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Rhode Island Legislative Action Committee update - Frank Lombardi

September 06, 2019 - Owners Developers & Managers

H5129 Resale Certificates

The provision of the Rhode Island Condominium Act concerning Resale Certificates has been amended formally by the passing of H5129 which made it through both the House and the Senate and was formally signed into law by Governor Gina Raimondo on June 28, 2019. Now associations will face financial penalties if they do not provide unit owners with Resale Certificates within ten days of a unit owner's written request. Specifically, RIGL 34-36.1-4.09 Resale of Units Section (b) was amended to add subsection (ii), which states as follows:

"In addition to those remedies as set forth in 34-36.1-4.17*, any association that fails to provide a certificate to the unit owner within ten (10) days of a written request by the unit owner is subject to a civil penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) per occurrence."

In Rhode Island, Resale Certificates are somewhat similar to 6(d) Certificates in Massachusetts, both of which are designed to provide a potential purchaser of a unit with detailed financial information such as the amount of assessments owed on the soon to be purchased unit, the association's operating and reserve budgets, potential litigation or claims etc., all of which hopefully would provide a snapshot of the economic health of the association and in some instances the condition of the unit and or the appurtenant limited common elements i.e. decks or patios in general, and which would assist the purchaser in deciding whether or not buying this particular unit and joining this particular community association makes financial sense.

Naturally, not having that information could prevent or otherwise materially and detrimentally affect the sale. Moreover, if a unit has several months of assessments owed i.e. \$1,000.00 and a certificate is not provided, then the purchaser would not be responsible for paying that amount post-closing.

CAI's RI LAC argued that this new provision was not needed as there are already protections in place via other provisions of 4.09 as well as 4.17 of the Act sufficient to have association's comply with the existing 10 day rule, not to mention that the association would stand to lose its ability to collect any assessment arrearage for the unit. RIGL 34-36.1-4.17 allows for anyone covered by the RI Condominium Act, i.e. a unit owner, with a claim for appropriate judicial relief, including but not limited to punitive damages for willful failure to comply with the Act, and reasonable attorney's fees where appropriate. Apparently, though, the legislature wanted to make the message crystal clear to

non-complying managers and boards by setting specific fines for violations, and was willing to live with a bit of overkill here.

H6216 Association Records

Another related bill, H6216, imposes a thirty day time limit by which an association must provide unit owners with financial and other records of the condominium. As of this writing, the bill passed both the Senate and the House and is on the governor's desk. The LAC anticipates that the governor will sign it. The amended provision of the RI Condominium Act is 34-36.1-3.18 Association Records now states as follows (the amended language in italics):

"The association shall keep financial records sufficiently detailed to enable the association to comply with 34-36.1- 4.09 (see above-resale of units). All financial and other records shall be made reasonably available for examination within thirty (30) days of a request by any unit owner and his or her authorized agent".

The LAC did not oppose this bill as the 30 day timeline provides some guidance for managers and boards when handling records requests, and did not tinker with the "shall be made reasonably available" language, which keeps in place a modicum of protection for associations in regard to record keeping, unit owner privacy, competitive bidding procedures/negotiations, and the like.

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