



## APRIL 2022 – MICHIGAN CAI LEGISLATIVE ACTION COMMITTEE UPDATE

Spring has finally sprung, which means the Michigan Legislature is back in session. The Michigan Chapter of the Community Association Institute’s Legislative Action Committee (“LAC”) has been quite busy over the past few months working to improve the laws that affect community associations.

Here is a status update regarding the LAC’s continuing efforts on some key pieces of pending (or soon to be pending) legislation:

- **Amendments to the Marketable Record Title Act:** The Real Property Law Section (RPLS) of the Michigan Bar intends to propose amendments to the Marketable Record Title Act (MRTA) this year to resolve certain issues and problems which were created by the 2018 amendments to the Act. As of the writing of this update, the bill has not yet been introduced in the Legislature.

The LAC’s focus in regard to the MRTA amendment effort is to protect the legality and integrity of the governing documents of as many Michigan community associations as possible. In particular, the LAC is seeking to reduce or remove entirely the possibility that the MRTA could be construed as eliminating the governing documents of those associations which are older than 40 years old. This risk was heightened as a result of the 2018 amendments to the MRTA. The LAC seeks to correct this problem in the amendments currently being discussed.

Although the RPLS has been the driving force behind the proposed amendments, the LAC has been in frequent contact with the RPLS to provide input and proposed improvements to the bill that would better serve community associations. Although the LAC views the most recent draft of the soon-to-be-proposed bill as a vast improvement over the current state of the MRTA in the protections it affords to condominium and homeowners’ associations generally, some significant concerns remain about the fact that the bill does not afford the same automatic protections to older homeowners’ associations and property owners associations in Michigan. Specifically, the most recent draft of the bill contains a January 1, 1950 cut-off date for those “Subdivision Restrictions” that will be exempt from the effects of the MRTA. This cut-off date will put older homeowners’ and property owners’ associations at risk if they do not record the required statutory notice to preserve their restrictions (associations whose original restrictions pre-date January 1, 1950 would be required to record such a notice or else have those restrictions eliminated by the MRTA).

As of the writing of this update, the most recent draft of the proposed amendments to the MRTA did not address the LAC’s concerns about the January 1, 1950 cut-off date. Nevertheless, in the coming months the LAC will continue to advocate for the interests of all Michigan

community associations (both older and newer) and push to expand the scope of the protections in the bill to cover as many types of associations as might be reasonably possible.

- **Amendments to Sections 106 and 108 of the Condominium Act – Fines and Liens:** The 2021 case of *Channel View East Condo Ass’n, Inc v Ferguson*, No 351888 (Mich Ct App Feb 25, 2021) (unpublished) held, in a nutshell, that the Condominium Act does not authorize an association to foreclose a condominium lien for unpaid fines alone if the governing documents do not treat fines as assessments. Although unpublished, this decision (if followed by Michigan courts) could significantly weaken the power of condominium associations to enforce their documents, as the foreclosure remedy would not be allowed for unpaid fines, only for unpaid assessments.

The LAC has drafted proposed amendments to Section 108 of the Act which would clarify that unpaid fines are secured by a condominium lien regardless of whether unpaid assessments are also owed. In addition, the LAC drafted proposed amendments to Section 106 of the Act which would clarify that the “notice and hearing” requirements of the Section governing the imposition of fines against co-owners for violations are satisfied as long as the association has offered the co-owner the **opportunity** for a hearing (regardless of whether the co-owner actually requests or attends a hearing with the board). This change would provide clarity to association boards about their statutory duty to provide notice to co-owners and to conduct hearings on violations before imposing a fine.

Recently, the LAC Co-Chairs met with Senator Wozniak of Shelby Township to discuss these proposed amendments to the Condominium Act and the potential benefits that these changes in the law could provide to Michigan condominium associations. The LAC intends to work with Senator Wozniak to introduce this bill in the Michigan Legislature within the next few months.

- **The Discharge of Prohibited Restrictive Covenants Act – House Bill 4416:** Since last year, the LAC has been working with Representative Sarah Anthony and her staff to help pass a new law that would allow the boards of community associations to easily amend their governing documents to remove discriminatory covenants. The bill would authorize boards to record a discharge to remove such covenants from their documents without a membership vote (such votes can often be time consuming and costly).

These types of discriminatory covenants were, unfortunately, fairly common to see in real estate restrictions in the early-to-mid 1900’s (until struck down as illegal by the Supreme Court). Even though the covenants are now unenforceable, they remain in the documents of many older associations.

The LAC, along with the RPLS, has suggested changes to the bill over the past year to help ensure that association boards will be able to easily identify removable “prohibited restrictions” by more specifically defining this term in the bill. This should help reduce the chance that a board might unintentionally violate the law by failing to remove a restriction that is not discriminatory on its face but may have a discriminatory effect. The bill was recently revised to address the LAC’s concern on this point. The LAC intends to reconsider the bill as revised shortly.

Community associations represent the interests of an ever-increasing membership in the State of Michigan and throughout the U.S. The CAI LAC is continually looking for ways to make our

voices heard in the Legislature and is committed to educating legislators about the needs of our communities.

**But we can't do it without your help.**

**The CAI LAC greatly needs your support to make our state's laws better for all of our Michigan community associations, their members and families.** Contributing to the CAI LAC with a monetary donation is one way that you can directly support these efforts to help make our laws better.

If you are interested in supporting legislative change for community associations, please consider making a financial contribution to the LAC at <https://advocacy.caionline.org/lac-donation-form/> and select the "Michigan Legislative Action Committee". Contributions from both individuals and community associations are welcome.

Sincerely,

Gregory J. Fioritto and Matthew Heron

Co-Chairs of the Michigan CAI LAC