**NH Condo Law Gives Owners a Voice in the Budget Process**

***By Gary M. Daddario***

In August 2016, HB 353 became law. The change in the law did not reduce the rights of condo owners in the budgetary process, but rather gives owners a voice in the process by requiring that condo boards approve a budget, provide the budget to owners and schedule a budget meeting. In addition, the law further provides for the budget to be subject to rejection if two-thirds of the community votes to reject it. In so doing, the law recognizes that condo boards are charged with the responsibility for administering the affairs of the condo but also allows unit owners a means of rejecting a board’s financial plan if the majority of owners believe it is not in the best interest of the association. As it stands today, the amended Condominium Act (the “Act”) appropriately provides for a presumption that a board’s budget will pass but equally important allows for it to be rejected if the majority of the community is at odds with it. In other words, the present state of the law strikes an appropriate balance.

HB 160 proposes to undo these August 2016 changes and instead would require that the budget meeting be attended by 50% of the association in person or by proxy. It can be difficult, if not impossible, to reach 50% attendance at any given meeting. Thus, the mere inaction of owners (which ironically tends to occur when people are satisfied) would stymie the board’s efforts to pass a budget. In addition, if 50% of the community is in fact present for the budget meeting, HB 160 would provide that a simple majority vote would suffice to reject the budget. For example, in a 100-unit condo, the presence of 50 owners would allow the budget meeting to take place and the votes of 26 owners would successfully reject the budget. Thus, notwithstanding the Act’s explicit fiduciary duty upon condo board members and the condo board’s intimate knowledge of the association’s financial needs, 26 out of 100 owners could reject the board’s budget if HB 160 becomes law - thus giving less than a super minority (26%) of owners control over the budget.

By analogy, the state’s legislators pass the budget for the state. If New Hampshire residents truly believe that finances are being handled incorrectly, their option is to elect new representatives. This state legislative process is not unlike that in condos where owners can elect new board members and in addition under the Act currently have a right to reject a board’s budget by a two-thirds vote. While some may argue that the present threshold for rejecting the board’s budget is high, this standard is appropriate and well-suited to the situation since it is the board members who are charged under the Act with the fiduciary duty to operate the condo in the best interest of the whole. And, in addition the board members have the best working knowledge of the association’s present finances as well as future plans and needs. In a condo, board members who are also owners must balance condo maintenance and operating expenses with the association fees all condo owners pay. Sadly, every association contains a percentage of owners who, at any given moment, struggle financially and, as a result, oppose any increase in condominium fees for personal reasons. The board is in the best position to put forward a budget that balances fees and expenses.

Bills like HB 160 and others have the potential for unintended negative consequences as well. Each time the law imposes more legal requirements and greater challenges on being a volunteer board member, there is a percentage of these owner volunteers who choose to abandon the position as well as potential homeowner volunteer candidates who decide to never run for election to the board.

Consider that in the more than two years since the passage of HB 353 and the present statutory version of the budgetary process, proactive associations have amended their documents to adopt the new language while other associations are in the process of so amending their documents now. Is it necessary for the legislature to make the condominium budget process such a moving target? And is it fair to change a process that currently provides a voice to condo owners in the budget process?

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