



CELEBRATING
55 YEARS

nerej

CAI president's message: The new balancing act

August 07, 2020 - Owners Developers & Managers



Edmund Allcock

We have all heard the term the “new normal” ad nauseam. The pandemic has placed our governmental leaders and our industry with a new balancing act. The new balancing act presented by the pandemic is about protecting public health versus diminished individual freedoms. Most condominiums have handled the dilemma well, and as best they can, and most residents and owners have reacted well.

The same cannot be said for all of our government leaders and there are lessons to be learned. It seems that the reaction to the pandemic has resulted in rushed and poor decision making and insinuation of personal ideology.

While the Federal government’s PPP program was well intentioned, the program was clearly rushed out and the reports are that many of the small businesses that it was intended to protect got steamrolled by larger businesses. The lesson is deliberation and attention to detail. The condominium association or property manager that does not carefully plan out and document their decisions and their ultimate intention may wind up with wholly unintended consequences.

Another example would be moratoriums on evictions, foreclosures and collections. Massachusetts is one of 28 States that has enacted some sort of eviction and foreclosure moratorium. In Massachusetts the moratorium was enacted in March and is currently extended through October. In conjunction with that moratorium, back in March, the Massachusetts Attorney General issued a 90 day collection moratorium on everything else other than evictions and foreclosures. Both moratoriums prohibited the sending of any collection notices and also prohibited the filing of almost all court cases to collect rent or mortgage payments.

The Attorney General’s collection moratorium was challenged in Federal Court and found to be unconstitutional as it violated the First Amendment to the United States Constitution’s guarantee of freedom of speech (i.e. collection notices sent in the mail) as well as the guaranteed right of every citizen to access the court system. Currently, there is a similar constitutional challenge in the Massachusetts State Court to the eviction moratorium.

As Judge Richard Stearns said in his recent decision declaring the Massachusetts collection moratorium unconstitutional:

The mere existence of an emergency does not increase constitutional power nor diminish constitutional restrictions”....“it is not permissible for any department of the government to change a Constitution or declare it changed because it appears ill adapted to a new state of things such as the emergencies created by COVID-19”.

This new balancing act is indeed tricky. The best leaders and decision makers excel during an emergency. Our condominium industry and leaders will always remain balanced on the beam if our

decisions are deliberate, measured and legal no matter the emergency.

Edmund Allcock, Esq. is the 2020 CAINE chapter president and 2020 president of the CAI College of Community Association Lawyers (CCAL) board of governors and is a partner with the law firm Marcus, Errico, Emmer & Brooks, P.C. in Braintree, Mass.

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