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LEGISLATIVE UPDATE

GEORGE GREATREX, ESQ.
PARTNER, HILL WALLACK LLP
LEGISLATIVE ACTION COMMITTEE CHAIR

Introduction... By George Greatrex, Esq.

"As we have previously reported, last summer a bill was signed into law revising the DCA's inspection requirements for multiple dwellings in New Jersey. I think it's fair to say these required periodic inspections cause much frustration and aggravation in our industry. Many thanks to LAC member Mike Pesce for bringing clarity to this process in his article that appears below. He provides an overview of how the new law revised the 5-year inspection program, its impact on common interest communities, and how to determine if some of the units in your association may be exempted from the inspection requirement."

DEPARTMENT OF COMMUNITY AFFAIRS CYCLICAL INSPECTION LAW AMENDED

By Michael Pesce, PCAM
President, Associa Community Management Corp., AAMC



The New Jersey Department of Community Affairs (the "DCA") has long inspected multiple dwellings, through their Bureau of Housing Inspection (the "BHI"), all pursuant to the Hotel and Multiple Dwelling Act (NJS 55:13A-1 et seq), which was first adopted in 1967. This law was initially intended to address maintenance concerns in hotels and rental apartment buildings. However, it has long been settled that the law also applies to association owned properties and units, with some exceptions, described below. The theory is that even though owners own their units, the state has jurisdiction over the common elements, and how owners maintain the interior of their units directly affects the safety of their neighbors.

Until very recently, the law called for the BHI to inspect applicable multiple dwellings every five (5) years, with an initial inspection, and subsequent reinspections for noted violations

not abated after the initial. Fines also accompany reinspection of unabated items. On August 5, 2019 this longstanding law was amended in a significant way. As originally introduced in 2018, this proposed amendment called for reinspections to occur every two (2) rather than five (5) years, and for obvious reasons, was strongly opposed by CAI and other affected industries. Through a series of negotiations, the final result of S1150/A5041 was not only no longer objectionable, but ultimately, an improvement of the law for well-maintained associations and properties.

Per the new law, multiple dwellings are now inspected in three (3) tiers, as follows:

1. For those properties with no violations at the initial inspection, or where all noted violations are abated by the first reinspection, the following cyclical inspection shall occur seven (7) years later;

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2. For those properties where violations are not abated until the second or third reinspection, the following cyclical inspection shall occur five (5) years later (the same as at present);
3. For those properties where the initially noted violations are not abated by the third reinspection or thereafter, the following cyclical inspection shall occur two (2) years later.

As a result, the new law seeks to reward the best maintained properties, by extending their inspections to every seven (7) years, while punishing poorly maintained properties with inspections every two (2) years. Those properties falling in-between shall continue to be inspected every five (5) years.

Several other comments may be helpful on this inspection process. First, there are fees charged by the DCA for these inspections, on a sliding scale per unit, based on the number of units (see NJS 55:13A-13(b)). These fees are not insignificant and should be budgeted for by affected associations. For example, a 100-unit association would pay a fee of \$1,644, while a 500 unit property would be assessed \$6,444, assuming no fines or reinspections, which incur additional fees.

Second, the law has long provided for the DCA to adopt standards for self reinspection by condominium associations which are at least 80% owner occupied (see NJS 55:13A-13(c)). To my knowledge, no such standards have ever been established, and CAI long ago determined that assuming this inspection obligation by individual associations would be a liability not worth taking.

That same section, NJS 55:13A-13(c), provides that if the inspection reveals ".....a consistent pattern of compliance with the maintenance standards... in at least 20% of the units in a dwelling or project," then the inspection may cut short the reinspection and charge the fee only on the basis of the units inspected. Like the self inspection clause, I have never seen this process implemented.

Finally, the law has not and does not apply to single family detached dwellings, even within an association, as they are not part of a multiple dwelling. In addition, the definition of multiple dwelling also excludes condominium and certain townhouse structures which satisfy the following construction and occupancy criteria (see NJS 5:13A-3K(2)), as follows:

(2) a building section containing not more than four dwelling units, provided the building has at least two exterior walls unattached to any adjoining building section and the dwelling units are separated exclusively by walls of such fire-resistant rating as comports with the "State Uniform Construction Code Act," P.L. 1975, c.217 (C.52:27D-119 et seq.) at the time of their construction or with a rating as shall be established by the bureau in conformity with recognized standards and the building is held under a condominium or cooperative form of ownership, or by a mutual housing corporation, provided that if any units within such a building section are not occupied by an owner of the unit, then that unit and the common areas within that building section shall not be exempted from the definition of a multiple dwelling for the purposes P.L. 1967, c.76 (C.55:13A-1 et seq.). A condominium association, or a cooperative or mutual housing corporation shall provide the bureau with any information necessary to justify an exemption for a dwelling unit pursuant to this paragraph;

In my experience, the construction determination requires the input and confirmation of an engineer or architect. An association seeking such an exemption is advised to apply for it before the notice of inspection is received, because once received, it is likely too late to affect that inspection. In addition, the exemption is intended only for building sections(undefined) that are owner occupied. However, for associations with low tenant populations, this exemption could avoid both inconvenience and expense.

Associations receiving notice of an impending DCA inspection are well advised to speak to their management and counsel, as the timeframes for compliance are exacting, and noncompliance can result in substantial penalties. At the end of an inspection, the Association receives a Certificate of Inspection, oftentimes called a "green card" in practice. The original should be maintained by the Association in a safe place, while the statute calls for a copy to be posted on the property. ■

Mike Pesce, PCAM is President of Associa Community Management Corp., AAMC, a long-standing member of CAHJ, which he has provided years of service to, and is the current Secretary of our NJ-LAC.