**MASSACHUSETTS Legislative Action Committee (MALAC)**

***Reprinted from July 2018 Condo Media LAC Update Feature***

***Many Bills to Follow – Little Action to Report by Nena Groskind***

**“Poison Pill” and Construction Defects**

The Massachusetts Legislative Action Committee (MALAC) is supporting two measures this year and the prospects for both “are uncertain,” MALAC Chair Matthew Gaines, a partner in Marcus, Errico, Emmer & Brooks, PC, reports. Both bills target obstacles that impede the ability of condominium associations to sue developers. One would bar “poison pill” provisions developers insert in condominium governing documents, requiring a super majority of owners to approve litigation against the developer.

The state Supreme Judicial Court found that language in the documents of one condominium association to be unacceptable, but that decision “was limited to the facts in this case,” Gaines notes. But it’s not clear how broadly that principle would apply. “That’s why we need this statute, which would state that any provisions that require owner approval for litigation or that might impede an association’s ability to sue a developer violate public policy.”

The MALAC is also advocating a measure that would revise the statutes of limitation and repose as they apply to the timing of condominium defect suits. Under the current structure, a suit must be filed within three years of when defects are discovered (statute of limitations) or within 6 years after completion of the development (statue of repose), regardless of when the problems are identified.

“This is unfair to condominiums,” Gaines notes, because developers who maintain control for an extended period of time (in a phased development, for example), “can run out the clock. They control how association fees are spent,” Gaines notes, “and they aren’t going to sue themselves.”

Under the legislation the MALAC has proposed, neither of these statutory clocks would begin to tick until after the developer has relinquished control. Both this measure and the ‘poison pill’ bill were reported favorably by the Judiciary Committee and have been referred to the House Committee on Third Reading ─ typically, Gaines says, “the last stop” before going to the floor for a vote. “Some bills never move after that,” he points out. “We’re hoping that won’t happen with these.”