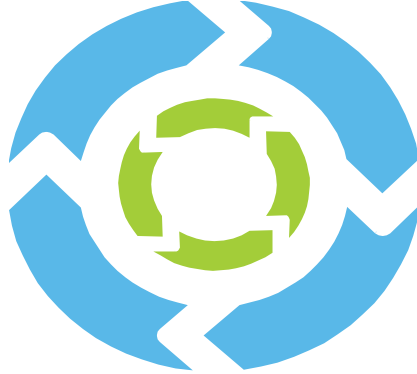




Community Connection



Summer 2011 Edition

Commentary on 2011 Changes in Arizona Planned Communities Act and Condominium Act

by Carolyn B. Goldschmidt

The Arizona legislature adjourned on April 20, 2011, and left us with six bills enacted into law that will revise Arizona's Condominium and Planned Communities Acts. Some of the changes the new laws will make are: allowing recording (taping or audio) of Board meetings; making committee meetings subject to the open meeting law requirements; renewing the procedure for owners or associations to bring an administrative claim on association issues that will be decided by an administrative law judge; capping the fees that can be charged for required disclosure to prospective buyers; strengthening the right of owners to have commercially-printed FOR SALE or FOR LEASE signs; broadening owners' flag display rights; and prohibiting an association from precluding door-to-door political solicitation by candidates and promoters of a ballot issue. For a more complete summary of all of the new laws that affect HOAs, which will go into effect (generally) on July 20th, please click:

http://www.soaz-cai.org/picture/325614summary_of_2011_hoa_laws.pdf

Following is a review of several of the new bills and provisions that warrant attention:

HB2609 [Open Meeting Law & Signs]: Association members and their authorized representatives have a right to attend and speak at "any regularly scheduled committee meetings" in addition to board of directors meetings. "Regularly scheduled" is not defined; however, the apparent intent of this addition to the law is to make meetings of standing committees open to members (i.e., architectural, landscaping, covenants, and nominating and election committees). There is no requirement that members be given 48 hours prior notice of committee meetings. ARS §33-1248(c) & §33-18(c) only require notice to the members of board meetings. Presumably, members would know when committee meetings are occurring because they are "regularly scheduled."

Currently, ARS §33-1248© & §33-18© state that notice of an emergency board meeting does not have to be given to members. HB2609 clarifies that an "emergency" occurs only when there is action needed that cannot be delayed until the next regularly-scheduled board meeting. And, this bill further clarifies that whenever a quorum of the board meets (formally or informally) to discuss association business, the open meeting law provisions apply.

continued on page 10

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Keep On Your Toes About the Statute of Repose!

by Darrien Shuquem, Esq., Dicks, Coglianesi & Shuquem, LLP

Diligent property managers, board members, and homeowners must be sure to familiarize themselves with Arizona's "statute of repose" (A.R.S. § 12-552) for construction defect claims. The "statute of repose" provides an eight year period, typically beginning with the completion of the construction, during which contract-based construction defect claims may be brought against the developer and/or builder. (Note that in limited circumstances, the repose period may be extended up to an additional year.)

As such, diligent property managers, board members, and homeowners must not ignore leaking roofs, windows, or decks (especially with monsoon season right around the corner!), or drywall cracking, stucco cracking, or other signs of potential construction problems. Rather, any such issues should be investigated promptly, and certainly before the eight year repose period expires.

Please note that once the statute of repose deadline passes, an association or homeowner with otherwise viable construction defect claims may be barred from asserting such claims. Obviously, this could have serious financial consequences, as the association or homeowner may have to come "out of pocket" to make the necessary repairs. Hopefully, this unfortunate result will be avoided by awareness of the repose deadline, and prompt attention to any potential defects.

Darrien Shuquem is a construction defect lawyer licensed in Arizona and California. Over the past decade, Darrien has helped recover millions of dollars to compensate Arizona homeowners and associations for construction defects in their homes and communities. Darrien can be reached at 602-254-4222 ext. 318, or dshuquem@hoadefectlawyers.com to answer any questions regarding this article, or regarding construction defects.



SoAZ-CAI went bowling in March

Above, Roxsann Badilla with Pinnacle Restoration gets ready to show us how it is done.

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RAIN DOES MORE THAN GET YOU WET, IT PUTS YOU ON NOTICE.

If you feel that your community association may have construction defects, and you haven't consulted an expert, be warned: The statute of limitations clock is ticking.



What to look for:

- ☐ Staining in the interior drywall and the corners of the window sills
- ☐ Staining on the carpet tack strip at sliding glass doors
- ☐ Look at the frequency and size of cracking in your drywall, stucco and foundation— are the cracks wide enough to place a dime in and longer than a foot?
- ☐ Do you have standing water after it rains and does that water drain toward the house?

At NO COST to you or your association, we will arrange for a licensed general contractor or architect to perform a complete walk-through inspection and evaluation of your house, building, grounds and common areas.

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RAIN PUTS YOU ON NOTICE!

Living in a home with leaks, mold, or other defects can sometimes make time feel as if it's standing still.

However, as we all know too well, time marches on. The weeks, months, and years can tick by at seemingly warp speed. Homeowners must be aware that the statute of limitations clock is ticking for construction defects that have not been resolved.

As with all potential legal actions, statutes of limitations are in place for construction defect claims, setting definitive time limits after which claims are barred. The expiration of statutes of limitations are often a builder's best defense against construction defect claims.

Because of the significant costs of building repairs, it is important that homeowners and association board members educate themselves and remain vigilant over all applicable statutes of limitations for construction defect claims. This is critical because the implications are severe.

For example, a negligence claim for faulty roof construction has a statute of limitations of two years from the "discovery" of the leaks. Leaks from the recent rains may have been the "notice" to your association that the clock is ticking on a potential construction defect claim.

Dicks, Coglianesse & Shuquem, LLP, is a leader in construction defect litigation, having helped thousands of Arizona property owners protect the value of their investments. We are proud to have collected more than \$100 million dollars on behalf of our clients, to help repair their homes, and make what's wrong, right.

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Mortgage Matters

by Paul Gready, CAAM®

We are two years into the recession and housing crash with Banks struggling and trusted government agencies have gone bankrupt. The system that has put-up mortgage money and allowed Americans to pursue the dream of homeownership is now broken.

Andrew S. Fortin, Esq. was the featured speaker at the SoAZ-CAI's luncheon on March 11, 2011. Andrew serves as the Vice President of Government and Public Affairs for the Community Associations Institute. His presentation entitled "CAI Mortgage Matters" provided information that all Community Association Managers, Management Companies, and members of the Boards of Directors will need to navigate the newly created agencies and the requirements to qualify for mortgages. The rules that determine who gets a mortgage, for what type of home, and in what type of community will dramatically change in the next couple of years.

New regulations may require a 20% down payment, there will be no more 80-15-5 or 80-20 mortgages. Closing costs and fees cannot be financed, and the LTV (loan to value) ration cannot exceed 80%. Additionally, pending mortgage requirements may include language that you cannot be more than 30 days late on any debt, and you cannot be more than 60 days delinquent in whole or in part for the prior 24 months. Also, a borrower cannot have any property repossessed within the prior 36 months, or be a party to a bankruptcy proceeding within the prior 36 months.

Andrew's presentation was very informative and enlightening. For additional information on this topic he recommended www.mortgagematters.org.

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SoAZ-CAI Tradeshaw

January 13, 2012

Mark your calendars and **"COME WALK THE RED CARPET WITH CAI AND CREATE AN AWARD WINNING COMMUNITY."**

Dodge the paparazzi and visit booths of our Business Partners, partake in the informative breakout sessions, and have a buffet lunch for "The Godfather". Rob Felix, our featured speaker, will end the day with an enlightening discussion on

"Successful Communities". And, don't forget there will be raffle prizes!

You don't want to miss walking the red carpet - have your picture taken with John Wayne or Marilyn Monroe - every attendee will receive a swag bag to store all your gifts and prizes.

Event cost is \$25.00 for members / \$35.00 for non-members.

The Committee would like to thank the Business Partners who already have signed up to sponsor this event and to those who haven't yet - better hurry - sponsorships are going quickly! Contact Susan Byrd for all sponsorship details.

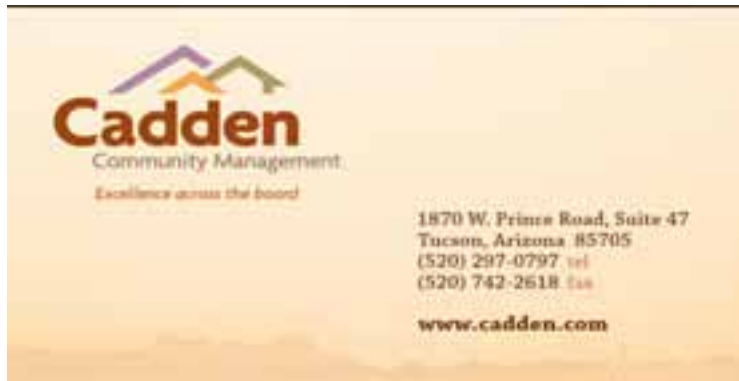
Stay tuned for additional information. Visit the Chapter's website at: [CAI Southern Arizona - Home Page](#)

I would like to recognize the Tradeshaw Committee members and thank them for their hard work: Anne Dill with Mutual of Omaha Bank; Bill Malaby with Sunland Asphalt; Carrie Valenzuela with Monroe McDonough Goldschmidt & Molla; Daryl Larson onsite manager at Villas West; Heidi Hallquist with Carpenter Hazlewood Delgado and Wood; Janna McVicker with Dicks Coglianesse & Shuquem; Jena Carpenter, Pam Lakey and Pam Valentine with Lewis Management Resources; Mindy Schooley and Kathy Van Hilsen with Rossmar and Graham; Kim Rubly and Teri McGuinness with Cadden Community Management; and Kristina Allen with CCMC.

Looking forward to seeing you there.

Kim Lax

Co-Chair 2012 Tradeshaw Committee



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Mark Your Calendar 2011 Events

June	22	Joint CAI-NARPM Luncheon Rental Properties	Tucson Elks Club
July	6	Educational Luncheon Arizona Legislative Update	Tucson Elks Club
September	14	Outdoor Social Event	Location TBD
October	TBD	Legal Forum	Omni Resort & Spa (tentative)
November	9	Annual Meeting Luncheon Round Table Discussions	Location TBD
December	14	Holiday Gala	Tucson Jewish Community Center
January	13	Trade Show	Tucson Convention Center

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Welcome New Members



The Southern Arizona Chapter welcomed many new members since our last issue. Please give a warm welcome to those listed below:



Christopher Bruyn	AME Management
Colleen Donnelly	Valley Crest Landscape Maintenance
Roger D. Douglas	
Linda Israels	Copper Crest Owners Association
Dr. Michael Katz	Armory Park del Sol
Lee-Anne Palin	Lewis Management Resources, Inc.
Pam Rogers	Lewis Management Resources, Inc.
Sandy Sandoval	Copper Rose Community Management
Michelle Saulina	Lewis Management Resources, Inc.
Barbara Trostle	Colonia Trails Homeowners Association
Cindy Voelz	Rancho Sahuarita Village Program HOA
Dan Wheeler	Vistoso Village Homeowners Association

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SoAZ-CAI Chapter Breakfast April 11, 2011 Orientation on the Community Associations Institute & its Resources

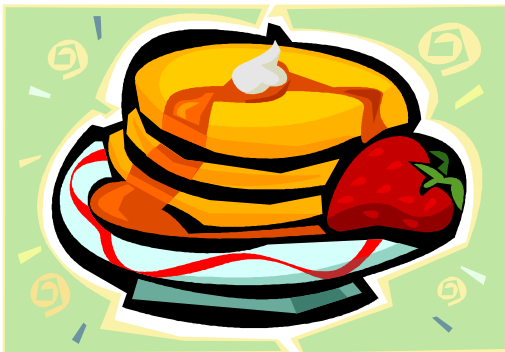
by Christine Johnson - Co-chair Membership/Sponsorship

The So-AZ Chapter held its first "Orientation Breakfast" on April 11th at Mimi's Café, focusing on topics and would appeal to new members. The Breakfast event was attended by 24 early risers.

The breakfast was sponsored by Pinnacle Restoration and speakers addressed the benefits of being a CAI Chapter member as well as speaking on significant Arizona legislation affecting the administration of local community associations. Ms. Roxsann Badilla, Account Executive for Pinnacle Restoration, spoke on the benefits of CAI membership and other current CAI members spoke on the technical resources available to the Chapter membership. In addition, Ms. Susan Byrd, CAI Chapter Executive Director, outlined what is scheduled each month for the Chapter membership for the remainder of the year. Ms. Byrd also discussed some key topics presented at the CAI National Conference, here in Boca Raton, Florida in May 2011.

Mr. Scott Carpenter, attorney with Carpenter, Hazlewood, Delgado & Wood law firm, updated attendees on Arizona legislation that would likely be law in 2011.

The next breakfast event is planned for later in the year. A specific date and location has not been determined by the Chapter Board of Directors. Please stay tuned.



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Commentary on 2011 Changes in Arizona Planned Communities Act and Condominium Act

continued from page 1

This bill also allows associations to require only "commercially painted" for sale, for lease, and for rent signs. The question will come up in some associations on whether the black and orange signs sold in hardware stores are "commercially printed". In my opinion, they are not within the class of signs that cannot be prohibited since the entire contents of the sign are not commercially printed.

HB2609 also modifies the law pertaining to political signs. This change will not affect most associations since it applies only where there is no city, town, or county ordinance that regulates the size and number of political signs on a member's property. Please click:

http://www.soaz-cai.org/picture/11211342-sign_codes.pdf

for a summary of the applicable Tucson and Pima County political sign requirements. The new law states that political signs now need to be allowed 71 days before an election. However, another new law, SB1326, states that the time limit is 45 days before an election. This conflict is best resolved by allowing political signs 71 days before an election.

HB2245 (Recording board meetings). Although members must be allowed to record board meetings with an audio or video recorder, a board can adopt reasonable rules and regulations regarding the taping. Examples of possible rules are: (1) tapes cannot be released to the media or posted on You Tube (or other internet media sites); (2) Board must be notified at least 48 hours before the meeting of a member's intent to tape [but consider that a member should not be prohibited from taping if notice is not given]; (3) Board can get copy of tape if it pays cost of reproduction; (4) taping device placement should be designated so video camera is not sitting right in front of the board table or otherwise obstructing the view of meeting attendees or board members; (5) member is responsible for assuring there is power source for recording device (battery operation is preferable).

SB1148 (Administrative Hearings for HOA Disputes). The resurrection of administrative hearings to rule on allegations of statute or governing document violations could be the subject of its own article.

continued on page 13



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Feds Move in the Right Direction on Transfer Fees

Thanks to efforts by CAI members, the Federal Housing Finance Agency (FHFA) has issued a revised draft regulation governing so-called private transfer fees. Originally proposed in August of 2010, the FHFA regulation would have banned any federally backed mortgage for property that contained a deed-based transfer fee. For community associations, the impact would have been devastating, as up to 49 percent of all community associations charge a deed-based transfer fee. These communities would have been unable to qualify for most federally backed mortgages under the regulation as drafted. However, due to the strong feedback from CAI members across the country, the FHFA has revised its proposal, excluding transfer fees charged by community associations.

FHFA took action on growing concern over the use of deed-based transfer fees payable to investors. Under this model, deed-restrictions require a transfer fee payable at the time of sale to the original developer or landowner for up to 99 years. As such, these transfer fees pull money out of communities and allow investors to obtain the benefits of equity or investments made by subsequent home owners. Unfortunately, the FHFA also included deed-based fees charged by community associations in its original draft regulation.

In its revised draft, FHFA specifically excludes deed-based transfer fees payable to a community association. It allows such fees when used to provide a direct benefit to the property upon which the transfer fee is levied. Under the draft, such fees may be used for support maintenance and improvements to encumbered properties, as well as cultural, educational, charitable, recreational, environmental, conservational or other similar activities that exclusively benefit the real property encumbered by the private transfer fee covenants. Such benefits must flow to the encumbered properties and its common areas or to adjacent or contiguous property. This shift in FHFA's proposal, brought about by CAI member activism, is a critical shift in policy and one that will benefit CAI members by ensuring access to affordable and fair mortgages.

Of course, the devil is always in the details, and CAI continues to work with FHFA to ensure the final regulation, when adopted, provides associations the greatest flexibility allowed in using a variety of tools, including monthly assessments, special assessment and deed-based transfer fees to balance the financial burden of maintaining the association. For now, residents in associations with deed-based transfer fees can sleep easy knowing that a potential regulatory disaster was averted.

As part of our ongoing Mortgage Matters program, CAI is working to protect homeowners in community associations and to ensure access to fair and affordable mortgage products for all current and potential community association residents. You can follow our work and share your thoughts at www.caimortgagematters.org. CAI will continue to monitor and participate in shaping the development of the final

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FHFA transfer fee rule to ensure the perspective of community associations is heard. If you have any questions about the "FHFA Transfer Fee Proposal and how it could affect your community, e-mail government@caionline.org with FHFA Transfer Fee Proposal in the subject line.

2011 Board of Directors

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Commentary

continued from page 10

SB1149 (Document Preparation & Transfer Fees). Effective Date December 31, 2011. This bill caps the aggregate fee at \$400 for services related to the transfer or use of property, including resale disclosure and lien payoff statement. Additional fees are allowed for "rush" requests and updates. Since this fee cap is in the statutes pertaining to required resale disclosure, one could ask whether the fee cap also applies to "transfer fees". It is this writer's opinion that the aggregate \$400 cap also applies to transfer fees, which sometimes are charged by associations or management companies in addition to disclosure fees. A transfer fee should be related to the tasks or costs of effectuating the transfer of the membership or ownership of the lot or unit. Thus, transfer fees are "related to the transfer or use of property." This \$400 aggregate cap does not apply to capital contribution fees or resale assessments, which are authorized under ARS §33-442 so long as the fee is specifically stated in the CC&Rs; the fee is paid to the association and not to a third party or declaring (developer); and the fee is used exclusively for purposes authorized in the CC&Rs.

SB1149 states that the association may mail the required resale disclosure statement to the property purchaser or the "purchaser's authorized agent." However, there is no detail on how an agent is authorized. It is reasonable for the association to require written authorization from the purchaser identifying his/her authorized agent.

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Why SoAZ-CAI Works

by Susan Byrd

I don't think there is any single answer for the Chapter's success in the time I've been Chapter Executive Director. When it comes to the Southern Arizona Chapter of Community Associations Institute (SoAZ-CAI), I see two common resources - Business Partners and committed membership.

SoAZ-CAI is successful and continues to grow thanks to the committed participation of our membership. With their help the Chapter has produced meaningful programs and events. On behalf of everyone (Chapter Membership and Board of Directors), I would like to recognize our Business Partners for making all our programming possible. Without their indispensable support, SoAZ-CAI would be a very different organization. They do more than advertise, sponsor and exhibit. They contribute to our publications, speak at our events and assist all of us with whatever we need whenever we need it. Their involvement in CAI and our chapter is an investment in the very concept of common-interest living. To all our Business Partners - thank you! To our management professionals and homeowner volunteer leaders, I encourage you to support these CAI members. Give them the opportunity to show you they are much more than just vendors - they are CAI family.

To all our other volunteers - I too, offer my thanks. Without your continued involvement none of what we do would be possible. You all have other jobs, yet you consistently find the time to create, plan and implement all of our wonderful programs and events. Whether you are on a conference call, meeting with Business Partners or even decorating - you are priceless.

For those of you reading this and wanting to be a part of the Chapter team, please send me an email to susan@soaz-cai.org or call me at (520) 870-7759. We welcome your participation in the chapter.



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This new law also imposes a penalty of extinguishment of the association's lien rights on the unit or lot if the association fails to provide a statement of unpaid assessments within 10 days after receipt of the request. And, a civil penalty of up to \$1200 can be imposed on an association or managing agent that charges or collects a fee in violation of the revised laws [ARS §33-1260 and ARS §33-1248(c) & §33-1806].

Sadly, HB2441 was not passed by the Arizona Senate after being approved by the House and the Senate Government Reform Committee. This bill would have made it easier for communities to amend their CC&Rs and would have clarified the position of communities with CC&Rs that have no amendment clause or a provision that allows amendments to be made only in a certain window of time. The Arizona CAI Legislative Action Committee (LAC) called this bill the "Power to the People Bill" because it would have allowed property owners more opportunity to change restrictions that no longer work. Hopefully, the bill will be introduced again next year and successfully navigated through the legislative process. The LAC works each year with a lobbyist to review and educate legislators on proposed bills that affect HOAs and condominiums. This year brought the introduction of approximately 22 HOA-related bills and the passage of six.

For additional legislative information please visit the following links:

- Flagpoles:** <http://www.soaz-cai.org/picture/1478301e-sb1326.flagpoles.pdf>
- Open Meetings:** <http://www.soaz-cai.org/picture/1192661a->
- Political Flyers:** <http://www.soaz-cai.org/picture/11409821f->

Carolyn Goldschmidt is a partner in Monroe, McDonough, Goldschmidt & Molla, PLLC, and has been practicing community association law in Tucson for the past 24 years. Carolyn is certified as a real estate specialist by the State Bar of Arizona, and is current President of the Southern Arizona Chapter of CAI as well as a delegate to and secretary of the Arizona CAI Legislative Action Committee.

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At Community Association Underwriters (CAU) we are pleased to be a promoter of Community Associations' Institute's CIRMS Designation. A CIRMS Designation identifies individuals in the insurance industry that have demonstrated the highest level of competence in community association insurance and risk management.

Specialization, knowledge, ethical standards, and involvement are some of the characteristics of your typical CIRMS Designee. For community leaders this designation becomes a great assist in identifying talented individuals in the community association insurance and risk management field. As of February 9, 2011 CAU Employees represent 16 of the 80 designees nationwide. The CIRMS Designees at CAU are proudly listed below.

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To read the article "The Community Association Specialist: Insurance and Risk Management" please visit our website at www.cauinsure.com. This article explains the benefits to community associations when working with a CIRMS Designee.



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