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2010 D.C. and Maryland Legislative Update

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2010 DC Legislation

This past year, the D.C. Council did not take much action that directly affects communities in the District of Columbia. However, the Council did enact a couple of laws that will impact the operations of communities in the District tangentially.

In December 2009, the D.C. Council amended the Smoke Detector Act of 1978. Under the amended act, a fire alarm notice must be given to residents and posted in the common areas of the building containing information regarding operation of the fire alarm and its connectivity with smoke detectors and the D.C. emergency response system. Additionally, the building must have a fire safety plan. Also, if 3% or more of the building's occupants are non-English proficient, the notice must be provided in the language of such population to comply with the Language Access Act of 2004.

Furthermore, under the changes, if the building is a high rise (defined as having occupied floors more than 75 feet above street level), the building must also prepare and maintain an evacuation plan, and conduct fire drills once a year. Therefore, all large-scale condominiums and cooperatives in D.C. are now required to comply with these changes to the Smoke Detector Act.

Additionally, the D.C. Council passed the Cooperative Housing Association Economic Interest Recordation Tax Emergency Amendment Act of 2009. Under this act, as of October 1, 2009, the District has imposed transfer and recordation taxes upon the grant, transfer or assignment of a proprietary leasehold or like interest in a cooperative unit. If the taxes are not collected and paid, the city has the right to collect the taxes directly from the cooperative housing association.

We anticipate significant changes to D.C. Condominium Act in the foreseeable future. The D.C. Legislative Action Committee of the local chapter of the Community Associations Institute is proposing a number of amendments to the D.C. Condominium Act regarding mortgagee consent for amending the condominium instruments, open meetings, electronic voting, access to records, and warranty bond requirements. We will continue to monitor the developments of these proposed amendments and update clients and our fellow industry professionals accordingly.

2010 Maryland Legislation

Changes Which Apply to Condominiums and Homeowners Associations

The requirements for fidelity insurance were tweaked in this last legislative session. The law now permits associations to obtain a fidelity bond, instead of insurance and clarifies that the requirement to have fidelity insurance or a bond does not apply to associations with less than four units/lots or associations where 3 months of gross annual assessments totals less than \$2,500.00.

In light of the massive amount of lender foreclosures, the General Assembly has added new procedures for all foreclosure actions, including lien foreclosure actions filed by community associations. These changes proscribe additional documents that must be sent to an owner and/or filed with the court with the lawsuit. These include an application to the owner to complete for “loss mitigation,” information regarding the foreclosure process in general and options for mediation, and an affidavit with details explaining why the parties have been unable to resolve the outstanding balance prior to foreclosure. In addition, there is an additional charge of \$300.00 that must be paid in addition to all of the other filing and service charges to defray the costs of mediation.

Finally, the General Assembly broadened the definition of nuisance in community associations to include using property for prostitution in addition to the current provisions regarding the distribution of drugs.

Changes Which Apply Only to Condominium Associations

The General Assembly adopted legislation changing the date when the developer’s warranty period for common elements starts to run. Currently, the law states that the warranty starts on the date that the first unit is conveyed to a unit owner. As of October 1, 2010, the warranty starts on the date that the first unit is conveyed, unless a common element is not completed at that time. When that occurs, the warranty for that common element commences when the element is completed or when it is available for use by all unit owners, whichever occurs later.

Section 11-114 of the Condominium Act was modified to require insurance companies to provide 45-days advance notice to condominium associations that the insurance policy is going to be cancelled – an increase from the current 30-day notice period.

Changes Which Apply Only to Homeowners Associations

The board of directors is required to prepare and submit an annual proposed budget to the lot owners at least 30 days before its adoption.