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2019 CAI Legislative Action Committee agendas

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CAI Legislative Action Committees (LACs) continue to watch and track legislative initiatives that impact condominiums in New England chapter states. The following is a recap of the past 12 months and a preview of what's on the horizon for LACs in 2019.

New Hampshire: New Hampshire lawmakers went back to work last August and the New Hampshire Legislative Action Committee (NHLAC) has been hard at work, as well since then. The committee's priority again in the coming year is a measure the Legislature has defeated several times, authorizing condominium associations to foreclose on delinquent owners in order to enforce the association's priority lien. NHLAC Chair Gary Daddario, a partner in Marcus, Errico, Emmer & Brooks, says he is hopeful the Permanent Subcommittee on Condominium Association Law will back the measure, which would improve its prospects. The subcommittee is also likely to propose a bill about which the NHLAC is less enthusiastic, creating a dispute resolution board for condominiums. Lawmakers have rejected this measure in the past because of its administrative costs, but Daddario says he's heard the subcommittee plans to address that obstacle by having this board share space and administrative staff with an existing board that deals with disputes involving manufactured housing. The NHLAC will be watching this proposal carefully, Daddario says, with many concerns about as yet unspecified details, among them: The board's structure, its authority, how complaints are filed, the fees, the hearing procedures and the appeals process, if any. "Will it be a formal, court-like proceeding, or an informal mediation?" Daddario asks, "and what happens after the board makes a decision? Can the parties appeal if they don't like the outcome? Once you start discussing the details," Daddario says, "the questions just keep coming."

Mixed Results: Last year's legislative session brought mixed results for New Hampshire condominiums. On the plus side, lawmakers approved a measure requiring condominium developers to label all land in a project, identifying it as common area, limited common area, convertible space or expandable land. Any area with the potential for future expansion must be labeled as such, Daddario says, making it subject to a five-year limit on future development, with the possibility of a five-year extension, if owners amend the governing documents. This measure corrects a state Supreme Court decision holding that a developer was not subject to statutory time limits on phased developments because he had not labeled the land involved in a way that subjected it to the deadlines.

Responding to the NHLAC's concerns, lawmakers revisited a measure they had approved in 2016 as part of the comprehensive rewrite of the condominium statute, subjecting special assessments to the same approval process as association budgets, which can be rejected if opposed by two-thirds

of the community's owners. The 2016 measure carved out an exception for "emergency" assessments, which owners would not be able to reject, but it did not define what constituted an emergency. The new legislation creates three categories of emergency expenditures that would be protected: Those dealing with structural issues, life or safety issues, or responding to court orders. The definition helps, Daddario says, but it's not a perfect fix. "There are still some critical issues that may not be covered," he notes. The approval process for assessments "still favors the board, as it should," Daddario says. "But it adds a step and adds time to the process." Also concerning to him: The measure represents another move by the Legislature to reduce the board's authority "and impede its ability to function."

New Hampshire lawmakers approved another measure the NHLAC had opposed, allowing condominium owners to call a special meeting on their own if the board does not do so within 30 days of receiving a request. Responding to the NHLAC's concerns, the bill's sponsor had amended it to specify that the business owners could conduct at this meeting would be limited to a vote to remove board members. But lawmakers rejected the amendment, so the measure will permit owners to vote on any measure. "We hoped it wouldn't pass, but it did," Daddario says. The impact "could be good or bad," he says. The worst case – the confusion the NHLAC fears would result if owners can overturn board decisions and alter policies the board has implemented. "Owners vote to fire a landscaper they don't like, and the landscaper says, 'my contract is with the board. You can't fire me.' Then what?" Daddario asks. The best case: "When boards get a request for a special meeting, they will make sure to schedule it within the 30 days the statute requires."

The NHLAC was neutral about a third measure that won approval, requiring associations to use formal "tally sheets" to record votes in association elections. "It's more burdensome for boards," Daddario says. "It's not end-of-the world burdensome, but it is more paperwork, and it probably isn't necessary."

Rhode Island: No news is relatively good news in Rhode Island. The Rhode Island Legislative Action Committee (RILAC) had been watching, with concern, four measures, and none of them won approval, Frank Lombardi, the RILAC co-chair and a partner in Goodman, Shapiro & Lombardi, LLC, reports.

- A measure mandating binding arbitration of condominium disputes was withdrawn.
- A bill that would have set a \$250 cap on the fee associations could charge for producing a resale certificate – and fine them \$1,000 if they take more than 10 days to respond to a request for one—was held for further study.
- A measure requiring board members to verify that their association manager has fidelity insurance – and fining board members personally if they fail to comply – was also held for further study.
- A measure providing a right of redemption for condominium owners on whom associations foreclose died in committee.

The LAC had not yet formulated its agenda for the new 2019 legislative session, when this update was compiled.

Massachusetts: The Massachusetts legislative session ended officially last July, but lawmakers continued to meet informally through the end of the year, so at the time of writing this update, action was still possible on some pending legislation, Massachusetts Legislative Action Committee (MALAC) chair Matthew Gaines, a partner in Marcus Errico, Emmer & Brooks, reported. Two CAI-supported bills “came close to a vote in the House” during the formal session and may come up again before year-end and after this update.

One would prohibit the “poison pill” provisions developers insert in condominium governing documents, requiring a super majority of owners to approve litigation against the developer. The other would amend the statutes of limitations and repose, so that neither of those statutory clocks, which set deadlines for construction defect legislation, would begin to run until after the developer had transferred control of the association to owners. “We’re cautiously optimistic about both measures,” Gaines said, but of the two, he thought the construction defect measure had the best chance of getting through the house and moving to the senate.

The Senate approved the perennial “right to dry” bill, allowing condominium owners to install clothes lines, but the House didn’t act on it during its formal session. Because the measure still lacks language clarifying an association’s authority to regulate the location and size of these installations, Gaines says, the MALAC would be just as happy to see it die.

The House and Senate both passed legislation dealing with the registration and taxation of short-term rentals, but the Governor vetoed one provision of it – sending the measure back to lawmakers to either override the veto or accept the change the governor wants. The governor’s objection targeted what Gaines described as “a minute point” and the measure, he notes, doesn’t affect condominiums. “We would have been concerned only if the bill prohibited associations from barring short-term rentals, which it doesn’t.”

Maine: An “exhausted” Maine legislature, which was supposed to wrap up its session last May, finally adjourned at the end of last summer after an extended special session – extended, Maine Legislative Action Committee (MELAC) Chair Bruce McGlaufflin, a partner in Petruccelli, Martin & Haddow, LLP, explains, because “the governor (Paul LePage) kept vetoing things.”

While as of this writing the MELAC had not yet finalized its agenda for the coming year, McGlaufflin noted two measures that are likely to be MELAC priorities, one dealing with the foreclosure process and the other clarifying the term “use” in the state condominium statute, for purposes of determining the percentage of owners who must approve changes affecting their property rights. The statute requires the approval of 100 percent of owners for any changes affecting the “use” of units, but it doesn’t define use, McGlaufflin explains, “and some people have argued over the years that use means, literally, any activity for which the unit is used.” Under this definition, an amendment restricting rentals or prohibiting smoking would require the approval of all unit owners. The change the MELAC may propose would clarify that the 100 percent approval requirement applies only to

zoning-type changes in “categories of use”? from residential to commercial use, for example.

Modest Improvement: After several unsuccessful tries, the MELAC has abandoned any hope of winning legislative approval of a priority lien for condominium associations. But the committee is considering a measure that would deter banks from prolonging the foreclosure process, which many do by repeatedly canceling and rescheduling the foreclosure auction. The measure would require banks that cancel a scheduled auction to pay any fees that accrue after that, until the auction is held. “It isn’t a big remedy,” McGlaufflin agrees, “but it would modestly improve the ability of associations to protect their interests.” The prospects for the legislation are uncertain, he says, noting that “it will attract the same opposition from the banking industry lobby that has defeated our super lien proposals.”

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