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New England state CAI-LACs - The status of bills to-date

April 07, 2023 - Owners Developers & Managers



Wellseley, MA CAI Legislative Action Committees (LACs) work to affect change and monitor state legislation that will impact communities around New England. In 2023, LAC delegates have seen active legislative sessions that include several bills of interest to community associations in their states.

Charles Katz-Leavy
Chair, MELAC

Maine Legislative Action Committee (MELAC)

Delegates on the Maine LAC are working on several initiatives in this legislative session including the following:

1. Urging the Maine legislature to look at adoption of the Uniform Common Interest Ownership Act (UCIOA). If the proposed bill passes, it would establish a study committee to recommend legislation for consideration in 2024.
2. Seeking to reduce the statutory threshold for certain types of declaration amendments from unanimous (100%) to 90%. The proposal would make it easier for associations to modify the allocated interests, create additional units, etc. when 90%+ of the owners are in agreement. The proposed legislation also looks to more clearly define what types of use restrictions are covered by this section of the Act.
3. Suggesting language to better define and implement the statute of limitations for statutory warranties for the common elements with the goal to come up with a new framework that would more clearly define the warranty periods and obligations of the parties.

Matthew Gaines
Co-Chair, MALAC

Massachusetts Legislative Action Committee (MALAC)

The MALAC is tracking more than 40 bills which would directly or indirectly impact condominium associations if passed. Most of these bills are refiles from prior legislative sessions, however, there are a few new bills of note.

Condominium Owners' Rights Act (CORA): One of the new bills filed this session that the MALAC will be watching with keen interest is .t relative to the Condominium Owners' Rights Act (CORA). This bill proposes to make several significant changes to the Massachusetts Condominium Act. For example, the bill proposes to add language to the statute requiring that property managers respond

to any unit owner's request for records within five (5) business days, and that a failure to timely produce the documents shall result in a \$100 fine payable to the unit owner, with each day of non-compliance constituting a separate violation. In addition, the bill proposes to greatly expand the list of records to which unit owners are entitled to inspect, including adding to the list engineering reports and legal opinion letters. Further, the bill proposes to add a new section to the statute which requires that condominium documents contain an internal dispute resolution procedure to address disputes between the board and unit owners.

Installation of Electric Vehicle Charging Stations: Another bill that the MALAC will have its eyes on this session is an act relative to the installation of electric vehicle charging stations by condominium owners. This proposal would prohibit condominium associations from prohibiting or unreasonably restricting a unit owner from installing an electric vehicle charging station in an owner's exclusive use parking spaces or other common areas, subject to certain requirements noted in the bill.

Solar Energy Access: A third bill that has drawn the attention of the MALAC is an act ensuring solar energy access. This bill proposes to substantially amend existing law by establishing that no homeowners or condominium association may forbid or unreasonably restrict the installation or use of a solar energy system.

Electronic Meetings & Voting: Finally, the MALAC has refiled legislation relative to electronic meetings and voting in condominium.

Gary Daddario
Chair NHLAC

New Hampshire Legislative Action Committee (NHLAC)

Once again, this legislative session contains multiple bills directly impacting condominiums.

Independent Review of Financials: This year, House Bill 239 would require all associations to obtain an independent review of their financials at least once every three years and to provide copies of the same to unit owners. In addition, the bill also includes a requirement that financial information requested by a unit owner be available to them within 15 days.

Votes in Homeowners' Associations: House Bill 42-FN applies to New Hampshire homeowners' associations and includes a provision which states that if more than 50% of the associations' votes are acquired by one person (after developer control has been terminated) then a 2/3 majority vote is required in order to amend bylaws, budgets, or property management services. The bill also provides that no such association shall be dissolved absent a hearing before the planning board of the municipality in which it is located.

Condominium Conversion: House Bill 236 provides that a condominium conversion (changing an existing property to the condominium form of ownership) shall not be considered a “subdivision” for purposes of municipal regulations on items like water and sewage disposal. This is provided the conversion does not result in new, separate building lots.

Statutory Power of Foreclosure: House Bill 178 would provide a statutory power of foreclosure law for condominiums. If you have anything to do with condominiums in New Hampshire, you know that hard-core delinquency cases present a serious problem. When these cases go long-term, present statutory law is short on remedies that can force the situation to a final resolution.

Accelerating fees against an owner who isn't paying accomplishes nothing. Terminating services against an owner who lives elsewhere also tends to fail as a final resolution. Even when associations schedule a sheriff sale of a delinquent unit, the results can be disappointing. The fact that such a sale does not extinguish the first mortgage on a unit combined with the fact that the subject unit owner is entitled to a one-year right of redemption has a serious chilling effect on the bidding, if any, that occurs at these sales.

As is consistently the case, the New Hampshire banking lobby appeared at the first public hearing to oppose this bill. Concerns included: lack of notice to mortgagees; lack of judicial involvement; foreclosures for insignificant balances; expansion of the priority lien; and negative impacts on the market when mortgages for condominiums become “riskier”.

The NHLAC has responded by expressing willingness to include redundant language in the foreclosure bill that would: require mortgagees to get notice; require the foreclosure to be on a judicial judgment; set minimum balance due standards for foreclosures; and make clear that the priority lien does not expand in a foreclosure scenario. As for market impacts, the NHLAC has cited to 20 other states and 2 jurisdictions of the United States in which condominiums enjoy a priority lien and can foreclose on it when necessary. In these areas, we are unaware of any significant market problems and, in fact, we are aware that FHA and the like are still backing mortgages in these jurisdictions.

As of this writing, the legislature retained House Bill 178, which means that it will be taken up again by early next year. In the meantime, the NHLAC and the New Hampshire banking lobby have agreed to meet to work on the language of the bill and to strive towards creating a compromise that will afford associations necessary protection while not harming lenders holding first mortgages on condominium units.

Janet Aronson
Co-Chair, RILAC

Rhode Island Legislative Action Committee (RILAC)

Several bills have been submitted on behalf of the RILAC that will serve to improve the administration of Rhode Island condominiums. They include submission of bills to address the following:

Use of technology for meetings and voting. This bill is intended to allow associations the ability to conduct meetings and voting through alternative measures; such as mail-in ballots and electronic voting or meetings.

Recording requirements for by-laws and rules and regulations. This bill will require that associations of more than four units have their by-laws, amendments and rules and regulations recorded with the Department of Land Evidence Records.

Alternative approval process for lender consent. In instances when condominium documents require the consent of lenders, this bill allows the association to follow a process to seek lender consent by mailing certified return receipt mail and first class mail to the lender of record. If no objection is received within sixty (60) days following the mailing, then the lender has been deemed to consent to the action or request. The passage of this bill will improve the ability of an association to accomplish a vote or act that must be approved by lenders.

In addition to the above, the RILAC is supporting a bill that will mandate that the unit owner insurance policy be primary for coverage up to the master policy deductible for condominiums created prior to July 1982 and subject to the Rhode Island Condominium Ownership Act. This bill will accomplish the same requirement as established by the 2022 legislation for condominiums created after July 1982 and subject to the Rhode Island Condominium Act.

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