Conflict of Interest

Condominium Dispute Resolution Bill Held for Further Study

[by Mary Joy Howes, Esq.]

This past year, legislation was proposed that sought to amend the Rhode Island Condominium Act by establishing an arbitration process to resolve condominium disputes. The proposed legislation, 2016-H-7204, would require arbitration for certain types of disputes by and between condominium unit owners and condominium associations.

While the concept behind this legislation may be well intentioned, it is unclear and over encompassing. The proposed change to the statute would strip the details of the operation of the condominium from the board of directors—details that have been contracted to and agreed to among the owners when taking title to their unit. For example, the legislation requires, among other things, that any "dispute" that involves the authority of the board of directors to "require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto..." would have to follow the arbitration process outlined in the legislation. This language can theoretically encompass almost any dispute and, as a result, unduly restricts the board's ability to manage and control the day-to-day operation of the condominium. Anyone who does not like the board's decision would have the right to submit the matter to arbitration.

UNINTENDED CONSEQUENCES

So what is so bad about arbitration? It is not that arbitration itself is "bad," the problem is the attempt to exercise this level of control over a community association. Condominiums are governed by the specific Declaration of Condominium and the powers and duties of the board of directors are set forth in the declaration and statute. The proposed bill would require that every condominium declaration include a description of the procedures to be utilized to resolve condominium disputes pursuant to the proposed legislation. It would also require that the condominium bylaws provide for the resolution of condominium disputes as outlined in the legislation. While unclear, the practical effect is that every existing Rhode Island condominium declaration and bylaws would have to be amended.

This proposed bill "mandates" amendments—something that can only be done via the requisite number of votes of the members. Unit owners already have relief via the governing documents and associations may voluntarily add provisions dealing with dispute resolution as the community agrees and sees fit under the proper procedures for amending the declaration.

The proposed legislation is also unnecessary and results in needless expenses for condominiums that already have plenty of remedies and relief via the specific contractual declaration, the RI Condominium Act, and through the judicial process. The legislation is arguably at odds with Section 3.20 of the Rhode Island Condominium Act, which is the provision of the Act that deals with the executive board's enforcement of the association's declaration, bylaws, and rules and regulations. Section 3.20 sets the requirements for hearings and fines for violations of the governing documents. The proposed legislation would arguably nullify that provision and the board's authority to find rule violations and levy fines.

The proposed legislation would also deny condominium unit owners and condominium boards their fundamental right of access to the court system in the normal course. The decision of the arbitrator is binding upon the parties unless either party reserves their right to a jury trial by giving notice to the other party or parties and to the arbitrators within 60 days of the arbitrator's award via certified mail, return receipt requested. If suit has already been initiated, either party must file a request for a jury trial with the court and with notice to the other party or parties within 60 days of the arbitrator's award. This provision is unclear as it seemingly forces a jury trial for all appeals of the arbitrator's decisions. Therefore, this legislation could ultimately force an expensive jury trial on a small issue, such as a keeping a cat in violation of a no-pet policy.

Alternative dispute resolution should not be statutorily imposed on every kind of dispute, some of which might require immediate judicial intervention. Additionally, there is the reality that court appointed arbitrators generally will not understand the nuances of condominiums. Mandating arbitration by non-condominium practitioners will only result in unnecessary expense, delay, and a lack of uniformity in decisions—even within each individual community.

CAI RHODE ISLAND LEGISLATIVE ACTION COMMITTEE (RILAC)

Members of the RILAC opposed this proposed legislation as overly vague, far too overreaching, and intrusive. Thankfully our efforts were successful and the proposed bill, after passing the House, was held for further study by the Senate Judiciary Committee in June 2016. This past year was not the first time this type of legislation was proposed, and it likely will not be the last.

The RILAC will be watching for this bill next term and will continue to argue that associations maintain their ability to self-govern, with free access to the judicial system, and arbitration only upon the choice of both parties, or if required by the individual association's documents.

Arbitration should not be forced on private condominium communities. While arbitration may be a positive choice, it should be voluntary and not be statutorily imposed. While condominiums are regulated and created by statute, they should not be micromanaged by statute.

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