**MASSACHUSETTS LAC Update**

**March 2019**

“A surprising flurry of year-end activity” produced welcome progress on a long-time legislative priority for the Massachusetts Legislative Action Committee (MALAC), committee’s chair, Matthew Gaines, a partner in Marcus, Errico, Emmer & Brooks, explains. Toward the end of an informal post-Thanksgiving session, the House approved a measure revising the deadlines under the Statues of Limitation and Repose, as they apply to condominium construction defect suits. Under the revised language, the statutory countdown will not begin until after a developer transfers control of a community to the association.

Although the Senate did not take up the measure before last year’s legislative session ended, passage by the House represents “huge progress,” Gaines says. Of the more than 6,000 bills introduced each year, only “a handful” win approval, he notes. Most are derailed by the sheer volume of bills or become entangled in unrelated tensions between the House and the Senate. That has been the case with this measure in the past, according to Gaines, who says, “We haven’t seen any opposition to it.”

There has been significant opposition to another MALAC-backed measure prohibiting “poison pill” language in condominium declarations that block construction defect suits against developers. That bill died again this year without receiving a vote in either the House or the Senate. The committee plans to refile both this bill and the statute of limitations measure this year, Gaines says.

**Short Term Rentals**

Two bills the MALAC had been watching last year were among those winning approval during the informal session. One imposes taxation and registration requirements on short-term rentals in the state. Beginning in July of this year, owners who rent their homes for short periods (less than 31 days) will have to register the properties with the state, obtain $1 million in insurance, and pay the same tax applied to hotels, motels and bed-and-breakfasts.

The MALAC didn’t oppose this measure but was monitoring it, Gaines explains, to ensure that it did not restrict the authority of condominium associations to restrict or bar short-term rentals. Not only is there no such restriction in the bill, he reports, lawmakers added language stating that nothing in the measure *shall confer the right to lease, sublease or otherwise offer short-term rental if prohibited by an HOA agreement or any other covenant restriction or requirement.* “We were very pleased to see that,” Gaines says. Lawmakers also added language exempting properties rented for 14 days or less annually at the behest of Gov. Charlie Baker, who had refused to sign the bill without that carve-out.

The registration requirement may actually help association boards enforce bans on short-term rentals by creating a means to identify them, Gaines notes. It may also provide something of an enforcement weapon in communities that lack the votes to bar the rentals, he says. “Boards can insist that owners renting their units produce their registration certificate,” he notes. Owners who haven’t registered their units are violating the state law, which, Gaines explains, is “an automatic violation of the condominium documents.”

The Legislature also approved another measure with more direct implications for condominiums, prohibiting associations from barring or unreasonably restricting the ability of owners to install charging stations for electric vehicles “on or in areas subject to separate interest,” in areas where owners have exclusive use or a separate interest, or in common areas, as long as the station is located “within a reasonable distance of a dedicated parking space.”

This means associations do not have the absolute right they have claimed to approve or reject a charging station, Gaines explains. “If they deny a request, they must have a good reason for that decision.”

This was a “home rule” petition submitted by Boston, which means it applies only to condominiums located there, Gaines points out. “But it is certainly possible we will see a more general bill applying statewide at some point.” Given that possibility, he suggests, association boards should consider adopting policies detailing their requirements for charging stations, clarifying, for example, that owners are responsible for maintaining the equipment and for paying for the electricity related to it. It is better for boards to be proactive, he says, than to respond in “a seat-of-the-pants” way when applications are submitted.