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Vermont Legislative Action Committee addresses Condo Statute Amendments

May 04, 2010 - Owners Developers & Managers

In their first legislative session since being organized in late 2009, the CAI Vermont Legislative Action Committee (VTLAC) has had their hands full. Over the past several months members of the committee have met with bill sponsors and legislators to address concerns about the most comprehensive overhaul of the Vermont Common Interest Ownership Act (VCIOA) in more than a decade.

In early February, VTLAC members David Boston, CMCA, AMS, Paul Carroccio, CMCA, AMS, PCAM and Jon Readnour, Esq. met with attorney Carl Lisman who drafted the bill (H. 689), and since that meeting members have also testified before house committee members and contacted legislators. While the VTLAC generally supports the bill which includes substantial amendments modeled on the Uniform Common Interest Owners Bill of Rights Act as drafted by the Commissioners on Uniform State Laws, there are parts of the bill that the VTLAC believe could be problematic for community associations in the state. Several provisions of this 70 page bill will make radical changes to how business is conducted by condominium associations. While some changes are of the "opt in" variety others are mandatory upon preexisting condominiums on the date the law becomes effective.

New Requirements

for Meetings

The bill as drafted would require an association to "notify unit owners of the time, date and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date." The notice may be delivered to any mailing or electronic mail address a unit owner designates or delivered by hand to each unit owner. The statute would require notice to all unit owners. Since many condominiums already have this requirement in the bylaws it would not be too onerous. Use of e-mail notice could reduce unnecessary cost and expense.

In addition to notice requirements for annual and special unit owner meetings, the bill sets minimum standards for a meeting of association members and also amends the current statute relative to the requirements for both unit owner meetings and board meetings. The VTLAC is most concerned about an amendment related to the conduct of board meetings and the general requirement that association board meetings be open to all unit owners, except during executive session. Per the proposed amendment "At each executive board meeting, the executive board shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association." In addition, any materials that may be distributed to the executive board before the meeting must also be copied and reasonably available to unit owners with some specific exceptions including copies of unapproved minutes or materials that are to be considered in executive session. While the statute does provide for telephonic, video or other

conferencing process, the VTLCAC opposes this provision because it is largely unworkable for condominium associations that are made up primarily of second homes and recreation properties.

Open Meeting Law for Board Meetings

While the intent of the amendment is to open board meetings to attendance by association members, it is essentially an open meeting law for board meetings. This represents a significant policy change from the democratic republic form of management familiar to non-profit or for-profit corporations. The underlying premise of current non-profit corporation law is that the board is elected as trusted representatives of the members to manage the affairs of the association. If they do not fulfill their duties they can be removed or a new board member elected at the annual meeting. VTLCAC does not dispute the importance of transparency in managing association affairs, but the problem with the amendment is that it creates an onerous procedural overlay that is almost unmanageable for non-resident second home condominium properties. Some of the specific concerns are as follows:

*The amendments would require that all board meetings be held at the common interest community unless amended by bylaw. Many Vermont condominium developments are recreational properties where most if not all board members live out of state. As a result, typically only a fraction of board meetings are held at the facility and those meetings are often just a perfunctory board meeting after the annual member meeting. The bulk of the board meetings are held via conference call, often on short notice permitted by the association's bylaws. The requirement for board meetings at the facility is impractical for non-resident properties.

*Providing opportunity for member attendance at all board meetings is an onerous and largely unnecessary procedural extravagance for the conduct of most board meetings. While board meetings by conference call connection appear to be allowed under the amendments telephone connections for associations with many unit owners is unwieldy if not outright futile. Providing board materials to all members and a right to comment as required by the new statute could be downright impossible for phone meetings and the cost to "reserve" possibly hundreds of connections for each call can run to significant expense if possible at all.

*Potential for mischief is enhanced where knowledge of who is actually on the call is hard to determine. That makes going into executive session from a regular meeting very risky since it is impossible to guarantee non-board members get off the call.

*The requirements as outlined above are also projected on subcommittee meetings.

*While the member notice requirement contemplates use of e-mail, not all members have e-mail and regular postage must be used. Costs will increase and for an association that is self-managed, maintaining email lists will be difficult.

Implementation Date

The current amendments to the VCIOA under consideration by the legislature would take effect upon passage if the bill is approved as drafted. A state wide education campaign will be necessary to obtain any significant level of compliance. To provide time to acquaint condominium association board members and owners with the new requirements, the VTLCAC is working with legislators seeking an implementation date of January 1st, 2012.