



# New Mexico Chapter *Newsletter*

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## Is Legislation Good or Bad for Communities?

By Scott Carpenter, Esq., CCAL

As lawyers, we are often asked for our opinion on pending legislation. Is this bill "good" or "bad"? Like many answers to questions lawyers are asked, it depends. As community associations become more and more common, the numbers of people who believe associations victimize owners increases. Legislators are contacted by constituents who complain about perceived injustices. Often, this process is described as "Legislation by Anecdote." Associations in many states across the country have struggled to find the right response to new regulation. There are two realities of an increased regulatory environment that will always be a constant in New Mexico, regardless of the degree of regulation adopted in the future.

First, associations will survive. No law has ever been adopted, anywhere in the country, that outlawed existing associations. There have been various proposals over the years in different states to make the creation of new community associations more difficult. But those attempts have never been serious or made any legislative progress. The fact is, mandatory membership community associations are perpetual entities. Roofs on condominiums must be maintained. Swimming pools and clubhouses cannot be easily shuttered. The "use restrictions" owners agree to are a matter of contract.

Second, the more regulated community associations become, the more expensive they are to operate. When laws are enacted that provide owners with additional rights, those rights can rarely be asserted without lawsuits. Lawsuits cost money and not just in legal fees. Insurance claims go up and with additional claims, premiums increase. In addition, periodic compliance with new regulations increases the burden on communities that are entirely volunteer managed, where the board members do all of the work. States that have adopted increasingly regulatory laws have an ever decreasing percentage of community associations that remain volunteer managed. The compliance tasks that come with increased regulation point communities to professional management and the expertise management companies provide.

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Mexico Chapter Site at  
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CAI New Mexico

## *CAI New Mexico Board of Directors*

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Kim Corcoran – *Chapter Executive Director* – Associa Canyon Gate

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Given these realities, what is an appropriate view of potential statutes in the community association realm? The best rubric for evaluating potential laws is: Is it good for homeowners in community associations? If it is, then adoption should be encouraged. If it is bad, adoption should be discouraged. The challenge, of course, is "which homeowner?" If the homeowner is a person who wants services without paying for them, or wants his neighbor to move his RV but won't trim his trees, that homeowner is not the best to measure potential legislation. Rather, the homeowner who pays his assessments on time, complies with the restrictions, appreciates the board members who volunteer for the community, and generally appreciate the value created by community associations is the prism through which legislation is best evaluated.

As New Mexico confronts proposed legislation over the next several years, the best response would acknowledge that (1) the New Mexico Legislature cannot, as a practical matter, outlaw existing associations, (2) all regulated industries incur costs associated with regulation, and (3) the best way to analyze proposed legislation is to simply ask, "Is this good for homeowners who choose to purchase homes in mandatory membership community associations?"

**Scott is the Managing Partner with the law firm Carpenter, Hazlewood, Delgado, and Wood, PLC., in Tempe, Arizona**

## Board Essentials Course

On April 2, 2011, the New Mexico CAI Chapter held the Board Essentials class, where 14 happy attendees took part in the course. Some comments from the evaluation forms were...

*"Well organized, quality seminar. Hospitality and food were great! It was a pleasure to attend"*

*"Very worthwhile – thank you"*

*"The program was excellent as was the food and opportunity to meet new friends"*

*"Scott Carpenter is a particularly outstanding presenter" (we are very lucky to have you Scott – thanks again for your help)*

Kim Corcoran, the Chapter Executive Director, said after the event "This was the first time our chapter has put on this course, and I think everyone involved did an excellent job. I look forward to us expanding on the course with additional participants and attendees in the future. It is also great to know what worked and what we can improve on next time. Thank you."

In addition to Kim, the participants in the session were facilitators Scott Carpenter, Esq., CCAL of Carpenter, Hazlewood, Delgado and Wood, Javier Delgado, Esq., of Carpenter, Hazlewood, Delgado and Wood and Jerry Parsons, CMCA, AMS, PCAM of Associa Canyon Gate, and assistant facilitators Manny San Miguel of Mutual of Omaha and Ryan Daniell of Heads Up Landscaping.

## M-100 Course in Albuquerque!

Great news! CAI National has agreed to schedule an M-100 course here in Albuquerque for **September 22<sup>nd</sup> – 24<sup>th</sup>**. This is a 2.5 day seminar that provides a comprehensive overview of community association management.

The chapter must have at least 10 registrants in order for the class to be held. Past scheduled classes have been cancelled due to us not getting enough registrants – if you are interested in the course or if you committed to chapter representatives that contacted you, please register now!

You can register online by visiting this link: <http://www.caionline.org/events/managers/pmdp/Pages/M100.aspx> and selecting the Albuquerque course from the list. Registering online at least 4 weeks in advance gets you a \$25 discount.

## New Mexico 2011 Legislative Update

By Javier Delgado, Esq.

2011 was an active legislative session for community associations. Five bills regarding community associations were introduced. Although none of them ultimately were enacted, it is helpful to review the content of the bills as they are likely to be re-introduced in 2012.

### **House Bill 9, the Homeowner Association Act"**

House Bill 9 would have, if enacted, created statutes that govern mandatory membership associations that are not condominiums. The proposed statutory framework would have called these non-condominium, mandatory membership, mandatory dues entities "Planned Communities."

The act would have:

- Imposed limitations on declarant control of a board as well as separate limitations upon declarant control of boards of "master planned communities"
- Directed allocation of association financial liabilities, expenses, reserves and voting rights;
- Established conduct of board meetings, including the exercise of voting rights and ballot counting, required that meeting be open to members except in limited circumstances and set notice and agenda requirements;
- Required disclosure of financial and other association records to members and facilitated the process for members to require the board to provide for a new financial audit or review;
- Provided that the winner in a lawsuit could request that the court require the loser to reimburse or pay the winner's reasonable attorneys' fees; and
- Required the preparation of a "Disclosure Statement" upon sale or re-sale of a parcel and provided a potential purchaser with the right to cancel a contract for purchase.

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All of the provisions of the act would have applied to planned communities containing at least six parcels created after the effective date of the act (an existing community could have amended its documents to "opt in"). Certain provisions of the act would have applied to planned communities organized prior to the effective date of the act (unless the community contained five or fewer parcels).

In addition, House Bill 9 would have also amended existing law that limits a community association's ability to enforce its use restrictions regarding solar collectors to water conservation devices.

***Senate Bill 8, "Condo Declaration Compliance with Local Laws"***

Senate Bill 8 would have amended the Condominium Act to require confirmation from the local zoning official that a condominium declaration complies with local zoning and subdivision laws.

Senate Bill 8 was an outgrowth of an effort by the Santa Fe City Council to address the growing problem of developers creating condominium developments without undergoing proper zoning.

***Senate Bill 183, "Condominium Board Member Requirements"***

Senate Bill 183 would have amended the Condominium Act to:

Limit the period of time a declarant could control a condominium association.

Imposed a higher duty of care (that of trustee) for executive board members appointed by the declarant.

Decreased the amount of time a declarant could control a condominium association.

Required notice of open meetings and further require that all meetings of the association and executive board be held in the county in which the condominium is located.

Provided for disclosure of records and guidance regarding the categories of records that members are entitled to view.

Provided that if a buyer elects to cancel a contract, the buyer may do so by hand delivering notice to the seller, mailing notice to the seller (or their statutory agent), or by electronic means (provided that the seller acknowledges receipt of the electronic transmission; and

Provided that the winner in a lawsuit could request that the court require the loser to reimburse or pay the winner's reasonable attorneys' fees provided that that the governing documents allow at least one party to recover attorney's fees and costs.

***Senate Bill 447, Condominium Disclosure Statement Delivery***

Senate Bill 447 would have amended the Condominium Act to provide discretionary provision that a disclosure statement could be delivered to a purchaser prior to the condominium declaration being recorded.

***Senate Bill 504 "Prohibition of Transfer Fee Covenants Act***

Senate Bill 504 would have rendered unenforceable any provision in a community association's governing documents requiring that a fee or charge be paid to the association upon the transfer of an interest in real property, unless the documents provided that the fee or charge to the association was to be used exclusively for the purposes authorized in the document (and no portion of the fee was required to be passed through to a third party designated or identifiable by description in the documents).

Senate Bill 504 was a legislative response to an entrepreneurial practice that arose in other states whereby property owners recorded transfer fee covenants against property they owned entitling the original developer (as a third party) to a percentage of the sales price of the property each time the property was re-sold.

In the past decade, many community associations adopted transfer fees (also commonly known as "reserve enhancement fees", "transfer fees", etc.) for another purpose - as means of supplementing community association finances. In some communities these fees can take the form of percentage of the sale price (e.g. 1% of the total sale price). If Senate Bill 504 had passed, community associations charging transfer fees would have had to re-evaluate their documents to ensure that their practice of charging transfer fees would have remained permissible.

Notwithstanding the failure of these bills to become law in 2011, the trend towards greater regulation of community associations in the future is clear.

*Javier is a Partner with the law firm of Carpenter, Hazlewood, Delgado, and Wood, PLC.*

The theme of the next Issue of this Newsletter will be ***"The economy, will it recover or not, what should we do?"*** If you are interested in submitting an article, please contact Lilah Odam at lodam@cgres.com or Jerry Parsons at jparsons@cgres.com.



## Carpenter Hazlewood Congratulates Kellie Callahan on Her Admission to the New Mexico State Bar!

Kellie has expertise in advising community associations in interpreting and enforcing their rules and regulations. She also has experience in collections and general legal matters. She looks forward to expanding her practice to New Mexico.



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## CAI National Conference

New Mexico had a large delegation at the CAI National Conference in Boca Raton this year. The event started with registration and a welcome reception on Wednesday, May 4 and ended with the Annual Membership Meeting on Saturday, May 7. The New Mexico CAI Members in attendance were:

**Ms. Kimberly Corcoran, CMCA, AMS, PCAM**

**Mr. William Donohue, CMCA, AMS**

**Mr. Vincent Marciano**

**Mr. Jonathan McCormick**

**Mr. Jerry Parsons, CMCA, AMS, PCAM**

**Ms. Carol Rickert Asbury, CMCA**

**Ms. Evelyn Saavedra, CMCA, AMS, PCAM**

In between the opening reception and the close of the Annual Meeting were many exciting and informative events. Several seminars were held each day in each of four learning tracks; Legal, Business, Trends and Technology. The sheer variety of seminars made it difficult to choose which to attend. Evelyn Saavedra and Jerry Parsons were inducted as PCAM's in the opening general session and Associa Canyon Gate was presented its AAMC certification.

*It is time for you to start planning to attend the  
2012 CAI National Conference in Las Vegas, Nevada!*

If you are interested in advertising in the CAI New Mexico Chapter Newsletters, please contact the Chapter Executive Director, Kim Corcoran, at 505-342-2797 ext. 109 or [kcocoran@cgres.com](mailto:kcocoran@cgres.com) for more information about space, ad sizes and pricing!

Thank you to all who attended our May CAI Lunch and Learn on Cyber Theft! A special thank you to our presenters from Mutual of Omaha Bank and to Heads Up for allowing us to occupy their meeting room!

**Upcoming Lunch and Learn: Budget/Tax Prep/Audits - July Thursday, July 21<sup>st</sup> at 11:30 a.m. - Presented by Bill McKinney of McKinney & Associates**



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