**NEW HAMPSHIRE**

**LEGISLATIVE UPDATE DECEMBER 2018**

An exception to the ‘limbo’ we identified, New Hampshire lawmakers went back to work in August and the New Hampshire Legislative Action Committee (NHLAC) has been hard at work, as well. The committee’s priority again this 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 are, 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.”