2013 advocacy activities

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ASSOCIATIONS INSTITUTE

2013 ADVOCACY ACTIVITIES

Federal and State Legislative and Regulatory Report

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CAI Government Affairs represents the interests of the 63.4 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

Index by Popular Issue Topics

Below is a list of trending issue topics found in this report and in what states the issues were considered. This list does not account for every piece of legislation monitored by CAI LACs in 2013, and many states may have monitored legislation on these topics which do not appear in this report or on the list below. The list is a snapshot of what you may find in this document and a forecast of legislation that may be considered hot topics in 2014.

Federal Issues

Unfinished Business: First Session of the 113th Congress Comes to an End

The First Session of the 113th Congress will likely be remembered more for its theatrics than for its accomplishments. The session began with a high profile, protracted dispute in the House of Representatives over disaster relief for victims of Hurricane Sandy and ended with the Senate "going nuclear" and changing long-standing filibuster rules for confirmation of presidential nominees. Between these events, a Senator dramatically held the Senate floor for 24 hours in an attempt to delay implementation of the Affordable Care Act; the federal government shutdown for 16 days; and, the U.S. government was allowed to come dangerously close to default.

It would be easy to write the first session off as a waste of taxpayer money and time, but this would overlook substantive debate on important issues that took place in congressional committees during 2013. Committees in the House and Senate addressed housing finance reform, flood insurance reform, disaster recovery, postal reform, and other issues important to CAI members. There is every expectation that both chambers will take up substantive legislation in each of these areas in 2014.

Housing Finance Reform

The future of housing finance giants Fannie Mae and Freddie Mac, often known as the housing government sponsored enterprises (GSEs), has been unsettled since the companies were placed in conservatorship by their regulator, the Federal Housing Finance Agency (FHFA). Now more than five years into what was intended as an emergency solution during the financial crisis of 2008, Congress is laying the groundwork for phasing out Fannie Mae and Freddie Mac. This will directly impact community associations and change how American households access mortgage credit.

The first concrete step to comprehensive housing finance reform was taken in the House of Representatives by the Financial Services Committee. On July 24, the committee approved the Protecting American Taxpayers and Homeowners (PATH) Act, liquidating Fannie Mae and Freddie Mac over a five-year period, relying on private markets to ensure the future availability of mortgage credit.

Under the housing finance system proposed by the PATH Act, the federal government will no longer guarantee timely payment of principal and interest on mortgages. Eliminating this guarantee will greatly reduce the potential for taxpayers being called upon to bailout federally-backed institutions in future financial crises.

The PATH Act is controversial as many policy experts predict that eliminating federal support for the housing finance system will significantly increase interest rates, endanger the availability of the 30-year mortgage, and disrupt access to credit. These costs are, in the view of many, unnecessary and too high a price to pay to insulate taxpayers from future financial crises.

From 2008 through 2011, more than $180 billion of taxpayer funds were diverted to Fannie Mae and Freddie Mac. There is widespread agreement that the taxpayer bailout of Fannie Mae and Freddie Mac prevented the financial crisis of 2008 from deepening and blunted the impact of the flowing recession.

Fannie Mae and Freddie Mac have since seen their finances stabilize and have made significant dividend payments to the U.S. Treasury. In 2014, dividend payments from the GSEs to the U.S. Treasury are expected to exceed the total amount of taxpayer money used to rescue the companies from insolvency. Despite this turnaround in the GSEs' finances, key members of Congress agree that Fannie Mae and Freddie Mac should not be allowed to remain in business.

The one area of agreement between the Financial Services Committee and the Senate Banking Committee is the need to liquidate Fannie Mae and Freddie Mac. Similar to the PATH Act, the primary legislative proposal under consideration by the Senate Banking Committee requires that the operations of the GSEs gradually cease over a five-year timeframe. Beyond this key point, however, sharp policy differences on the future of housing finance divide lawmakers in the House and Senate.

Senate Banking Committee Chairman Tim Johnson (D-SD) and Ranking Republican Mike Crapo (R-ID) believe the federal government must continue to support the housing finance system. This support includes a federal guarantee for mortgages and a new federal agency, based on the Federal Deposit Insurance Corporation, to protect taxpayers from a future bailout.

Under the Senate Banking Committee proposal, private investors who buy federally-guaranteed mortgages must absorb substantial losses prior to any taxpayer resources being used to support the housing finance system. A second layer of taxpayer protection will be achieved by assessing a fee on each mortgage guaranteed by the federal government. The guarantee fees are to be deposited in a special insurance fund and used by federal regulators to cover catastrophic losses on mortgages in a future housing crisis. Senators believe this double layering of capital resources will reduce the likelihood that taxpayers will be called on for future bailouts of the housing finance system.

A second key policy goal of the Senate Banking Committee is to ensure the continued availability of the fixed-rate, pre-payable, 30-year mortgage. The 30-year mortgage is the mainstay of the American housing finance system and is the choice for the majority of American households financing the purchase of a home. Many housing finance policy experts believe the 30-year mortgage will not be available to most households unless the federal government continues to support the housing finance system. The Senate Banking Committee is working to calibrate its proposed federal mortgage guarantee to ensure the 30-year mortgage remains available to most buyers.

Outlook for 2014

The House of Representatives adjourned without considering the PATH Act. Some have suggested the 16-day federal government shutdown so limited the number of legislative days in the House that the bill was unable to be considered. However, this does not account for the fact that Financial Services Committee Chairman Jeb Hensarling (R-TX) led a coordinated effort to secure a vote for the PATH Act on the House floor.

Countering Chairman Hensarling's push for a vote was a sustained and fierce lobbying campaign intended to blunt the legislation's prospects in the House. Most observers agree this lobbying campaign created enough uncertainty among members of the House Republican Conference that House Leadership was unwilling to schedule a vote on the PATH Act in 2013. Additionally, the PATH Act faces unified opposition from the House Democratic Caucus, which exposes Republicans to industry and homeowner criticism for pressing forward with ideologically-driven housing finance reforms.

The Senate Banking Committee is working toward a general housing finance reform legislative framework that can be supported by both Democratic and Republican Senators. The committee has engaged in a deliberative process, holding more than ten hearings on housing finance reform in 2013 alone. The starting point for the committee's legislative work was a consensus bill cosponsored by ten Senators, evenly divided by political party.

Notwithstanding this bipartisan approach, the Senate Banking Committee was unable to finalize a reform package in 2013. In December, Chairman Tim Johnson (D-SD) said the committee had not made the progress he had hoped for, but noted the committee's top priority going into 2014 will be introduction of housing finance reform legislation.

Legislative action on housing finance reform is likely to reach the floor of both the House and the Senate in 2014. Given the significant differences in each chamber's approach to reform, production of a final, consensus legislative package is unlikely. A more likely scenario is that as Congress continues to debate housing finance reform, federal housing finance regulators will press forward with policies intended to reduce the federal government's role in the housing finance system.

Flood Insurance Rate Relief

The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters) was enacted to restore the financial position of the National Flood Insurance Program (NFIP). Through Biggert-Waters, Congress directed the NFIP to increase insurance premiums for policies on older residential properties, second homes, rental properties and businesses. The NFIP is currently more than $24 billion in debt to the U.S. Treasury.

Premiums on policies targeted in the Biggert-Waters Act were, in many cases, insufficient to offset the insured structure's flood risk over time. Insufficient premium levels have contributed significantly to losses within the NFIP due to catastrophic loss events such as hurricanes Katrina and Sandy.

The Biggert-Waters Act also requires the Federal Emergency Management Agency (FEMA) to update flood maps that determine mandatory flood insurance purchase areas. These flood map updates have a direct impact on flood insurance premiums. Where new FEMA maps show either a higher level of flood risk or new flood risk, the NFIP must adjust flood insurance premiums over a five-year period so premiums reflect actual flood risk.

Finally, the Biggert-Waters Act requires that flood insurance premiums rise to the full risk rate when an insured structure is sold or a lapsed flood insurance policy is renewed. Under this statutory requirement, new property owners or policyholders renewing expired coverage must pay full risk premiums without possibility of a five-year phase-in period.

Outlook for 2014

As FEMA and the NFIP moved to implement Biggert-Waters Act requirements, Congress began to hear from constituents that flood insurance premiums were rising by astronomical percentages. Hearings in the Senate Banking Committee and the House Financial Services Committee demonstrated that homeowners across the country were facing the possible loss of their homes due to unaffordable flood insurance premiums.

Based on these reports, multiple members of Congress introduced legislation to delay increases in flood insurance premiums required by the Biggert-Waters Act. Over the course of several months, a consensus legislative package, the Homeowner Affordable Flood Insurance Act (HFIA), was developed and introduced in both the House and Senate.

Under HFIA, flood insurance premiums increases will be delayed for approximately 4 years while FEMA studies the impact of premium increases on homeownership and the viability of the NFIP. HFIA also directs that FEMA correct acknowledged flaws in the process the agency uses to map high flood risk areas.

At the end of the 1st Session, HFIA had 168 cosponsors in the House of Representatives and 27 cosponsors in the Senate. The legislation enjoys strong support from both Democratic and Republican members, which lends strong momentum to the legislation heading into 2014.

Notwithstanding this strong bipartisan support, HFIA has encountered stiff opposition from Republican leadership on the Senate Banking and House Financial Services Committees. This opposition stymied efforts to schedule a vote on in the Senate on HFIA in early December. In the House, an attempt to move a significantly scaled-down NFIP rate relief bill during the last week of the session was stopped by a large number of members who complained the legislation provided little relief to homeowners.

Senate Majority Leader Harry Reid (D-NV) has recently announced that in early 2014 he will initiate procedures to bring HFIA to a vote on the Senate floor. The first major test for HFIA is a vote on cloture, a procedural move that will clear the way for debate and a final vote on the legislation. At least 60 Senators must vote for cloture if HFIA is to continue through the legislative process in the Senate.

Disaster Assistance Reform

The devastation caused by Hurricane Sandy reignited the debate over the disparate treatment of community associations in federal disaster response and recovery programs. Community associations in areas affected by Hurricane Sandy were, in many cases, disqualified from receiving federal assistance with debris removal and other disaster recovery activities.

FEMA classifies community associations as private entities with governance responsibilities over community infrastructure. This classification means associations are generally ineligible to receive federal assistance when clearing storm debris from roads and waterways and or repairing roads, bridges, culverts, and other community infrastructure damaged in a major natural disaster.

The impact on condominiums and cooperatives is also acute. Damaged common elements such as heating and cooling systems, elevators and other critical building infrastructure are ineligible for federal disaster

repair assistance. When similar damages occur to single-family homes, owners are eligible to apply for repair assistance to help cover uninsured losses.

Legislation has been introduced in the House and the Senate to make condominium and cooperatives eligible to receive federal repair assistance to cover some of the cost of uninsured damages. CAI has worked to support bill sponsors Rep. Steve Israel (D-NY), Sen. Charles Schumer (D-NY) and Sen. Kristen Gillibrand (D-NY) in their efforts to ensure that condominium and cooperative homeowners have access to the same federal disaster benefits as all other homeowners.

In late 2013, the House Committee on Transportation and Infrastructure took an important first-step toward helping condominium and cooperative homeowners recover from future disasters. During consideration of H.R. 3300, the FEMA Reauthorization Act, the committee approved an amendment to the legislation that will require FEMA to study the disparity in federal disaster recovery benefits for condominium and cooperative homeowners.

Outlook for 2014

While H.R. 3300 was approved by the Transportation Committee in late October, the full House of Representatives did not take action on the legislation. In discussions with Transportation Committee staff, the delay in scheduling a vote on H.R. 3300 was attributed to the limited number of legislative days remaining on the House calendar and the need to address other legislative priorities.

H.R. 3300 will likely be scheduled for a vote in the House in early 2014. It is projected the bill will easily pass the House, likely on a unanimous vote. Prospects for H.R. 3300 in the Senate are unclear as passage in the House is not a strong indicator the upper chamber will consider the legislation.

If H.R. 3300 successfully navigates the legislative process and becomes law, significant work remains if community associations are to be treated equitably with other neighborhoods and homeowners in disaster response and recovery. H.R. 3300 only requires that FEMA study one aspect of the fairness in disaster assistance question. A change in federal statute is required if community associations are to have fair access to the full complement of federal disaster response and recovery programs.

Securing the necessary statutory change is highly dependent on educating members of Congress on why stable community associations are critical to reviving cities and towns devastated by major natural disasters. Stable community associations provide safe, decent and sanitary housing for residents. This is the cornerstone of a healthy community and a prerequisite for a devastated region's recovery following a major natural disaster.

Postal Reform

The struggling U.S. Postal Service has been the target of major reforms in the Congress over the past several years. Postal reform seemed a prime candidate for a major bipartisan accomplishment in 2013 when leaders of key committees in the House and Senate reached agreement on a legislative framework. Despite this close coordination between lawmakers in the House and Senate, postal reform has stalled in the Congress.

There is bipartisan agreement that the U.S. Postal Service (USPS) is in dire financial straits. Despite growth in package and standard mail delivery, the USPS reported a $5 billion loss in 2013. While this is a substantial improvement over the $15 billion loss reported for 2012, the USPS still has a substantial deficit, carrying forward $61 billion in liabilities with assets of $40 billion. Policymakers agree that structural changes to the USPS are required if the agency is to have a positive net worth and positive cash flow.

The changes necessary to have a meaningful impact on future USPS operations are controversial. Proposals to close post office locations are fiercely opposed by Senators from rural states. Other Senators object to elimination of the six-day mail delivery schedule. Changes to pension funding and other labor issues have generated controversy in the House of Representatives.

One key postal reform under consideration by Congress is the elimination of door delivery of mail. Under the legislative framework agreed upon by leaders of the Senate Committee on Homeland Security and Governmental Affairs and the House Oversight Committee, letter carriers would no longer deliver mail and packages to locations near a postal patron's door. Delivery would be restricted to centralized delivery points such as a cluster box or a curbside receptacle. The legislation also requires that all new construction be designed to incorporate cluster box or curbside delivery of mail. The delivery point change is projected to save the postal service at least $4 billion each year when fully implemented in 2022.

Under the Postal Reform Act (PRA) of 2013, conversion from door delivery to cluster box or curbside delivery is mandatory. Established communities with door delivery of mail would be required to either place cluster boxes throughout the neighborhood or residents must individually purchase and install curbside mailboxes. Exceptions to mandatory conversion are included in the PRA for the elderly or postal patrons with medical conditions limiting their ability to receive mail at a centralized or curbside delivery point.

Local postmasters will be required to meet with local communities, associations and other stakeholders about the conversion process. While the meetings are a requirement, the PRA does not direct that postmasters respond to input from local communities or associations. Rather, emphasis is placed on the mandatory conversion of door delivery to centralized or curbside delivery points.

The change is expected to halt door delivery of mail for more than 30 million postal patrons living in established communities and multi-family housing developments. Individual patrons who do not qualify for an exemption but wish to continue to receive door delivery of mail will be assessed a delivery fee by the postal service.

Outlook for 2014

Elimination of door delivery is controversial and was a key reason that Democratic members of the House Oversight Committee voted uniformly to oppose the PRA. This opposition was a key reason the PRA failed to reach the House floor in 2013. It is likely, however, that the PRA will see floor action in the House in 2014.

Prospects for postal reform legislation in the Senate are uncertain. Leaders on the Senate Homeland Security and Government Affairs Committee have scheduled and then cancelled a vote on PRA legislation three times since September 2013. The latest canceled vote on the PRA was scheduled for December 18.

In the Senate, ending door delivery has not drawn the same level of concern and criticism as in the House. Rather, Senators are focused on other controversial reforms and have been unable reach consensus. If committee leaders are able to address the concerns of rural state Senators, the outlook for postal reform legislation being enacted in 2014 will improve significantly.

CAI will continue to monitor these and other issues pending before the Congress in 2014. If you have any questions about housing finance reform, flood insurance rate relief, or postal reform, please contact CAI's Government and Public Affairs at (888) 224-4321 or government@caionline.org.

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Amicus Curie Briefs

CAI is active in preparing amicus curiae (friend of the court) briefs in federal and state cases that address issues of significant importance in community association law. This aspect of CAI's overall government and public affairs program is vital to preserve the legal rights of community associations and their homeowners. CAI's success in this area is the result of the tremendous hard work and dedication of the members of CAI's Amicus Curiae Advisory Group and other individuals who assist pro bono to review brief requests, draft and file briefs, or argue in select cases.

Wyman v. Ayer Properties, LLC (Massachusetts)
The question raised in this case is whether the economic loss doctrine may preclude an organization of unit owners from recovering against a condominium developer for defective construction, and if so, whether the economic loss doctrine can be satisfied by an association demonstrating that a defective element caused harm to other common area property or units.

Shortly after turnover of control from the condominium trust to a unit-elected owner board, the plaintiffs engaged an engineering consultant to investigate possible construction defects. The investigation revealed deficiencies associated with the windows, the roof and masonry of the building. The trial court ruled that the windows and roof had been deficient but that economic loss doctrine precluded an assessment for injury to masonry.

The plaintiff and the defendant both filed appeals. The appeal court affirmed the plaintiff's claims regarding the windows and roof and also ruled that damage to the masonry be included in the award, but elected to apply the trial courts 20 percent reduction which factored in prior repair costs. Both parties filed an application for further appellate review. The case has been referred to the Supreme Judicial Court of Massachusetts.

Hellmann v. Grand Point Island Homeowners Association (Missouri)
The Hellmanns and Health Care Resources (HCR) contest the legitimacy of the Association and the authority of the Directors to govern the subdivision under the Declaration on a variety of ever-evolving legal theories. Their significant contentions generally challenging the Association and Directors include: there is no valid or legitimate homeowners association because the original Association was administratively dissolved in 2006; the Declarant Bayberry "voluntarily relinquished" his right to appoint individuals as directors; and the Directors had no authority to reinstate Association. Consequently, the Appellants contest any and every action taken by the Association or its Directors.

The Hellmanns' attacks are motivated because the Association opposed the Hellmanns' unilateral attempts to relocate the Community Dock, which the other owners want to remain attached to the common Park parcel. HCR, who has been in alliance with the Hellmanns, contests the authority of the Association and Directors based primarily on the belief that a subdivision of 13 lots does not need a homeowners association, regardless of what the recorded covenants provide, and HCR does not want to pay the assessments that all of the other owners, except for the Hellmanns, have already paid.

As in the May 7, 2013 Amended Judgment, the Court found the Association was properly reinstated, is currently in good standing, and Restelli, Lowe, and Fulton are the proper Directors of the Association with authority to govern the subdivision pursuant to the Declaration.

Chase Bank v. Chase Plaza Condominium Association (Washington, DC)
The question raised in this case is: does an association foreclosure wipe out the first mortgage on a property (except to the extent excess monies attach to the proceeds IF NOTICE is given)? Importance lies in the fact that the lower court got it wrong – association foreclosure does not wipe out the first mortgage; by basics of foreclosure law the foreclosure action must extinguish the first lien.

Ultimately, the questions to be answered in the brief is: what is the meaning of "priority" in conjunction with the right of the bank to re-secure its position by payment prior to lien sale? How is the statute designed to help an association which is otherwise subject to the bank's priority? In other words, who would want to bid at an auction, especially where there is no right of the bidder to recoup amounts bid and expenses incurred in a situation where the lender then forecloses its mortgage?

CAI's Amicus Committee is asking the intended brief author to limit the argument to whether a foreclosure of a condominium priority lien extinguishes the first mortgage. CAI is not looking to support one side or the other in terms of who should prevail in this case so CAI does not need to address the issue of lack of notice to lenders.

The Currituck Club POA v. Mancuso Development, Inc. (North Carolina)
Currituck POA took action to claim approximately $122,000 in unpaid assessments owed by Mancuso Development, Inc. Mancuso Development argued that a previously entered agreement with the original owner/declarant excused any obligation it had to pay assessments.

The question raised in this case is: can an owner and member of an association may have their obligation to pay assessments waived by the declarant by contract with the declarant? The facts of the case present a plethora of problems. Mancuso Development successfully argued against its obligation to pay assessments on Currituck POA's property by virtue of arguments never before used in cases by builders attempting to avoid payment to an association. Mancuso argued that its third party relationship with the original declarant erased any claim held by the POA. However, a declarant cannot legally waive a builder's obligation to pay assessments to an association.

This matter presents issues of importance to community association law in North Carolina and would have a substantial negative impact if affirmed by the North Carolina Court of Appeals. The amicus filing will address the principle that the previous ruling was based on a flawed concept; that side agreement would create uncertainty in community associations; the ruling would allow a developer to extinguish an existing obligation via a bulk transfer; and the ruling demonstrates that the court of appeal is anti-community association.

Villas at the Boulders Association v. Lennar Corp. (Colorado)
At issue is the interpretation of Colorado's statute of repose for community associations. Villas at the Boulders Association received a favorable order from the district court stating that Colorado's six-year statute of repose in construction defect cases begins to run upon the issuance of the certificate of occupancy for the final building developed in the association. However, the interpretation of the statute urged by Lennar would be to have a separate statute of repose period for each building in the project based upon the individual certificate of repose for that building. Lennar is seeking to gain approval of this interpretation from the appellate court.

Fowler v. M&C Association Management (California)
Associa's member company, M&C, was sued by a resident of a client community alleging the two fees charged by M&C were in violation of California Code section 1098.5. The fees in question are common fees levied for change of records and other services provided at the time of transfer of title and authorized by the Davis-Stirling Act and exemptions found in code section 1098.5.

At issue is an attempt by a plaintiff's attorney to establish a class action suit to recover damages for lawful fees charged by Associa pursuant to the Davis-Stirling Act and allowable under California's statute that regulates transfer fees. At issue is the current legal framework governing management companies' ability to charge fees to clients and the current interpretation of California's statutory requirements and case law on allowable transfer fees for common-interest communities and their agents.

The Florida Bar Re: Advisory Opinion – Activities of Community Association Managers (Florida)
On March 28, 2012, The Florida Bar's Real Property, Probate & Trust Law Section petitioned the Standing Committee on Unlicensed Practice of Law for an advisory opinion on the activities of community association managers. The petitioner sought confirmation that the activities found to be the unlicensed practice of law in The Florida Bar Re: Advisory Opinion – Activities of Community Association Managers, 681 So. 2d 1119 (Fla. 1996) ("1996 Opinion") continue to be the unlicensed practice of law. The petitioner also asked if it was the unlicensed practice of law for a community association manager to engage in any one of the identified fourteen activities.

Hudson Tea Building Condominium Association v. Block 268 (New Jersey)
Hudson Tea Building Condominium Association v. Block 268 involves two high-rise residential structures which were converted from rental units to a not-for-profit condominium pursuant to the New Jersey Condominium Act in 2005. The case seeks to answer whether the Appellate Court erroneously upheld the policy favoring arbitration rather than yielding to the practicality of the circumstances presented by a Condominium Association tasked with remedying the defect at issue; whether a portion of the Plaintiff's construction defect, tort and fraud claims against the Defendants are subject to arbitration under the terms of certain Purchase Agreements entered into by a minority of the individual unit owners (not the Association) with the Sponsor; and whether the Appellate Court erred in determining that the arbitration clauses were so broad as to extend beyond the closing of the purchase. There is no indication here that the Individual Plaintiffs contemplated that they were waiving their rights to statutory or contractual claims arising from systemic latent defects in construction.

Spanish Court Condominium Association II vs. Carlson (Illinois)
Spanish Court Two filed a two-count Complaint for Possession of Condominium Unit and Assessments against unit owner Lisa Carlson and all Unknown Occupants. Based on Carlson's failure to pay her association assessments, the association sought in its Complaint the possession of Carlson's condominium unit pursuant to the association's Declaration of Condominium Ownership and of Easements, Restrictions and Covenants for Spanish Court II Condominium Development. Count II of the Complaint also sought possession, as well as monetary damages for breach of contract, in the amount of unpaid common expenses, late charges, interest and fines and attorneys' fees.

For more information on these and future efforts, go online to www.caionline.org and look under our Issues & Advocacy section.

2013 Legislative Summit

CAI members from around the country met in Washington, D.C., October 29, to address critical community association issues with officials at the Federal Housing Administration (FHA), the Federal Housing Finance Agency (FHFA), the Federal Emergency Management Agency (FEMA) and key Congressional leaders.

The intensive advocacy effort, part of a first-ever, federal Legislative Summit organized by CAI, focused on the current inability of community associations to access FEMA disaster relief directly and housing reform—specifically priority liens and uniform rules for determining the financial stability of condominiums.

The summit was a "great success," said Ronald L. Perl, chair of CAI's federal Legislative Action Committee, a member of CAI's College of Community Association Lawyers and a CAI past president. "We had a unique opportunity to discuss federal legislative issues at a high level. I'm confident the lines of communication . . . that were opened by these meetings will continue to grow and enable us to better represent the interests of our members throughout the country."

Federal regulators were equally positive about the initiative. "Your timing for this meeting was spot on," said Ivery Himes, director of the Office of Single Family Asset Management at the U.S. Department of Housing and Urban Development. Eileen Zaenger, senior policy analyst for FHFA's Office for Housing and Regulatory Policy, called the meeting ". . . a huge first step."

CAI representatives included homeowners, community managers, attorneys, management company executives and state lobbyists.

Organized by CAI's government and public affairs team, the summit was designed to strengthen the dialog between CAI and federal policy makers.

"This was another step toward fostering greater communication and cooperation between CAI members and U.S. regulatory agencies," said Dawn Bauman, CAE, CAI's senior vice president of government and public affairs. "These relationships are essential so CAI can remain the recognized national advocate for common-interest communities."

CAI members also shared their perspectives on community manager licensing, professional certification for managers and flood insurance.

For more information on these and future efforts, go online to www.caionline.org and look under our Issues & Advocacy section.

Alabama

LAC Delegates

Elbert Boothby, CMCA, AMS, PCAM **(Chair)**
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Tamela M. Makinda **(Vice Chair)**

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Thomas Freeley

Melissa Peters
BB&T Association Services

Susan Rucks
Deer Valley Homeowners Association, Inc.

Advocacy Highlights

Task Force on Homeowners Associations-The legislature passed HJR 28 in 2012 in order to form a task force to study all facets of homeowners associations, which included the possible enactment of legislation. Members of the LAC served on the task force, which investigated topics such as owner disclosure, manager licensing and revitalizing the condominium act. The task force was disbanded. In 2013 the legislature (passed/failed to pass) HJR 353 which would have continued the task force and required it to report its findings, conclusions, and recommendations to the Speaker of the House and the Lieutenant Governor not later than the 10th legislative day of the 2014 Regular Session.

Arizona

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The 2013 legislative session was one for the record books. A grueling marathon that seemed to last forever. Until the last week with budget deadlines right around the corner, when a coalition of republicans and democrats assumed control of the process. At this point, the marathon became a sprint…one designed to move all of the major bills to the governor's desk at a breakneck pace.

When the Arizona legislature concluded its business just before 1:00 a.m. on Friday, June 14, 2013, issues ranging from the expansion of Arizona's Medicaid program, to comprehensive changes in election law, and even the definition of gender for the purpose of using a public restroom had all received serious attention.

In the course of this chaos, CAI's lobbying team managed to successfully stall and defeat *dozens* of shortsighted bills that would have negatively impacted Homeowners Associations (HOAs) and their residents. Efforts to make board members personally liable for attorney's fees, prohibiting associations from regulating the installation of amateur HAM radio towers and permitting residents to opt-out of

paying dues to their master association were just a few of the proposals that never reached Gov. Brewer's desk. The real measure of success in this year's session can be found in what ***did not*** happen.

Under the leadership of Rep. Michelle Ugenti, Chairwoman of the House Government Committee, a working group was established to address HOA-related issues advanced by legitimate stakeholders. This group served as a filter, and Rep. Ugenti personally led the effort to ensure that only sensible and functional proposals were considered. CAI played a critical role in this process, although some compromises were required.

One for the CAI record books: The 2013 session has apparently brought an end to the infamous "Parking Wars." Sen. Nancy Barto, a long-time leader of the efforts to limit local authority over parking in HOAs, has agreed to abandon her efforts to change the laws governing parking in existing HOAs (the changes are now limited only to future communities), and Sen. Barto pledged to drop the issue for future legislative sessions.

Advocacy Highlights

HOA Omnibus-In the midst of the scramble to cram the remaining bills through the process, Rep. Ugenti amended a number of HOA provisions on to a senate elections bill. Many of these provisions had initially been included in the "HOA Omnibus" bill that emerged from the stakeholders working group (an "omnibus bill" is a compilation of multiple, related legislative proposals that are combined into a single bill).

The provisions added to SB 1454 specify that local municipalities cannot require the establishment of planned communities, allow employees of an association to perform specific functions in small claims court, clarify that email and facsimile are acceptable forms of voting in community elections, and establish rules for homeowners that rent their units. Only six hours after the HOA provisions were adopted, the bill received its final vote and was transmitted to the governor for her signature. Days later, on June 20, 2013, **Gov. Brewer signed SB 1454 into law.**

In a remarkable turn of events, the Arizona Center for Law in the Public Interest filed a lawsuit seeking Declaratory Judgment that SB 1454 violates the Arizona Constitution's "single-subject" rule. The Arizona Constitution states, "Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title…"

In its suit, the Arizona Center for Law in the Public Interest argued that the combination of the various changes governing HOAs with the election-related provisions creates a single bill that fails this constitutional test. Moreover, the Arizona Center for Law in the Public Interest argued that the short title of the bill was not changed to accurately reflect the contents of the combined legislation. On September 11, 2013, **Superior Court Judge Randall Warner signed the stipulated order finding that the HOA provisions added to** SB 1454 **in the House of Representatives violated the single subject provision of the Arizona Constitution. As a result, those provisions were held to be void and ineffective.**

Public Roadways-SB 1278 provides after the period of declarant control, an HOA has no authority over and is prohibited from regulating any roadway owned or held by a governmental entity. The measure applies only to planned communities for which the declaration is recorded after December 31, 2014. The CAI Arizona LAC was neutral on this measure. SB 1278 was **signed by Gov. Jan Brewer**.

(Arizona cont.)

Design Review Process-SB 1302 makes a clarifying change to the design review process for planned communities. The measure was supported by the LAC and was **signed by Gov. Brewer**.

Reserve Fund Disclosure-HB 2155 would have required homeowners associations to disclose in its annual corporate filing whether it has and the dollar amount in reserve funds in an addendum entitled "Disclosure Regarding Reserve Fund Study." The LAC opposed this measure. **The bill failed upon adjournment**.

Maintenance of Foreclosed Properties-HB 2193 would have allowed homeowners' associations to remove trash or repair hazardous structures on foreclosed properties. Associations would have been allowed to place a lien on the property for the costs. The LAC supported the measure, but **the bill failed upon adjournment**.

Zoning Prohibitions-SB 2292 would have prohibited municipal planning agencies and county planning and zoning commissions from requiring a subdivider or developer to construct or establish a planned community as part of a subdivision regulation or zoning ordinance. The bill provided subdividers or developers cannot be penalized because of a lack of a planned community as part of the preliminary plat or specific plan, and specified that community associations required by municipalities shall only be permitted to maintain community property. The LAC opposed the measure, and **the bill failed upon adjournment**.

Landscaping-HB 2363 would have prohibited HOAs from prohibiting a member from using any portion of the member's property as a vegetable garden or for the cultivation of other edible plants. The LAC opposed the measure as drafted, and **the bill failed upon adjournment**.

HOA Omnibus-HB 2371 would have made sweeping changes to the regulation of homeowners associations and management companies. The LAC adopted a neutral position on the bill. The bill eventually **failed upon adjournment**, but many of its provisions were included in SB 1454 (see above).

Master Association Dues-HB 2460 would have provided members of an age-restricted planned community may be required to make payments to a master association under specified circumstances. The LAC strongly opposed the bill, and **it failed upon adjournment**.

Political Signs-HB 2527 would have made various changes relating to elections. The bill provided condominium associations could not prohibit the indoor or outdoor display of a "political sign" by a unit owner on the owner's property, except earlier than 71 days before election day and later than 3 days after election day. This measure failed upon adjournment but its provision relating to condominium associations was placed in SB 1454. HB 2536 provided a condominium association could not prohibit political signs on common elements of a unit owner's property. The LAC was opposed to this provision, and **the bill failed upon adjournment**.

Disclosure Documents-HB 2626 provided that if the seller provides HOA disclosure documents or if the buyer waives receipt of those documents, the HOA cannot charge more than $100 for a transfer fee for the property. The bill also provided that the purchase of HOA disclosure documents is prohibited from being a condition of transferring title to a property. **The bill failed upon adjournment**.

(Arizona cont.)

Board Indemnification-HB 2636 provided that if a homeowners association member or condominium association unit owner incurs attorney fees and is successful in compelling the board to comply with any provision of the community documents or state law, the individual board members are jointly and severally liable for the attorney fees and the HOA or condominium association cannot indemnify the board members unless indemnification is approved by a vote of 2/3 or more of the membership. Also, HOA and condominium board members with a conflict of interest may not vote on that issue. **The bill failed upon adjournment.**

Limitations; Termination; Penalties-HB 2643 provided that beginning in 2014, municipal planning agencies are required to ensure that no more than 1/2 of the number of new residential properties constructed in the municipality are located within an HOA. The bill also provided that beginning in 2014, the HOA board is required to conduct an election of the membership at least once every eight years on the question of whether to terminate the HOA. The bill prohibited HOAs from imposing a penalty on a member more often than twice each calendar quarter, and provided the penalties cannot exceed the monthly dollar amount of the regular HOA assessments on that property. The bill also provided the list of items subtracted from Arizona gross income for income tax purposes is expanded to include the amount of HOA dues and assessments paid. **The bill failed upon adjournment.**

Process Servers-SB 1055 provided that while serving process, a certified process server is authorized and privileged to enter and remain lawfully on real property or unannounced in a planned community or condominium association that is guarded or gated. The LAC opposed the bill, and **the bill failed upon adjournment.**

Amateur Radio-SB 1277 provided municipal and county zoning ordinances and HOA regulations must provide for reasonable heights and dimensions for accommodation of amateur radio station emergency service communications antennae and structures. The LAC opposed the measure, and **the bill failed upon adjournment.**

Elections and Meetings-SB 1333 provided statutes governing annual and regular meetings of corporations do not apply to HOAs. The bill prohibited HOAs from taking any action by written ballot or written consent instead of in-person and absentee voting. The bill required that HOA elections must use secret ballots, provide for independent observers to witness the tallying of ballots and save voted ballots for one year. The bill also prohibited HOA boards from including endorsements for any candidates for election in any official materials circulated, posted or provided by the board. The LAC opposed the measure, and **the bill failed upon adjournment.**

Zoning Prohibitions-SB 1365 provided municipal planning agencies and county planning and zoning commissions are prohibited from requiring a subdivider or developer to construct or establish a planned community as part of a subdivision regulation or zoning ordinance. **The bill failed upon adjournment**.

Resale Disclosure Fees-HB 2092 provided that beginning with the fee in effect on January 1, 2013, homeowners associations and condominium associations cannot increase the fee charged for resale disclosure documents and statements by more than 3 percent per year. The LAC was neutral on the bill, and **the bill failed upon adjournment.**

(Arizona cont.)

Boards and Voting-HB 2135 provided that after the period of declarant control, the declarant cannot hold more than one seat on the board of directors of a homeowners association or condominium association. The bill required homeowners associations and condominium associations, instead of permitted, to provide for voting by use of electronic mail and facsimile delivery. The LAC was neutral on the bill, and **the bill failed upon adjournment.**

Management Authority-HB 2145 provided that for HOA and condominium associations that contract with a management company, the management company and its officers and employees may lawfully act on behalf of the association and its board of directors on all matters within the scope of the agency agreement executed between the company and the board. The LAC was neutral on the bill, and **the bill failed upon adjournment.**

Administrative Hearings-HB 2154 provided that if the petitioner prevails in an administrative hearing for a dispute between an owner and a homeowners or condominium association or a mobile home parks landlord and tenant, the administrative law judge is required to order the respondent to pay any attorney fees reasonably incurred by the petitioner. Also, if a petition for a hearing in a dispute between an owner and a homeowners or condominium association is dismissed at the owner's request before a hearing is held, the filing fee must be refunded to the owner. The LAC was opposed to the bill as drafted, and **the bill failed upon adjournment.**

Registration of HOAs-HB 2274 provided that beginning January 1, 2015, HOAs are required to register with the Secretary of State instead of record information with the county recorder. The bill also provided that beginning March 1, 2015, the Secretary of State is required to post this information online in a form that makes it available to the public. **The bill failed upon adjournment.**

Rental Properties-HB 2337 provided homeowners and condominium association members are permitted to use the member's property as a rental property unless prohibited in the declaration, and to designate a third party to act as agent with respect to HOA matters on the property. The bill would have prohibited the HOA from requiring a copy of rental applications or contracts or requiring a tenant to limit or waive rights of due process as a condition of occupancy. The LAC was neutral on the bill, and **the bill failed upon adjournment.**

Zoning Limitations-HB 2474 provided the planning agency of a municipality or county is prohibited from requiring a developer to establish a planned community unless the planned community association owns or is liable for certain special features such as a golf course, lake or clubhouse. **The bill failed upon adjournment.**

California

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California Advocacy Highlights

Commercial and Industrial Common-interest Developments-SB 752 establishes the Commercial and Industrial Common-interest Development Act (CICIDA), which provides for the creation and regulation of commercial and industrial common-interest developments. The CAI California LAC supported this bill**. The bill was signed into law.**

Real Property Disclosures-Current law requires the transferor of residential property to make certain disclosures to a prospective transferee and requires these disclosures to be made on a specified form. SB 652 revises the transfer disclosure form to additionally disclose to a potential transferee specified claims for damages by the seller whether settled or not. The LAC was neutral on this bill, and **the bill was signed into law.**

Elections-Provisions of the Davis-Stirling Common-interest Development Act require that a common-interest development be managed by an association and that elections related to the governance or administration of the common-interest development conform to specified requirements. AB 968 would, notwithstanding the election requirements referenced above, authorize a common-interest development with not more than 15 separate interests to conduct an election of directors pursuant to other specified requirements if a majority of the members of the common-interest development agree to conduct elections under these provisions. The measure is supported by the LAC. **The bill will carry over to the 2014 legislative session.**

Electronic Voting-AB 1360 would authorize an association to conduct elections by electronic voting, as specified, and would enact related provisions. The bill would require an association, if electronic voting is to be conducted, to provide each member with an opportunity to indicate that he or she will be voting electronically and to provide ballots, as specified. The bill would require the electronic balloting service provider to retain the ballot data until the time allowed for challenging the election has expired. The LAC is investigating electronic systems that offer greater security to rebut opponents' claims that no internet election system is secure from hackers and manipulation. **The LAC is the sponsor of the legislation and will resume the bill early in 2014.**

Electric Vehicle Charging Infrastructure-The California Building Standards Law provides for the adoption of building standards by state agencies by requiring all state agencies that adopt or propose adoption of any building standard to submit the building standard to the California Building Standards Commission for approval and adoption. In the absence of a designated state agency, the commission is required to adopt specific building standards, as prescribed. Existing law requires the commission to publish, or cause to be published, editions of the code in its entirety once every 3 years. AB 1092 requires the commission, commencing with the next triennial edition of the California Building Standards Code adopted after January 1, 2014, to adopt, approve, codify, and publish mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily dwellings and nonresidential development. The bill requires the Department of Housing and Community Development to propose mandatory building standards for the installation of future electric vehicle charging infrastructure for parking spaces in multifamily dwellings and submit the proposed mandatory building standards to the commission for consideration. The bill requires the department and the commission, in

proposing and adopting the mandatory building standards, to use specified sections of the California Green Building Standards Code as the starting point for the mandatory building standards and to actively consult with interested parties. **The measure was signed into law.**

Electric Vehicle Charging Stations- Existing law establishes the Alternative and Renewable Fuel and Vehicle Technology Program, administered by the State Energy Resources Conservation and Development Commission, which authorizes, among other things, upon appropriation by the Legislature, a grant program to provide funding for homeowners who purchase a plug-in electric vehicle to offset costs associated with modifying electrical sources that include a residential plug-in electric vehicle charging station. SB 454 creates the Electric Vehicle Charging Stations Open Access Act, which would prohibit the charging of a subscription fee on persons desiring to use an electric vehicle charging station, as defined, and would prohibit a requirement for persons to obtain membership in any club, association, or organization as a condition of using the station, except as specified. The bill requires the total actual charges for the use of an electric vehicle charging station to be disclosed to the public at the point of sale. This bill contains the LAC's intended amendment language: ""Publicly available parking space" shall not include a parking space that is part of, or associated with, a private residence, a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers or vehicles, such as employees, tenants, visitors, residents of a common-interest development, or residents of an adjacent building, or a parking space provided by a producer of electric vehicles as a service." The bill was signed into law.

Building Standards and Utilities-SB 750 would require a water purveyor that provides water service to a newly constructed multiunit residential structure or newly constructed mixed-use residential and commercial structure that submits an application for a water connection after January 1, 2015 , to require measurement of the quantity of water supplied to each individual dwelling unit and to permit the measurement to be by individual water meters or submeters, as defined. The bill would require the owner of the structure to ensure that a water submeter installed for these purposes complies with laws and regulations governing approval of submeter types or the installation, maintenance, reading, billing, and testing of submeters, including, but not limited to, the California Plumbing Code.

Common-interest Development Manager-Current law requires that certain actions take place with regard to the Cemetery Board and Funeral Directors and Embalmers Board and the Structural Pest Control Board by January 1, 1996. SB 822 deletes those provisions. The bill was amended by the LAC to specify that the term "contractor" or "consultant" does not include a common-interest development (CID) manager, and clarifies that a CID manager is not required to hold a contractor's license to perform management services. The measure was signed into law.

Private Security Services-Current law generally regulates private security services, including, among other things, requiring the licensing of private patrol operators, as defined, and imposing various restrictions and obligations on private patrol operators, as specified. AB 759 would replace the term private patrol operator with the term private security contractor for these purposes. The bill would make related, conforming changes. This bill contains other related provisions and other existing laws. The LAC is watching this bill for amendments.

(California cont.)

Supplemental Law Enforcement Services- Existing law provides that a board of supervisors of a county, and a legislative body of a city, may contract to provide supplemental law enforcement services to private individuals or entities at special events or occurrences. SB 298 authorizes, until January 1, 2017, the Board of Supervisors of the County of Orange or the city council of a city within this county to contract to provide supplemental law enforcement services to a homeowners' association on an occasional or ongoing basis to enforce the Vehicle Code on a homeowners' association's privately owned and maintained road, as specified. It also requires, on or before June 30, 2016, the Department of Justice to prepare and submit a report to the Legislature on certain impacts of this contract, would require the board of supervisors or city council to reimburse the department for the costs of this report, and would authorize the board of supervisors or city council to seek reimbursement for these costs. The measure was supported by the LAC, and was **signed into law.**

Divided Lands-Existing law exempts a limited-equity housing cooperative or a workforce housing cooperative trust from provisions of existing law governing subdivided land transactions that are applicable to stock cooperatives if the limited-equity housing cooperative or workforce housing cooperative trust complies with specified conditions. AB 569 would revise the conditions for the exemption to, among other things, require that each party that executes a regulatory agreement with the cooperative satisfy itself that the rights of the cooperative members are provided adequate protection, as specified. This bill also contains the LAC's language, to wit: "(f) Directors shall not be required to be elected pursuant to this article if the governing documents provide that one member from each separate interest is a director." **The measure will be considered in 2014.**

Fees on Transaction Documents- Housing California and California Housing Consortium (more than 300 organizations) sponsored SB 391, which would enact the California Homes and Jobs Act of 2013. The bill would make legislative findings and declarations relating to the need for establishing permanent, ongoing sources of funding dedicated to affordable housing development. The bill would impose a fee, except on sales transaction documents, of $75 to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded. By imposing new duties on counties with respect to the imposition of the recording fee, the bill would create a state-mandated local program. The LAC opposes this measure due to the burdens on foreclosed owners and costs to HOAs. **The measure will be considered in 2014.**

Mortgage Debt Forgiveness-The Personal Income Tax Law conforms to specified provisions of the federal Mortgage Forgiveness Debt Relief Act of 2007. The federal Emergency Economic Stabilization Act of 2008 extended the operation of those provisions to debt that is discharged before January 1, 2013. SB 30 would extend the operation of the exclusion of the discharge of qualified principal residence indebtedness to debt that is discharged on or after January 1, 2013, and before January 1, 2014. The bill would become operative only if SB 391 is enacted and takes effect. (The LAC opposes SB 391.)

Colorado

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Advocacy Highlights

Expansion of Regulatory Authority and Association Registration-HB 1134 as originally introduced broadly expanded the powers of the HOA Information Officer and the HOA Information and Resource Center which are both housed within the Colorado Division of Real Estate. During the legislative process, the bill was completely overhauled. In addition to requiring all HOAs [including pre-Colorado Common-interest Ownership Act (CCIOA) communities] to register and simplifying the registration requirements, the bill requires the Division of Real Estate to conduct a study which will assess options, costs and the need for

the Division of Real Estate to:

1. Offer to mediate HOA complaints;
2. Mandate the mediation of complaints;
3. Refer disputes to alternative dispute resolution services;
4. Provide owners with an expedited and inexpensive administrative hearing process specific to HOA disputes;
5. Monitor and review HOA procedures and election-related disputes;
6. Report alleged election-related misconduct to the Director of the Division of Real Estate;
7. When requested, appoint an election monitor to conduct HOA elections;
8. Provide regulatory oversight over declarant-controlled boards to ensure they are complying with their fiduciary duty to the association and comply with the requirements in CCIOA relating to transition; and
9. Provide regulatory oversight to protect executive boards, directors, homeowners and residents from threats or defamatory conduct arising in HOA matters.

The study must be completed by December 31, 2013, and legislation is expected in 2014 to further regulate HOAs. **HB 1134 went into effect on August 7, 2013.**

Debt Collection-Near the end of the legislative session, HB 1276 made it through the legislative process with bipartisan support. Here are highlights of the bill:

Collection Policy

HB 1276 requires that the Collection Policy which all HOAs are required to have under CCIOA must include at a minimum:

- The date on which assessments must be paid to the association and when an assessment is considered past due;
- Any late fees and interest the association is entitled to charge on a delinquent account;
- Any returned-check charges the association is entitled to charge;
- The circumstances under which a delinquent owner is entitled to enter into a payment plan and the minimum terms of the payment plan; and
- Before the association turns over a delinquent account to an attorney or collections agency, the association must send the delinquent owner a written notice specifying:
    1. The total amount of the arrearage, with an accounting of how the total arrearage is determined;
    2. Whether the opportunity to enter into a payment plan exists and instructions for contacting the association to enter into the payment plan;
    3. The name and contact information for the individual the owner may contact to request a copy of the owner's ledger to verify the amount of the debt; and
    4. That action is required to cure the delinquency and failure to do so within 30 days may result in the account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the owner's property and other remedies available under Colorado law.

Foreclosure

An association, or the assignee of the association's lien, may only proceed to foreclosure if the total amount secured by the lien would equal or exceed 6 months of assessments. Also, the board of an

(Colorado cont.)

association must vote to proceed with foreclosure on any given delinquent account. Boards are not permitted to delegate their responsibility to authorize a foreclosure action to an attorney, insurer, manager or any other person.

Payment Plan
Delinquent owners have a one-shot opportunity at a payment plan to bring their delinquent account current. The payment plan must be for a minimum of six months but can be longer if the association so wishes. The delinquent owner must make the scheduled payment as required by their payment plan and pay their current month assessment obligations. If they fail to make these payments, the association may immediately proceed with collections.

This one-time opportunity to enter into a payment plan does not extend to lenders who take title to the property as a result of a default on a mortgage or flippers.

HB 1276 **went into effect January 1, 2014.**

Manager & Management Company Executive Licensure-HB 1277 requires the licensure of community association managers and management company executives. Here are some highlights of the bill:

Beginning on July 1, 2015, community association managers, management company CEOs and executives of management companies who directly supervise managers will be required to be licensed in Colorado.

To obtain a license, these individuals must hold one or more of the following credentials: (1) the Certified Manager of Community Associations (CMCA) certification awarded by the Community Association Managers International Certification Board; (2) the Association Management Specialist (AMS) designation awarded by Community Associations Institute; (3) the Professional Community Association Manager (PCAM) designation awarded by Community Associations Institute or (4) any other credential identified by the Director of the Division of Real Estate.

In addition to holding one or more of the credentials outlined above, the manager must take a course and pass an examination relating to Colorado law and the governing documents of associations.

Prior to obtaining their license, the managers must pass a criminal background check. In addition, licensed managers may be subject to discipline by the Division of Real Estate for a variety of offenses. Depending upon the severity of the offense, the discipline may include: (1) an administrative fine not to exceed $2,500; (2) censure of a licensee; (3) place the licensee on probation and set the terms of probation; (4) temporarily suspend a license; or (5) revoke a license.

HB 1277 **will go into effect on January 1, 2015.** However, managers and management company executives will not be required to hold a license until July 1, 2015. In the meantime, this bill will go through significant rulemaking with the Colorado Division of Real Estate. The CAI Colorado LAC will be requesting input from members on proposed rules and will provide important updates during this process.

(Colorado cont.)

Landscaping (Xerascaping)-SB 183 was introduced to address the severe drought conditions in Colorado and to ensure that HOAs are not unnecessarily requiring homeowners to install water-guzzling turf grass as part of their landscapes. Here are some highlights of the bill:

For the installation of new landscapes or when receiving requests to modify existing landscapes, associations cannot require that any turf grass must be installed in the landscape. Turf grass is defined as "continuous plant coverage consisting of nonnative grasses or grasses that have not been hybridized for arid conditions which, when regularly mowed, form a dense growth of leaf blades and roots. If owners ask their associations for permission to install turf grass, associations can permit the installation. Associations just cannot require the installation of any turf grass in a landscape.

In enforcing covenants, associations are not permitted to require owners to water their landscapes in violation of water use restrictions. However, associations may require proof from owners that they are watering their landscape or vegetation in a manner that is consistent with the maximum water permitted by the watering restrictions which are in place.

Associations are permitted to adopt and enforce design or aesthetic guidelines that: (1) require the installation of drought-tolerant vegetative landscapes; (2) regulate the type, number and placement of drought-tolerant plantings; and (3) regulate the hardscapes which an owner may install. **The measure went into effect immediately.**

Connecticut

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Advocacy Highlights

Priority Lien-HB 6662 **was signed by Gov. Dannel Malloy on June 24, 2013**. Priority liens are now evergreen, so this is a tremendous victory for associations throughout our state. Our lobbyists worked tirelessly to ensure our concerns were heard and helped to foster successes at the Capitol. This issue dominated our work at the Capitol during the session. After many arduous meetings negotiating with the bankers' lobbyists, we prevailed in our efforts to ensure that the priority liens are now evergreen and have been extended to nine months. It is important to note that the CAI Connecticut LAC received support from the Connecticut Condos Owners Coalition (CCOC) and their leaders, President Gail Egan, and George Gombossy.

The Common-interest Ownership Act (CIOA) gives common-interest community associations seeking to collect unpaid common charges a priority lien over previously recorded first or second security interests (e.g., mortgages). HB 6662 makes several changes affecting this priority lien. It:

1. Extends the period covered by the lien from six to nine months;
2. Specifies that the lien applies in all actions the mortgage holder brings to foreclose its mortgage on the unit as well as all actions the association brings to foreclose its lien for unpaid common charges (presumably, this allows the association to invoke the priority lien more than once, if assessments continue to go unpaid–i.e., it is an "evergreen" priority lien);
3. Excludes from the lien any late fees, interest, or fines that the association assesses against the unit's owner during the nine-month period;
4. Specifies that the lien includes only reasonable attorneys' fees;
5. Requires an association, before bringing an action to foreclose its lien, to provide mortgage holders with (a) 60 days' notice setting forth specified information and (b) a copy of the demand for payment it must already send to the unit owner (it must provide the copy to the mortgage

holder at the same time as the unit owner); and

6. Excludes costs or attorneys' fees from the association's priority lien if it fails to provide the required 60 days' notice.

The act specifies that CIOA's provisions concerning the priority of association liens (in regard to all other liens and encumbrances, not just mortgages) apply despite contrary provisions in the association's declaration or bylaws.

It also specifies that association assessments under CIOA and related attorneys' fees and costs owed by a mortgagor (i.e., the borrower) and paid by a mortgagee, are part of the debt the mortgagor owes to the mortgagee or lienor.

Budget and Assessment Approval Process- Under existing law, common-interest community annual budgets and special assessments are approved unless a majority of all unit owners (not just a majority of those voting), or a larger number specified in the association's declaration, votes to reject them.

HB 6513 changes requirements under the CIOA)for approval of annual budgets and special assessments for certain large common-interest communities and master associations. The original language for the bill had all associations needing to change their budget ratification procedures. The LAC's members and lobbyists spent many hours working with Rep. Arthur O'Neill and the Governor's office to reach agreement to limit the scope of this bill to include only associations with over 2,400 units among other conditions.

HB 6513 creates an exception for (1) common-interest communities that have at least 2,400 residential units and were established before July 3, 1991 and (2) master associations exercising the powers on behalf of one or more common-interest communities or for the benefit of the unit owners of one or more such communities, with the same size and establishment requirements as specified above. The bill provides that, for these communities and master associations, a proposed budget or assessment is approved unless (1) a majority of unit owners participating in the vote rejects it and (2) at least one-third of unit owners entitled to vote on the measure vote to reject it. **The bill was signed into law.**

Revisions to CIOA-HB 6477 makes several changes affecting condominiums and other common-interest communities. It subjects community association managers to disciplinary action for "a knowing and material violation" of the Common-interest Ownership Act (CIOA) or Condominium Act.

HB 6477 exempts board members or association officers under CIOA and the Condominium Act from criminal liability, under certain circumstances, for alleged violations of the state building or fire safety code or a municipal health, housing, or safety code. This immunity applies when the board proposes a special assessment to cover the cost of repairs needed to ensure compliance with the codes and the unit owners vote to reject the assessment. (It appears that for communities governed by CIOA, the immunity only applies if the special assessment is proposed according to the law's procedural requirements for such assessments.)

CIOA generally allows executive boards to provide board members and unit owners a schedule of board meetings instead of providing specific notice in advance of each meeting. Under HB 6477, if the board provides unit owners with such a meeting schedule, the secretary or other officer specified in the bylaws

must make an agenda available to board members and unit owners no later than 48 hours before the meeting.

CIOA sets certain conditions for proxy voting. HB 6477 specifically allows associations to provide proxy forms to unit owners seeking to vote pursuant to a directed or undirected proxy. (A directed proxy specifies how the vote is to be cast, while an undirected proxy allows the person who is given the proxy to decide how to vote.) The proxy forms must include a blank space for the insertion of the proxy holder's name. HB 6477 also allows the forms to include the name of a person the association designates as the default proxy holder. Such a person is authorized to exercise the proxy if the unit owner does not specify the name of the proxy holder subject to the limitations set forth for proxy voting under CIOA and the act.

Under CIOA, associations must keep detailed records of receipts and expenditures affecting their operation and administration and other appropriate accounting records. HB 6477 specifies that this includes records relating to any reserve accounts. **The bill was signed into law.**

Private Transfer Fee Ban-SB 859 bans private transfer fees on and after the bill's effective date. A "private transfer fee" is, with some exceptions, a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property located in Connecticut or (2) for the right to make or accept the conveyance.

For any private transfer fee obligation in existence as of the bill's effective date, the bill requires the obligation to be (1) disclosed in the sale contract and (2) recorded in the town's land records by December 31, 2013. The bill also specifies how real property can become unencumbered by an existing obligation.

Under the bill, a "private transfer fee" is a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property in Connecticut or (2) for the right to make or accept the conveyance. It does not include any: dues, assessment, fine, contribution, fee, charge, or other amount payable to an association or a unit owners' association organized under the Common-interest Ownership Act pursuant to any declaration, covenant, law, or association bylaw, rule, or regulation, including a fee or charge payable to the association for an estoppel letter or certificate. **The bill was signed into law.**

District of Columbia

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Advocacy Highlights

Amendments to the Condominium Act-District of Columbia Councilwoman Mary Cheh introduced the Condominium Amendment Act of 2013, which was assigned Bill Number B20-0139 and referred to the Committee on Economic Development. The measure results from the LAC's efforts and cooperation with Cheh and her staff.

The following is a bullet-point summary of the proposed Condominium Act amendments:

- Require unit owners to obtain condominium owner's insurance coverage with dwelling (whether residential or commercial) property coverage at a minimum of $10,000.00 and condominium owner personal liability insurance coverage at a minimum of $300,000.00 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 $5,000.00. If the owner is responsible for the association's property insurance deductible or an uncovered loss up to $5,000.00, such amount shall be an assessment against the owner's unit.
- Adopt the business judgment rule to govern decisions of the Board of Directors, rather than the reasonableness standard currently applied by the DC Court of Appeals. Currently, DC 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 days to respond to a notice of a proposed amendment to the condominium instruments. Any failure to respond within sixty 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 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 months from the date of recordation of a memorandum of lien or filing of suit.
- Clarifies the Association's power to convey title upon nonjudicial foreclosure.
- Require the Association to maintain financial books and records subject to the unit owner's right to examination, except certain confidential documents that may be excluded from review by unit owners.
- Require the Declarant to record with the Condominium Instruments an affidavit reflecting that the warranty bond has been posted in an amount equal to ten percent of the construction costs of the condominium building.

The bill did not pass in 2013.

Florida

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Advocacy Highlights

Mortgage Foreclosure-HB 87 eliminates many of the abuses which occurred in prior mortgage foreclosure actions and are still occurring in existing mortgage foreclosure actions. Foreclosing on a mortgage in Florida is a lengthy process with the average time between the foreclosure filing and conclusion of the

case being 853 days while the national average is only 414 days. This foreclosure crisis has negatively impacted neighborhoods, negatively affected the judicial branch in terms of both funding and caseload and impeded Florida's economic recovery. HB 87 places an affirmative duty on lenders to produce the mortgage note or provide sworn evidence that they are the owners of the note, thereby eliminating the fraud and other problems that resulted from the robo-signing practices of the past. For the benefit of the borrower, the legislation also shortens the statute of limitations for deficiency judgments from five years to one year. The bill makes revisions to the current show cause process which will streamline and expedite the judicial process while at the same time preserving all appropriate due process rights of the borrowers. It also permits community and condominium associations standing to request the court to move the case along when there are delinquent assessments due. **The bill was signed into law.**

HOA Omnibus-CS HB 7119 is an act that amends several laws that relate to homeowners associations and community association managers (CAM). Below are highlights of the measure, which was **signed into law**.

HOA Reporting
CS HB 7119 requires community association managers or community association management firms (or the associations when there is no CAM) to report information about the HOAs they manage to the Department of Business and Professional Regulation (DBPR). This one-time reporting requirement is due November 22, 2013.

Proposed Changes to Manager Standards of Professional Conduct
CS HB 7119 provides that DBPR may take administrative action against a CAM license for violations of state laws relating to community associations, but did not contain specifics regarding what constitutes an actual "violation". At the August Regulatory CAM Council Meeting, the Council approved language that implements the provisions of CS HB 7119 that propose new changes to the Standards of Professional Conduct in Rule 61E14-2, F.A.C. In adopting the proposed changes, the Council was provided a side-by-side comparison of the current rules and the CS HB 7119 implementation, which was created and provided by DBPR staff.

CAM Firm License Renewal
CS HB 7119 provides CAM Firms must renew their two-year license by September 30.

Design Professional Liability-CS SB 286 eliminates personal liability of individual design professionals for their negligence. CAI-FLA opposed this measure as it being an unfortunate attempt to shift the ultimate negligence liability burden from the design professionals to the consumers. **The measure was signed into law.**

Filing False Documents-CS CS CS SB 112 punishes those persons who file false liens, mortgages, judgments against persons and their property as part of their misguided attempt to disassociate themselves from the U.S. **The measure was signed into law.**

Submerged Land Leases-CS CS CS HB 999 reduces the fees previously paid by community associations for the privilege of obtaining submerged land leases to permit boat docks. **The measure was signed into law.**

Landlords and Tenants-CS HB 77 provides that landlords who are delinquent in the payment of assessments may not retaliate against tenants who pay rental payments to associations. **The measure was signed into law.**

Georgia

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Advocacy Highlights

Updates to the Condominium Act-The CAI Georgia LAC successfully introduced a change to the Georgia Condominium Act that will directly impact the bottom lines of the State's condominium associations. HB 458 **passed the legislature this session and became law on July 1, 2013.** This bill was a product of the LAC's continuing efforts to positively impact the financial strength of condominium associations in Georgia and help them better share the costs of casualty losses in their communities. Many associations have experienced an increase in the costs of insurance and have been forced to raise their deductibles to keep their insurance affordable. The Georgia Condominium Act, however, limits the amount of the deductible that an association can assess back to any unit owner who suffers a covered loss under the association's insurance required by the Act. The LAC was extremely pleased with the bipartisan support and politics-free passage of this important legislation for Georgia's condominium associations. The Act previously limited the amount that could be assessed back to an owner to no more than $2,500, often leaving the association to pay the balance of the deductible as an unexpected common expense. With HB 458 now law, if allowed by the governing documents, associations can assess back up to $5,000 to an owner for the deductible for an owner's loss covered by the association's insurance required by the Act. This $5,000 cap only applies if an owner's loss is one for which the association must insure under the Condominium Act. The $5,000 deductible cap does not apply to other losses, like water, that the association may also insure but is not obligated to ensure under the Act. Thus, for unit water damage, for example, there is no cap on the amount of the deductible that the association may assess back to the unit owner. Unit owners may buy individual coverage for their liability for the deductible under the master policy.

Transfer Fees-The LAC was also successful in ensuring that Georgia's community associations were not negatively impacted by the new Georgia transfer fee bill. HB 160 **passed the legislature** and became law on July 1, 2013, three years after its initial introduction. The bill prohibits transfer fees paid to third parties upon the sale of property, with a few exceptions. The bill's primary purpose was to prevent covenants that required fees to be paid to a developer upon subsequent sales or transfer of a lot, established to provide a future stream of income for the developer. 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. With the LAC's involvement, 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.

For the third year in a row, politicking by other interest groups slowed down this bill. While most add-ons did not survive, this year, an exception for legitimate brokerage commissions paid to licensed real estate brokers survived. There are also exceptions for tax exempt community land trusts, community development corporations and certain entities regulated by the Public Service Commission. However, the LAC is happy to report that proposed language to limit fees that could be charged by community management companies at closings did not survive. The LAC worked diligently behind the scenes with our professional lobbyists and management company executives, and we were able to remove these limitations from the final bill.

Covenants Running with Land-The other success of the LAC this year was through its work with the sponsors of HB 175, relating to covenants recorded upon agreement of a property owner and a third party, which as originally drafted would have imposed new restrictions on how and when covenants run with title to real property subject to community associations. The LAC worked diligently with the sponsors of HB 175 and our Chair testified on behalf of Georgia community associations to provide that the new law does not relate to or negatively impact covenants recorded and enforced in the context of community associations. **The measure was signed into law.**

Priority Lien-The GA LAC continued with its effort to adopt a Georgia priority lien for the benefit of Georgia's condominiums and property owners' associations after foreclosures. SB 56 was introduced during this first of a two-year session. SB 56 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. The LAC testified on SB 56 before the Senate Judiciary Committee, but the Committee referred the bill to a subcommittee, where it **was tabled.** Banks and the Realtors' chief lobbyist both opposed the bill and refused to discuss possible compromises, though many Realtors support a priority lien for Georgia communities.

As SB 56 remains pending in the Senate Judiciary Subcommittee, the LAC is working in the off season to determine its best course to try again to adopt this important legislation. The LAC continues to reach out for alliances. The LAC may find support from the sponsor of HB 502, which would provide a limited priority lien to associations submitted to the Property Owners' Associations Act. This bill was introduced by the Governor's floor leader, but the bill was not heard in committee. A priority lien would help Georgia homeowners protect property values across our state and join 22 other states in adopting a limited priority lien for property owners. 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.

(Georgia cont.)

Water Meters and Utilities-HB 408 was dropped late in the 2013 Session and did not get heard and **carried over to 2014**. However, the LAC will support this bill in next year's session. The bill 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.

Cell Phone Towers-The LAC followed HB 176 but did not get actively involved with support or opposition as there were other well-funded parties battling the substance of this bill, which would have removed government hurdles and restrictions for erecting cell phone towers. **The bill carried over to 2014.**

Priority of Covenants in Subdivisions-HB 464 was introduced 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 get heard and **carried over to 2014**, but the LAC will support the bill if it gains momentum in the next session.

Tax Redemption-HB 69 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 and **carried over to 2014**.

Confirmation on Foreclosures-HB 344 was introduced this session but there were no hearings or other activity associated with it, so it **carried over to 2014**. The LAC will oppose this bill should it gain traction in 2014 as it would create new and unnecessary hurdles for associations when they exercise their right to foreclose on their lien.

2014 Legislative Agenda-The LAC anticipates another active session in 2014. The LAC plans to 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 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 continue to fight for a priority lien for Georgia's communities and 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

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Advocacy Highlights

Foreclosures-There were several significant foreclosure related bills affecting associations in 2013. The CAI Hawaii LAC lobbied for HB 25, which allows both condominium and planned community associations to commence or continue with a non-judicial foreclosure even if the mortgagee has filed for foreclosure. The previous statutory bar on this set by Act 182, enacted in 2012, has been removed. HB 21 provides that condominium associations can immediately collect a special assessment/limited super-priority lien from mortgagees who purchase a delinquent unit in a foreclosure. Condominium associations have been spared from the original requirement to wait until the mortgagee sells the foreclosed unit to a third party. The LAC supported HB 21 as to this change. However, HB 21 requires a condominium association to pay over "excess rental income" from a delinquent unit which the condominium association acquires title to after a foreclosure proceeding. LAC opposed and sought amendments of this portion of HB 21. As a result, HB 21 requires that a condominium association must pay any "excess rental income" to existing lien holders based on the priority of lien as determined by a court in a final judgment. **The measures were signed into law.**

Mediation-The LAC also lobbied for SB 505, which adds support for mediation of condominium related disputes as one of the educational purposes supported by the condominium education trust fund. An additional amount of annual condominium education trust fund fees will be collected and administered by the Hawaii Real Estate Commission. Condominium associations and their members can use professionally trained mediators to mediate their disputes, with the fees of the mediators paid by such additional condominium education trust fund proceeds. **The bill was signed into law.**

Illinois

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Advocacy Highlights

Amendments to Manager Licensure-HB 595 amends the Community Association Manager Licensing and Disciplinary Act (225 ILCS 427/1, et. seq.) to provide for several tiers of licensing and grants the Department of Financial and Professional Regulation jurisdiction over Community Association Management Agencies. The amendments will require not only community managers to maintain a license, but require Community Association Management Agencies to be licensed by the Department. Further, the amended legislation will provide that a "Supervising Manager" will be separately licensed and hold a managerial position at licensed Community Association Management Agencies. The amendment eliminates the obligation of community associations to fund the administration of the Act. Finally, the amendment grants the Department the ability to enforce the various provisions of the Act against not only community managers but Community Association Management Agencies. The CAI Illinois LAC worked with legislators and the Department to get **this bill passed**.

Proxies-HB 1167 eliminates proxy voting for condominiums during an election. Under current law, condominium association boards can adopt a rule to provide for mailed ballot voting. Proxy voting on any other matters would remain in the Act. The bill mandates that elections be conducted by secret ballot. There is no comment about quorum. On March 22, 2013 **the bill was re-referred to Rules Committee in the House**.

Ombudsperson-HB 1293 creates an Office of Condominium Ombudsperson under the authority of the Illinois Attorney General. The Ombudsperson would be charged with offering training and educational materials and courses to condominium unit owners, condominium associations and boards. Requires the Ombudsperson to maintain a statewide toll-free telephone number, maintain certain information on the Attorney General's website and provide dispute assistance to owners and boards. Further, the bill provides that every condominium unit owners' association shall pay an annual fee to the Ombudsperson to cover the administration of the Act, starting at $3 per unit. The LAC met with the sponsor and voiced its concerns over the position. On March 22, 2013 **the bill was re-referred to Rules Committee in the House**.

Lake Associations-HB 1773 amends Illinois Common-interest Community Association Act in several sections. This bill clarifies that an association cannot enter into a contract with a board member or a member of his or her immediate family, without following certain procedural requirements, and permitting an association the ability to disapprove the contract. **The measure was signed into law**.

Definition of "Family"-HB 2374 amends the Illinois Common-interest Community Association Act to expand the definition of "immediate family" to that portion of the statute which provides at a community association cannot enter into a contract with a board member or a member of his or her immediate family, without following certain procedural requirements, and permitting an association the ability to disapprove the contract. This bill would expand "immediate family" to include siblings. Currently, the definition includes spouse, parents and children. **The measure was signed into law.**

Day Care-HB 2861 as proposed amends the Illinois Common-interest Community Association Act and allows licensed day care centers to be permitted within community associations (not condominium associations), even if an association prohibited businesses from being operated. Arguably this bill could create a contingent insurance liability exposure that was not contemplated by an association's insurance and could consequently increase a community association's insurance premium. ILAC opposed this bill. On February 26, 2013 the bill was referred to Rules Committee in the House.

Foreclosures and Priority Lien-HB 2645 expands an ability for an association to collect unpaid assessments following foreclosure from 6 months to 12 months. The financial institutions remain exempt from making this payment, which means that the party who subsequently purchases the unit from the bank after the foreclosure sale is obligated to make the payment. Additionally, the bill seeks to remove the "initiation of an action" prerequisite to collecting on the super lien rights. In order to be entitled to collect on the super lien rights, the current law requires that an association initiate an action to collect before the foreclosure sale. Further, the bill seeks to incorporate the super lien rights into the Condominium Property Act and the Common-interest Community Association Act. Lastly, the bill seeks to amend the Common-interest Community Association Act by adopting language that is already found on the Condominium Property Act, to provide assistance to common-interest association that encounter owners who do not abide by an association's covenants or rules. The Condominium Property Act statutorily

(Illinois cont.)

memorializes condominium associations' rights to assess the attorney's fees back to the defaulting owner. The same statutory authority should be granted common-interest associations. On March 22, 2013 **the bill was re-referred to Rules Committee in the House.**

Foreclosures and Priority Lien-The Illinois State Bar Association has proposed HB 2646, which would amend only the Illinois Condominium Property Act by expanding condominium association's right to collect unpaid regular assessments following from 6 months to 9 months. This expansion would only apply to regular assessments. Further, while attorney fees and costs of collection can be collected from the third party buyer, in no event can the total amount exceed 9 months of regular assessments. The bill would remove the "initiation of an action" prerequisite to collecting on the super lien rights. Finally, the bill would amend Section 22.1 of the Illinois Condominium Property Act and require that information be provided to prospective buyers within 10 days of a request. Currently the law requires the information to be made available within 30 days. On April 18, 2013 **this bill was lost in the House.**

Insurance-SB 1457 amends Section 12 of the Illinois Condominium Property Act to provide that certain insurance policies must be in a total amount of no less than the full insurable replacement cost or guaranteed replacement cost (current law does not contain "or guaranteed replacement cost") of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, a minimum amount of 5 percent of the total building (blanket) limit. Additionally, the bill would prohibit an association from obtaining insurance if the insurance policies cover multiple "unaffiliated" associations and prohibit certain self-insurance arrangements. The bill would require, with exceptions, only policies issued by carriers who meet certain ratings benchmarks be permitted. Further, the bill caps the maximum deductible amount that unit owners can be required to pay at $5,000. Moreover, the bill requires that certain contractors and vendors must provide certificates of insurance, which, among other requirements, have a commercial liability limit of at least $1,000,000 and provide a workers' compensation policy. Finally, the bill would require that associations with 6 or more units carry certain levels of fidelity coverage. Currently, the Act imposes those requirements only on associations with 30 or more units. On March 22, 2013 **the bill was re-referred to Assignments Committee in the Senate.**

Amendments to Declarations-SB 1606 amends Section 27 of the Illinois Condominium Property Act to provide that once a condominium association member other than the developer, condominium instruments shall be amended only (unless the Act provides) by: (i) an affirmative vote of 2/3 of those voting or by a majority vote margin specified by the condominium instruments, provided that the specified majority vote margin may not exceed a three-quarters vote of all unit owners; and (ii) any required mortgagee's approval. The bill deletes provisions of Section 27 which provide exceptions to the above general rule regarding amendments. **The measure was signed into law.**

Forcible Entry-HB 2360 amends the portion of the Forcible Entry and Detainer Act to prohibit an owner from raising the association's lack of maintenance of the common elements as a defense to a suit to collect unpaid assessments. This bill effectively overturns the Second Appellate District's decision in Spanish Court Two Condominium Association v. Carlson, which held that an owner could raise the defense of withholding assessments based upon the association's alleged failure to maintain the common elements. On April 18, 2013 **this bill lost in the House.**

Indiana

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Centennial Homeowners Association

Advocacy Highlights

Various Property Issues-HB 1084 provides that the homeowner protection unit of the attorney general's office shall enforce violations of the statute concerning homeowners associations. With certain exceptions, requires a homeowners association to: (1) make financial records available for inspection upon written request by a member of the association; and (2) provide all communications concerning a dispute with a homeowner to that homeowner. The bill permits a homeowners association to charge a search fee not to exceed $35 per hour for time spent on records searches in excess of one hour. Provides that the total amount of the fee for a search may not exceed $200. The bill provides that the homeowners' association statute does not abrogate an agreement by a homeowners association to provide additional inspection rights. The bill requires a clerk of a court who must collect a civil costs fee from a party filing a civil action to also collect a $50 mortgage foreclosure counseling and education fee from a party filing a civil action to foreclose a mortgage. The measure urges the legislative council to establish a study committee on the topic of homeowners associations. The CAI Indiana LAC worked in opposition to the measure; however, **it passed into law**. The LAC held educational seminars over the summer on the provisions in HB 1084.

Covenants-SB 126 provides that if all the lots included as part of certain homeowners associations are not all subject to the same homeowners association covenants, all the lots may be made subject to new replacement covenants if the homeowners association: (1) distributes to the owner of each lot a proposed set of covenants that would apply to all lots included as part of the homeowners association and a petition to be signed by each lot owner on which the owner indicates whether the owner approves or disapproves of applying the proposed covenants to all lots included as part of the homeowners association; and (2) submits the petitions and covenants to the county recorder if the lesser of: (A) a percentage of lot owners specified in the covenants; or (B) two-thirds of all lot owners; approve of applying the covenants to all lots included as part of the homeowners association. The bill further specifies that homeowners association covenants submitted to a county recorder in accordance with these procedures are considered to be in effect on the date they are recorded. The bill provides that a replacement covenant does not apply to and is not binding on certain properties in the homeowners association to the extent that the new replacement covenant changes an existing covenant or adds a new covenant that pertains to a minimum lot area or minimum home size. The bill also specifies that a replacement covenant does not apply retroactively. The LAC expressed some concern on the measure but took a neutral position on it after it was revised several times during the session. **The bill was signed into law.**

Swimming Pools-HB 466 provides an exception to state department of health rules governing swimming and wading pools for condominiums that meet certain requirements. **The measure died in committee.**

Kentucky

LAC Members

L. Thomas Richards, CMCA, AMS, PCAM **(Chair)**
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John Payne, CMCA, AMS **(Treasurer)**
Paragon Management Group, Inc.

Bob Detherage **(Secretary)**
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Richard Hornung, Esq.
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Advocacy Highlights
No controversial issues for the community association industry were raised or pursued, so there are no legislative activities to report.

Maine

LAC Members

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New England Chapter

Advocacy Highlights

Priority Lien-LD 807 took center stage for Maine community associations during the 2013 session, much to the surprise of the CAI Maine LAC, which, after seeing the measure defeated last year, had decided to wait a while before trying again. The measure appeared on the docket by accident; a state lawmaker had filed a bill addressing foreclosures in timeshare communities. But somehow in the pre-filing deadline scramble, the drafting committee substituted the old super lien language and the legislator, who had actually opposed the super lien measure, signed it, thinking it was his timeshare bill. Instead of withdrawing the bill, the lawmaker added his timeshare language to give the Maine LAC another opportunity to try to win support for the priority lien, which puts community associations first in line, ahead of the mortgage lender, to collect unpaid common area fees from delinquent owners.

The Judiciary Committee heard testimony on that measure and several others at a single hearing dominated by proposals to modify a controversial measure, adopted two years ago, requiring mediation before mortgage lenders can initiate foreclosure proceedings. The super lien got little attention; most of the testimony lambasted banks for using mediation as a tool for delaying the foreclosure process.

The committee ultimately killed all of the foreclosure-related bills (including the priority lien) at the request of the state attorney general, who said she will form a working group to study the issues and "see what can be worked out." Although the priority lien will be part of the agenda, the study group will focus primarily on mediation reform. The LAC has yet to take a position on that issue but is obviously interested in it, because community associations are affected by foreclosure delays. The LAC used that in the past as an argument for the priority lien. Those arguments have not been successful thus far, largely because banking industry opposition has been so strong. But the "beating" banks took on the mediation issue which may have weakened their position, and as a result the LAC may have a better shot at getting the priority lien bill passed.

The LAC will be participating in the attorney general's study committee.

Error and Omissions-The committee also requested action on a housekeeping measure to clarify what appears to be an error in an existing statute governing condominiums established before 1983. That legislation includes a subchapter dealing with "membership camping." In reviewing the law, the LAC noticed language in this subchapter saying that a violation of "the chapter" would also be a violation of the state Unfair Trade Practices Act. It should have said "a violation of the subchapter," but as written, any violation of the chapter could trigger the other law, with a potentially "huge impact" on litigation involving condominiums governed by this measure. The Judiciary Committee agreed on the last day of the session to insert corrective language in its "Errors and Omissions" bill, which was then **passed and signed into law by the Governor**, eliminating the potential problem.

Maryland

LAC Members

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Harris Jones & Malone, LLC

Advocacy Highlights

The CAI Maryland LAC studied approximately forty eight bills introduced in 2013. Of these bills, seven bills deemed harmful to common ownership communities in Maryland were actively opposed and twenty four were actively supported in whole or in part. The remaining bills were monitored to ensure nothing was added by amendment that would warrant the LAC taking a position.

Manager Licensure-Once again, manager licensing took center stage for MD-LAC, more so than the past four sessions of the General Assembly where several bills were introduced to require managers of common ownership communities to be licensed. The LAC continued efforts to influence the licensing legislation by engaging key members of committees in an effort to shape the legislation to be in line with CAI's public policy and not be a burden on managers or associations.

HB 576 and SB 794 were introduced this year by Delegate Pam Beidle and Sen. Delores Kelley. Like the 2012 version, the legislation establishes a State Board of Common-interest Community Managers to administer a licensing program. The legislation was supported by many groups including the MD Bar, Realtors, Office of the Secretary of State, Department of Labor, Licensing, and Regulation and others. The

House sponsor, Delegate Beidle, emphasized the need to keep the cost of the licensing at a reasonable level. The LAC supported a proposal whereby Maryland associations would be required to register annually and pay a nominal and capped registration fee. **HB576 passed the full House but was killed in Senate committee.**

Breed Restrictions-The other major legislation that MD-LAC actively supported are the "pit bull" bills, HB 78 and SB 160. Each would abrogate the Court of Appeals ruling in Tracey v. 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. The Senate version expressly limits the liability of "…Condominium Council of Unit Owners, Cooperative Housing Corporation or homeowners association…" The Senate and House each dug in their heels on conflicting positions and **the bill died when a conference committee could not achieve compromise**.

Attorney's Fees-Legislation cross filed (HB 1532 and SB 1062) at the very last minute became problematic for Maryland community associations as it would have placed them in a precarious position with regard to recovering legal fees expended in collection and enforcement matters. The bills would prohibit community associations from demanding or attempting to collect fees which are not "reasonable" in relation to the amount in "controversy" (amount you are trying to recover) when "reasonable" is not determined until much later when presented in court. **The bills did not make it out of committee but are expected to be back in 2014.**

Foreclosure of Liens-HB 286 provides community associations may now only 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. The legislation does not preclude an association from "using any other means to enforce a lien against a unit owner," presumably leaving a lien in place and waiting for a sale or mortgage refinance to demand payoff of the lien. **This legislation was signed into law.**

Closed Meetings-The **legislature passed** HB 388, adding to the Condominium Act a provision to generally permit a closed meeting for consideration of a business transaction in negotiation, a provision that was already in the HOA Act.

Mortgage Refinance and Priority over Junior Liens-SB 199 **was signed into law** and permits a homeowner to refinance a first mortgage up to $150,000.00, retaining first priority, under specific circumstances.

Contracts for Resale and Notice of Potential Special Assessments-HB 23 and SB 176 provided that a contract for the resale of a unit in a condominium or HOA is not enforceable unless the seller furnishes notice of "potential" special assessments as may be on a meeting agenda or even casually mentioned in meeting minutes during the preceding 12 months. **The legislation failed upon adjournment.**

Building Codes and Balcony Inspections-SB 18 and HB 469 would have required inspections of balconies in all multifamily dwellings at least every 10 years by a "professional inspector" to ensure the balconies meet applicable code requirements. **The legislation failed upon adjournment.**

(Maryland cont.)

Individual Exceptions to Limitations on Rentals-HB 1195 would have required a Board to grant an exemption from rental restrictions to an individual owner under certain circumstances. **The legislation failed upon adjournment.**

Warranty Claims-HB 1141 (SB 167 was similar) would have prohibited provisions in condominium documents that limited, restricted or placed conditions upon the pursuit of warranty claims with the declarant. SB 167 passed the Senate but did not get out of committee in the House. **The legislation failed upon adjournment.**

Massachusetts

LAC Members

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New England Chapter

Advocacy Highlights

The top legislative news is Boston's new energy ordinance, requiring commercial and residential buildings, including condominiums, to begin tracking their energy consumption and reporting it to the city. At the state level, the CAI Massachusetts LAC is tracking 54 measures, 39 of which are re-files from last year. Many on that list are perennials, filed repeatedly and left to die without moving out of committee.

The legislative docket includes two new bills that have attracted the committee's attention. One promotes the use of electric vehicles and the other requires property owners to install window guards within units and "on all applicable windows" in the common areas of multi-family dwellings if residents who have children request them.

The committee is also watching two bills that gained traction in the last legislative session: One creates a commission to study the state condominium statute, which the LAC opposes only because they think the commission should include more industry professionals. The other specifies that if owners sue associations for improperly denying them access to records they are entitled to see and prevail in those actions, the association must pay their legal expenses. The committee thinks the legislation is "sensible," but hasn't taken a position on it.

Building Energy Reporting-Boston's **newly enacted** energy ordinance requires commercial and residential buildings, including condominiums, to begin tracking their energy consumption and reporting it to the city. The theory is that making building owners and residents aware of their energy consumption will encourage them to implement conservation measures and to pressure their commercial and

residential occupants to do so as well.

But the city ordinance is flawed in several respects, according to Matthew Gaines, a partner in Marcus, Errico, Emmer & Brooks and chair of the CAI Massachusetts LAC. Buildings that rank below the 75th percentile in energy usage will be required to undertake a more formal energy audit, he notes, but the ordinance doesn't require any additional action, such as updating existing systems, nor does it impose any penalties on buildings that fail to meet minimum standards. So it's not clear how much impact the measure will have, if any, on consumption patterns, says Gaines.

The impact on condominiums is even less clear. As originally proposed, the measure would have required all condominium owners to report their usage individually to the association, which in turn would have been required to collect and deliver that information to the city — an undertaking that Gaines says would have been both costly for communities (resulting in higher common area fees for owners) and virtually impossible for associations to implement. "It is hard enough to persuade owners to give you their mailing address, let alone report their utility bills every month," notes Gaines.

At the LAC's urging, the bill was amended to make reporting voluntary for owners and to eliminate any penalty for failing to do so. Associations are still required to report whatever information they receive from owners to the city, which will estimate aggregate usage based on proxy data from other buildings, making the results inaccurate and incomplete, which, says Gaines, "defeats the purpose" of collecting the data in the first place.

But the reporting requirements are taking effect, beginning in 2015 for condominium communities with 50 units or more or space totaling 50,000 sq. ft., or more. Implementation is delayed until 2017 for small condominiums with between 35 and 49 units, or between 35,000 and 50,000 sq. ft. An earlier draft included smaller communities with as few as 25 units or 25,000 sq. ft., but the LAC persuaded lawmakers to increase the threshold for the reporting requirement. "Ideally, we wanted them to exempt residential dwellings altogether," Gaines says, "but we at least won this small victory."

Electric Vehicles and Parking-HB 2594 promotes the use of electric vehicles, requiring owners of any "improved or enclosed property" used as off-street parking, which would include condominium parking areas, to designate at least one space per hundred exclusively for electric vehicles. Although the law specifies that the spaces must be equipped with an electric charging station, it does not require associations to pay for the equipment. But the measure is still problematic for common-interest ownership communities, Gaines says. "What happens in a community in which all 150 parking spaces are deeded to owners, [with no additional] guest parking? Does that association have to rip up a green area to comply?" And what happens, he asks, if two people have electric cars and want to use the one designated space?

The committee is opposing the measure, which Gaines likens to the "right-to-dry" statutes requiring associations to allow owners to install clotheslines on their property–"well-intended," but ill-suited for common-interest ownership communities. **The measure carried over to 2014.**

Window Guards-The well-intended but ill-suited description also applies to SB 1149, filed for the first time this year, requiring property owners to install window guards within units and "on all applicable windows" in the common areas of multi-family dwellings if residents who have children request them. As written,

(Massachusetts cont.)

the measure would not only require condominium owners who rent their units to install guards if tenants request them, it would require the association to install window guards on all the landings leading up to that unit.

The committee has not opposed this measure, but "we are watching it closely," Gaines says, and if it seems to be gaining traction, "we may seek a carve-out" for condominium common areas. **The measure carried over to 2014.**

Condominium Study Commission-HB 1092 creates a commission to study the state condominium statute. The LAC opposes only because they think the commission should include more industry professionals. **The measure carried over to 2014.**

Compliance and Liability-SB 621 specifies that if owners sue associations for improperly denying them access to records they are entitled to see and prevail in those actions, the association must pay their legal expenses. The committee thinks the legislation is "sensible," but hasn't taken a position on it. "We don't favor it, Gaines says, but we aren't storming the gates to oppose it either." **The measure carried over to 2014.**

Michigan

LAC Members

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Richard Lance Govang
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Charles J. Hurton

Vicki Hancock, CMCA, AMS, PCAM **(CED)**
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Tabitha Zimny **(Lobbyist)**
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Advocacy Highlights

Auditing Requirements-The **enactment of** HB 4355 is a product of three and a half years of CAI Michigan LAC's work. The Real Property Section of the State Bar…The bill amends the Condominium Act to do the following:

- Require an association of co-owners with more than $20,000 in annual revenue to have its books, records and financial statements independently audited or reviewed by a certified public accountant.
- Allow an association annually to opt out of that requirement by an affirmative vote of a majority of its members or by any means permitted under the association's bylaws.
- Delete a provision that requires an association's books and records to be audited or reviewed annually by independent accountants, but specifies that those audits need not be certified.
- Include financial statements in a provision requiring certain documents to be available for examination by co-owners and mortgagees.

Day Care-Introduced in December of 2013, SB 717 provides a property owners association shall not prohibit the use of real property as a family child care home or a group child care home. **The bill will carry over into 2014.**

Manager Licensure-Gov. Rick Snyder is considering the deregulation of 18 industries, so the LAC is working with the Department of Licensing and Regulatory Affairs to create an alternative to the licensing model.

Minnesota

LAC Members

Gene Sullivan **(Federal Liaison & Chair)**
New Concepts Management Group

Gregory Pettersen, RS **(Vice Chair)**
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Mark David Gittleman, CMCA **(Treasurer)**
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Joseph Crawford, CMCA, AMS, PCAM

Michael D. Klemm
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John K. Bouquet, Esq.
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Walt Burris
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John R. Dorgan
John R. Dorgan, Attorney at Law

Monte Abeler **(CED)**
Minnesota Chapter

Nick DeJulio **(Lobbyist)**
Ewald Consulting

The 2013 session started with a bang for the CAI Minnesota LAC and Chapter as a number of proposals were introduced that could have had deep effects on Minnesota's members and industry.

Advocacy Highlights

Mortgage Foreclosure-Early on a number of bills dealing with foreclosure were introduced as a few legislators were looking to protect constituents in their district. While most of these bills went nowhere this session, one bill seemed to gain some traction early this session. HF 83 was intended to prohibit mortgage foreclosure dual tracking as well as a number of other provisions that tended to be more harmful to the lending industry than helpful to homeowners. Included in the bill was a piece on mediation that would have extended the time that foreclosure could take place and cost those foreclosing on the property more money. The LAC had some serious concerns regarding this language and met with the bill author Rep. Mike Freiberg to discuss the LAC's position and concerns. Unfortunately, the LAC was able to get the issues addressed prior to a House hearing on the bill. However, after CAI Minnesota testimony and others during a House hearing **the bill was laid over** and never came back up.

Following the hearing, the Senate author pulled together a work group to work out issues. The LAC was part of that group including the State Bar Association, credit unions, banks, realtors and others. After days of language drafting and meetings, the bill was dropped as it was clear a number of issues remained and the bill would more and likely fail if it came up for a vote. In an effort to deal with the dual tracking provision, HF 1842 was introduced. The new bill worked with a number of stakeholders to deal with the federal foreclosure language that will take effect in 2014. No mediation piece was included in this bill. HF 1842 **passed both the House and Senate** in the final week of session.

HF 129 was another bill that moved through both the House and Senate this session. The bill dealt with Mortgage foreclosures regulations and defined the definition of foreclosure consultant. The issue was noncontroversial and **was approved with unanimous support and signed by Gov. Dayton**.

With a number of bills being introduced and not moving, a concern for the LAC was that some of this potentially harmful language could get tacked on to other bills or onto the Omnibus Housing bill which was carried by Rep. Karen Clark. Thankfully none of these provisions moved forward and the case was the same in the Senate.

Solar Restrictions-SF 1054, which was the Solar Power Cost Reduction Act of 2013 bill, had a provision that would have allowed condominium owners the right to attach solar panels to the building. This provision of **the bill was dropped in committee** and never came forward again.

Continuance of Housing Improvement Districts-While the LAC was busy fighting bills, it did have some other victories. Included in the **enacted** Omnibus Tax Bill (HF 677) was the 15-year deadline addition of the housing improvement district language. While the original bill looked to repeal the deadline completely, the new language ensures the program will be around and other cities can opt in. The LAC, working along with the League of Minnesota Cities, was able to show support of the language and communicate with lawmakers about the benefits the program provides cities. In addition to this provision to the tax bill, the LAC was very happy not to see the business-to-business taxes that were first introduced this session. With all services on the table to be taxed, the LAC shared a letter of concern with members of both the House and Senate Tax committees as well as Gov. Dayton on how those taxes could impact the industry and homeowners across the state.

Liens-The LAC still knows of a number of pending bills that could move forward next year. A number of the foreclosure bills are still out there as well as SF 1308, the Minnesota Common-interest Ownership Act lien bill. Sen. Greg Clausen is the chief author of the bill. While it **went nowhere this session**, the LAC had a brief conversation with his office to discuss the bill. There currently is still no House companion, so the LAC will have to wait to speak with House members next session.

Missouri

LAC Members

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The Crescent Condominium

Cathy Roth-Johnson **(CED)**
Heartland Chapter

James Durham **(Lobbyist)**

Advocacy Highlights

Political Signs-HB 381 **failed upon adjournment**, but addressed a recurring issue that will likely be brought back up in 2014. would prohibit a property owners association from enforcing or adopting a restrictive covenant that prevents a property owner from displaying on his or her property one or more signs advertising a political candidate or ballot item for an election on or after the 90th day before the date of the election to which the sign relates or before the 10th day after that election date. The bill provides a property owners' association is authorized to:

1. Enforce or adopt a covenant that requires a sign to be ground-mounted or limits the property owner to displaying only one sign for each candidate or ballot item;
2. Enforce or adopt a covenant that prohibits a sign that contains a nonstandard decorative component, is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object;
3. Enforce or adopt a covenant that prohibits a sign that contains the painting of architectural surfaces; threatens the public health or safety; is larger than four feet by four feet; violates a law; contains language, graphics, or any display that would be offensive to an ordinary person; or is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists; and
4. Remove a sign displayed in violation of an authorized restrictive covenant.

Private Roads-HB 868 specifies that a plan of maintenance must be a direct agreement among the homeowners who abut or have easement rights over a private road, and a homeowner cannot be required to join a homeowner or subdivision association as part of a plan of maintenance for a private road. **The measure failed upon adjournment.**

Solar Panel Restrictions-This is another reoccurring issue and is certain to be discussed in 2014. Missouri had two bills in 2013 that addressed HOAs prohibiting solar panels, HB 984 and SB 368. HB 984 provided the association with reasonable quantified restrictions regarding orientation, which is similar to Florida, Illinois and Vermont. SB 368 provided associations unqualified reasonable restrictions, but to not prevent the installation, impair the functioning or affect the cost. **The bills failed upon adjournment.**

Nebraska

Legislative Activities

Changes to the Condominium Act-LB 442 amends provisions regarding liens for assessments and fines levied by homeowners' associations (section 52-2001) and condominium unit owners associations (sections 76-825, 76-842, 76-856, and 76-874 of the Nebraska Condominium Act).

The bill repeals provisions which provide for an association to have a lien on a member's real estate or on an owner's unit for fines imposed against the member or owner.

The bill provides that a lien is prior to all other liens and encumbrances on real estate or on a unit except, among other things, a mortgage or deed of trust recorded before the notice of the lien has been recorded for a delinquent assessment for which enforcement is sought (rather than a first mortgage or deed of trust recorded before the date on which the assessment sought to be enforced became delinquent).

The bill provides that an association declaration may not provide that a lien on a member's real estate or unit for any assessment levied against real estate or the unit relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on real estate or the unit recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice of lien.

The bill amends section 52-2001 to provide that the definition of "homeowners association" does not include a "co-owners association organized under the Condominium Property Act" (the 1963 condominium act) as well as does not include a unit owners association organized under the Nebraska Condominium Act (the 1983 condominium act).

The bill amends section 52-2001 regarding homeowners' associations and adds a new section to the Nebraska Condominium Act to provide that an association may require an owner who purchases real estate or a unit on or after the effective date of the bill to make payments into an escrow account established by the association until the escrow account balance for that real estate or unit equals six months of assessments. **The measure was signed into law.**

Nevada

LAC Members

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Advocacy Issues

The CAI Nevada LAC started the session strong with a well-attended Community Association Day at the Capitol, to give homeowners the opportunity to meet with their legislators, and to share materials provided by CAI. More than 1,000 pieces of legislation were introduced this session and the LAC monitored 50 dealing with community associations. Of those 50, 20 were enacted that impact associations and management companies. The common theme faced throughout the legislative session was that legislators continue to place great emphasis on protecting the rights of unit owners who do not pay their assessments.

While such consumer protections are helpful in terms of ensuring that residents feel protected in their ownership interest from overzealous boards, it is clear from the burdensome impositions found in this session's legislation that the pendulum may have swung too far in that direction. Below is a summary of legislation pulled from the legislative update in the August issue of *Community Interests*.

Trash Cans-Dubbed the "trash can" bill, AB 44 prohibits an association from banning the outside storage of trash or recycling containers.

However, an association is allowed to adopt rules that reasonably restrict the manner in which those containers are stored by 1) limiting the storage areas to the rear or side of the unit and by 2) prescribing the size, location, color, material and method of attachment of any screening material so that the containers are not visible from the street, sidewalk or adjacent property. The rules may also specify the area in which the containers must be placed for collection and when the containers may be placed in the collection area and must be removed from the collection area. **The measure was signed into law.**

Group Homes-SB 233 **was signed into** law and codifies the holding of a Federal Court case which states that the sections of Nevada Revised Statutes (NRS) 116 allowing deed restrictions or CC&Rs requiring a certain distance between "group homes" and adjacent properties violated the Fair Housing Act Amendments of 1988. The bill repeals the offending sections of NRS 278 that violated Federal law. Therefore, local municipalities that have ordinances requiring that group homes must be a certain distance from the next property are not enforceable.

The case appears to be limited to group homes with disabled residents. Under the Fair Housing Act, alcoholics and recovering drug addicts are considered to be disabled.

However, current addicts of controlled substances are not considered disabled. Deed restrictions on group homes for active drug users or felons are likely still valid.

Collections-Although at one point it made numerous changes to the collection process, as finally **passed**, SB 280 made only four changes.

First, if the lender and borrower agree, the lender may set up an escrow account to pay the assessments. If the lender establishes such an account, the assessments must still be paid on the same schedule as other owners who do not have an escrow account.

Second, before an association may start the collection process, it must first send to the owner a schedule of the fees that may be charged if the owner fails to pay the past due assessments, a proposed payment plan and a notice of the right to contest the past due assessments at a hearing before the board and the procedure for requesting such a hearing. This mailing cannot be made until the past due assessments are at least 60 days delinquent.

Third, an association may once again charge a fee of $20.00 for providing documents in a resale package in electronic form.

Finally, an owner, the owner's agent or a lienholder (i.e., bank) may request a demand statement from the association. The demand statement must be provided within 10 days and must include the amount of the monthly assessments and any unpaid obligations. The demand statement remains effective for at

(Nevada cont.)

least 15 business days. If the association becomes aware of an error before the resale is consummated, the association must deliver a corrected demand statement. Payment of the amount stated in the demand statement constitutes full payment of the amount due from the owner.

The association may charge $150 for preparing the demand statement and an additional $100 if there is a request that the demand statement be furnished within three days.

Dispute Resolution-AB 370 is an amendment to Chapter 38 of NRS 116. When this bill **became effective**, over twenty successful years of resolving disputes involving residential property subject to (covenants, conditions, and restrictions) CC&Rs was drastically changed.

Existing law requires all disputes involving property subject to CC&Rs to be commenced as a mediation or arbitration with skilled and knowledgeable mediators and arbitrators. Under existing law, only after the mediation or arbitration has been completed is a party allowed to commence an action in district court. This saves time and money for all participants. Nearly all of the mediators are skilled and conduct the arbitrations or mediations in an impartial and professional manner.

Under the new law, with the artificial caps placed on the charges that the mediators and arbitrators may receive, it is anticipated we will lose these skilled mediators and arbitrators. The decisions in arbitrations are well-reasoned and appropriately consider the applicable law and evidence presented.

Now the only option will be a mediation or diversion into a program that is optional or agreed upon arbitration. This optional program is identified as the Referee Program. Fortunately, the parties must agree to use the Referee Program because if the existing Referee Program is the model, there may be problems. When the Referee Program was presented to the entire Assembly Committee on Judiciary in AB 34, it was widely opposed. The pilot Referee Program has drawn a lot of criticism from numerous organizations. There are no procedural protections in the pilot Referee Program. In contrast, the existing procedures under arbitrations under Chapter 38 were well established and afforded numerous procedural due process rules.

Therefore, with the passage of AB 370, the current and highly successful mandatory mediation/arbitration program has been dismantled. There is no mandatory arbitration. The parties would have to agree to arbitration under the new bill.

If there is no agreement to submit the claim to the Referee Program or to arbitration, the parties will be forced to go through the mediation process and then have the opportunity to present the claims in district court if there is no resolution agreed to by the parties.

It is anticipated this will increase the costs and expenses to the parties involved.

Courts were pleased with the existing ADR process because it reduced their caseloads. These caseloads are anticipated to increase under the changes that have been implemented because there will be no mandatory arbitration.

The success of the existing ADR program resulted from a less expensive but necessary forum for the enforcement of valuable contractual rights set forth in the Governing Documents, statutes and case law.

(Nevada cont.)

Arbitration-AB 326 is an amendment to Chapter 597 of NRS 116. When this bill **went into effect** any agreement that includes a provision requiring a person to submit to arbitration any dispute between the parties now requires specific authorization of the arbitration requirement by the person. If there is no specific authorization, then the person cannot be required to submit to arbitration.

In that a purchaser of real property is required to acknowledge receipt of the Governing Documents, it will be my opinion that the documentation should now include a specific provision that agrees to any arbitration provision in the CC&Rs of a community. If possible, enforcement of the arbitration provisions in the CC&Rs of a homeowners association may be an alternative to the loss of arbitration under Chapter 38. Associations may want to consider amending their CC&Rs to include a requirement that disputes of the CC&Rs must be arbitrated if mandatory arbitration is not already included in the governing documents.

Fines-SB 130 is an amendment to Chapter 116 of NRS 116. When this bill **went into effect** the process and procedure for imposing a fine against a unit's owner or a tenant or an invitee of a unit's owner or tenant now requires additional action by the homeowners association.

This bill requires that the written notice provided to the unit's owner and, if different, the person against whom the fine will be imposed: 1) specify the alleged violation in detail; 2) specify the proposed action to cure the alleged violation; and 3) under certain circumstances, include a photograph of the alleged violation.

The photograph of the alleged violation is necessary: 1) if the alleged violation relates to the physical condition of the unit or the grounds of the unit or 2) if it is possible to obtain a photograph.

This bill further provides that, after the person against whom the fine will be imposed is provided the written notice of the alleged violation, he or she must be provided a reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing.

Foreclosure Mediation Program-AB 273 amends NRS 107, which governs deed of trust foreclosures, and amends NRS 116 to add an impediment to an association's foreclosure process. The amendment to NRS 107 modifies the Foreclosure Mediation Program (the "Program"). The amendment to NRS 107 requires the trustee under the deed of trust to notify every person with an interest in the property, by certified mail, return receipt requested, of the enrollment of the owner in the Program. Thus, an association should receive notice of the owner's and trustee's participation in the program. In addition, once the mediation certificate has been issued indicating either no mediation is required or mediation has been completed, the trustee must notify the association of the existence of the certificate.

During the owner's participation in the Program, the owner must pay the obligations that come due to the association, i.e., monthly assessments, but not the past due amounts.

AB 273 amends NRS 116.31162 to prohibit an association from foreclosing its lien if: (1) the unit is owner occupied and encumbered by a deed of trust and (2) the holder of the beneficial interest under the deed of trust has: (a) recorded a notice of default and election to sell and, (b) not recorded the certificate indicating that no mediation is required or mediation has been completed.

(Nevada cont.)

There are several problems and issues with AB 273. For example: (1) What if the holder of the beneficial interest under the deed of trust does not notify the association of (a) the owner's participation in the Program, or (b) of issuance of the certificate indicating that no mediation is required or mediation has been completed? and (2) What if the owner fails to pay assessments during the Program?

The adjustments to the association's collection process adopted by AB 273 must be implemented immediately in preparation for the changes, as the **bill went into effect on October 1, 2013**

Anti-bullying-AB 395 is referred to as the "anti-bullying" Bill. A similar Bill was introduced during the 2011 Legislative session. However, it was defeated, at least in part, because it was not balanced, i.e., it only protected owners from alleged bullying by officers, directors and community managers.

AB 395 proposes to amend NRS 116 to prohibit a community manager, director, officer, employee or agent of an association, an owner or a guest or tenant of an owner, from willfully and without legal authority, threatening, harassing or engaging in a course of action, which: (a) causes harm or serious emotional distress, or (b) creates a hostile environment for the community manager, director, officer, employee or agent of an association, an owner or a guest or tenant of an owner. A violation of this statute is deemed to be a misdemeanor.

While the intent of AB 395 is good, its implementation and effectiveness is debatable. A misdemeanor is a criminal law term. AB 395 fails to identify who enforces this provision. However, AB 395 expressly provides that a violation of this statute is not a "violation" as that term is defined in NRS 116.745. Thus, the Nevada Real Estate Division does not have the authority to enforce it. AB 395 also does not grant an association or any other third party a private right of action to enforce this statute. Thus, it appears that enforcement has been relegated to the City or District Attorney's office.

SB 427 does not directly affect associations, but it reflects the Legislature's intent to limit bullying or cyber-bullying. SB 427 requires courts to inform the school district if a child enrolled in the school district is lawfully engaging in bullying or cyber-bullying. While this conduct may be occurring to individuals residing in an association, SB 427 would generally not apply to the association. However, if an association is utilizing a school for its meetings, then Section 15 of SB 427, which amends NRS 388.135, prohibits a member of the association from engaging in bullying or cyber-bullying on those premises**. Both bills went into effect October 1, 2013.**

Business Licenses-SB 60 amends NRS 116 Chapters 76-82 and **was signed into law**. This bill relates to businesses, registered agents, and filing for business licenses. For those associations that were formed under Chapter 81, it continues the requirement to obtain a state business license.

The bill goes on to set certain parameters for those who serve as registered agents. For management companies and or attorneys in the industry that serve as registered agents, for 10 or more business entities, the bill requires that they must register with the Secretary of State as a commercial registered agent. This will provide the Secretary of State with certain rights to audit the records of the registered agents. Finally, the law adds additional steps for entities that fail to file an annual list of officers and directors within one year of the due date to renew their licenses. In order to be reinstated, the entities will have to take additional steps, including filing a declaration with the Secretary of State, under penalty

(Nevada cont.)

of perjury, that the reinstatement is authorized by a court of competent jurisdiction or the duly elected Board of Directors or other governing body of the entity. For those management companies that are owned by an entity which has been formed in a different state, the requirement for a "foreign" (non-Nevada corporation) to register with the Secretary of State has been expanded to require the filing of not only a declaration of existence of the corporation in the foreign jurisdiction, but a declaration that the corporation is in good standing in the jurisdiction in which it was incorporated.

Exemptions as Licensed Contractors-AB 334 amends NRS 116 Chapters 624 and 645 **and was signed into law**. This bill relates to certain exemptions for licensed real estate brokers and sales person from provisions relating to the requirement that they be licensed as contractors if they are involved in assisting clients in engaging contractors.

The bill exempts licensed real estate brokers, real estate broker sales persons from the provisions to be licensed as a contractor, if they are acting within the scope of their license, assisting a client in scheduling work to repair or maintain a residential property under certain circumstances. The exemption applies to jobs under $10,000 that do not require a permit.

This is important for common-interest communities because there is no language in the bill that relates to a Community Association Manager (CAM). The Nevada State Contractors Board has recently raised issues about whether or not an association and or its CAM is acting in the capacity of a contractor when the associations engage more than one contractor, involved in different disciplines, to work on the same job.

By way of clarification, if an association directly engages a landscaper, plumber and an electrician to work on, install, repair or replace an intricate irrigation system and the landscaping relating thereto, the State Contractors Board has said it may take the position that the association or the CAM are acting as a general contractor if no such general contractor is involved in the project.

If the Contractors Board takes such a position, then the association or the CAM could be deemed to be in violation of the statute requiring general contractors to be licensed. The reason that AB 334 is important to CAMs is that it demonstrates that the legislature did not think to provide to CAMs the same exemption the bill provides to licensed real estate brokers. The real issues for licensed Real Estate Brokers and CAMs is that the exemption granted in the bill only applies to jobs of under $10,000 and where permits are not required.

Often CAMs are involved in jobs that involve much more than $10,000 that involve more than one licensed contractor and that require permits. CAMs and their respective clients should review the issues relating to contractors and the need for licenses with their legal counsel before embarking on construction projects including, but not limited to, simple repair projects.

Non-profit corporations-AB 366 amends NRS 116 Chapters 81, 82 and 92A and **was signed into law**. It revises certain provisions of corporate statute governing non- profit cooperative corporations. This bill will apply to associations that are actually formed pursuant to NRS 81.0102 through NRS 81.160.

(Nevada cont.)

The bill requires certain provisions be included in Bylaws and the Articles of Incorporation and that certain words be included in the name of cooperative corporations. The interesting question is whether or not an existing cooperative has to amend its Bylaws or its name to comply with such statute. There are very few homeowner associations in Nevada that are cooperatives. However, some developer attorneys, who drafted documents for associations, may have inadvertently formed associations under the sections of NRS 81 referred to above.

Any board member or manager who knows that his or her association was formed under such sections should consult the association's legal counsel in order to determine whether or not changes have to be made to the Articles, Bylaws or name of the corporation.

Landscaping-Rep. Dina Neal introduced AB 137 legislation that would prohibit associations from requiring homeowners to landscape their backyard. Apparently, Ms. Neal moved into an HOA and did not want to bear the cost of installing basic landscaping, like gravel or turf. When the association sought to work with her on the matter, she decided to take matters into her own hands and introduced AB 137 banning HOAs from requiring that residents landscape their back yards. Despite a rather lengthy introductory testimony by Rep. Neal, the **bill languished in committee**.

Political Campaigns-Another negative proposal was AB 121 introduced by Rep. Lynn Stewart. Mr. Stewart's bill would have required an association to provide the association's mailing list and contact information of all association homeowner/ residents, at no charge, to any candidate running for office in the community.

The bill would also have required the association to mail campaign material, at the candidate's expense, to unit owners.

The bill generated concern on two levels. First, it created cause for concern in releasing resident information with few qualifications and second, the law ignored that there are many electronic tools, websites and other materials that a candidate and association can use to get the word out. This bill **joined** AB 137 **in the dustbin at the end of session.**

Association Procurements-AB 34 was another challenging bill that arose during session. Introduced by the Assembly Judiciary Committee, the bill would have provided some relief from the burdensome "3 bid" rule that exists for association procurements, but would have come at a high cost.

AB 34 would also have redefined a board meeting so broadly as to include just about any time a handful of board members may be in the same area, even if it is for a social event or a meeting with the managers.

The bill also would have imposed a requirement that an association appoint an election monitor upon petition of 10 percent of the residents.

AB 34 would also have created a "referee program" for association disputes. At the end of session, the bill remained in committee, although some of the elements of the bill found their way into other proposals.

New Hampshire

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Advocacy Highlights

Manager Licensure-HB 463 requires property managers for associations of unit owners of real property to be certified as qualified by the national Community Associations Institute. This measure did not originate from the CAI New Hampshire LAC. It **was dead on arrival**.

Condominium Review Board-HB 154 establishes the New Hampshire condominium law review board and repeals the committee to study laws relating to condominium and homeowners associations. The bill **was voted inexpedient to legislate**.

Dog Registration Records-HB 108 permits manufactured housing parks and condominium associations to access dog registration records. The bill **was voted inexpedient to legislate**.

Removal Procedure for Boards-HB 464 establishes a procedure for removal of a condominium board member by a vote of the unit owners association. The bill **was voted inexpedient to legislate**.

New Jersey

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Advocacy Highlights

Manager Licensure-The New Jersey LAC along with its lobbyists diligently advocated in support of the manager licensing legislation. AB 2658 and its Senate companion reside on the Senate Floor as of January 1, 2014. The legislation will have to be approved by the full Senate and its amendment, which transferred authority of the oversight board from the Division of Consumer Affairs to the Department of Community Affairs, will have to be voted on by the full Assembly before the bill is sent to the governor's desk. **The LAC is optimistic that the legislation will be approved before adjournment.**

Open Meetings-Members of New Jersey LAC and its lobbyists met with one of the sponsors of AB 3373 and its companion that would make homeowners' associations in which developer control of executive board has not been surrendered a public body under "Sen. Byron M. Baer Open Public Meetings Act." The legislation seeks to provide a remedy for those communities in which a developer remains in the control of the association board for a protracted period of time, be it due to the downturned economy or a sluggish housing market, in an effort to ensure that meetings are held at proper intervals, with proper representation by the developer and the unit owners within the community, and with proper notice to the unit owners. In researching the issue prior to its meeting with the sponsor, the LAC found an article

published in the October 1991 issue of Community Trends®, written by Michael Pesce, PCAM, entitled "Complying with the Open Board Meetings Act – A Manager's Perspective", and it became acutely aware that ongoing education is warranted. Community Managers and Board Members are encouraged to review the Open Board Meetings Act and make sure that you are in compliance. The chapter will continue to work with the sponsor on this issue, and will reach out to the New Jersey Builders Association as well. **The measures will likely fail upon adjournment in January 2014.**

Emergency Preparedness-A number of bills were introduced as a result of Super Storm Sandy, including SB 2341, which would require retirement subdivisions and retirement communities to install electrical generators to provide electricity to common use area to be used as shelter in case of emergency, SB 2491, which requires the installation of emergency power supply systems to certain common areas of new planned real estate developments. The Legislative Action Committee discussed the bills and agreed to oppose them on the basis that the state government is overreaching its authority within private associations. **The bills will likely fail upon adjournment**. The LAC also monitored SB 2343, which would require emergency operations plans in certain senior occupied buildings, and **is likely to be signed by the governor.**

Foreclosure Process-Sponsored by Assemblyman Herb Conaway, the LAC supported AB 3497, which revises residential property mortgage foreclosure process, requires documentation of right to foreclose and consultation on foreclosure alternatives, and provides expedited process for foreclosing abandoned properties. The current process is fraught with difficulties in trying to get the bank to maintain the foreclosed property. **The bill will likely fail upon adjournment.**

New Mexico

Legislative Activities

Homeowners Association Act- This year New Mexico Senate Majority Whip Tim Keller and Senators Steward, Baldanado, and McMillan introduced the HOA Act. The act is a product of four years of stakeholder input, and is the first HOA bill **signed into law in New Mexico**. The final act provides a framework for future amendments, but offers important protections to homeowners and associations. The act applies to all homeowners associations, but does not apply to condominiums governed by the Condominium Act. Below is a summary of key provisions of SB 497.

Recording or Filing of Homeowner Association Notice and Declaration
Associations organized after July 1, 2013, have 30 days to record a notice with its county clerk's office. Associations organized prior to July 1 have until June 30, 2014, to record notice.

Association Record Disclosure to Members
Associations must make available all financial and other records to a lot owner within 10 days of request. Associations may not charge a fee to review the records; however, they may charge reasonable fees for copies.

Duties of Homeowner Associations
Associations shall exercise any powers granted to the association by the governing documents. Associations have a lien on a property with unpaid assessments or fines after the assessments or fines are due.

Duties and Responsibilities of the Board Members
The board is to act on behalf of the association, adopt a budget annually, and provide a summary of the budget to the owners within 30 days.

Declarant Control
Except master planned communities, the period of declarant control must terminate no later than the earlier of the following:

- 60 days after 75 percent of the lots are owned by someone other than the declarant.
- 2 years after the declarants have stopped offering lots for sale.
- 2 years after the development right to add new lots was last exercised.
- The day the declarant gives written notice of surrendering their rights to the lot owners.

Absentee and Proxy Voting
Associations shall provide for votes in person, by absentee ballot, proxy, or by some other form of delivery.

Financial Audits
Associations consisting of over 100 lots must have an annual financial audit conducted by a CPA within 180 days of the end of the fiscal year. The audit must be made available to all owners within 30 days of completion.

Disclosure Statements
Prior to closing, purchasers must receive a disclosure packet. The packet must have the following:

- The declaration of the association.
- The association's bylaws.
- Any covenants, conditions, and restrictions.
- The rules of the association.
- The disclosure certificate from the association.

Cancellation of Purchase
Purchasers have the ability to cancel a contract based on the association's status.

The act went into effect July 1, 2013.

New York

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Advocacy Highlights

Manager Licensure-Two sets of legislation were introduced that would regulate the community manager profession. AB 2110 and its companion 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 are pending in committee of referral. AB 4917 provides for the licensing of common-interest community association managers. The bill does not have a companion and is pending in its committee of referral. CAI supports the language found in AB 4917 and is working with the bill sponsor and the sponsors of AB 2110 and its companion to amend and unify the language in order for the issue to move forward. The measures **may be considered in 2014.**

Assessments-AB 6268 and its companion 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 **may be considered in 2014.**

North Carolina

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Advocacy Highlights

Audit and Fidelity Bonds-HB 793 addresses the two issues of auditing of an HOA's records and the need for a fidelity bond. This bill **met the criteria for crossover** and is currently at edition 4. It requires that HOAs with annual assessments in excess of $100,000 maintain a fidelity bond equal to the current annual operating budget but not greater than $1 million. All management companies would require a fidelity bond equal to the sum of the annual budgets of all of its clients, but with a maximum of $2 million.

All Associations with annual assessments of more than $250,000 would be required to have an annual independent financial audit by a CPA. Associations with an annual revenue of at least $150,000 are required to have an annual review by a CPA. In both cases the audit or review must be completed within one year after the end of their fiscal year and be available to the owners within 30 days after completion. It is expected that this bill will pass before the end of the session. The CAI North Carolina LAC supports this version of the bill.

Budget Bills-The legislature considered three different budgets. A review of the three bills (HB 998, SB 394 and SB 677) shows that the legislature, over time, intends to shift emphasis from income-based taxes to other taxes, including privilege and sales. The proposed reduction in the income top rate varies by bill from 4.5 percent to 5.9 percent as a flat rate, which replaces all tax tiers up to the current top tax rate of 7.75 percent. None of these bills proposed to tax Social Security income and the House bill increases the

amount of base income from $4,000 to $12,000 that is exempt for any income tax. It has been stated that the long term intent is to eliminate individual income taxes. HB 998 **was signed into law.**

Repeal of Foreclosure Option-Reps. R. Moore, Alexander and Hamilton introduced HB 175 to repeal the ability of an HOA/POA to use foreclosure as a tool in the collection of delinquent dues. This bill did not make Crossover and **is dead for this session**.

Rights and Responsibilities-On April 14, the NC House ratified SB 228 and **the Governor signed the bill** into law on May 24, 2013. This bill was introduced by Sen. Bill Cook and Sen. Ronald Rabin and was sponsored by the LAC, which expended significant effort to assure its passage. This bill provides clarity to the rights and responsibilities of the HOA and Condominium Associations which in the past were ignored by the judiciary when ruling on cases. The three areas most affected are:

- Access to areas requiring upkeep-This also defines responsibilities under certain conditions, such as upkeep and damages, and how the HOA can legally intervene and recover their costs.
- Definition of Applicable Documents. The courts have, in the past, taken the position that only the declarations were the controlling legal authority when ruling on cases. They have ruled narrowly that if the exact wording at issue was not covered by the declarations, then the HOA had no rights to expend "dues" for those activities, services or products. Changes incorporated by S228 to the 47F and 47C statues explicitly expand the documents that must be considered by the court when defining a HOA's responsibilities and authority.
- Modifications to Declarations-This change states that "Any amendment passed pursuant to the provisions of this section of NC statues 47F and 47C or the procedures provided for in the declaration are presumed valid and enforceable". Even though this appears to be a statement of the obvious, the courts have ruled that changes that significantly change the intent of the original declarations were invalid, even when following the procedure in the declarations. HOAs could therefore not modernize or adapt to new circumstances that were presented. The SB 228 changes are applicable to all HOAs, included those that were created before 1999.

Declarant Rights-HB 330 is one of two bills submitted by the State Bar, with the intent of clarifying G.S. §47F and G.S. §47C that relate to Declarant Rights. It **successfully made crossover** and is waiting in the Rules Committee for assignment to other committees. The LAC has supported this bill.

Lien Enforcement-Another bill originating from the State Bar, HB 331, is focused on technical changes to G.S. §47F and G.S. §47C which define the enforcement procedures of liens. These changes are intended to simplify the language and remove apparent contradictions. The LAC has supported this bill, which **was signed into law**.

Manager Licensure-HB 871 would regulate community association managers. The measure requires licensing but does not provide for education or experience requirements and allows the Real Estate Commission to oversee the profession. The LAC did not support the measure which **failed**.

Mandatory Education for Board Members-HB 883 would provide that 60 days after election to a community association's board of directors, a board member must complete a minimum of four hours of education on the laws related to community associations under state law. The bill provided community association shall pay to the Commission a fee for the course in the amount of $75 for each individual board member taking the course. **The legislation failed.**

(North Carolina cont.)

Voluntary Mediation-HB 278 and it **signed by the governor on June 19**. It provides for voluntary mediation of a wide range of HOA issues, but specifically excludes topics such as payment of dues and assessments and fees levied as fines. Either an Association or the individual homeowner can initiate a mediation process which is handled by members of the North Carolina Dispute Resolution Commission or the Mediation Network of North Carolina.

The results of the mediation are not binding and statements made during the mediation cannot be introduced into future litigation. The cost of mediation would be shared equally between the HOA and the individual.

The LAC has supported this bill.

Ohio

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Advocacy Highlights

Manager Licensure and Amendments to the Condominium Act-HB 371 was introduced without consulting the LAC and was immediately deemed a "negative bill." Besides requiring managers, of any condominium associations with 10 or more units to be licensed as real estate brokers, the bill would create a dispute resolution board, which had the power to subpoena. The bill also did not protect associations' operational viability, especially since other parts of the bill required changes to board meetings, record retention, and, most notably, stripped the boards' authority to approve budgets without a majority approval of the owners. Within days of its introduction, the LAC Chair and lobbyist met with the sponsor to communicate the strong opposition to the bill. The measure **will carried over to 2014**. A similar measure was introduced in 2012 and it failed upon adjournment.

Flag Display-SB 51 would prohibit manufactured homes park operators, condominium associations, neighborhood associations, and landlords from restricting the display of service flags, and the U.S. flag. The measure **will carry over to 2014**.

Oregon

LAC Members

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Advocacy Highlights

Electric Vehicle Charging Stations-HB 3301 authorizes the owner of lot in planned community or unit in condominium to install electric vehicle charging station for personal, noncommercial use. The measure **was signed into law**.

Flag and Political Sign Display-HB 3406 would authorize owners, unit owners and residents of planned communities or condominiums to place political signs or flags on units and to hold certain public meetings in units or in common areas. The measure **failed upon adjournment**.

Governance-HB 2823 would establish requirements for association operating accounts of planned community homeowners associations and condominium unit owners associations. The measure would specify persons authorized to be association account holders and institutions in which accounts may be held and require audit of association financial statements on annual basis if annual assessments are $500,000 or more. Requires association obtain insurance against bad acts in specified amount. The bill would prohibit associations from banning signs based on content from property under control of owner, but allow associations to impose reasonable restrictions on number, size, and period of display of such signs. It would also prohibit associations from making information confidential or exempt from disclosure unless information is confidential or exempt under Oregon law and allows requests for association records to be made via electronic means. Proponents assert that in June 2012, more than 30 metro-area homeowners associations lost between $1.2 and $2.0 million in embezzlement by a homeowners association manager. The measure **failed upon adjournment**.

Pennsylvania

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Advocacy Highlights

Planned Unit Development Data Collection Act-The 2011 report of the Joint State Government Commission Study on Common-interest Ownership Communities in the Commonwealth of Pennsylvania included several recommendations for policy regarding community associations, including the collection of data in the Commonwealth on common-interest ownership communities. Rep. Mario Scavello circulated a co-sponsorship memorandum indicating his intention to introduce the Planned Unit Development Data Collection Act that would require county governments within the Commonwealth to collect, maintain, and make available upon request, information identifying community associations and cooperatives located within the boundaries of the county. This hopes to aid the state in assessing the impact of legislation specific to Common-interest Ownership Communities. The Pennsylvania LAC has been worked with Rep. Scavello to recruit co-sponsors for the bill, which was introduced as HB 1688 and **is available for consideration in 2014**.

Tax Equalization-HB 551, introduced by Rep. Mario Scavello, would allow a unit owner in a common-interest ownership community to deduct 75 percent of his or her association assessments (also known as 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 LAC supports the adoption of this bill, as presently drafted. The measure **is alive for consideration in 2014.**

Association Records and Open Meetings-SB 557, HB 319, and HB 1254 all address open meetings and open records in common-interest ownership communities. The LAC strongly agrees that the sharing of information and access to documentation are essential components of properly functioning community association governance. However, there are laws and rules already in place that ensure openness and that unit owners have access to the records and documents of their community association. Furthermore, the adoption of this legislation will likely have several unintended consequences that will adversely impact the ability of associations to function properly. Adoption of certain provisions contained in these bills, including the use of recording devices during board meetings and the provisions regarding the application of fines for violations by board members, will have a serious chilling effect on the willingness of homeowners to serve on the board of directors within their communities. **All measures are alive for consideration in 2014.**

Extension of Time for Conversion-HB 1122 sought an extension of time for developers to convert convertible real estate or withdraw withdrawable real estate from a condo/planned community within 7 to 10 years. Both the Uniform Planned Community Act and the Uniform Condominium Act provide that control of the board of a planned community or condominium must be turned over from the developer to a unit owner-elected board no later than the sale of 75 percent of the units within the development, or seven years after the conveyance of the first unit in the development, whichever first occurs. The LAC successfully amended the bill to clarify that the above legislative changes to the acts did not change the period of declarant control within 7 to 10 years. The bill, with CAI's amendment, passed both the Senate and House and **was signed by the Governor in July 2013**.

Legislative Cure for Shaffer v. ZHB of Chanceford Twp PA Supreme Court Decision-In the court case of Shaffer v. Zoning Hearing Board of Chanceford Township, the township objected to the creation of a planned community and conveyance of parcels among family members. The township took the position, which was adopted by the county court and affirmed by the Commonwealth Court, that the creation of a planned community fell within the definition of land development under the Municipalities Planning Code. The state Supreme Court affirmed the decision of the Commonwealth Court without an opinion. The LAC seeks a resolution to the conflict created by the courts between the Municipalities Planning Code and the Uniform Planned Community Act and Uniform Condominium Act. Both of these statutes provide for the regulation of planned communities and condominium associations in Pennsylvania. This conflict will jeopardize the validity of existing residential and commercial planned communities and condominium associations throughout the state and put their title insurance policies and lender financing at great risk. This decision impedes financing of commercial and industrial projects throughout the Commonwealth, adversely affects housing opportunities for first-time buyers and retirees and adds to the current economic woes of the building industry in Pennsylvania.

While municipal governments play a vital role in regulating the use and development of land in Pennsylvania under the Municipalities Planning Code, the scope of municipalities' authority should not extend to the creation and conveyance of interests in land that have historically come under the Uniform Condominium Act and the Uniform Planned Community Act. Both of these statutes, prior to this court

(Pennsylvania cont.)

decision, were used to create condominiums and planned communities that were not part of a land development or subdivision plan on existing facilities and existing land for estate planning and financing purposes, among others. Therefore, the LAC is advocating for legislation that will make it clear that the creation of condominium associations and planned communities out of existing land or facilities does not require municipal approval unless and until new structures or buildings are constructed within the association or planned community. This legislation will eliminate the unnecessary conflict of legal statutes to which condominium associations and planned communities are now exposed and remove a potential impediment to the viability of residential and commercial associations and communities throughout the Commonwealth. **The LAC is currently working the Pennsylvania State Association of Township Supervisors to negotiate a legislative remedy to this court decision**.

Rhode Island

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Advocacy Highlights

The CAI Rhode Island LAC has not spotted many condominium concerns on its legislative radar screen this year, the committee's chairman, Frank Lombardi, a partner in Goodman, Shapiro & Lombardi, LLC, reports. Of the bills filed thus far, only one seems to have any potential impact on condominiums and the impact would be positive. The measure would prohibit a municipality from assessing newly-constructed residential properties, including condominiums, at full cash value until they have been occupied. This approach would enable a condominium developer who completes construction of a property in a weak market to hold the units until conditions are more favorable and prices have improved. The tax relief "could encourage condominium construction," says Lombardi.

The committee may propose legislation this year to clarify the authority of community associations to file consecutive six-month priority liens, establishing a new lien if payments become delinquent again after a foreclosing lender has cleared a previous lien.

South Carolina

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Advocacy Highlights

No onerous legislation was introduced in 2013 and a CAI sponsored Community Manager Certification Bill is being developed by the CAI South Carolina LAC, for introduction in 2014. Manager Certification is being supported as a means to ensure those practicing this profession are following professional standards and a code of ethics so that the services they provide are not injurious to public health, safety and welfare.

The bill will propose the state Department of Labor Licensing and Regulation, (LLR), establish a Community Association Management Oversight Board, (similar to the Boards of Realtors, Contractors, Electricians, Plumbers, Cosmetologists, Architects, Insurance Brokers, Doctors, Nurses, etc.), whose members will be appointed by the governor or perhaps by the Director of LLR , and will have the authority to establish educational and testing requirements for individuals practicing community association management in the state. The LAC will propose that LLR look to CAI National as the standard for education and certification as many other states have done. The state would certainly be free to develop its own programs, but there is no appetite in state government at this time to duplicate professional programs already available in the private sector.

Tennessee

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Lawmakers adjourned the 2013 Session of the 108th General Assembly on Friday, April 19, the earliest conclusion date in nearly twenty years. Significantly, it was the target completion date set by the Senate in January and it was achieved without late night floor sessions. This early date means that some controversial issues were left on the table for next year but many important changes were adopted.

The final drama of the session was action on pet projects by Lt. Governor Ron Ramsey and House Speaker Harwell. Ramsey had worked out an agreement to redraw Tennessee's judicial districts which would reduce the number of judicial districts and District Attorney's from 31 to 29. This plan would have given growth counties such as Williamson and Rutherford their own judges and DA's. Despite early opposition, the final plan was supported by the Tennessee Trial Judges Association, the Tennessee Judicial Conference and the Tennessee Bar Association who hoped to put the new system in place before 2014 elections since judges will be elected to eight year terms. Present districts have not been changed since 1984. House members, who had become irritated by the fast pace of session to make the April 19 adjournment date, also promoted by Ramsey, rebuffed the judicial plan as too important to be made in haste. This was only the second time in the past thirty years that a bill has been rejected by the House; the vote against the measure was 66 to 28.

Stinging from this House action, the Senate refused to act on a bill supported by Speaker Harwell known as the charter school authorizer. This controversial bill would have allowed a state panel to review and approve charter school applications turned down by local school boards. The plan was developed after the Metro Nashville School Board denied a charter to Phoenix based charter school operator, Great Hearts Academies. Education Commissioner Kevin Huffman and Gov. Bill Haslam later imposed a $3.4 million

fine on Metro for rejecting Great Hearts. Gov. Haslam said in support of the measure, "There should be somebody that says this application meets the state requirements and it is not just about the LEA [local education agency] who makes the final decision." While members of the General Assembly can return to work on the charter authorizer next year, it will be too late to redraw judicial districts before the 2014 elections.

On CAI specific bills, the LAC expects Sen. Randy McNally and Rep. Jimmy Matlock to assemble a study group in the near future to look for ways to resolve this issue before next session. As soon as we have additional information about the process we will pass it along. This study group is expected to include, in addition to CAI, representatives of various local government organizations, the Tennessee Bankers' Association, the Tennessee Realtors Association, and the Tennessee Bar Association.

Advocacy Highlights

County Liability for Fees and Assessments-SB 54 and its companion establish that whenever Hickman County acquires property at a tax sale, any non-governmental entities holding a vested contractual right to payment of fees or assessments secured by such property shall retain such right, provided that the county shall not be liable for payment of such fees or assessments for a maximum of 24 months from the date of order of tax sale. The bills allow the county to surrender the property to the non-governmental entity in full satisfaction of any fees or assessments. SB 1304 and its companion would allow county legislative body to grant permission for a tract of land to be sold for an amount less than the total amount of delinquent taxes owed, if the body finds that it is impossible to sell the land for at least the amount owed. The LAC opposed this legislation, which has been **deferred to 2014**.

Open Meetings-SB 1284 and its companion would require all meetings of a nonprofit home owners' association board to be open to members of the home owners' association, except when discussing delinquent assessments or indebtedness of individual members of the home owners' association. The LAC is awaiting amendatory language and the bill has been **deferred to 2014**.

Property Sold for Delinquent Taxes-SB 625 and its companion require court clerks who are notified by persons having legal claims against property set for delinquent tax sale to notify such persons of the results of such delinquent tax sale. The LAC opposed the measure, which has been **deferred to 2014**.

Texas

TCAA Members

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Advocacy Highlights

Operations-HB 2075, a cornerstone of the TCAA legislative agenda, gave condominium associations more flexibility to borrow money, more workable and understandable insurance provisions and extended an owner's right of redemption after an association foreclosure no matter who purchases the property. This was a TCAA sponsored bill. **The measure was signed into law.**

Management Certificates-HB 3800 was the most far-reaching yet benign outcome among the TCAA-sponsored bills. All associations will need to record a new management certificate with their county clerk's office to comply with HB 3800. This bill's intent was to deflect the persistent call for more regulation or an agency to register all POAs. (A mirror provision is contained in HB 2075 for condominiums.) **The measure was signed into law.**

Foreclosure-HB 2978 pertains to service for expedited foreclosure and court-ordered mediation in expedited judicial foreclosure if a judge orders it. The provision for mediation has the net effect of potentially increasing costs and drawing out the timeline for expedited foreclosure. HB 584 provides if a county maintains an Internet website, the county must post notice of foreclosure sale filed with the county. HB 699 extends the locations of certain public sales of real property (the courthouse steps are not the only place). All of three of these bills are POA non-specific and require no action on the part of POAs; however, all interested parties will want to take note of these changes. **All measures were signed into law.**

Landscaping-SB 198 expands the use of xeriscaping and **was signed into law**. Water conservation was a theme that resonated in several bills, not just those related to POAs. POAs may not prohibit an owner from using drought-resistant landscaping or water-conserving natural turf. Xeriscaping modifications are still able to be subject to review by the ACC. The good news is that AstroTurf can be restricted.

Flags-HB 680 permits flying U.S., Texas and military flags on flagpoles in the front yard. After a hard-won compromise, a POA must allow these flags to be displayed on a flagpole in a front yard with a 15 foot or more setback. If less than a 15 foot setback, a flagpole may be attached to the house for flying these flags. The measure **was signed into law.**

Contiguous Lots-HB 35 allows an owner to build on a contiguous lot, either that fronts on the same street, or on a corner lot, either by the side or back of a property. The measure **was signed into law.**

Board Vacancies and Contracts-HB 3176 relates to filling an unexpired term of a vacated seat on the board and removes limitations on the circumstances of the vacancy. A board may now appoint to a vacant position for the unexpired term of the position. HB 503 specifies conditions of contracting between the POA and its directors to ensure transparency and fairness, laying out specific requirements. The measures **were signed into law.**

HOA Omnibus-One notable bill which **did not pass**, TCAA supporters defeated HB 3803, which was chock full of overreaching regulations and Attorney General oversight. Other proposed bills had provisions which would disregard the authority of ACCs. In each case, TCAA worked tirelessly to hammer out acceptable language. Many of these, such as regulations concerning solar panels, propane tanks and generators, did not come to fruition.

Utah

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Utah Chapter

Advocacy Highlights

Reserve Accounts-SB 64 makes several changes to reserve account requirements. The bill specifies the required contents of a reserve analysis; requires an association or an association of unit owners to provide each year: a summary of the most recent reserve analysis to its members and a complete copy of the most recent reserve analysis, upon request. It requires an association or an association of unit owners to include a reserve fund line item in its annual budget; requires the management committee of an association or an association of unit owners to determine the amount of the reserve fund line item; and provides procedures for the members of an association or an association of unit owners to veto the management committee's reserve fund line item and enforcement procedures. The measure **was signed into law**.

Amendments to the Condominium Ownership and Community Association Acts-SB 90 modifies and enacts provisions of the Condominium Ownership Act and the Community Association Act. The measure enacts provisions relating to making changes to adjoining units or lots acquired by the same owner and enacts provisions relating to the responsibility for maintenance, repair, and replacement of common areas and units or lots. The bill modifies reserve fund provisions and enacts a provision allowing management committee members and officers to be indemnified or to have their liability limited. It enacts provisions allowing a preexisting association to make a later-enacted provision of law applicable to the association

and provides a limit on plan fees. The measure also modifies provisions relating to the organization of an association as a nonprofit corporation or other entity, modifies insurance provisions, and enacts a provision relating to the consolidation of associations. It enacts provisions relating to application of the rule against perpetuities and the rule against unreasonable restraints on alienation and enacts a provision relating to eminent domain of property that is part of a community association. **The measure was signed into law.**

Vermont

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Advocacy Highlights

Priority Lien-The priority lie issue surfaced in Vermont, where the courts have split on whether sequential liens are allowed under that state's priority lien statute, and in Massachusetts, where the LAC is supporting legislation specifying that "priority liens shall mean all six-month lien periods established in accordance with the statute and not limited to one six-month lien period, whether or not the lien periods are successive." Matt Gaines, who chairs the CAI Massachusetts LAC, has argued that this "common sense" clarification is consistent with the intent of the priority lien, which is to ensure the financial viability of community associations.

Virginia

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The 2013 legislative session was a "short" session–45 days rather than 60 days–but with the number of bills being introduced each session that the CAI Virginia LAC monitors, every session begins to feel too long. This year we monitored over 30 bills. The LAC was active on at least 10 of the bills. At times we questioned the need for certain bills, and if we were not successful in getting the bill pulled, we participated by requesting numerous rewrites to try and get things right. At the end of the session the following bills will impact our community associations.

Advocacy Highlights

Disclosure Packets-More disclosure requirements have been added to the resale certificates and disclosure packets. HB 1807 amends both Va. Code Ann. §§ 55-79.97 and 55-509.5 and requires an addition to the information disclosed in the resale certificate and the disclosure packet. The information provided must include a statement on whether there are any known project approvals in effect from the secondary mortgage market agencies, such as FHA condominium project approval. **The measure was signed into law.**

HB 2305 also amends both Va. Code Ann. §§ 55-79.97 and 55-509.5 requiring the inclusion of a statement of any restriction, limitation or prohibition against the installation or use of solar energy collection devices on the owner's property. It does not change or restrict the ability of an association to regulate the installation of solar energy collection devices. **The measure was signed into law.**

Late Fees-HB 1595 amends Va. Code Ann. § 55-79.83 and a new section will be added to Va. Code Ann. § 55-513. It permits both property owners' associations and condominium associations to impose a maximum late fee of 5 percent on assessments that are 60 days or more past due, unless the declaration, condominium instruments or rules and regulations provide otherwise. **The measure was signed into law.**

Condominium Development-HB 2275 is a bill proposed by the Home Builders Association of Virginia ("HBAV"). HBAV's initial goal was to specifically expand the ability of condominium developers to control the association for a longer period of time to coincide with the longer sales period experienced in the current economy. The LAC's concerns with the bill were primarily based on maintaining the integrity of the warranty period and the ability of the association to file suit when there is a breach of the warranty. The final bill represents a compromise on the issues. Declarants will be able to extend the period of declarant control for up to 15 years from the date the first unit is sold but such an extension will require approval by two-thirds of the votes in the association. If the extension is approved, there will be a warranty review committee that will investigate whether any breach of the warranty exists. The statutory time period for bringing a warranty action is five years after the warranty began or one year after the formation of the warranty review committee, whichever last occurs. **The measure was signed into law.**

Home-based Businesses-HB 2200 applies only to property owners associations. It will be added as a new section to Va. Code Ann. § 55-513. HB 2200 permits owners to have a home-based business within his or her personal residence unless the declaration provides otherwise. The association may, however, establish (i) reasonable restrictions as to the time, place and manner of the operation of a home-based business and (ii) reasonable restrictions as to the size, place, duration and manner of the placement or display of any signs on the owner's lot related to such home-based business. Any home-based business shall comply with all applicable local ordinances. **The measure was signed into law.**

Stormwater-HB 2190 was initially a bill designed to allow stormwater facilities to meet minimum state standards. As originally introduced, it prohibited localities from requiring more stringent standards in the construction of stormwater management facilities than the state requires. The LAC's concerns were focused on safety standards and cost efficiency because associations inherit these facilities and their long-term responsibilities and liabilities. The LAC worked in conjunction with other parties and the coalition was successful in keeping language that retained the localities' authority to regulate stormwater facilities. **The measure was signed into law.**

Meetings-HB 1711 amends Va. Code Ann. §§ 55-79.75 and 55-510 by addressing the notice required when an annual meeting has been cancelled. If an annual meeting is cancelled the subsequent notice of the meeting must be sent at least seven days prior to the rescheduled meeting, and the notice must include a statement saying that directors will be elected at the meeting. **The measure was signed into law.**

Washington State

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Advocacy Highlights

Electronic Notice of Meetings-HB 1370 provides meeting notices may be sent by electronic transmission if a homeowner provides written consent to receive electronically transmitted notices. An owner may revoke such consent to receive notices electronically by delivering a written revocation to the association's secretary or other officer specified in the bylaws. Consent is deemed to have been revoked if the secretary or officer is unable to electronically transmit two consecutive notices to the homeowner. The CAI Washington State LAC worked with the prime sponsor of this bill to make it workable for associations and supported its **final passage**.

Redemption of Real Property-SB 5541 provides a creditor's priority to redeem an interest in foreclosed real property is determined by the creditor's priority, not the time in which the interest was recorded. In the instance where a condominium association uses its super lien priority to foreclose on a unit owner for unpaid assessments, the lender's priority is not extinguished for failing to pay off the association's lien. The LAC opposed this legislation that **took effect June 28, 2013**.

Reserve Studies-The LAC **defeated** SB 5134 which attempted to amend the reserve study law to allow exemptions for HOAs to comply. The LAC stands firm that reserve studies are essential in providing disclosure to homeowners.

Assessment Increases-There was an attempt to legislate that regular assessments may not exceed a 20 percent increase from the last fiscal year's budget, and the aggregate of any special assessments may not exceed a 5 percent increase from the last fiscal year's budget. The LAC opposed SB 5075 and was **successful in defeating** it.

Changes to UCIOA-A section of the Washington State Bar Association convened a group of industry representatives to review the Uniform Common-interest Ownership Act (UCIOA). The group has been working on revisions to the UCIOA for the past four years and plans to bring a proposal to the 2014 Legislature. The implications of the proposal will be quite significant for homeowners throughout the state. The LAC will **undoubtedly have this at the top of their 2014 priorities**.

West Virginia

Legislative Activities

Updating UCIOA-Currently West Virginia utilizes the 1982 version of the Uniform Common-interest Ownership Act (UCIOA). In 2013, Rep. Ferro and Sen. Synder introduced HB 3101 and its Senate companion to update UCIOA with the 2008 version. Both **measures failed to receive consideration in 2013**, but the same bill number has been secured for the House to consider in 2014.

Wisconsin

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Advocacy Highlights

Dam Disclosure-Under current law, with certain exceptions, owners selling residential real property or vacant land must give prospective buyers a form, known as a Real Estate Condition Report for residential real property and as the Vacant Land Disclosure Report for vacant land, on which the owner discloses certain conditions of, and other information about, the real property of which the owner is aware. AB 430 and SB 344 require an owner to disclose on the applicable report whether the owner has notice or knowledge that a dam is located on the property or that ownership of a dam that is collectively owned by a homeowner association, lake district or other group runs with the property even though the dam is not located on the property. The bills also update the Real Estate Condition Report and the Vacant Land Disclosure Report to indicate that the regulation of underground storage tanks was transferred to the Department of Agriculture, Trade and Consumer Protection. The **measures carried over to 2014.**