

Community Trends®



LEGISLATIVE UPDATE

CHRISTINE F. LI, ESQ., CCAL
PARTNER, GREENBAUM, ROWE, SMITH & DAVIS LLP.
LEGISLATIVE ACTION COMMITTEE CHAIR

Financial soundness is likely the greatest concern of a community association. All the top-flight amenities and operations in the world are worthless if the association does not have a history of operating in the black, with adequately funded reserve accounts in anticipation of replacing improvements approaching the end of their useful lives. The consistent adoption of budgets with operating expenses and reserves to shield the members of the association from the threat or reality of special assessments when a significant need arises is a priority.

Putting the theme of budgets and reserves into the legislative context, the statutes and regulations in New Jersey lend little guidance to budgeting by community associations. The New Jersey Condominium Act at N.J.S.A. 46:8B-14 includes as the duties of the Association the "assessment and collection of funds for common expenses and the payment thereof," the "maintenance of accounting records, in accordance with generally accepted accounting principles, open to inspection at reasonable times by unit owners," and then states two examples of what the records are to include. The powers of the association in the Condominium Act, at N.J.S.A. 46:8B-15, include the power to "levy and collect assessments duly made by the association for a share of common expenses or otherwise..." The Condominium Act only applies to properties subjected to a master deed, the contents of which are detailed in the Condominium Act. It does not apply to other planned communities such as those consisting of dwellings constructed upon subdivided lots.

The regulations promulgated pursuant to the Planned Real

Estate Development Full Disclosure Act ("PREDFDA") similarly give little direction. N.J.A.C. 5:26-4.2(8) discusses the proposed budget for the operation and maintenance of the common elements and facilities, including the amount to be set aside as reserves for the replacement of the common elements and the need for a letter of adequacy. N.J.A.C.

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5:26-8.7(a) captioned "Budgets" merely states that "[t]he association shall...prepare and adopt an operating budget which shall provide for any and all common expenses to be incurred during the year as well adequate reserves for repair and replacement of the common elements and facilities."

Remember that PREDFDA applies to sponsors and developers of condominiums and other planned real estate developments and governs the preparation of the initial budget prepared by the sponsor at the time of the formation of a community and while the sponsor is in control of the governing board. Budget preparation requirements are

generally determined by the governing documents of the community, the parameters established by previous budgets, and industry standards.

S-1586/A-2027. Several bills, with provisions protective of the financial, as well as other issues, have been introduced recently. One such bill, S-1586 was introduced on February 16, 2016. The synopsis of the bill is “[c]oncerns membership and management of homeowners association.” S-1586 adopts concepts from the Condominium Act, such as referring to common property as common elements, allocating to each of the owners a percentage interest in the common property. The bill attempts to interrelate its provisions with those of the Condominium Act with the stated purpose of increasing accountability to owners and creating transparency in the actions of associations. At times, the bill claims to supplement the provisions of the Condominium Act while, at other times, the provisions of the Condominium Act are being “inferred as equally applicable” to a homeowners association or a developer based on the “intent of the Legislature that all types of planned real estate development associations should have uniform powers, standards of operation, and protections for the property interests of homeowners.”

On the financial front, the bill details the owners’ entitlement to inspect the “business and financial records” of the association, and includes a more detailed definition of financial records than currently exists. The purpose of this writing is not to evaluate the proposed definition or any other aspects of the bill; rather, worthy of comment is the tenor of the bill. It describes the financial records which homeowners shall have the right to access as “presumptively non-confidential for purposes of disclosure to members of the association.” That global statement is supplemented with permission to a board “redact any clearly personal identifying information in association business or financial records, such as social security numbers, or personal addresses.”

While transparency is important, the bill needs to be reviewed critically and amended. On the financial front, the bill lacks clarity as to the information which must be

disseminated. The adoption of any legislation also needs to take into consideration that the exposure to which our boards, property managers and other professionals are subjected to under other laws such as the Fair Debt Collections Practices Act.

Jersey City Ordinances. While the LAC concentrates on bills introduced in Trenton, two ordinances were introduced on April 27, 2016 which, as of this writing, remain under consideration by the Council in Jersey City. The ordinances would apply to various businesses, including condominiums with 50 or more units.

Ordinance #16.081 would establish a minimum 30-hour work week for building service employees in multifamily communities. Service employees include janitors, security officers, groundskeepers, doorpersons, building cleaners, porters, handypersons, superintendents, elevator operators, window cleaners, stationary firepersons or building engineers.

Ordinance #16.082 requires certain employers of non-managerial service employees to follow certain procedures when a property is sold, control is transitioned from one entity to another, or a service contract is terminated or cancelled. Any successor firm for building services contracts must retain the employees of the terminated firm for at least 90 days. At the end of this 90 day period, the employer must provide a written evaluation of the employee, and must retain that employee if the employee receives a satisfactory evaluation.

Certainly there are interests deserving of the protection proposed by these ordinances; however, if adopted, these ordinances will significantly reduce the discretion which associations now have in engaging service employees. CAI-NJ has joined with several industry associations in opposing these ordinances. The LAC is following the ordinances in light of their inevitable financial and operational impact upon property managers and community associations.

H.R. 1301. In closing, a compromise has been reached on H.R. 1301, which would have prohibited community associations from imposing a blanket prohibition on

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the installation of ham radio antennas. CAI has advocated for the ability to impose such a prohibition in the context of the governance of community associations; however, such prohibitions were opposed by the ham radio lobby intent on ensuring amateur radio communications in the event of a local disaster.

As part of the compromise, antennas are not allowed to be installed on common property. A community association may adopt and enforce reasonable written rules concerning the installation, placement, and aesthetic impact of exterior antennas. Notification and prior approval of antenna installations is required. ■