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Changes to the NH condo statute go into effect on August 7 - by Dean Lennon

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The ever-changing NH Condo Statute has undergone yet another round of tweaks in the most recent legislative session. The new statutory provisions discussed below will go into effect as of August 7.

Ballots: New paragraph IV of Section 39-a now requires that ballots cast in an association vote—meaning a vote of owners, not of the board—be counted using a tally sheet. The new paragraph does not define “tally sheet,” so any piece of paper whereby an individual can record votes will suffice. Moreover, the new law requires that ballots and tally sheets must be made available for examination and recount by any owner participating in the vote immediately following the announcement of the vote result.

Thus, any owner who just voted can immediately make a request to examine all of the ballots and tally sheet in order to determine if the vote was properly counted. At least one board member and at least one additional owner (other than the requesting owner) must be present during any examination of the ballots and tally sheet.

Emergency Special Assessments: As you may recall, the 2016 amendments changed the process by which budgets are approved and by which a board can make a special assessment. A special assessment requires prior notice to the unit owners and the owners must have the opportunity to veto the assessment by a 2/3 vote of the entire voting power of the association. Under the 2016 amendments, the veto process could be avoided by a 2/3 vote of the board if the special assessment was needed on an emergency basis.

The legislature has now set out to define what constitutes an emergency. An emergency, for special assessment purposes, is now defined as: “a situation that requires immediate action by the board of directors where a danger to the structural integrity of the common areas is discovered or to the life and safety of property unit owners or as required by a court order or to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.” Only a situation

that falls into this definition would allow a 2/3 vote of the Board to avoid the veto vote process for making the special assessment.

Thankfully, the definition would cover almost any relevant situation that would require an emergency special assessment. A collapsed roof that needs immediate repair falls under the “danger to structural integrity” language. Where funds are needed to maintain a plowing contractor’s services during an extremely snowy winter, the board could rely upon the “life and safety of property unit owners” language since unplowed parking areas would be hazardous to all residents.

However, note the language which states: “could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.” This language precludes a Board from making an emergency special assessment where the Board failed to account for a foreseeable issue in the annual budget. That said, the Board can still make a special assessment in that scenario, they just have to put the assessment up for the required veto vote.

Developer Provisions: A new paragraph V has been added to Section 24 of the NH Condo Statute which relates to the conversion of convertible spaces and land. This legislative change prevents a developer from possessing open-ended development rights and further prevents a developer from sticking unit owners with the tax burden of convertible space which a developer could theoretically leave unconverted for an unlimited period of time.

The legislature also created a new paragraph I-a to Section 16 of the Statute. This provision states that all lands are specified in the declaration as being part of the condominium must be labeled as either: individual units, common areas, limited common areas, convertible spaces or convertible lands. All lands that a developer proposes for future development must be identified as such and is subject to the 5 year and 7 year statutory time limits for completion.

The purpose of this change in the law was to force developers to specifically identify all land that is part of the condo so as to inform the public—i.e. potential buyers—of exactly what it is they are buying into. This change, and the change above regarding conversion, were a direct result of the unfortunate result in the case of Condominiums at Lilac Lane Unit Owners’ Association v. Monument Garden, LLC, a NH Supreme Court decision from 2017, in which a developer was allowed to avoid the 5 year statutory time limit for conversion of convertible land, simply by failing to use statutory terms for future developable land. This legislation should close the seeming “loophole” presented by that case. The NH Legislative Action Committee of CAI-NE successfully lobbied for these changes.

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