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CAI State and Federal Legislative Update for 2021

July 02, 2021 - Owners Developers & Managers

Boston, MA CAI Legislative Action Committees (LACs) work to effect change and monitor state as well as federal legislation that will impact communities around New England.

Maine Legislative Action Committee (MELAC)

By Charles Katz-Leavy, Esq., chair MELAC

Earlier this year MELAC delegates testified in favor of LD 683 An Act to allow Maine nonprofit corporations to hold meetings electronically. While it is anticipated that the bill will eventually pass, at the time of this writing the bill's status is still pending. The MELAC will closely monitor the bill's progress in the coming weeks.

At the May meeting of the MELAC, delegates agreed to propose a bill clarifying the definition of "use" in 33 MRS Sec. 1602-117. The proposal would also lower the threshold for increasing the number of units, changing unit boundaries, altering allocated interests, etc. from unanimous to 80% or 90%.

Massachusetts Legislative Action Committee (MALAC)

By Matthew Gaines, Esq., co-chair MALAC

Of the approximately 7,000 bills filed for the 2021/2022 session, the MALAC is tracking over 40 bills which would directly or indirectly impact condominium associations if passed. As only one or two of these bills has even had a hearing as of the writing of this update, it is far too early in this two-year legislative cycle to predict the likelihood that any of the bills will become law.

One bill the MALAC is particularly interested in this session is H. 1416, An Act relative to electronic meetings and voting in condominiums. The idea for this proposal arose from the struggles many Massachusetts condominiums faced during the past year with respect to holding unit owner meetings and elections due to COVID-19. Many condominium documents specify that unit owner meetings and voting must be in person at a meeting; obviously, this was not possible for over a year. As a result, the MALAC drafted legislation which will enable condominiums to hold unit owner meetings via remote electronic means as well as to permit owners to vote remotely and electronically. The MALAC hopes the legislators see the need to pass this legislation, which will enable more unit owners to participate in the governance of condominiums.

Other measures the MALAC will be following during this session is a bill pertaining to a “right to dry”, and a bill prohibiting the misrepresentation of service animals. While both bills were filed in the 2019/2020 session, and failed to pass, perhaps their fate will be different this time around.

In addition, the MALAC will be closely watching, H. 3425, An Act relative to electric vehicle charging stations. This bill, as currently drafted, states that a condominium association may not prohibit or unreasonably restrict an owner from installing an electric vehicle charging station in areas to which an owner has exclusive use, or on the common areas, so long as the station is within a reasonable distance of the owner’s dedicated parking space. Similar legislation has been in place in the City of Boston for a few years, and this bill would apply the requirement statewide.

New Hampshire Legislative Action Committee (NHLAC)

By Gary Daddario, Esq., CCAL, Chair NHLAC

I begin with a quick review of this session’s notable bills and their current status:

1. House Bill 462- sought an explicit foreclosure power for associations after obtaining court judgments in lien enforcement cases. The procedure would be the same as for mortgage holders. This bill was proposed by the NHLAC and we believe it is necessary so that associations can have the benefit of meaningful relief in their long-term delinquency cases. Unfortunately, notwithstanding our support at the public hearings and even with a bank president offering testimony as to how the condominium foreclosure remedy has not harmed the banking/lending industry in Massachusetts, the Commerce Committee deemed it “inexpedient to legislate” (ITL).
2. House Bill 466- requires recusal from votes to award a contract of any unit owner who has an interest in a business that may perform contractual work for an association. The NHLAC had issues with this bill, including that it assumed unit owners vote on contracts (a role typically reserved for board members) and assumed that an owner with an interest in a business would have a conflict of interest (as opposed to motivation to excel) when it came to working for their own association. This bill has also been deemed “inexpedient to legislate”.
3. House Bill 313- sought to prohibit associations from adopting or enforcing restrictions against “ham” radio antennae, their supporting structures and related equipment. The NHLAC found this bill somewhat unfair because it negated, by statute, what would otherwise be the restrictions of the governing documents, and the NHLAC believes that potential buyers should base their decision to purchase a condominium, at least in part, on whether they are prepared to live with the association’s restrictions. This bill has also been deemed “inexpedient to legislate”.
4. House Bill 336 - sought to create a condominium dispute resolution board operated by the State. The NHLAC had concerns about a lack of procedural due process for associations, some of the details of the board’s operation and the costs to both the State and the associations of New Hampshire. This bill has also been deemed “inexpedient to legislate”.

5. House Bill 358 - sought to prohibit associations from requiring more than a simple majority vote to approve a unit owner's solar energy system. The NHLAC had concerns similar to those expressed with regard to House Bill 313 (discussed at Item 3 above). There were also practical concerns about damage to common areas and the limitations of physical space in places like the roof if many unit owners wanted to install such equipment. There were also issues surrounding the fate of such equipment when a unit owner moves away. This bill has also been deemed "inexpedient to legislate".

Next, some insight as to the legislative happenings of the foreseeable future:

1. The condominium foreclosure remedy (recently HB 462) is something the NHLAC believes is important to the financial futures of associations in the granite state. Accordingly, when allowed in a future session, we will introduce this bill again and do our best to get it passed.

2. The interest groups behind the "solar" bill (recently HB358) and the "ham radio" bill (recently HB 313) are committed to their causes. Combined with the fact that these bills gained some early traction, we expect them to be re-introduced in future sessions.

3. The "dispute resolution board" bill (recently HB336) has the passionate support of the legislators who sponsor it. This bill has been introduced before and will likely be seen again.

Rhode Island Legislative Action Committee (RILAC)

By Janet Aronson, Esq. co-chair RILAC

Although we have been emerging slowly from the impacts of COVID, the Rhode Island legislative session rapidly went into full swing. At the time this update was written, the RILAC has been battling pending legislation which seeks to cap the fee for a Resale Certificate at \$125.00.

This bill puts the burden of the expenses associated with the issuance of a Resale Certificate onto the association and the underlying owners. The bill is being pushed into law by the Rhode Island Association of Realtors which appears to have no understanding of how a condominium association works and who pays for the expenses. The Realtors rhetoric about the bill is simply not accurate as they conclude that the fees for the Resale Certificate are "cash cows" for associations. As a further basis for the bill, the Rhode Island Realtors Association claims that condominium fees have risen over the past decade. While monthly fees have likely increased over the years, it is because the costs for insurance, utilities, trash removal and other necessary condominium association expenses have likewise increased.

The increase in condominium fees is based on a budget of anticipated expenses and not some arbitrary amount. The efforts of the Rhode Island Realtors demonstrate a lack of understanding regarding the operation of a condominium. At this time, despite the efforts of the RILAC delegates as well as the many Rhode Island condominium board members and property managers that have

opposed the legislation, it is likely to become law. Should it pass into law, the RILAC will need to contemplate presenting legislation in the next legislative session to address the artificially low fee cap. We encourage Rhode Island condominium associations to join forces and be ready to support these efforts that will preserve and promote the interests of associations and all unit owners.

FEDERAL LEGISLATIVE UPDATE

The Biden Administration, Congress, and Community Associations

By C. Scott Canady, CAI's Federal Advocate, Tambala Strategies

The transition to a new presidential administration and a closely divided Congress has not slowed the pace of the federal government in 2021. In March, President Biden's signature COVID-19 relief plan, the American Rescue Plan Act, became law. The president and Congress have moved on to consideration of the American Jobs Plan, a proposal to rebuild the nation's infrastructure. As federal policymakers discuss these and other proposals, CAI advocates are working to advance key CAI priorities.

CAI advocates secured an important advocacy win in the American Rescue Plan Act with the establishment of the Homeowner Assistance Fund. CAI advocates are now pressing members of Congress to include community association disaster relief legislation in the American Jobs Plan. Other issues affecting community associations under discussion by federal policymakers are being closely monitored, including federal fair housing and debt collection policy.

Homeowner Assistance Fund

The Homeowner Assistance Fund helps homeowners who lost jobs and income due to the COVID-19 pandemic catch up on missed mortgage and housing payments. The \$9.9 billion national program is managed by the U.S. Treasury Department and is administered by state housing finance agencies.

CAI advocates secured language in the American Rescue Plan Act to include delinquent community association assessments as housing costs eligible to be paid through the Homeowner Assistance Fund. This marks the first time the federal government has expressly elevated delinquent community association assessments to the same level of importance as delinquent mortgage payments in emergency housing assistance legislation.

The Homeowner Assistance Fund has already disbursed more than \$700 million to state housing finance agencies to help eligible homeowners avoid foreclosure. All community association homeowners with assessment delinquencies due to COVID-19 job and income losses should be encouraged to contact their state housing finance agency to determine if they are eligible for relief through the Homeowner Assistance Fund.

Recovering from Natural Disasters

Community associations are often overlooked in natural disaster recovery activities because the Federal Emergency Management Agency (FEMA) takes the view that disaster recovery is the association's responsibility. This forces community association homeowners to pay disaster recovery costs that homeowners in non-association neighborhoods do not pay.

The Disaster Assistance Equity Act will require FEMA to provide community association homeowners the same disaster recovery assistance as non-association homeowners. Under this legislation, if a local government determines disaster debris in a community association is a threat to the life, health, and safety of residents, FEMA will be required to reimburse the local government's costs to remove these threats as is currently done for non-association neighborhoods. The legislation will also allow condominium and housing cooperative homeowners to use FEMA disaster assistance to repair building roofs and other critical building infrastructure in the same manner as single-family homeowners may under FEMA current rules.

U.S. Rep. Jerry Nadler of New York is leading efforts to pass the Disaster Assistance Equity Act. CAI advocates expect Rep. Nadler will be joined by several Republican and Democrat representatives when the Disaster Assistance Equity Act is introduced in the U.S. House of Representatives in June. Rep. Nadler has indicated he will work to include the Disaster Assistance Equity Act in the American Jobs Plan Act, which Congress will consider this summer.

Federal Issues on the Horizon

CAI advocates are monitoring other areas of federal policy that affect community associations. President Biden has placed a renewed emphasis on fair housing enforcement and addressing the nation's housing shortage. Additionally, legislation amending the Fair Debt Collection Practices Act has been approved by the U.S. House of Representatives.

At President Biden's direction, the 2015 Affirmatively Furthering Fair Housing (AFFH) regulation requiring state and local governments to improve fair housing access in communities has been reinstated. The president is also supporting a review of local government zoning policy to determine how zoning rules have contributed to the national housing shortage, estimated by federal mortgage finance company Freddie Mac to be 3.8 million homes.

In May, the U.S. House of Representatives narrowly approved H.R. 2457, the Comprehensive Debt Collection Improvement Act. CAI is monitoring one provision of the legislation that overturns the unanimous opinion of the Supreme Court in *Obduskey v. McCarthy & Holthus, LLP.*, that governs how the Fair Debt Collection Practices Act applies to non-judicial foreclosures. CAI supported the Supreme Court's opinion in the *Obduskey* case, which provided clarity for community association attorneys involved in non-judicial foreclosure actions. H.R. 2457 is controversial, and the U.S. Senate is unlikely to approve the legislation.