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The Maine Legislative Action Committee supports Condominium Homeowner Protection Act

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The Maine Legislative Action Committee (MELAC) of the Community Associations Institute (CAI) has submitted a proposed bill, entitled the Condominium Homeowner Protection Act, to the Maine Legislature to enact certain amendments to the Maine Condominium Act that will implement best practices, improve a condominium association's ability to collect assessments, clarify a condominium owner's rights to participate in association governance, and eliminate inconsistencies. Maine condominiums are governed by the Maine Condominium Act and the Unit Ownership Act with the date the condominium was created determining which Act applies. In addition, since condominium unit owners' associations are organized as nonprofit corporations they are also governed by Title 13-B. With the increase in the number of condominiums built in the state since the adoption of the Condominium Act in the early 80's, provisions of the Condominium Act and Unit Ownership Act have been found to be inconsistent. In addition, the Acts do not address the many new challenges that have evolved over the past two decades and that are now confronting condominium homeowners.

Association Borrowing

The proposed amendment would allow associations to more easily borrow money to address association repairs, improvement and replacement projects. Currently, many Maine condominium associations are unable to borrow funds because their condominium documents do not expressly authorize the associations to grant security to the lender. Obtaining an amendment to the documents for that authority in this environment is difficult at best, and usually requires a 2/3 vote of members. The proposed amendment to the Act would allow associations to grant security to lenders if approved by a majority of unit owners.

Meetings and Record Keeping

While currently, unit owners have no right to receive notice of association board meetings or to participate in the meetings, unless the condominium documents specifically grant such rights, the amendment would require boards to give notice of their board meetings to owners and give owners the right to attend meetings of the board, subject to rules established by the board. Specific circumstances under which an executive session may be held and which owners may be restricted or prohibited from attending are defined.

To correct conflicting guidance on the question of record-keeping and access to records under the Condominium Act and the Nonprofit Corporation Act, the amendment clearly establishes what records need to be retained by associations and for what period of time. In addition, subject to certain privacy and other legal considerations, the amendment clarifies a unit owner's right of access to records

Liens and Access

The amendment will extend the duration of the association's lien from 3 years to 5 years which will help associations protect their liens for unpaid assessments during the extended foreclosure proceedings which are being witnessed as a result of an increase in foreclosure sales driven by a slumping economy and combined with a court backlog.

Specific to foreclosures, in this economy, the proceeds of a foreclosure sale can be insufficient to pay the debt to the bank leaving no funds to pay the condominium association for unpaid assessments. To add insult to injury, banks often postpone auction dates or delay the process of transferring title to the purchaser. Until title to the unit passes to a buyer at the foreclosure sale, the association's lien remains subordinate to the mortgagee's lien. Under the amendment, the association's lien will be binding on the new title holder from the initial date of sale forward.

The devastation of a condominium foreclosure extends well beyond the foreclosed owner. In a condominium, all unit owners are assessed condominium fees to cover the common expenses of the property as well as maintenance and repair of the buildings and amenities. Unit owners who default on their mortgage payments generally also default on their monthly condominium fees and the shortfall is passed on to the remaining unit owners through increased monthly fees or supplemental assessments. To provide a measure of protection for remaining owners, the amendment will establish a six month common charge priority over any first mortgages.

For owners who do not pay their assessments, the amendment would provide associations the ability to suspend any right or privilege of a unit owner that fails to pay an assessment. However, the amendment specifically provides that associations may not deny a unit owner access to the owner's unit or withhold services that would lead to endangering the health, safety or property of any person. For more information about the MELAC or the Condominium Homeowner Protection Act contact the chapter office 781-237-9020 or visit us on the web at www.caine.org.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540