



September 7, 2012

Mr. Jeffrey T. Picker  
Assistant UPL Counsel  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

Dear Mr. Picker:

I am contacting you on behalf of Community Associations Institute (CAI)<sup>1</sup> regarding the unauthorized practice of law (UPL) concerns brought to the Standing Committee on UPL by the Real Property Probate & Trust Law (RPPTL) Section of The Florida Bar in its letter dated March 28, 2012.

On behalf of members in Florida; including board members, community association lawyers, community association managers (CAMS), and homeowners, I respectfully request the Standing Committee on UPL accept our invitation to engage in collaboration and meaningful dialogue as the solution to clarify activities of concern raised by the RPPTL Section of The Florida Bar.

CAI has been in discussion with stakeholders throughout Florida, including community association lawyers, regarding this issue. These discussions yield to the opinion that many of the UPL concerns brought to the Standing Committee by the RPPTL Section were successfully addressed by the Supreme Court in 1996. The principles outlined in that decision paved the way for an industry-wide paradigm shift of community association management services. As a result, CAMS are held to a higher degree of accountability and standard of service than they had been previously.

Since 1996, the professional requirements and accountability of CAMS have continued to advance. Today, there is an effective model of professionals working together to serve the community association, with each profession requiring specialized training and examination. CAMS work closely with boards and utilize best practices and standards to engage a community association lawyer for their specialized knowledge of counsel on legal issues related to the community association.

This model works well and there is no objective evidence from community association boards, homeowners, CAMS, community association attorneys or the Florida Community Association Manager Regulatory Council that this model is not working well. The number of complaints and disciplinary actions related to a CAM being accused of the unauthorized practice of law is negligible.

<sup>1</sup> CAI is the only international organization dedicated to fostering competent, well-governed community associations. For nearly 40 years, CAI has been the leader in providing education and resources to the volunteer homeowner leaders who govern community associations and the professionals who support them. CAI's more than 32,000 members include homeowners, professional managers, community management firms, and other professionals; including attorneys, and companies that provide products and services to community associations. CAI members in Florida are serviced locally by eight chapters spread throughout the state advocating for industry best practices and standards that result in building better communities.

<sup>2</sup> Florida Department of Business and Professional Regulations (DBPR) Community Association Manager Information Booklet. <http://www.myfloridalicense.com/dbpr/servop/testing/documents/camcib.pdf> (2012)

What has changed since 1996 is the volume of work related to several of the areas in question raised by the RPPTL section as UPL. Since there is not an outcry from the public or the regulatory body indicating problems, the question appears – “what is the basis for these concerns and could it be perceived as simply related to billable hours and fees?”

### **Public Protection**

Community association management is a highly specialized profession that requires competent and responsible individuals to perform the ongoing governance, administrative and facilitative role. As such, CAMs are required to be licensed through the Department of Business and Professional Regulation (DBPR) Division of Professions through Florida Statute Chapter 468 – Part VIII and Florida Administrative Code Chapter 61-20. The licensure program provides for the maintenance of high standards of professional conduct by those licensed as a CAM and offers consumer protection for Florida residents living in the regulated communities through education, complaint resolution, mediation and arbitration and developer disclosure.

To obtain a mandatory license, CAMS are required to demonstrate their competency through completing a comprehensive education program, consisting of at least 18 credit hours, and passing the CAM examination. According to the DBPR CAMs Information Booklet, the content of the CAM examination consists of state and federal laws pertaining to the operation and management of community associations, preparation of community association budgets, procedures for noticing and conducting community association meetings, insurance matters relating to community associations, management skills, and association maintenance.<sup>2</sup>

In addition to passing a comprehensive examination, those wishing to continue practicing community management must complete 20 hours of continuing education every two years, which is similar to the continuing legal education required by The Florida Bar of 30 hours every three years.

The DBPR CAM program also features a well known and well used complaint process to protect the millions of Floridians living in community associations. Through the DBPR complaint process, anyone has the ability to file a complaint against a CAM’s license for an infraction of their professional and ethical conduct, including the unauthorized practice of law.

CAI recognizes the significant importance of the charge of the Standing Committee on UPL and the desire to protect the public interest and reduce harm to the public by unauthorized practice of law activities. However, CAI encourages the standing committee to defer to the DBPR and the existing, proven process of consumer protection for people living in state’s community associations.

### **Practicing Law in Community Associations**

The practice of community association law is unlike any other area of specialization. A community association lawyer must be an expert in numerous state and federal laws, including state condominium and homeowner acts, non-profit corporation acts, bankruptcy acts, the Fair Housing Act, the Fair Debt Collection Practices Act and the Telecommunications Act, to name just a few. It is a practice that also

requires an attorney to have practical solutions to issues that often involve enforcement actions against individual residents that may affect their most prized and largest asset, their home. The current housing crisis and general state of the economy have only made these tasks more sensitive and challenging.

CAI membership includes community association lawyers and law firms throughout Florida. In conversations with community association lawyers in Florida about the UPL issue, I heard references to “grey areas”, activities that may be “ministerial” in nature, activities that may not require “significant interpretation and expertise”, and “practicing” vs. “following” the law. These references indicate a lack of consensus among the most relevant and involved elements of the legal profession relative to whether the items raised by RPPTL Section constitute UPL when performed by a CAM. In addition, I suspect there are numerous community association lawyers who are members of the Florida Bar who are still completely unaware of the issue in front of the standing committee.

Community association managers and community association boards rely on their community association lawyer for their expertise and knowledge and hope to engage them in meaningful practice of law and counsel, instead of asking them to spend their valuable time on ministerial activities.

Community association lawyers provide a legal stratum necessary to community associations; however, the nature of the profession does have distinct and differing requirements from the ongoing clerical and organizational role professional community association managers are required to fill. CAI urges the standing committee to recognize the unique professional challenges and difference of community association management and the practice of community association law.

### **Collaboration and Meaningful Dialogue**

A decision on the many activities outlined in the March 28, 2012, letter from RPPTL, including the revisiting of standards and principles outlined in the 1996 Supreme Court decision, will have a significant effect on the millions of people living in Florida’s 60,000 community associations and the 11,000 licensed community association managers and thousands of community association lawyers representing them. Additionally, this issue could potentially have a tremendous financial impact on community associations, individual homeowners and community management firms. Community associations will feel the burden from the increased number and cost of legal fees to perform such additional activities, and management firms will lose revenue from no longer collecting said fees.

If there is an authentic interest of consumer protection by the Standing Committee on the UPL and The Florida Bar, we request a collaborative approach to engage in a meaningful dialogue to seek clarification and further analysis of these issues. Information received at a single hearing (June 22<sup>nd</sup>) at a single location, in a state the size of Florida and one with such a varied and complex community association industry is simply inadequate for the Standing Committee to move forward with a fair and equitable decision for the community association industry as a whole.

The Florida Bar, self described as a guardian for the integrity of the legal profession and the statewide professional organization of lawyers, is similar in nature to CAI. CAI is a guardian for the integrity of community association living and is a multi-disciplinary organization representing all areas of the community association industry, including accountants, attorneys, board members, homeowners, managers and other professionals.

Clarification on these important issues can be derived through collaboration between our two organizations and a meaningful dialogue with leaders from our respective memberships representing all of the effected parties to this issue.

In the RPPTL letter dated March 28, 2012, Mr. Meyer seeks clarification he believes is needed for board members, managers and attorneys involved in the area of community association law. In Florida, CAI has the capacity to convene leaders in each of these critical areas of the community association industry for a dialogue on this issue. As the only multi-disciplinary organization in Florida representing these disciplines, CAI stands ready to assist in finding this clarification and engaging representation from across the industry throughout Florida with the Florida Bar to have an open dialogue on this very issue.

Thank you for your consideration of CAI's position and gesture on these issues. If you have any questions regarding this letter or if CAI may be of any service, do not hesitate to contact me or Dawn Bauman, CAI's Senior Vice President, Government and Public Affairs, at (703) 970-9224. I appreciate the critical nature of these issues, and I look forward to the courtesy of your reply.

Very truly yours,



Thomas M. Skiba, CAE  
Chief Executive Officer