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CAI-MALAC affects recent change to condo. statute

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In late July governor Patrick signed into law a bill that amends section 5 of the Massachusetts Condominium Act. The bill, which was proposed by the Citizens Housing and Planning Association (CHAPA) and was supported by the CAI Massachusetts Legislative Action Committee (MALAC), amends the manner in which percentage interests can legally be established for condominiums containing affordable units. The MALAC worked with CHAPA to refine the legislation over the last three years, and provided input and support throughout the legislative process.

Amends How Percentage

Interest is Established

Previously, percentage interests for units in a condominium had to be established according to the approximate fair value of each unit as of the date of the master deed. This created some confusion and even litigation in the context of affordable restricted units and the establishment of master deed percentages based upon the phrase "approximate relation to fair value" in section 5(a) of the Condominium Act. The issue was whether or not units that were subject to an affordable housing restriction (which are often imposed or required by governmental entities in connection with the permitting of condominium projects) were required by the Condominium Act to have a lower percentage interest (meaning lower condominium fees and diminished voting power) than similar market rate units within the same condominium.

Two camps emerged across the Commonwealth. Some master deeds took into account the affordable restriction and lowered the percentages based simply on sale value. Others ignored or discounted the restrictions entirely on various grounds, including:

- (1) the limited duration of the affordable restrictions,
- (2) the ambiguity in the statutory phrase "approximate fair value",
- (3) the concern that affordable unit owners would be disenfranchised by diminished voting power,
- (4) the concern that it would unfairly place a larger common fee burden on the market unit owners possibly making the condominium project unmarketable, and
- (5) the fact that all of the unit owners in a condominium, regardless of their economic status or how they acquired their unit, pay common expenses for the benefit of their respective common property including insurance, snow plowing, landscaping, etc., all of which they enjoy equally and which has nothing to do with how much they paid for their unit.

This legislation appears to end that debate as it makes it clear that the master deed may, but need not, take into account the affordable housing restriction when assigning values to units in establishing percentage interests. Accordingly, the legislation appears to ratify percentage interests in all existing condominium master deeds containing affordable units.

The legislation also provides condominium associations an additional tool to amend the Master Deed to reset the percentage interests, if and when affordable housing restrictions expire or are terminated. Finally, the legislation allows for the assessment of common expenses based on a square footage methodology, as opposed to percentage interests, if provided for in the original master deed or an amendment thereto, which would require the consent of all affected unit owners.

CAI Legislative

Action Committees

Each day, decisions affecting the authority for community are decided. These decisions are made by legislatures, agencies and courts in local, state and federal jurisdictions. As the national advocate for community associations, CAI is committed to encouraging the active participation of community association advocates in helping define community association law. As part of that commitment, CAI fosters the formation of Legislative Action Committees (LACs) to ensure that the voice of community associations is heard and heeded. Members of a LAC are CAI's representatives before state legislatures, regulatory bodies and the courts. For more information of New England state LACs, including Maine, Massachusetts, Rhode Island and Vermont contact the CAI New England chapter office at 781-237-9020.