurance law, the reasonable availability of flood insurance for residential property through the National Flood Insurance Program (NFIP) became a critical question. [SB 542](#) was adopted to assist Floridians to obtain alternative flood insurance coverage. Thankfully, the Biggert-Waters Flood Insurance law was further amended to eliminate the emergency nature of this matter. The bill added Section 627.715 to authorize insurers to offer personal lines residential flood insurance policies to off-set the anticipated loss of the availability of flood insurance through the NFIP. Please note that this bill does not apply to commercial or commercial residential policies. **The measure went into effect on June 13.**

Florida (cont.)

Citizens Property Insurance Corporation – [HB 1089](#) is part of an attempt to slowly but steadily reduce the role of Citizens as a major player in the Florida insurance arena. Section 627.351(6) was added to provide that, **effective July 1, 2014**, commercial lines residential condominiums are ineligible for coverage for wind-only coverage if 50 percent or more of the units are rented more than eight times in a calendar year for a rental agreement period of less than 30 days.

Citizens Property Insurance Corporation – [SB 1672](#) is another bill which is slowly but steadily reducing the role of Citizens as a major player in the Florida insurance arena. The bill amends Chapters 626 and 627 to direct Citizens to stop writing new commercial residential multi-peril policies in the coastal account effective July 1, 2014. Instead, Citizens may offer separate wind-only policies, and commercial residential policies excluding wind. Citizens may, however, continue to renew commercial residential multi-peril policies on a building that is insured by Citizens on June 30, 2014. The bill prohibits an insurance agent, managing general agent, adjuster, customer or service representative from accepting referral fees or compensation from an inspection or inspection company related to an inspection used to obtain insurance coverage or establish the insurance premium. The bill additionally prohibits a public adjuster, apprentice or associate from accepting a power of attorney that vests to the right to select the person that will perform repairs on an adjusted property. **The measure went into effect July 1.**

Georgia

LAC Members

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Advocacy Highlights

The Georgia LAC successfully introduced a change to the Georgia Condominium Act to ensure that governing documents could not be drafted to limit and/or prohibit an association's ability to bring an action in its own name for claims or other matters relating to any portions of the units or common elements which the association has the responsibility to administer, repair or maintain. [HB 820](#) passed the Georgia Legislature this Session and became law on July 1, 2014. This bill was a product of the GA LAC's continuing efforts to positively impact condominium associations in Georgia.

The LAC also was successful in ensuring that Georgia's community associations were not negatively impacted by the new Georgia transfer fee bill. House Bill 160 also passed the Georgia Legislature and became law on July 1, 2013, three years after its initial introduction. As originally proposed, this bill would have prohibited 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 community associations. Because of the LAC's efforts, the legislation provides express exclusions for fees paid to communities formed pursuant to the Georgia Condominium Act and the Georgia Property Owners' Association Act, as well as for fees paid to Georgia common law homeowner associations.

The Georgia LAC also followed multiple other bills of interest to community associations; however, given this was an election year the session was short and focused, with a limited number of bills making it to the floor in both the House and Senate for a vote.

Georgia (cont.)

Condominium Standing To Sue-[HB 820](#) passed the Georgia Legislature this Session and became law on July 1, 2014. This bill was written and sponsored by the GA LAC in order to ensure covenants were not drafted to restrict/prohibit association's standing to bring claims related to common elements or other areas a condominium is required to maintain. Based on Georgia case law there was a growing number of governing documents restricting and/or prohibiting an association's right to bring a claim for defects above and beyond the statutory restrictions provided in the Georgia Right to Repair Act.

Priority Lien-As noted in the 2013 Session, 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 56](#) was introduced in 2013, during this first of a two-year session. SB56 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.

Associations continue to defer maintenance in their communities due to losses from foreclosures, and assessments for the remaining owners continue to increase to make up for the continuing bad debt. A limited priority lien would help curb this impact; however, in **2014 the GA LAC was not successful in pursuing this bill due to opposition presented in the 2013 session.**

Condominium Special Assessment-[HB 854](#) was introduced and drafted by GA LAC. The Condominium Act caps the amount an association can specially assess to \$200.00 without a membership vote. The proposed revision would permit a special assessment equal to 1/6th of the annual assessment without a vote by members. The bill passed out of the House after GA LAC spoke at multiple hearings on the matter, but it was **stalled in a Senate Committee and a short legislative session during an election year.**

Water Meter-[HB 408](#) was dropped late in the 2013 Session and did not get heard. LAC supports the bill which would require that for residential buildings with master water meters, water companies may only charge residential water and waste-water rates on a per dwelling basis, as normally charged for single family residential users. This bill would be a great benefit to communities with a master meter and ensure they are not charged commercial water and waste-water rates; however, **the bill did not pass during the 2014 session.**

Priority of Covenants in Subdivisions-[HB 464](#) was introduced in 2013 to help prevent subdivisions whose developers are foreclosed upon from losing the benefit and protections of already recorded covenants when a new developer takes over. The bill would prohibit removal of covenants from the community by a subsequent developer. **This bill did not pass during the 2014 session.**

Tax Redemption-[HB 69](#) was introduced in 2013 and would have cleared up language in the relevant statutes regarding fees paid for fees due to condominium and property owners' associations following a tax sale redemption. **The LAC worked with sponsor but this bill stalled out.**

Confirmation on Foreclosures-[House Bill 344](#) was introduced in 2013 but there were no hearings or other activity associated with it. **There was no action to push this bill in 2014.**

Georgia (cont.)

2015 Legislative Agenda

The LAC anticipates another active session in 2015. The LAC plans to re-introduce a bill to increase the amount a condominium association board may specially assess to unit owners without a member vote, currently capped at \$200. The LAC also plans to re-introduce a priority lien bill for condominiums only based on commits from legislators provided to LAC's lobbyists. The LAC also intends to continue to protect the rights of management companies to charge their fees for closings and transfers of homes in the communities they manage. In addition, the LAC will support other legislation already introduced or that may be introduced for the benefit of community associations. Of course, the LAC will continue to monitor and defend against legislation that may negatively impact Georgia's communities.

Hawaii

LAC Delegates

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Motooka & Yamamoto, LLLC

Surita Savio (Secretary)
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Alan I. Takumi, CMCA, AMS, PCAM (Federal
Liaison)

Advocacy Highlights

*Here is a summary of **new laws** affecting condominium and community associations.*

Planned Community Association, Collection-Effective April 30, 2014, [HB 2045](#) gives community associations the same rights as condominium associations to assess or pursue claims against buyers in a voluntary conveyance for delinquent assessments owed by sellers. Similarly, the Board and managing agent need to provide statements on amounts owed to escrow, realtor and both parties in the sale.

Association Non-Judicial Foreclosure-Effective April 1, [HB 2585](#) fixes a loophole in the existing statute by allowing Associations to serve any parties other than the unit owners, which cannot be otherwise served, by notice of publication and posting in a special proceeding in the circuit court in order to proceed with a non-judicial foreclosure.

Condominium Projects, Agricultural Uses-[SB 2078](#) clarifies that agricultural uses and activities on lands classified as agricultural shall not be restricted by any private agreement contained in condominium project documents, except for a restriction taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of April 23, 2014.

Hawaii (cont.)

Condominium, Owners' Access to Documents & Records-[HB 2401](#) consolidates into one section the documents, records and information that must be made available to unit owners or their authorized agents and specifies that the Association and its managing agent must provide these no later than 30 days after receipt of a written request. It also gives the Real Estate Commission powers to investigate, issue cease and desist orders, enjoin and impose penalties against violations of this provision. **The measure went into effect July 1.**

Condominium, Cumulative Voting, Board Directors-[HB 2482](#) clarifies the process for cumulative voting for an election at an association meeting, amends the definition of "majority" or "majority of the unit owners" and makes corresponding technical amendments associated with this amended definition. It also clarifies that directors who are appointed to fill vacancies on a board of directors must stand for election at the next annual meeting or a duly noticed special meeting. It also clarifies that approval of a lease rent collection system and an annual audit of an association's financial accounts and cash balance may be waived at an association meeting by a vote of a majority of all the unit owners if the association is composed of less than twenty owners. **The measure went into effect July 1.**

Condominium, Unpaid Assessment, Board Election-[SB 2483](#) clarifies that a condominium association's lien is subordinate to real property taxes, rather than all taxes. It also clarifies that a condominium association may assess unpaid common maintenance fees against any purchaser who purchases a delinquent unit in a foreclosure. It finally specifies that a condominium board may only fill board vacancies temporarily until a duly noticed election. **The measure went into effect July 1.**

Private Guards, Continuing Education-[SB 2486](#) amends various provisions relating to private guards and individuals acting in a guard capacity; reduces the continuing education requirement to four hours every two years; delays the continuing education requirement to prior to the June 30, 2014, renewal cycle; and makes permanent the registration and licensure requirements for private guards and individuals acting in a guard capacity by repealing the sunset date of Act 208, Sessions Laws of Hawaii 2010. **The measure went into effect June 29.**

Solar Energy Device, Warranty, Contractors-[SB 2657](#) requires a contractor that installs a solar energy device to notify the private entity that installation might void the roofing warranties or guarantees. Unless the private entity forgoes the roofing warranty or guarantee, a contractor that installs a solar energy device must obtain written approval from the roof manufacturer and follow written instructions for waterproofing roof penetrations from the roof manufacturer. A roofing contractor that waterproofs roof penetrations related to the installation of a solar energy device must honor the roof warranty or guarantee, provided that if either the roofing contractor's guarantee or the roofing manufacturer's warranty is no longer in effect, the contractor who installs the solar energy device and waterproofs the penetration shall apply the contractor's or lessor's standard labor and workmanship warranty. **The measure went into immediate effect.**

Hawaii (cont.)

The following new laws do not directly relate to Associations but they impact all homeowners or legal proceedings. Directors and property managers should know about these when their associations are involved in a relevant transaction or legal proceeding.

Residential Landlord-Tenant Code, Eviction, Medical Marijuana-Effective November 1, [HB 1503](#) voids any rental agreement provision that allows for eviction of a tenant who has a valid certificate for the medical use of marijuana unless (1) the rental agreement allows for eviction for smoking tobacco and the medical marijuana is used by means of smoking; or (2) the project documents of the condominium or community association prohibit the medical use of marijuana.

Real Estate Appraisals, Arbitration Awards-[HB 1830](#) requires a licensed or certified real estate appraiser, who is named or appointed as an arbitrator in a proceeding, to determine the fair market value, fair market rental or fair and reasonable rent of real property, shall record all arbitration awards, records of awards, and any supplementary, dissenting or explanatory opinions in the Bureau of Conveyances as public records. **This bill became law without the Governor's signature on April 30, 2014.**

Judgment Liens, Collection-Effective July 1, [HB 1579](#) clarifies that money judgments are considered valid liens against all real property, including registered property, when recorded in the Bureau of Conveyances.

District Court Jurisdiction, Collection: Effective April 17, [HB 1846](#) provides the maximum claim amount in civil cases within the district court's jurisdiction increased from \$25,000 to \$40,000.

Service of Process, Collection-[SB 2072](#) supersedes a 2013 appellate case decision on serving a summons and specifies that service by certified, registered, or express mail sent to the addressee only as ordered by the court upon the defendant within the state shall be valid for civil actions in the nature of assumpsit if a reasonable attempt at personal delivery has not been successful.

Idaho

Legislative Activities

Fines-[SB 1310](#) provides that a homeowner's association may not impose fines on members unless its authority to do so is clearly set forth in the covenants and restrictions. Additionally, it provides a procedure relating to the imposition of fines on homeowner's association members, to provide that no fine shall be imposed if a member begins resolving the violation prior to the meeting so long as the member continues to address the violation in good faith until fully resolved. The bill provides a restriction relating to the use of fines and to provide that specified law shall not affect certain authority that may allow for the recovery of attorney's fees. The measure was **signed into law, and went into effect July 1, 2014.**

Illinois

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Advocacy Activities

Ombudsman-[HB 4204](#) creates the Office of the Condominium and Community Interest Community Ombudsperson within the Department of Financial and Professional Regulation, Division of Professional Regulation. The bill adds provisions concerning: duties of the Ombudsperson; written policies for resolving complaints; requests for assistance; registration requirements; confidentiality; reporting requirements; fees; and penalties for noncompliance. **The bill was signed into law, and will go into effect July 1, 2016.**

Lease of Units After Possession-[HB 4782](#) amends the Illinois Forcible Entry and Detainer Act regarding leasing of units by associations. The bill provides that an association may enter into a lease at any time within 8 months of expiration of the stay on its possession order. The lease entered into may not exceed 13 months. Currently the statute provides that the term of a lease entered into by an association cannot exceed 13 months following the expiration of the stay of the order of possession. This amendment to the Act will aid associations in leasing units by affording more time to complete any necessary repairs and locate tenants. **This bill was signed into law on August 18, 2014.**

Illinois (cont.)

VOIDS CERTAIN DEVELOPER PROVISIONS IN CONDOMINIUM INSTRUMENTS-[HB 4783](#) amends Section 9.1 of the Illinois Condominium Property Act. The bill provides that any condition in a condominium instrument which either: (1) requires the prior consent of the unit owners in order for the board to take certain actions, including the institution of any action in court or a demand for a trial by jury; or (2) requires the board to arbitrate or mediate a dispute with a developer, declarant or any person not then a unit owner prior to litigation or a demand for a trial by jury – is void. This bill effectively voids restrictions in governing documents that seek to thwart or place oppressive procedural hurdles upon an association’s pursuit of claims against the developer. **This bill was signed into law on August 26, 2014.**

ELECTRONIC NOTICE-[HB 4784](#) amends Section 18.4 of the Illinois Condominium Property Act. The bill grants a board the power to adopt rules and regulations permitting electronic delivery of notices and other communications, but only upon an individual unit owner’s authorization. Additionally the bill permits each unit owner to designate an electronic address, a U.S. Postal Service address, or both, as his or her contact information to be kept on the list of unit owners. **This bill signed into law on July 16, 2014.**

ELECTRONIC VOTING, NOTICE AND USE OF TECHNOLOGY-[HB 5322](#), introduced by CAI, amends both the Illinois Condominium Property Act and the Common Interest Community Association Act. The bill permits boards to adopt rules and regulations concerning the use of acceptable, verifiable means of technology, including electronic means for unit owner notice, voting, signatures, consents and approvals. The bill establishes that electronic votes are valid and may be used for the purpose of establishing meeting quorums. The bill also provides that a verifiable electronic signature satisfies any requirements for signatures on documents. It acknowledges that if an owner either does not have the capability or desire to conduct business electronically, an association shall make reasonable accommodation, at its expense, for the person to conduct business without the use of electronic or other means. **This bill was signed into law on August 25, 2014.**

AMENDMENTS TO INSURANCE REQUIREMENTS FOR CONDOMINIUMS-[SB 3014](#) amends Section 12 of the Illinois Condominium Property Act regarding insurance requirements. Despite passing out of the Insurance Committee on March 27, 2014 this bill has been re-referred to Assignments. The bill as proposed would clarify issues regarding amount of coverage required for replacement costs of the insured property, defense costs obligations of condominium insurance and improvements and betterments coverage. The bill provides greater specificity as to the types of defense coverage required under an association’s directors and officer’s liability policy. Additionally, the bill will remove the right of an association to purchase mandatory owner insurance and charge the cost of such insurance back to the owner. **This bill was signed into law on July 16, 2014.**

LEASING-[SB 3057](#) amends Section 1-35 of the Common Interest Community Association Act and adds a qualification to which leases must be provided to the association when a unit is not owner occupied. Originally the bill stated that only leases in excess of 30 days must be provided by the owner to the association. This bill was introduced with support of the Illinois Association of Lake Communities. In conjunction with CAI an amendment to the bill has been made which simply provides that “Unless otherwise provided in the community instruments” leases are required to be provided to the association in accordance with Section 1-35, thereby removing the reference to “leases in excess of 30 days.” **This bill was signed into law on August 1, 2014.**

Illinois (cont.)

Process Servers in Gated Communities-[SB 3286](#) amends Section 2-203 of the Illinois Code of Civil Procedure regarding service of process on individuals. The bill, as amended, requires employees of “gated residential communities” (including condominiums, cooperatives and private communities) to permit entry to a process server (as defined under the Code) for the purposes of serving process on a defendant or witness who resides or is known to be in the community. **This bill was signed into law on August 15, 2014.**

ISBA Foreclosure Bill-The Illinois State Bar Association proposed [SB 2664](#) that amends only the Illinois Condominium Property Act by expanding condominium associations’ right to collect unpaid regular assessments on foreclosed units from 6 months to 9 months. This expansion would only apply to regular assessments and not to any other unpaid common expense. Further, while attorney fees and costs of collection can be charged to the third-party buyer, in no event can the total balance collected exceed an amount equal to 9 months of regular assessments. The bill amends Section 2 of the Act to include definition of “regular monthly assessments.” The bill would remove the “initiation of an action” prerequisite to collecting these amounts. Finally, the bill amends Section 22.1 of the Illinois Condominium Property Act and reduces the days an association (or its management company) has to respond to a request from a purchaser for information from 30 days to 14 days, if the association is managed. If the association is self-managed it has 21 days. Currently the law requires the information to be made available within 30 days. On April 8, 2014 this bill passed the entire Senate and was sent to the House. Following a heated debate on May 22, 2014, this bill passed the House with a slight majority. This bill will be sent to the Governor for signature.

Governor Quinn amendatorily vetoed the bill on August 18, 2014 and recommended certain language located on pages 10 and 12 of the bill to be replaced with the following:

“Following a consent foreclosure, common law strict foreclosure, or the delivery of a deed in lieu of foreclosure, the mortgagee shall have the duty to pay to the association all moneys due to satisfy the lien held by the association, except for the 9 months of unpaid regular monthly assessments and associated attorney's fees which may be collected from the purchaser.”

With these changes, SB2664 had Governor Quinn’s approval. Governor Quinn respectfully requested the legislators to concur with his amendatory veto language.

Sen. Hastings, as sponsor of the bill, needed to introduce the amendatory veto changes during the fall veto session. CAI-IL respectfully requested Sen. Hastings to approve Governor Quinn’s amendatory veto and to submit it to the legislators for concurrence. **The bill ultimately died with no favorable action taken on the veto.**

Alternative Payment of Delinquent Assessments-[HB 4154](#) proposes the creation a new Sec. 1-47 of the Common Interest Community Association Act which would mandate that common interest communities of more than 14 units adopt “reasonable guidelines” for delinquent owners to pay regular and special assessments. The bill would require the association to adopt and record in the county recorder’s office guidelines for a payment plan. The payment plan would need to be a minimum of 3 months and not extend greater than 18 months. The payment plan could not include “additional monetary penalties” but could include costs associated with monitoring the payment plan. An owner would not be entitled to

Illinois (cont.)

relief under the guidelines if that owner failed to honor the terms of a prior payment plan within the 2 previous years. CAI has voiced concerns regarding this bill because of its mandates on a common interest community's ability to collect unpaid assessments and possible inconsistency with Section 9-102.1 of the Illinois Forcible Entry and Detainer Act. **The bill failed upon adjournment.**

Task Force on Fire Prevention-[HB 4609](#) would create a twenty (20) member Fire Safety Task Force (with numerous interests represented on the task force including a statewide organization representing common interest community associations) to investigate, research and analyze the costs and benefits of fire sprinklers and hard-wired smoke detectors in residential and commercial buildings. This bill is in response to State Fire Marshal's prior attempt to enact regulation which would have mandated that numerous condominium associations install expensive sprinkler and upgraded fire alarm systems throughout their buildings. Further, the bill would restrict the State Fire Marshal's ability to push a sprinkler mandate through as an administrative rule. The bill provides, "The Office of the State Fire Marshal may not adopt rules requiring the installation of fire sprinkler systems in any structure." This restriction on the State Fire Marshal's unilateral authority will establish that any legislation regarding fire sprinklers will be enacted at the legislative level, after debate and hearings. **The bill failed upon adjournment.**

Recording of Deeds Following Foreclosure-[HB 4761](#) amended Section Sec. 15-1509 of the Illinois Mortgage Act. The bill adds a requirement to the Act that a party acquiring property through a judicial foreclosure must record the deed within 60 days of its delivery. **The bill failed upon adjournment.**

Minutes, Executive Session and Exemptions of Common Interest Communities-[HB 4796](#) amends the Common Interest Community Association Act in three distinct ways. First, the bill would require that following any closed portion of a board meeting of a common interest community, the board would be required to "note" any matter discussed in the closed portion of the meeting. Secondly, the bill would require that all minutes of meetings of members, the board or committees with decision making authority (even those only in draft form) be made available to members within 30 days of the meeting. Finally, the bill removes the \$100,000 budget threshold from the exemption requirements under CICA but maintains the exemption for ten (10) units or less. **The bill failed upon adjournment.**

Elimination of Payments to a Condominium Association Following Foreclosure-[HB 5511](#) amends Section 9 of the Illinois Condominium Property Act by removing most of Subsection (g)(4) and all of Subsection (g)(5) thereby eliminating the obligation of a third party purchaser, following a foreclosure, to pay six (6) months of common expenses to a condominium association. This bill denies any association the ability to recover any portion of common expense following a foreclosure from third-party purchasers. This bill effectively repeals portions of the Illinois Condominium Property Act that have been in place since 2007. **The bill failed upon adjournment.**

Private Road Transfer-[HB 5645](#) provides that a residential neighborhood within the unincorporated boundaries of a township road district whose private roadways are maintained by a homeowner's association, and whose neighborhood was platted before 1970 may vote to turn authority and control over its roadways to the township road district. This bill failed to obtain the necessary votes in the Counties and Township Committee on both March 25, 2014 and March 27, 2014. **The bill failed upon adjournment.**

Illinois (cont.)

No Authority Over Single Family Homes-[HB 5870](#) creates new Section 1-85 of the Common Interest Community Association Act. The bill specifically provides that a Common Interest Community, that has “single family homes” (an undefined term), has no authority over the single-family home or the property upon which the home is located. Additionally, the bill provides that any term or provision in a declaration to the contrary is void. Effectively, this bill provides that all restrictive covenants, rules, restrictions or regulations imposed against single family homes are void. This would apply to covenants and rules regarding fences, pools, sheds, architectural control, outbuildings, swing sets, additions, dog runs, pets, pigeon aviaries, chicken coops, etc., on single family home lots. Basically this provision would invalidate almost every restrictive covenant in a HOA declaration. In addition it would invalidate any restrictions regarding operating a business, such as a daycare, at a single family home lot. **The bill failed upon adjournment.**

VOIDS CERTAIN DEVELOPER PROVISIONS IN CONDOMINIUM INSTRUMENTS-[SB 2892](#) is similar to HB 4783. It creates a new Section 18.8 of the Illinois Condominium Property Act and states that any condition in the condominium instruments is void and unenforceable if: (1) it restricts the right of a board to represent the association in legal matters which affect the common elements by requiring consent of unit owners; (2) requires arbitration, or mediation prior to the filing of an action in a court, or (3) restricts or delays a board's ability to bring an action affecting the common elements in court and/or to demand a trial by jury. Additionally, the bill provides that any of the foregoing restrictions could be valid and enforceable but only if approved by 75% of the unit ownership. **The bill failed upon adjournment.**

Electronic Voting, Notice and Use of Technology-[SB 3040](#), introduced by CAI and identical to HB 5511, amends both the Illinois Condominium Property Act and the Common Interest Community Association Act. The bill permits boards to adopt rules and regulations concerning the use of acceptable, verifiable means of technology, including electronic means for unit owner notice, voting, signatures, consents and approvals. The bill establishes that electronic votes are valid and may be used for the purpose of establishing meeting quorums. The bill also provides that a verifiable electronic signature satisfies any requirements for signatures on documents. It acknowledges that if an owner either does not have the capability or desire to conduct business electronically, an association shall make reasonable accommodation, at its expense, for the person to conduct business without the use of electronic or other means. **The bill failed upon adjournment.**

Exemptions Under the Common Interest Community Association Act-[SB 3537](#) amends Section 1-75 of the Common Interest Community Association Act. The bill modifies the \$100,000 annual budget exemption. Under the language of the bill an association with an annual budget of less than \$100,000.00 would only be exempt from the provisions of the Act if a majority of owners voted to exempt the association. Otherwise only an association of less than 10 units would be automatically exempt for the binding provision in the Act. **The bill failed upon adjournment.**

Indiana

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Advocacy Highlights

Recording of Homeowners Association Covenants-[HB 1107](#) lowers the number of different sections of lots of a land development, from 12 to two, that are required to record certain homeowners association covenants. **The bill was signed into law.**

Political Activity on Homeowners Association Property-[HB 1134](#) provides that a homeowners association may not adopt or enforce a rule or covenant that prohibits, or has the effect of prohibiting: (1) a candidate; (2) an individual who holds an elected office; (3) the spouse of a candidate or individual who holds an elective office; or (4) a volunteer worker of a candidate or individual who holds an elected office; from entering onto homeowners association property for purposes of conducting political activity. **The bill was signed into law.**

Transfers of Real Property-[SB 249](#) specifies that a property tax penalty for property sold by a county executive through a certificate of sale procedure is to be removed from the tax duplicate if the penalty is associated with a delinquency that was not due until after the date of the original tax sale but is due before the issuance of the certificate of sale by the county executive. Specifies procedures for collecting unpaid taxes after the county auditor determines that a property is no longer eligible for a standard deduction. Provides that no lien attaches for any additional taxes and civil penalties resulting from the removal of the deduction with respect to a bona fide purchaser of the property who is without knowledge of the county auditor's determination. Indicates that certain defects in a lease recorded with the county recorder do not invalidate the effect of recording the lease. Provides that a person acquiring a condominium unit is not liable for unpaid assessments if the condominium association, manager, or board of directors fails to provide a statement of unpaid assessments within 10 days of the person's written request. Specifies the appraisal procedure to be used when selling property at auction in a partition action, and provides that the parties may waive appraisal and valuation. Permits any person with an interest in property being sold at a sheriff's sale in a partition action to request that the court order the sale be conducted by an auctioneer. Provides that a governmental entity may claim title by adverse possession without having paid property taxes and special assessments due on the property if the governmental entity is exempt from the payment of property taxes and special assessments. **The bill was signed into law.**

Kentucky

LAC Members

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Advocacy Activities

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

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

The bill was not introduced in 2014.

Maine

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New England Chapter

Advocacy Activities

2014 was a difficult year for Maine in terms of its foreclosure rate. “There are still a lot of foreclosures around, and some associations are really getting hit,” says attorney Joseph Carleton, chairman of the Maine Legislative Action Committee (LAC) for the New England chapter of the Community Associations Institute (CAI-NE). “Banks are foreclosing and the foreclosure process takes a lot of time. In Maine, the process takes years. So although we don’t have as many in number as some folks do, when we have them, there’s likely to be a long time before the association starts collecting again.”

“The Legislature also added on (to the judicial foreclosure) a mediation process, which lengthens an already lengthy process — and some of the banks, especially out-of-state banks, who have foreclosures have not been anxious to speed up the process because they would just as soon wait for the market to recover,” Carleton says.

The Maine LAC has worked very diligently on getting priority lien legislation introduced in the legislature, but was unable to introduce a bill in 2014. It continues to be a major driver for the Maine LAC.

Maryland

LAC Members

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Lisa Harris Jones, Esq. (Lobbyist)

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Advocacy Activities

The Maryland Legislative Action Committee (MD LAC) was very busy again during the recent Maryland General Assembly session. MD LAC studied approximately 49 bills introduced in 2014. Of these bills, 11 bills were deemed harmful to common ownership communities in Maryland and were actively opposed. Sixteen bills were actively supported in whole or in part, and the remaining bills were monitored to ensure nothing got added by amendments that would warrant the LAC taking a position.

MD LAC chose to concentrate on three main legislative issues: condominium warranties, manager licensing, and lien foreclosure. We also actively pushed for the legislation to remedy the Court of Appeals "pit bull" ruling in Tracey vs. Solesky. Of course, the legislature made sure that there was much, much more on our plate.

Last year, legislation passed ([HB286 \[2013\]](#)) that limited the ability of community associations to foreclose on a lien consisting solely of delinquent assessments and attorney's fees "directly related to the filing of the lien." The LAC vigorously opposed this legislation to no avail. This year, friend of the MD LAC, Del. Doyle Neimann introduced legislation at our request to allow foreclosure of liens with the inclusion of late fees, interest and reasonable costs, and attorney's fees directly related to efforts to collect delinquent assessments.

Maryland (cont.)

Foreclosure of Liens-[HB602](#) did pass. Unfortunately, it was amended to allow inclusion of only assessments, interest and “reasonable costs and attorney’s fees directly related to the filing of the lien that do not exceed the amount of the delinquent assessments (excluding any interest). LAC members worked tirelessly to push the bill as originally written, but were unable to reverse the amended language.

Manager Licensure and Registration-Once again, manager licensing usurped substantial LAC man hours during the session. This was the sixth consecutive year that there has been legislation attempting to regulate the community management profession.

[HB10](#) was pre-filed this year by Del. Pam Beidle. It was pretty much the same bill that had passed the House in 2013, except the provisions that implemented registration fees for community associations were removed.

Additionally, Sen. Delores Kelley introduced [SB274](#), which simply attempted to require managers to register with the state and pay a \$50 registration fee. This legislation **was reported unfavorable** by Judicial Proceedings.

It is important to note that no manager licensing bill in Maryland has never been initiated by CAI or the MD LAC - rumors to that effect are simply false. CAI efforts are guided by national policy (see www.caionline.org/govt) that supports licensing with very specific conditions. MD LAC has been committed to efforts to mold the legislation to the best it can be for all stakeholders.

The fiscal note issued by the Department of Labor, Licensing and Regulation (DLLR) projected that the biennial licensing fee for each Maryland community manager would be \$850. By contrast, the biennial fee for Real Estate Brokers is \$190; Real Estate Agents - \$90; Architects - \$76; Professional Engineers - \$76; CPAs - \$50. DLLR suggested modifications to revise the legislation in an effort to reduce the licensing fee. However, things became overly complicated and the sponsor, **Del. Beidle, withdrew the bill.**

Warranty Claims-The other major legislation that the MD LAC initiated was [HB259](#) (SB207). For some time, it has been common that condominium governing documents and contracts for sale have placed limitations and conditions on the pursuit of warranty rights. HB259/SB207 would establish that an "instrument made by a developer" would be unenforceable if it:

- Attempts to shorten the statute of limitations for a claim;
- Purports to waive the “discovery rule” or other dates applicable to a claim;
- Requires an Owner or the Council of Unit Owners to assert a claim subject to arbitration within a time period shorter than the statute of limitations; or
- Operates to prevent an Owner or the Council from filing a lawsuit, initiating arbitration or asserting a claim within the statute of limitations period.

HB259 was **reported unfavorable** by the House Environmental Matters Committee. SB207 did pass through the full Senate, but was then **reported unfavorably** by the House Environmental Matters Committee.

Maryland (cont.)

Dangerous Dogs-MD LAC very actively supported the cross filed “pit bull” bills ([HB73/SB247](#)) intended again, to abrogate the Court of Appeals ruling in Tracey vs. Solesky by establishing a “rebuttable presumption” standard for all dog owners and eliminating the strict liability standard for a “person who has the right to control the presence of a pit bull (dog) on the property” reverting this exposure to the common law standard previously existing.

Both chambers of the Maryland Legislature approved legislation that would slightly shift legal liability toward dog owners whose animals bite a person and returns the liability exposure for Maryland community associations back to the common law standard previously existing. The bills were filed as emergency legislation and **went into effect on April 8, 2014**, when signed by the Governor.

Many Associations had taken steps to restrict the presence of pit bulls in the community. Now, pit bulls are no longer singled out and ALL dog owners are now responsible if their pet bites someone. Associations are encouraged to consult with legal counsel as to repealing or modifying rules that may have been adopted to restrict pit bulls or concerning rules with the broader scope to apply to all dogs.

Balcony Railing Inspections-[HB947](#) (SB401) also known as Jonathan’s Law, requires periodic inspections of certain multifamily dwellings with balcony railings constructed of wood to ensure that each balcony railing meets code requirements. **The bill went into effect October 1, 2014.**

Electric Vehicles and Recharging Equipment-[HB1346](#) (SB850) establishes, for calendar years 2014 through 2017, the Electric Vehicle Recharging Equipment Rebate Program to provide rebates to individuals and business entities for the costs of acquiring and installing vehicle recharging equipment. **The bill went into effect July 1, 2014.**

Transparency Requirements and Member Rights-[SB865](#) essentially applies a number of provisions from the Condominium and Homeowner Association Acts to Maryland Cooperative, including open meetings, establishing a cooperative housing corporation depository, establishing a dispute settlement mechanism, addressing distribution of written information by members, and establishing eviction proceedings for delinquent shareholders. **The bill went into effect October 1, 2014.**

Limitations on Fees-Very significant legislation was [SB229](#) (HB412). These bills attempted to limit the fee to \$50 that a condominium could charge to furnish a resale certificate or that a homeowners association (HOA) may charge an owner for providing the information necessary to comply with resale disclosure requirements. As significant, the bills inserted HOAs into the resale disclosure equation where, previously, there was no legal obligation. Proponents argued that the legislation was necessary due to costs that sometimes “exceeded \$500.” **The bill died in conference.**

Disclosure and Cancellation Requirements-Similarly, [SB820](#) affected the resale disclosure process by requiring notice of “any changes in mandatory fees and payments” or “other substantial and material amendment” AND altered the time frame for providing a resale certificate from the current 20 calendar days after receipt of a written request to only 7 calendar days.

MD LAC vigorously opposed each of these bills, spent countless volunteer hours lobbying legislators, and was very grateful for the significant efforts of our lobbyist Lisa Harris Jones. **SB820 did not come out of committee.**

Maryland (cont.)

[SB229](#) was amended to remove requirements relating to HOAs and modestly increase the allowed fee to \$100. The bill passed the full Senate. HB412 ultimately passed the House with amendment to increase the allowable fee to \$250 without modifying any other provisions. As the House and Senate versions were different, a conference committee was appointed. Friend of Maryland Associations, Delegate Pamela Beidle, would not recede to the Senate and **both bills died**.

Smoking Restrictions-[HB664](#) would allow written leases to include restrictions or prohibitions on smoking tobacco products; allowing the bylaws of a condominium to contain restrictions or prohibitions on smoking tobacco products in the units or common areas; and authorizing that a homeowner association declaration, bylaws, rules, or recorded covenants may include restrictions or prohibitions on smoking tobacco products in multi-unit dwellings or in the common areas. **The bill was given an unfavorable committee report.**

Condominium Boards of Directors-[HB548](#) (SB672) would have prohibited two individuals who are married to each other to serve as members of a condominium board at the same time. **The bill was given an unfavorable committee report.**

Individual Exceptions to Limitations on Rentals-[HB1039](#) would have required a Board to grant an exemption from rental restrictions to an individual owner under certain circumstances. **The bill was given an unfavorable committee report.**

Limit on Assessments-[HB1027](#), a Prince George's County bill, would have provided that a unit owner may not be charged an assessment that exceeds 20 percent of any mortgage payments the unit owner is required to make on the unit during the period covered by the assessment. **The bill was given an unfavorable committee report.**

Massachusetts

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Advocacy Activities

Clarification Bill-[SB 602](#) clarifies chapter 183A of the general laws Filed by Sen. Brian A. Joyce and referred to the Housing Committee. This bill accomplishes two goals. First, the bill cleans up a contradiction in the Massachusetts Condominium Act regarding the process for granting easements and limited common areas. Second, the bill adds a new provision to the Condominium Act stating that if condominium documents require the consent of mortgagees to amend the documents, and the mortgagee does not respond to a written request for such consent within sixty (60) days, consent shall be deemed given. Given the difficulty in obtaining a timely response from the large national banks, this amendment will save Associations significant time and expenses associated with trying to obtain mortgagee consents. **The bill was signed by the Governor.**

Priority Lien-[SB 603](#) sought to clarify condominium priority liens. This bill seeks to clarify the fact that a condominium association's priority lien for common expenses is not limited to one six month lien period, but shall include all six month lien periods established in accordance with the statute. This bill is critical to ensuring that associations can continue to enforce multiple priority liens over the first mortgage. Given that the common expenses are the life blood of a condominium association, the need to adequately protect an association's lien for common expenses is essential. **The bill failed upon adjournment.**

Construction Defects-[SB 726](#) is an act relative to construction defect claims by condominium owners filed by Sen. James B. Eldridge. This bill would clarify that the tolling of the statute of limitations and statute of repose for construction defect claims against a developer by the condominium association would not begin until the developer has turned over control of the condominium association to the unit owners. This bill would correct the serious inequity that currently exists whereby a developer retains control of the association for an extended period of time effectively preventing any remedy for the unit owners against the developer for construction defects. **The bill failed upon adjournment.**

Michigan

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Advocacy Activities

The LAC was active in 2014 in reviewing and commenting on several pieces of Legislation, while attempting to pursue its desire to have a manager certification bill introduced. 2014 proved not to be the right time or environment or reintroducing the manager certification bill and again, it was decided to table this for 2014 with a fresh look in 2015.

Audits-[HB 4355](#) was introduced to bring current audit language in the Michigan Condominium Act up to date with current accounting standards. As written, however, the bill contained many flaws, including a lower level of reporting with no transaction testing, an opt-out provision for Associations that did not establish what level of approval was necessary and an exemption for associations with gross revenues below a certain level. Members of the LAC testified before the House Committee resulting in amendments to the bill that addressed all of these deficiencies and strengthened the “auditing” requirements. The bill was finally passed toward the end of 2013 and became **effective January 1, 2014**.

Minnesota

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Legislative Highlights

The 2014 Legislative Session concluded on Friday, May 16 and overall it was a successful session for CAI-MN. While legislators did not come back in until late February the short session was very action packed as CAI-MN worked tirelessly on two main issues that could have had unfavorable impacts on the industry. Members of the Legislative Action Committee are to be thanked for the hours and trips to the Capitol, the time they put in to review language, meet with stakeholders and testify a number of times on provisions. Those efforts were key in helping defeat the foreclose lien language of HF 1941 and the HOA Solar Prohibition language in the Omnibus Energy bill.

Mortgage Foreclosure Mediation -[HF 1941](#) was a carryover issue from the 2013 session that dealt with the foreclosure movement. As you may recall in 2013, CAI-MN and a number of other stakeholders worked together to address a number of issues that were presented in the 2013 bill. In an effort to address parts of the issue a new bill came forward that addressed issues raised around foreclosures. The language paired with federal laws and efforts in dealing with banks and lien holders. One piece that was not addressed in the compromise bill of 2013 was the idea of mediation. Rep. Raymond Dehn (DFL-Minneapolis) who vowed to continue working on the issue brought HF 1941 forward this session. Right from the start the bill had a number of issues much like its predecessor in 2013. Input from stakeholders was not sought out when the bill was drafted. At each committee stop a number of issues were raised with the language and the bill seemed to be losing support. CAI-MN met with Rep. Dehn to discuss our concerns with language around the "Subsequent lienholder" language and how this would affect HOA's. After a few hearings and conversations, small changes were made but the efforts were not enough and the bill died in committee. A last-ditch effort was tried in the final weeks of session to try and tack the language on as an amendment on the House floor. Those efforts did not have the support of the body and the motion was withdrawn.

Minnesota (cont.)

Solar Panels-[HF 2918](#)/SF 2555 was a bill that came to the LAC in early January from Fresh Energy who was looking to allow the use of roof top solar energy systems in homeowners associations. As many will recall, Ross Abbey with Fresh Energy was invited to a LAC meeting in February to discuss their proposal with us. It was clear from the first meeting that the bill needed some work to help meet industry language and standards, but a number of concerns were raised by the LAC with the language. Over the past three months CAI-MN worked with Fresh Energy and Rep. Will Morgan (DFL-Burnsville) to make the language as easy as possible for HOAs if it were to move forward. After many amendments and suggested changes the language got to a more acceptable point in the House. In the Senate, the bill died in Senate Judiciary but was brought back up with an amendment that allowed for rooftop use on newly comprised HOAs after January 1, 2015.

This language was not favored by Fresh Energy at any point and it was not included in the House language. HF 2918 was then added to the Omnibus Energy bill [HF 2834](#). With the session beginning to come to a close, the House took up the Omnibus Energy Bill and passed it off the House floor and sent it to the Senate for their approval. The Senate, who did not have an omnibus bill, did not accept the House language as they had a number of their own provisions that they wanted included in the bill. At this time Sen. Dave Senjem (R-Rochester) had an amendment to remove all of the HOA rooftop solar provisions from the bill. That motion passed with bipartisan support and the House language was removed from the Senate's position. Sen. Senjem argued for local control and that the state should not be inserting itself into contracts that were sought out by homeowners.

With two different bills, the Senate and House went to conference committee on HF 2834. Prior to meeting, Sen. John Marty who is chair of the Senate Energy Committee asked CAI-MN and other stakeholders to meet with him to work out some compromise language. It was clear that the effective date for new HOA members was not a solution as it did not get at current HOAs. After three days of floating ideas back and forth the CC met to begin work on the bill. The HOA rooftop solar issue was the only major difference between the House and Senate. Following the first meeting the chairs asked all stakeholders to keep working on the issue as Chair Marty could not bring the House language back to the Senate for a third time. After one more effort that included the MN BAR Association with a draft of a proposed amendment to 515B it was clear no common ground could be met and Fresh Energy was not willing to compromise on the language and they pulled the language from the Omnibus Energy bill.

Throughout the process we worked well with Fresh Energy and thanked them for consulting with us on the language. They understood our national position of opposition from day one. In the final days we saw no efforts to add the House language on to something else and the issue finally died as the session came to an end. While the issue is dead for now, I believe that we could see it come back next session and we might not be as lucky to work with Fresh Energy as we did this session.

Omnibus Tax Bill-In the final days of the legislative session the House and Senate passed [HF 3167](#) which was the second Omnibus Tax bill. Included in the language was [HF 2783](#) which authorized Ramsey County Housing and Redevelopment Authority to establish housing improvement areas. The language can be found in article 6 of the tax bill HF 3167. The conference committee did not include language around [HF 2917](#) which dealt with a parcel that is wholly or partially classified as class three (commercial, industrial, or public utility) is subject to charges in a SSD. Members on the CC had a number of questions

Minnesota (cont.)

about the language and what it would mean for property classifications and who would get to vote on opt in and opt out.

Looking Forward to 2015-While 2014 was a successful session for CAI-MN, we need to start thinking about 2015 and what could possibly be introduced that could have an impact on HOAs and other areas. One item that I don't believe is a finished issue is the effort to keep looking at covenants and how/what changes could be made to them. This is an issue that has been talked about for a number of sessions starting with the "flagpole bill" and now with the "HOA Solar Provisions." This session there seemed to be a growing concern with HOAs that do not meet and don't allow for members to discuss issues and make changes. While this is not likely reflective of CAI's members we are grouped in with the industry and some members might look to address some of these concerns in 2015. While both the House and Governor are up for re-election it is important to start thinking about alternative plans regarding solar and other items that could come forward.

Missouri

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Advocacy Highlights

Political Signs-[HB 1364](#) sought to overturn covenants that barred political signs in community associations. **The bill failed upon adjournment.**

Solar Panels-[SB 579](#) would have overturned covenants banning solar power installation in community associations. **The bill failed to make it out of committee.**

Nevada

LAC Members

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Advocacy Highlights

The Nevada Legislature did not hold a 2014 legislative session. Therefore, the Nevada LAC did not introduce or advocate for or against any legislation during the calendar year. The LAC prepared for the 2015 legislative session.

New Hampshire

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Claudette Carini (CED)
New England Chapter

Advocacy Highlights

Assessments-[HB 1115](#) would exclude condominium assessments from a unit owner's homestead, offering the owner no protection against enforcement of condo lien procedures. It was **signed into law**.

Liens-The LAC watched [HB 1283](#), which restricted associations' ability to pursue and enforce liens if the association's charter lapses at any time. The **bill was signed into law**.

Manager Licensure-[HB 1594](#) sought to create a manager licensing requirement. The bill was **tabled until the 2015 session** but is expected to be an important piece of legislation in 2015.

Dispute Resolution Board-[HB 1595](#), a bill creating a state condominium dispute resolution board, was referred for further study and **did not pass in 2014**.

New Jersey

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Paul Maticera (Lobbyist)
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Advocacy Highlights

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

As of the beginning of 2015, the bill has been released from committee in the Senate and **remains pending before the Assembly Regulated Professions Committee** while CAI NJ negotiates the anticipated cost of a licensure program with the Administration.

Fines for Failure to Maintain Vacant Properties-[SB1229](#) authorizes municipalities to regulate the maintenance of vacant residential properties that are under foreclosure, and issue citations against creditors if those properties' conditions are found to be in violation. It also requires out-of-state creditors to designate an in-state person or entity responsible for the care, maintenance, and upkeep of the property. **The bill was signed into law by Governor Christie.** With this new protection in place, CAI

New Jersey (cont.)

NJ is considering ways to help member communities encourage their municipalities to enact such ordinances.

Foreclosure Reform-[AB 3793](#)/ SB2545 concerns the expedited process for foreclosing vacant and abandoned residential properties in uncontested actions. These bills amend the 2012 law that which provides an expedited process for residential mortgage lenders to foreclose vacant and abandoned residential properties. CAI NJ is working with the Sponsor to ensure that lenders can be compelled to either use this process or be responsible for the maintenance of properties and association fees, while applying the same remedies to uncontested foreclosures generally. **The bills are pending consideration.**

Inspection Fees-[N.J.A.C. 5:10-1.12](#)-Establishes fees for five year inspections conducted by Department of Community Affairs. This new rule adoption increases fees by a factor of 27.35%, rounding up to the next whole dollar increment. The result is estimated to be an increase of potentially over 30% for many of our member communities, which faced an increase of 19% during the previous Administration. The rules were adopted without changes to the June 2 proposal despite the efforts of CAI NJ and the New Jersey Apartments Association to mitigate the dramatic increase.

Community Association Reform-CAI NJ is working with legislators in both houses **to introduce**, on a piecemeal basis, elements of the earlier reform efforts known as the CARA. Bills with provisions we hope to improve include:

- [AB 469](#)-concerns membership and management of homeowners associations. Its provisions include the assignment of title of common elements to an association and the even division thereof amongst unit owners; uniform priority assigned to the rights of unit owners in a common interest community (including, but not limited to reasonable inspection of business and financial records); procedures for the adoption and amendment of bylaws; and the election and recall of members of an association board.
- [SB 1938](#)-“Owners’ Rights and Obligations in Shared Ownership Communities Act.” Which would implement the over 30 recommendations of the Assembly Task Force to Study Homeowners’ Associations nearly twenty years ago.

New York

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Mary Ann Rothman (Lobbyist)
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Condominiums

Advocacy Highlights

Manager Licensure-Two sets of legislation were introduced that would regulate the community manager profession. [AB 2110](#) and its companion (SB 184) require residential real property managers or any firm employing a property manager, contracting with a property manager or contracting to provide a property manager to file a registration statement with the secretary of state and to be certified from an approved certifying organization. CAI opposes these companion bills **which languished in their committee of referral**. [AB 4917](#) provides for the licensing of common-interest community association managers. CAI supported the language found in AB 4917; however, the enacting clause of the bill was struck in January 2014, so the **bill was killed**.

Assessments-[AB 6268](#) and its companion (SB 1001) require market-based assessments of real property owned or leased by a cooperative corporation or on a condominium basis which is converted or constructed on or after January 1, 2015. The measures **languished in their committees of referral**.

North Carolina

LAC Members

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St. James Plantation Property Owners
Association

Diane Klietsch
North State Bank

John McInerney, AMS, LSM, PCAM
Talis Management Group, Inc.

Virginia Davis, CMCA, AMS, PCAM
York Properties, Inc.

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

Derek Neil Greene, CMCA, AMS
Community Association Management

Paul Hill

Harmony Taylor, Esq.
Hedrick Gardner Kincheloe and Garofalo, LLP

Catherine-Louise Wade, CMCA, AMS, PCAM
HRW, Inc.

Leslie Blum (CED)
North Carolina Chapter

Henry W. Jones, Esq. (Lobbyist)
Jordan, Price, Wall, Gray & Jones

Advocacy Highlights

As per all “Short Sessions” this one primarily concentrated on budgetary negotiations. Throughout the year conflicting views and policy differences hampered budget work between the House and Senate oftentimes sparking heated debate during Conference Committees. As the House aligned itself with the Governor’s budget, the Senate Appropriations Committee produced a vastly different budget and members of both bodies went to conference to sort out the differences. During these hearings multiple proposals were sent back and forth in hopes of agreement yet, at times, the differences in policy between both chambers created a chasm that could not be crossed. Key components in contention were the amount to provide for teacher raises, retention of teacher assistants and the specific amount to cut from Medicaid. Due to Medicaid budgetary shortfalls, the House and Senate both produced separate Medicaid reform bills, in an attempt to reign in the program that has long gone over budget. As expected, differences in policy abounded between the House and Senate proposals.

Other business taken up during this past session included a proposal to clean up the Dan River coal ash spill and address the entire coal ash issue in the state, regulatory reform legislation, removing the fracking moratorium and an omnibus bill to address tax law issues created from last session's tax reform.

The session was never without its share of controversy and with ongoing budget conflict remaining at the forefront, the election year and disagreement within the GOP-led Executive and Legislative branches provided an additional political subtext. Governor McCrory remained vocal in his criticism over the

North Carolina (cont.)

Senate's aggressive approach while Speaker Tillis's campaign against Kay Hagan for U.S. Senate had also continued throughout the session. Tension between the Governor's office and state Senate was an ongoing theme which reached its height with Senators threatening to subpoena McCrory's budget director, Art Pope, to answer questions concerning the budget during a hearing. Needless to say, North Carolina's political landscape provided an interesting backdrop during the past legislative session.

Due to the priorities of the "Short Session," few substantive bills surfaced of CAI's concern; however, monitoring committees, sessions and staying on the defensive at the Legislature was key this year as it can be difficult to predict the specific issues that come before the General Assembly.

Declarant Rights-One bill in particular which was introduced during the 2013 regular session was [HB 330](#), Planned Community Act/Declarant Rights. This bill, which was supported by CAI, made changes to the Planned Community Act regarding the transfer of special Declarant rights and is similar to a provision on the subject in the state Condominium Act. It resurfaced at the end of June 2014 in the Senate Judiciary Committee. The bill moved through committee and floor debate in early July and was **signed into law** on July 7, 2014.

Ohio

LAC Members

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

Richard Landis, CMCA, AMS, PCAM (Vice Chair)
R. N. Landis Management

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.
Cuni, Ferguson & LeVay Co., L.P.A.

Tom Gemperline
Woods at Big Bear Farms

David Kaman, Esq.
Kaman & Cusimano

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

Advocacy Highlights

Priority Lien-The Ohio LAC had Rep. Rogers introduce a priority lien bill, [HB 572](#), that would have provided that a portion of a condominium or planned community assessment is prior to other liens on condominium units and planned community lots and to provide that a condominium unit owners association lien is a continuing lien. **The bill failed upon adjournment.**

Omnibus Bill-The LAC also worked hard to defeat [HB 371](#). This bill would have subjected fellow volunteer board members and property managers to criminal prosecution for failure to meet certain statutory requirements. It also required all board meetings be open and abolishes the ability to make decisions without a meeting even with unanimous, written approval. For obvious reasons, these issues alone are reason enough to oppose this legislation. Furthermore, the bill also required every association to register each year with the Department of Real Estate and provide all the Board members' names, addresses and other information, which would be made available to the public. **The LAC successfully defeated this legislation.**

Oregon

LAC Members

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

A. Richard Vial, Esq. (Vice Chair)
Vial Fotheringham, LLP

Karna Gustafson, Esq. (Secretary)
Landye Bennett Blumstein, LLP

David T. Schwindt, RS (Treasurer)
Schwindt & Co. Certified Public Accountants

Cheryl Brendle, CMCA, PCAM
Community Management, Inc.

Richard L. Thompson
Regenesi, Inc.

Deana Doney

Scott Barrie (Lobbyist)
Oregon Home Builders Association

Advocacy Highlights

The Legislative Assembly only accepted urgent bills this year. Therefore, the LAC did not introduce or advocate for or against any legislation during the calendar year. The LAC is currently preparing for the 2015 legislative session.

Pennsylvania

LAC Members

Stefan Richter, Esq. (Chair)
Clemons Richter & Reiss, P.C.

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

Jill Lorraine Geiger, CMCA, AMS, PCAM
(Secretary/Treasurer)
Mid-Atlantic Management Corporation

Alan Dolge
Traces of Lattimore Community Association

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

Edward E. McFalls
Wooldridge Construction

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

John Carney, CMCA, AMS, PCAM
Wallenpaupack Lake Estates Property Owners
Association

Dr. Paul H. Cunningham
Village Grande at Millers Run

Marshal Granor, Esq., CMCA
Community Management Services Group

David Martin, CMCA, AMS
Saw Creek Estates Community Association

Timothy J. Snowden, CMCA, AMS, PCAM
FirstService Residential

F. David Sylvester, CMCA, AMS, PCAM
F. David Sylvester & Associates, Inc.

Diane K. Wohlfarth, Esq. (CED)
Papernick & Gefsky

Tony Campisi (CED)
Pennsylvania Delaware Valley Chapter

Christian Muniz (Lobbyist)
Duane Morris Government Strategies

Advocacy Highlights

Recording Fees- Pursuant to the Pennsylvania Uniform Condominium Act (UCA), and the Uniform Planned Community Act (UPCA), all amendments to a declaration must be recorded. Unfortunately, what has historically been an administrative act at minimal expense, has become a large financial burden. A number of counties have implemented a requirement to index each amendment against each parcel number in the condominium or planned community. And, for indexing amendments against each parcel number, these counties have adopted a “per parcel” fee. In Montgomery County, for example, the fee is \$10.00 per parcel. Accordingly, an amendment to a 250-unit Association will cost, at a minimum, \$2,500.00. Many other counties around the Commonwealth have adopted similar fees. Such fees are not only absurdly high, they bear no relation to the work required to record documents. Moreover, as recording is a legal requirement, such fees could prevent associations from complying with the UCA or the UPCA. CAI is currently working on legislation to bring filing fees down to reasonable levels, and to prevent counties from imposing these exorbitant charges. This issue is pending introduction for 2015.

Pennsylvania (cont.)

Planned Unit Development Data Collection Act-CAI opposes this Bill. [SB 1302](#) was introduced on March 26, 2014 by State Sen. Folmer and referred to the Senate Urban Affairs and Housing Committee. As written, the Bill would drastically alter the Uniform Planned Community Act's existing requirements for meeting quorums, create legislative inconsistencies regarding the adoption of budgets and imposition of fines, and create unnecessary pitfalls to hinder an association's ability to collect assessments. The legislation proposes unworkable solutions to non-existent problems. The Act authorizes an association board to levy fees (assessments) through an annual budget process. Section 5303 (b) of the Act requires that notice of the adoption of the annual budget or approval of a capital expenditure be delivered to each Unit Owner promptly after such approval; and furthermore provides that the Owners may vote to reject same. Section 5302(a)(11) of the Act requires that fines and penalties be preceded by notice and an opportunity to be heard. To require that assessments, fines and penalty amounts be approved by the membership at an annual meeting is thus unnecessary, and inconsistent with existing consumer protection provisions of the Act. Furthermore, such a change would seriously impact an association's ability to maintain the revenue necessary to cover the expenses of managing the community. **The bill failed upon adjournment.**

Planned Unit Development Data Collection Act-CAI supported [HB 1688](#). On July 2, 2009, the Pennsylvania House of Representatives passed HR 350, which directed the Joint State Government Commission (JSGC) to study the impact of Common Interest Ownership Communities (CIOCs), commonly referred to as planned communities, on the Commonwealth and its local governments. The JSGC study, completed in December, 2011, provided critical data, insight and recommendations. One key finding of the JSGC study concerns the absolute lack of information on CIOCs across Pennsylvania. While it is estimated that 2.8 million PA residents live in a CIOC and that roughly 80 percent of new housing starts since 2000 are CIOCs, the actual number and location of these communities is, by large and far, unknown. HB 1688 would mandate the collection of data including information such as name, physical location, land area, lot size, number of units, location, infrastructure age, and articles of incorporation or other non-profit organization registration information filed with the Department of State. **The bill failed upon adjournment.**

State Tax Deduction for Association Assessments-CAI supported [HB 551](#). The bill would allow a unit owner in a common interest ownership community (planned community) to deduct 75% of his or her association assessments (or dues) from his or her personal income tax. The purpose of this legislation is to address the problem of residents of associations paying taxes for municipal services that are often not provided to them. **The bill failed upon adjournment.**

Association Records and Meetings-CAI's PA LAC objects to certain provisions and supports amendments to [HB 319](#) / [HB 1254](#) / [SB 557](#). These Bills address open meetings and open records in common interest ownership communities. CAI strongly agrees that the sharing of information and 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.

Pennsylvania (cont.)

There are two fundamental, and erroneous, assumptions which appear to be the underpinnings of this legislation: that associations are all the same and that associations are similar to municipalities. A thorough review of associations in the Commonwealth of Pennsylvania would reveal that neither assumption is accurate and the adoption of this legislation, in its current form, will likely have several unintended consequences that will adversely impact the ability of associations to function properly. Issues including the availability of meeting space, availability of minutes within a defined period of time, use of recording devices and enforcement provisions will have a chilling effect that will discourage volunteers from serving on boards of community associations. For these and other reasons, CAI sought amendments to the bills. **They all failed up adjournment.**

Withdrawal/Conversion of Real Estate Within Flexible Planned Communities-CAI's PA LAC sought an amendment to [SB 859](#) and [HB 1122](#). The Bills amend the Uniform Planned Community Act and the Uniform Condominium Act to replace the current 7-year limitation on withdrawal or conversion of real estate within flexible planned communities with either a 10-year limitation (for projects that do not have a phasing plan) or a limitation based on the approved phasing that is submitted by the developer to the municipality.

Both the Uniform Planned Community Act and the Uniform Condominium Act provide that control of the board of a planned community or condo must be turned over from the developer to a unit owner-elected board no later than the sale of 75% of the units within the development, or seven years after the conveyance of the first unit in the development, whichever first occurs. CAI seeks amending language that clarifies that these Bills make no changes in the period of declarant control. The amendment supported by CAI states:

The foregoing amendments to Sections 3206(2), 3219(a), 5206(2) and 5219(a)(3) of Title 68 of the Pennsylvania Consolidated Statutes shall specifically apply only to those Sections; and shall not apply to or alter any other Sections of Title 68 of the Pennsylvania Consolidated Statutes, including, by way of example and not limitation, Sections 3303, 3411, 5303 and 5411. All other time periods listed in Title 68 of the Pennsylvania Consolidated Statutes are therefore unaffected hereby.

The foregoing language was accepted by the Bill's sponsors and included in the current version of the Bills, therefore, CAI had no objection to the Bills.

House Bill 1122 was adopted by both legislative chambers and signed by the Governor on July 2, 2013.

Rhode Island

LAC Members

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

Frank A. Lombardi, Esq. (Co-Chair)
Law Office of Frank A. Lombardi

David Abel, CMCA
First Realty Management Corporation

Allison E. Field, CMCA, AMS
Bilodeau Property Management Service

Sarah Flannigan, CMCA, AMS
Barkan Management Company, Inc.

Dr. Marian Styles-McClintock

Claudette Carini (CED)
New England Chapter

Advocacy Highlights

Foreclosure of Condominium Lien-[HB 7150](#) was submitted by a non CAI member seeking to more easily publish foreclosure notices. Specifically, the Bill sought permit publication of notices in newspapers published in the Town or City where the condominium unit is located; also, the bill sought to establish a right of redemption in unit owners being foreclosed upon, similar to the first mortgagee lender's right to redeem 30 days after the Association sends notice of the foreclosure to the unit owner. **The bill was held for further study.**

Service Animals-[HB 7445](#) sought to expand the circle of professionals who could render an opinion to as to whether or not a service animal necessary to mitigate the effects of a physical or mental disability. Those professions would be a physician, physician's assistant, nurse practitioner, other health care providers, vocational specialists, or licensed social workers. LAC committee member, Mary-Joy Howes, Esq., attempted to "tighten" up the definition of service animal and gave input regarding the effect of the presence of these animals in a no pets community association. **The bill was held for further study.**

South Carolina

LAC Members

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

William Press Courtney, CMCA, AMS (Vice
Chair)
Waccamaw Management, LLC

Robert E. Barlow, Jr., CMCA, AMS, PCAM, CIRMS
(Treasurer)
ADP Barlow Insurance

Terri Barry, CMCA, AMS, PCAM
Gold Crown Management, Inc.

Hal L. Beverly, Jr.
McCabe, Trotter & Beverly, P.C.

Blanche Brown, CMCA, AMS
DeBordieu Colony Community Association, Inc.

Shaun Cranford, Esq
Cranford Law

Joseph DaPore, Esq.
Young Clement Rivers

Beverly Griffin

T. Peter Kristian, CMCA, LSM, PCAM (Federal
Liaison)
Hilton Head Plantation Property Owners
Association, Inc.

Todd Lindstrom
Hilton Head Plantation Property Owners
Association, Inc.

Kevin McCracken, CMCA, AMS, PCAM

J. Thomas Mikell, Esq.
Mikell, Weidner, Wegmann, & Harper, LLC

Jerry P. Watson, CMCA, AMS, PCAM

Ray L. Weaver
The Woodlake Village Homeowners Association,
Inc.

Kati Segar (CED)
South Carolina Chapter

Graham Tew (Lobbyist)

Advocacy Highlights

The SC-LAC's primary focus during the 2014 Legislative Session was threefold:

Manager Licensure-A sub-committee of the LAC lead by Shawn Cranford prepared a bill for the legislature's consideration that if passed would Certify Community Managers under the State's Licensure and Labor Relations Department. Unfortunately we were unable to introduce the bill for the 2014 session. **The SC-LAC is working towards filing the bill for the 2015 session.**

Omnibus HOA Bill-The LAC opposed an [onerous piece of legislation](#) that would have once again imposed draconian measures as well as a stiff annual registration fee on all community associations across the State. Working with our lobbyist Graham Tew, who has done an outstanding job representing our interests in Columbia, the SC-LAC was able to successfully defeat this measure. In the alternative the SC-LAC is trying to work with lawmakers to craft a comprehensive HOA Act that would address needed concerns without imposing onerous measures. **This effort is ongoing.**

Federal Activities-SC-LAC Chairman John Thompson and Secretary Peter Kristian met with Kathy Crawford, the Regional Director for Sen. Scott, to discuss two issues that are not only important to residents living in Community Associations in South Carolina but to those in all 50 States:

South Carolina (cont.)

The Stafford Act which is the enabling federal legislation for FEMA is currently being interpreted by FEMA staff members to exclude funding to private communities who do not receive the benefit of local municipal government clean up post disaster debris within their communities. To the extent federal and local governments are funding the cost for cleanup for the general population; FEMA should not discriminate against those who live on streets that are privately owned and maintained.

The Second issue is the current proposal from FHFA, the new federal entity that will likely replace Fannie Mae and Freddie Mac, to eliminate the availability of Federally-backed mortgages on condominium properties which have a deed-based transfer fee. There are good and bad transfer fees. Good transfer fees are funding mechanisms for community-based improvements and programming, (e.g. infrastructure projects, recreational facilities, green space conservancies, art guild's, recreational and social clubs, Etc.); bad transfer fees enrich entities that are not, or are no longer, providing any benefit to members of the community. Some crafty developers have attempted to create transfer fees that are paid directly to them, long after they have no ties to the community. CAI does not object to these transfer fees being targeted for scrutiny. The FHA has dealt with this issue in the recent past and has rules that segregate good and bad transfer fees, while allowing funding for mortgages that have good transfer fees to continue.

We asked Sen. Scott to work with his colleagues on both sides of the aisle to introduce a new Bill in the US Senate, to propose a particular amendment to the Stafford Act, (provided by CAI National's Government Affairs Department), that eliminates ambiguity on the availability of FEMA funding for emergency services provided to community associations, including condominiums, cooperatives, HOAs and POAs. And second, for Sen. Scott to author a letter to FHFA suggesting they mirror the precedent set by FHA in dealing with good and bad transfer fees, in connection with the availability of federally backed mortgages.

The SC-LAC wishes to extend their gratitude to all of the Communities in South Carolina that have and continue to support our Dollar per Door Campaign which funds the costs of our lobbying team.

Tennessee

LAC Members

Scott Ghertner, PCAM (Federal Liaison & Chair)
Ghertner & Company

Jim Trout, AMS, PCAM (Secretary)
Timmons Properties, Inc.

Hal Kearns (Treasurer)
Apex Ventures, Inc.

W. Lee Corbett, Esq.
Corbett Crockett

Larry D. Ellis, AMS, PCAM, RS
Miller-Dodson Associates

Alvin L. Harris, Esq.
Alvin L. Harris

Judy L. Rose, CMCA, AMS, PCAM
Morris Property Management, Inc.

Scott Weiss
Christiansted Valley Homeowners Association

Joseph C. Wise, CMCA, AMS, PCAM
Wise Property Solutions

Faye Ellis (CED)
Tennessee Chapter

Douglas Jones (Lobbyist)
Schulman, Leroy and Bennett, PC

Advocacy Highlights

Open Meetings- [SB1284](#)/HB1251 requires all meetings of a nonprofit homeowners association board to be open to members of the homeowners association, except when discussing delinquent assessments or indebtedness of individual members of the homeowners association. **The bill failed upon adjournment.**

Disclosure Statement and HOA Study- [SB2110](#)/HB2070-requires that prior to selling residential property located within a planned unit development (PUD) that any owner of the property disclose in writing whether the PUD is complete, and if the PUD is not complete, the date of which all property located in a PUD will be developed.

The Senate State & Local Government amendment added additional language requiring Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to conduct a comprehensive study on the law and regulations regarding homeowners associations. Requires the Secretary of State, Office of the Comptroller of the Treasury, and the Department of Commerce and Insurance to provide assistance to TACIR as needed for this study. Requires TACIR to submit a report to the Speakers of the House and Senate by January 1, 2015. **The bill failed upon adjournment.**

Order of Protection- [SB2177](#)/[HB1982](#) allow homeowners associations, neighborhood associations, neighborhood watch or any organized group of residents that live within a residential area to seek an order of protection against offenders convicted of three or more offenses of the crimes of theft, burglary, rape or criminal homicide. **The bills failed upon adjournment.**

Parking and Political Signs- [SB 2198](#)/HB2060 prohibits a homeowners association from barring any person from parking on any public street located within any county or municipality unless expressly authorized by the legislative body of the county or municipality. Specifies that any provision of a governing document of a homeowners association that restricts parking on any public street is declared

Tennessee (cont.)

null and void. Also specifies that any fees or fines imposed by any homeowners association for any public street parking violation shall be unenforceable and of no legal effect in a court of law. Restricts the ability of homeowners' associations to ban political signs on private property and to impose fines in excess of the monthly dues owed by property owners within the homeowners' association.

Bylaws- [SB2556](#)/HB2471 expands the definition of an homeowners association bylaws to include the homeowners association financial statements and operating budget when a buyer, prior to purchasing property located in a PUD, requests that such bylaws be disclosed. **The bills failed upon adjournment.**

Tax Sale and **Liens-**[SB 54](#)/HB 19 authorizes a tax entity, when acquiring undeveloped or unimproved property at a tax sale, to transfer such property to a non-governmental entity for the purpose of satisfying in full any fees assessed by the non-governmental entity, as approved and negotiated by both entities. It prevents any judgment from being entered against the tax entity related to payment of assessments or fees before the date that the non-governmental entity takes title to the property, if the transfer is jointly approved. The bill prevents any lien for those assessments or fees claimed by the non-government entity from being enforced. **The bills were enacted.**

Texas

TCAA Members

Susan Wright (Chair)

Susan Wright and Associates, LLC

Roy D. Hailey, Esq. (Vice Chair)

Butler | Hailey, Attorneys at Law

Pamela D. Bailey, CMCA, AMS, PCAM
(Treasurer)

Chaparral Management Company

Randy Allen

Goodwin Management, Inc.

Judd A. Austin, Esq.

Henry Oddo Austin & Fletcher, P.C.

Robert Burton

Winstead PC

Marta Gore

Destiny's Performing Arts Studio

Connie Niemann-Heyer, Esq.

Niemann & Heyer, LLP

Judith M. Phares, CMCA, PCAM
CMA

Dean A. Riddle, Esq.

Riddle & Williams, P.C.

Worth Ross, CMCA, AMS

Worth Ross Management

Christi K. Wells

Mutual of Omaha Bank - Community
Association Banking & CondoCerts

Advocacy Highlights

The Texas Legislature did not hold a 2014 legislative session. Therefore, TCAA did not introduce or advocate for or against any legislation during the calendar year. TCAA prepared for the 2015 legislative session.

Utah

LAC Members

LaMond Woods, CIRMS (Chair)
Sentry West Insurance Services

Bruce C. Jenkins, Esq., RS (Vice Chair)
Vial Fotheringham SG, LLP

Michael B Miller, Esq. (Vice Chair)
Vial Fotheringham, LLP

Val Weight (Treasurer)
Canyon Road Towers

John Richards, Esq. (Secretary)
Richards, Kimble & Winn, P.C.

Sarah Crawford, CMCA, AMS, PCAM
FCS Community Management

David C. Houston, CMCA, AMS, PCAM
Capital Consultants Management Corporation

Jerry Jensen, CMCA, AMS
Community Association Management

Keith Schoen

Ray Kimber
Herefordshire Condominium Association

John D. Morris, Esq.
Morris Sperry

Justin Rae
Three Fountains Owners Association

Jason Sucher
Advantage Management & Real Estate Services,
LLC

Craig Moody (Lobbyist)
Moody & Associates Incorporated

Mindy Knudsen (CED & Federal Liaison)
Utah Chapter

Advocacy Highlights

Removal of Directors of Nonprofit Corporations-[HB 350](#), sponsored by the LAC, clarifies that bylaws provision controls, but if silent, a director can be removed by a majority of the homeowners association's voting interests. **The bill was signed by the Governor.**

Association Lien Amendments-[HB 26](#) clarifies the circumstances under which an association of unit owners or an association has a lien against a unit or a lot for an unpaid fine. It provides that if a board assesses a fine against a lot owner, the lot owner may:

- request an informal hearing to dispute the fine within 30 days after the day on which the fine is assessed; and
- initiate a civil action to appeal a decision from an informal hearing; and
- makes technical changes.

The bill was signed by the Governor.

Condominium and Community Association Lien Amendments- [HB 115](#), also sponsored by the LAC, requires that a notice of lien, for a lien based on an unpaid assessment or an unpaid fine under Title 57, Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association Act, include the amount of the unpaid assessment or the unpaid fine.

Utah (cont.)

The bill requires that a notice of lien include:

- The lien claimant's name, address, and phone number; or
- If the lien claimant has a representative for purposes of the lien, the lien claimant's name and the representative's name, address, and phone number.

The bill also clarifies that a copy of a notice of lien that the lien claimant mails to the person against whom the notice of lien is filed shall include:

- The date the notice of lien was submitted for recording; and
- The article number on the certified mail receipt.

The bill was signed by the Governor.

Residential Rental Amendments-SB 147 prohibits, except under certain circumstances, an association or an association of unit owners from requiring a lot owner or a unit owner to:

- Obtain the association's or the association of unit owners' approval of a prospective renter; or
- Give the association or the association of unit owners a copy of certain documents relating to a renter.

The bill provides that no later than 30 days after the day on which a renter vacates a rental property, the owner or the owner's agent shall return to the renter the balance of any deposit and the balance of any prepaid rent and provide an itemized notice of any deductions.

Further it establishes a procedure by which a renter may:

- Notify the owner or the owner's agent of the owner or the owner's agent's failure to comply with the provisions of the preceding paragraph; and
- Provide the owner or the owner's agent a five-day opportunity to comply.

It provides that if the owner or the owner's agent fails to comply within five days after the day on which a notice is served, the renter may recover the full deposit, the full amount of any prepaid rent, and a civil penalty of \$100. Further it provides that in an action to enforce compliance with the provisions of this bill, a court shall award costs and attorney's fees to the prevailing party if the court determines that the opposing party acted in bad faith.

The bill was signed by the Governor.

Vermont

LAC Members

David Boston, AMS, PCAM (Chair)
TPW Management

Jon Readnour (Vice Chair)
Readnour Associates, P.C.

Paul T. Carroccio, CMCA, AMS, PCAM
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TPW Management

Tom Carroli
Mountain's Edge Condominium Association

John Watanabe, AMS, PCAM
Winterplace Condominium Owners Association

Claudette Carini (CED)
New England Chapter

Advocacy Highlights

Weatherization Measures-The most significant legislative action in 2014 was [HB 787](#), an act relating to weatherization measures in common interest communities, which would have prohibited restrictions on homeowner energy conservation or renewable energy efforts, including the installation of clotheslines and solar panels. It remained sitting in the House Committee on Natural Resources and Energy **with no further action**.

Virginia

LAC Members

Susan B. Tarley, Esq. (Chair)
Tarley Robinson, PLC

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Coleen Hillen (Secretary)
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Michael A. Inman, Esq.
Inman & Strickler, P.L.C.

Catherine Fulkerson, CMCA
Reston Association

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Huntington Grove

William Bradley Mason, Esq.
Segan, Mason & Mason, PC

Jeremy R. Moss, Esq.
MercerTrigiani

Dana Shotts-Neff, CMCA, AMS, LSM, PCAM
Chesapeake Bay Management, Inc.

Paul L. Orlando, Jr., CMCA, LSM, PCAM
Service First Management & Consulting, Inc.

Carol L. Teigen, LSM, PCAM
Stone Ridge Association

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Jerry Wright, Esq.
Chadwick, Washington, Moriarty, Elmore &
Bunn, P.C.

Chuck Duvall (Lobbyist)
Lindl Corporation

Tripp Perrin (Lobbyist)
Lindl Corporation

Denny Gallagher (Lobbyist)
Lindl Corporation

Advocacy Activities

The CAI Virginia Legislative Action Committee (VALAC) enjoyed a large degree of success in the General Assembly this year. Our lobbyists from the Lindl Corporation, Chuck Duvall, Tripp Perrin and Denny Gallagher, worked non-stop for us. Doors were opened, legislators listened, and we are pleased with the new relationships we established. Not only did we establish excellent relationships with legislators, we also received the support of the Virginia Association of Community Managers and the Virginia Association of Realtors on [HB 791](#). Our successes were found on both the House and Senate side. Below are highlights and outcomes of legislation that addressed community associations and the VALAC's efforts during the 2014 General Assembly.

Late Fees-The VA LAC worked with Del. Watts to clarify the late fees that can be charged on assessments. [HB 566](#) was **signed by Governor McAuliffe on March 17, 2014**. It amends the Virginia Condominium Act and the Property Owners' Association Act (the "POAA") providing: *Except to the extent that the condominium instruments or rules or regulations promulgated pursuant thereto provide*

Virginia (cont.)

otherwise, an executive organ may impose a late fee, not to exceed the penalty provided in § [58.1-3915](#), for any assessment or installment thereof that is not paid within 60 days of the due date for payment of such assessment.

Compliance with Declaration-Del. Pogge submitted changes to the Virginia Condominium Act to clarify a unit owner's right to file a lawsuit against the unit owners' association. The VA LAC was concerned about the proposed language and provided substitute language to Delegate Pogge on [HB 530](#) which she agreed to use. HB 530 amends Va. Code Ann. 55-79.53 A. by adding the following language: *This section shall not preclude an action against the unit owners' association and authorizes the recovery, by the prevailing party in any such action, of reasonable attorney fees, costs expended in the matter, and interest on the judgment as provided in § [8.01-382](#) in such actions.*

Merger; Judicial Reformation of Declaration -[HB 690](#), providing for the merger of condominiums and judicial reformation of declarations, was introduced by Del. Massie. The VA LAC reached out to Del. Massie on the bill to provide substitute language and worked with other stakeholders on the substitute bill. HB 690 amends the Virginia Condominium Act by providing condominiums with the ability to merge two or more condominiums. It also amends both the Condominium Act and the POAA by permitting associations to petition the circuit court to make changes to a declaration. A process is set forth in the statute and it can only be used in the following limited circumstances: *(i) ambiguities or inconsistencies in the declaration that are the source of legal and other disputes pertaining to the legal rights and responsibilities of the association or individual lot owners or (ii) scrivener's errors, including incorrectly identifying the association, incorrectly identifying an entity other than the association, or errors arising from oversight or from an inadvertent omission or mathematical mistake.*

Notice for Requests to Examine Records-The VA LAC worked with Del. Filler-Corn on [HB 550](#) which increased the time for self-managed associations to respond to document requests from owners. We provided some technical amendments to the bill to keep it consistent with defined terms used elsewhere in the Virginia Code. HB 550 has been **signed by the Governor** and was effective July 1, 2014.

Rescission of Condominium Purchase Agreement-[HB 899](#) was introduced by Del. Peace. It sought to reduce a purchaser's right of cancellation on a condominium contract from 10 calendar days to 5 calendar days. The VALAC lobbied to limit the reduction to 7 days but were unable to get agreement. To provide a balance to the potential condominium buyer, we requested the addition of a requirement that the purchaser's right of cancellation be in bold, 12-point type on the first page of the contract. This change was accepted. HB 899 has been **signed by Governor McAuliffe** and was effective July 1, 2014.

Allowable Fees-[HB 900](#) was another bill introduced by Del. Peace. It added clarifications to the permitted charges for disclosure packets and resale certificates. The VALAC sought to have a few changes made to the bill. We were successful in removing language that permitted the bill for the disclosure packet or resale certificate to not be paid if the manager did not submit the invoice at the time of closing. HB 900 has been **signed by the Governor** and is effective July 1, 2014.

Solar Panels -Sen. Petersen introduced [SB 222](#) on solar panels. The original bill would have nullified those restrictions in declarations that prohibit solar panels. The modified language recognizes and clarifies the authority of the declaration in being able to prohibit solar panels. **The bill was enacted.**

Virginia (cont.)

Association Charges-[HB 260](#) would have provided that unless expressly authorized in the Property Owners' Association Act or in the declaration or otherwise provided by law, no association may make an assessment or impose a charge against a tenant unless the charge is a fee for services provided or related to use of the common area. The measure **was pulled by the patron and will not carry over to 2015.**

Owners' Bill of Rights-[HB 332](#) provides that in addition to other powers and duties, the Common Interest Community Ombudsman is required to develop and disseminate to all common interest communities in Virginia a common interest community owners' bill of rights, which shall be written in readily understandable language using words of common everyday usage and avoiding legal terms and phrases. The bill sets out the minimum requirements for inclusion in the bill of rights. The measure was **carried over** and referred to the Housing Commission.

Association Charges-[SB 386](#) would have clarified that a property owners' association may only assess charges or fees for services provided or related to use of the common area that are expressly authorized in the Virginia Property Owners' Association Act, the association's declaration, or as otherwise provided by law. The measure was **pulled by the patron and will not carry over to 2015.**

Rule Enforcement-Last, but certainly not least, is [HB 791](#). HB 791 in its original form provided community and condominium associations with the ability to go to general district court on violations of the rules and regulations or declaration. The intent was to permit associations to use the more efficient and less costly general district court rather than circuit court which also benefits the owner in reducing any attorney's fees they incur. Subsequently, many changes were discussed, some were made, then changed again. The VA LAC picked up opposition to the bill which made its way to the "news" and unfortunately the misinformation and lack of understanding of the bill became an issue. The bill ended up going to "conference" which means three delegates and three senators were appointed to work out a compromise on the bill. The bill was modified again, the conferees agreed to it, and it passed both the House and the Senate. The bill was then returned to the General Assembly by the Governor with recommendations. The Governor's recommendation **ultimately passed.**

The following is the summary of the bill with the Governor's recommendations. The bill provides that associations may file or defend a legal action in general district or circuit court to seek an order to require that any violation of the condominium instruments or rules duly adopted pursuant thereto be corrected. However, the bill provides that before any action authorized in the bill or in the governing documents is taken to enforce rules violations and after written notice of the alleged violation to the owner at the address required for notices of meetings, the owner shall be given a reasonable opportunity to correct the alleged violation. If the violation remains uncorrected, the owner shall be given an opportunity to be heard and to be represented by counsel before the board or such other tribunal as the governing documents or rules duly adopted pursuant thereto specify. The bill gives an appeal of right from general district court an action involving rule enforcement filed by a condominium unit owners' association or unit owner or of an action filed by a property owners' association or lot owner. The bill also provides that in the event of a legal action involving rule enforcement, the prevailing party is entitled to recover court costs and reasonable attorney's fees.

Virginia (cont.)

It was evident from the reports on the ground during the long haul towards the passage of HB 791 that while many members understand the value of community associations, there is a perception that community associations have become too powerful and the inclination to give them any additional power – real or otherwise – is minimal. Many factors have contributed to this feeling including many members with negative stories about their experience living in a community associations and at least a couple of members who have a law practice dedicated in part to filing lawsuits against community associations. The horror stories of the few vocal residents unfortunately dramatically outweigh the silent majority of homeowners who think favorably of community association and their missions. These obstacles are not insurmountable but we are going to need to make a concerted and sustained effort at educating legislators and other policy makers about the valuable role community associations play and why the hysteria is unfounded.

Washington State

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Advocacy Highlights

The short, 60-day legislative session in Olympia was relatively uneventful as a unique partisan split divided the two chambers resulting in any significant legislation being put on hold while legislators battled with budget priorities to fund a Supreme Court mandated court decision relating to funding basic education.

The 2015 legislative session will prove to be much more active with the introduction of legislation adopting a revised form of the Uniform Common Interest Ownership Act.

Washington State (cont.)

Annual Minutes-[HB 2567](#), which **passed and was enacted**, requires an association to make meeting minutes from the previous association meeting available to each owner for examination and copying *not more than* sixty days after the meeting. In addition, the bill calls for the minutes of the previous association meeting be approved at the next association meeting in accordance with the association's governing documents.

Limiting Reserve Studies-[HB 2240](#) and [SB 6147](#) would have exempted condominium associations with fewer than 50 units and residents 55 years and older from having to update their reserve studies after an initial study has been completed. WSCAI LAC strongly opposed both of these bills. **The proposals failed to be reported out of their committees of origin.**

Marina Slips -[SB 6319](#) would have exempted a marina slip that is "incorporated as its own community association" from the HOA Act. **This bill failed to pass the legislature.**

Wisconsin

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Advocacy Activities

The LAC continued its work to modify Chapter 703, the state's condominium act. The proposed amendments include:

1. Improving the definitions in Section 703.02 Wis. Stat. to include the following subsection: 5b) "construction begun" or "construction began" means the date a building permit was issued for the construction of the unit or units. (5c) "completed" means the earlier date of when the unit is either occupied or an occupancy permit has been issued.
2. Making a lender under Section 703.09(2) Wis. Stat. respond in writing to a proposed declaration amendment within 45 days, and if they don't respond, then lender will be deemed for all purposes to have approved the actions specified in the notice.
3. Amending Section 703.10(4) Wis. Stat. so as to prohibit anyone who is not paying the full amount of assessments under Ch. 703.16 from voting.
4. Amending Section 703.16(2)(a) to require vacant land to pay assessments equal to 10% of what would be due if construction were complete, 50% while construction is occurring and require construction to be completed within 24 months.
5. Amend Section 703.16(2)(b) Wis. Stat. to limit the amount of assessments for which a Unit Owner can be liable to their proportionate share of the budget during any period that another Unit Owner is exempt from assessments.
6. Amend Section 703.165(5) Wis. Stat. so that any first mortgagee foreclosing on a Unit liable for the assessments for the preceding twelve months.

Below is more detail on the problems and proposed solutions related to the proposed amendment.

Wisconsin (cont.)

Amendment to Section 703.09(2)

Current Problem. The law requires a mortgagee's (secured lender) approval to amendments to the Declaration, but many mortgagees, even when the amendment would be beneficial, don't respond in any fashion to a requested amendment. This makes it almost impossible for most associations to amend their declaration.

Proposal. If the mortgagee does not provide a response within 45 days, then the secured lender will be deemed for all purposes to have approved the proposed declaration amendment.

Amendment to Section 703.10(4)

Current Problem. Declarants or more commonly their successors (often banks via foreclosure) allow the period of declarant control to pass, so they are not required to pay any assessments on un-built units, but they have full voting power for every un-built unit. For practical purposes this often gives them control of the association, even though they are not paying assessments. This makes no sense and is not equitable.

Proposal. After the period of declarant control under s. 703.15(2)(c), a unit owner shall have no voting rights until the unit is paying the full amount of an assessment that would be due if the unit were completed, sold and occupied.

Amendment to Section 703.16(2)(a)

Current Problem. After the period of declarant control under s. 703.15(2)(c), declarants still often construct units and use the common element (e.g. model units), especially the roads on which very heavy construction vehicles pass, yet they often pay no assessments. This is because the developer has not yet sold the particular unit. For such units, even if vacant land, the owner should pay some assessment.

Proposal. After the period of declarant control under s. 703.15(2)(c), owners of units that have:

1. Not yet had construction begun shall pay assessments of 10% of the amount that would be due if the unit were completed, sold and occupied; or
2. Had construction begun, but are not yet completed, shall pay assessments of 50% of the amount that would be due if the unit were completed, sold and occupied. Once construction has begun, all units are deemed completed 24 months after the date that construction began, such that full assessments shall be due at that time.

Amendment to Section 703.16(2)(a)

Current Problem. While associations are under declarant control, the declarant is required to pay any shortfall from the budgeted amount of assessments. The assessments paid on the sold units are collected monthly as the expenses are due monthly, but the declarants shortfall is not owed until after the end of the year. This, at times, effectively puts the burden for all of the current year's expenses on the existing unit owners despite the statute. This is not equitable and the developer should pay monthly just like all of the other unit owners.

Wisconsin (cont.)

Proposal. Declarant or successors of exempt units must pay any shortfall monthly with everything adjusted annually. This is simply fairer to everyone.

Amendment to Section 703.165(5)

Current Problem. When a unit goes into foreclosure, the first mortgage holder does NOT pay assessment, but upon completion of the foreclosure, the first mortgage holder gets the benefit of the association (the other unit owners) keeping the property up. Since the bank is getting the benefit, it should pay its fair share in the same fashion that 22 other states have recently changed their lien priority statutes to require that banks pay from 6 months to unlimited months of the back assessments.

Proposal. Make the first mortgage holder liable for the unit's proportionate assessments during the period of the foreclosure, but not more than 12 months, while the other unit owners are paying to keep the common elements maintained.

For any association that has had a bank foreclose of a unit owner, the passage of the amendment, assuming a 12 month lien priority and a \$200 per monthly assessment, would put \$2,400 into the association's accounts. Accordingly, the more foreclosures that you have had, the more these amendments would likely benefit your association.

Index of Issues

- 100 Old Palisade*, 11
- Abandoned Units, 45
- Amateur Radio, 17, 18
- Amber Homes, Inc.*, 10
- Arbitrate, 10, 30, 54, 57
- Architectural Control, 60
- Assessments, 6, 7, 8, 13, 16, 18, 22, 31, 32, 33, 36, 44, 45, 50, 52, 53, 58, 59, 61, 64, 65, 67, 75, 78, 84, 89, 90, 95, 101, 102, 103
- Attorney's Fees, 5, 22, 31, 37, 40, 55, 58, 64, 65, 93, 96, 97
- Audits, 35, 53, 69
- Balcony, 66
- Bartram*, 5
- Bayview Loan Servicing**, 5, 14, 15
- Biggert-Waters Act, 19
- Bill of Rights, 97
- Boards of Directors, 67
- Budgets, 6, 23, 59, 60, 79, 80, 84, 90, 99, 101
- Bylaws, 6, 39, 90
- Cancellation Requirements, 66
- Casey*, 6, 20, 95
- CCIOA, 13, 29, 33
- Centre Pointe Condominium*, 8
- Chanin Properties Investment**, 7
- Clotheslines, 94
- Collection, 52, 54
- Commercial Condominiums, 47
- Common Areas, 67, 68
- Construction Defects, 10, 11, 13, 30, 31, 32, 33, 68
- Consumer Financial Protection Bureau, 18
- Continuing Education, 53
- Contractors, 53
- Conversion of Real Estate, 85
- Countryside Community Association*, 8
- Covenants, 8, 12, 13, 50, 55, 60, 61, 72
- Crime, 89
- Data Collection Act, 84
- Daycare, 60
- Declarant Rights, 80
- Delinquent Assessments, 58
- Developer, 57, 60
- Disclosure, 13, 22, 66, 89
- Dispute Resolution, 9, 26
- Dispute Resolution Board, 75
- Documents, 12, 13, 26, 35, 40, 44, 45, 47, 49, 50, 52, 53, 54, 57, 60, 65, 68, 83, 84, 97, 100
- Dogs, 60, 66
- Drought, 26
- Elections, 34, 53
- Electric Vehicles, 66
- Electronic Notice, 57
- Electronic Voting, 26, 40, 57, 60
- E-mail, 45
- Emergency Powers, 46
- Executive Session, 59
- Fees, 5, 7, 22, 29, 31, 33, 36, 37, 40, 41, 42, 48, 49, 50, 51, 53, 55, 56, 58, 64, 65, 66, 67, 77, 83, 84, 87, 88, 90, 93, 95, 96, 97
- FEMA, 88
- FHA, 8, 17, 88
- FHFA, 18, 88
- Filmore*, 8
- Financial Reports, 35, 46, 90
- Fines, 26, 35, 55
- Fire Prevention, 59
- Flood, 5, 19, 47
- Flood Insurance. *See* Insurance
- Foreclosure, 5, 14, 15, 16, 36, 37, 40, 41, 45, 50, 52, 53, 58, 59, 63, 65, 70, 76, 77, 86, 102, 103
- Glens at Pompton Plains Condominium**, 9
- Golf Carts, 22
- Hallmark Homes*, 13
- Handicap Accessibility, 46
- HOA Study, 89
- Homeowners Association Act**, 20
- Insurance, 17, 19, 25, 28, 34, 39, 43, 45, 47, 48, 49, 56, 57, 62, 64, 74, 87, 89, 92, 99, 101
- Kelley**, 13
- Lake Chalet Owners Association*, 10
- Landscapes, 26, 27
- Late Fees**. *See* Fees
- Leasing, 40, 56, 57
- Lien, 5, 14, 15, 16, 18, 20, 32, 33, 37, 38, 40, 41, 42, 43, 44, 50, 51, 53, 54, 58, 61, 65, 70, 75, 81, 86, 90, 92, 103
- Management Company Transparency, 29

Manager Licensure, 65, 69, 75, 76, 78, 87
 Managers, 29, 34, 35, 43, 44, 54, 65, 76, 78, 81
 Marijuana, 54
 Marina Slips, 100
 Married, 67
 Mediation, 30, 41, 57, 60, 63, 70
 Meetings, 6, 15, 20, 34, 35, 40, 44, 45, 46, 53,
 55, 57, 59, 60, 71, 81, 84, 85, 89, 97, 100
 Member Rights, 66
 Merger, 96
Metropolitan Homes, 10
Michael Botelho, et al, 15
 Minutes, 34, 59, 100
 Mortgage Finance Reform, 18
 National Flood Insurance Program, 19, 47
 Notice Amendments, 46
 Ombudsman, 42, 56, 97
 Omnibus Bill, 44
 Omnibus HOA Bill, 87
 Omnibus Tax Bill, 71
 Open Meetings, 66, 81, 89
 Owners' Directories, 45
Pagosa Lakes Property Owners, 12
Palisades at Fort Lee, 11
 Parking, 89
 Pets, 60, 86
 Pit Bulls, 64, 66
 Political Activity, 61
 Political Signs, 22, 73, 90
Polston, 12
 Priority Lien, 5, 15, 16, 17, 18, 19, 37, 42, 50, 51,
 58, 59, 63, 68, 81, 103
 Private Road, 59
 Process Servers, 58
 Property Use, 26
Pulte Home Corp, 8
 Purchase Agreement, 96
 Reasonableness Standard, 40
 Records, 29, 34, 45, 53, 84, 96
 Registration, 20, 65, 81, 87
 Rentals, 44, 67
 Resale, 35, 66, 96
 Reserve Studies, 100
Rosso, 13
 Rule Enforcement, 97
Ryan Ranch HOA, 13
 Service Animals, 86
SFR Investments Pool, 5, 14, 15
 Smoking, 8, 54, 67
 Solar Panels, 27, 53, 71, 73, 94, 96
 Subsurface Rights, 47
Sudden Valley Community Association, 6
 Tax, 33, 34, 50, 61, 71, 79, 84, 90
 Tax Sale, 50, 61, 90
 Teleconference, 40, 45
 Terrorism Risk Insurance Act, 19
The Lodges at Eagles Nest POA, 7
 Timeshares, 44
 Tracey vs. Solesky, 64, 66
 Transfer Fees, 17, 36, 49, 88
 Transfers of Real Property, 61
 Transparency, 66
Triple Crown at Observatory Village, 15
TwentyEleven, LLC, 15
U.S. Bank, 5, 14
 U.S. Mail, 19
 Uniform Acts, 6, 10, 13, 15, 20, 33, 34, 62, 83,
 84, 85, 99
 Unit Owner's Right, 40
 Vacation Rentals, 47
Vallagio at Inverness Residential, 10
Van Kleef, 9
Village Homes, 15
 Void, 60
 Voting, 34, 40, 53
 Warranty, 53, 65
 Water-efficient Landscapes, 26
 Yard Maintenance, 26