

RHODE ISLAND SUPERLIEN LEGISLATION NOW LAW --- EFFECTIVE JULY, 2008

Frank A. Lombardi, Esq. and Edmund A. Allcock, Esq.
[Law Office of Frank A. Lombardi](#) [Marcus, Errico, Emmer & Brooks, P.C.](#)
Rhode Island Legislative Action Committee (LAC) Co-Chairs

[HB 7512](#), legislation that allows condominiums to recoup foreclosure costs as part of the six-month priority lien, also clarifies that the condominium association's foreclosure sale would convey title subject only to senior encumbrances and liens as set forth in the state's Condominium Act. Introduced at the end of February, 2008 and effective (without the Governor's signature) on July 5, 2008, HB 7512 --- [now](#) Chapter 479 --- took effect on July 5, 2008.

A Success for a New LAC

This important legislation, filed by the Rhode Island Legislative Action Committee (RILAC) with the help of Representative Patricia Serpa (D-Warwick), amends the Rhode Island Condominium Act to allow the state's condominium associations a fully enforceable six-month superlien for common expenses over pre-existing first mortgages on units. This ensures that condominium associations will have a strong and enforceable remedy for the collection of common expenses so that unit owners do not have to pay for their neighbor's delinquencies. The remedy afforded by the law will help stabilize condominium property values by decreasing delinquencies and keeping condominium fees from skyrocketing out of control.

HB 7512, which was badly needed in Rhode Island due to the current credit and mortgage crisis, allows the state to catch up with its neighboring states (Connecticut and Massachusetts) that have had superlien statutes for many years. Rhode Island becomes the 16th state in the country to enact a similar form of condominium legislation.

A Short But Long Road

CAI welcomed its 29th LAC --- the Rhode Island LAC --- November 2007.

Hitting the ground running after some pre-November legislative outreach, LAC members worked tirelessly for four months attending committee meetings, testifying in front of various legislative subcommittees, meeting with legislators, and battling with well-heeled opponents of the HB 7512. In an effort to get the attention of the legislators as well as opponents of the legislation, the RILAC also issued a "Call to Action" which was answered by constituents across the state. CAI members, including unit owners, community association managers, attorneys, and other condominium professionals, sent hundreds of e-mails and made numerous telephone calls to legislators urging passage of the bill.

In fact, the response generated by the legislative communication was so overwhelming that legislators contacted RILAC members and requested that the "Call to Action" be discontinued as state house computers could not handle the volume of e-mails being sent.

This "Call to Action" response was noted by Representative Brian Patrick Kennedy (D-Westerly), who as Chairman of the House Corporations Committee recommended passage of the legislation. House Majority Leader Gordon Fox (D-Providence), who was also supportive and instrumental in the process, complimented CAI and the RILAC on its organized grassroots approach in the face of organized lobbyist opposition to the legislation.

The efforts of the RILAC and industry members were successful: on June 10, 2008, the House voted 60-0 to pass HB 7512, and the legislation then saw a unanimous vote in the Senate on June 23, 2008. The legislation became law after the Governor failed to act within the prescribed 10-day requirement.

What the Legislation Does: A Win for State Unit Owners and Associations

The heart of HB 7512 is that it now allows condominiums to foreclose on delinquent units, wipe out the first mortgage, and collect up to six months unpaid common expenses from the foreclosure sale proceeds. Prior law did not provide for this remedy, forcing condominium associations to often wait up to 12 months for the first mortgagees to foreclose on the unit, and then only receive six of the 12 months of common expenses that were due on the unit. Under the new law, unit owners will not have to bear the burden of the uncollected common expenses.

Additionally, the law increases the costs that an association can recover as part of its superlien over the first mortgage. Previously capped at \$2,500 for attorney fees and costs, now the caps increase to \$2,500 in attorney fees and \$5,000 in costs, for an aggregate total of \$7,500. This amendment was spurred by increasing foreclosure costs, and in particular, publication costs which continue to average \$3,500 per foreclosure. This situation left associations paying costs every time a unit owner was seriously delinquent, inevitably passing these costs on to the other unit owners, resulting in increased common expenses and decreased property values. It is expected that the \$7,500 aggregate cap will eliminate this problem for the near future.

Important Compliance Changes Under HB 7512

The new superlien law imposes a number of additional notice requirements, primarily involving the first mortgagee during certain time frames and intervals throughout the collection and foreclosure process. Executive boards, community association managers, and/or association counsels must carefully follow these notice requirements. Failure to comply with the notice requirements will result in the loss of a condominium's ability to recover attorney fees and costs as part of the priority.

The Community Association Institute of New England will hold a seminar on August 7th to review this new law and the notice requirements. Additionally, the law will be

reviewed in detail at the Rhode Island Regional Forum on November 13th. For more information on these programs, contact the Chapter office at 781-237-9020.

Executive boards and property managers should consult counsel as to the proper procedure for handling collections, notice compliance, etc.

NOTE: The lender holding the first mortgage has a limited 30-day right of redemption that it must exercise to avoid losing its security interest in the unit.

A Special Nod of Recognition

Representative Serpa was instrumental in the passage of HB 7512, working with the members of the Rhode Island LAC:

	Ed Allcock, Co-Chair	Frank Lombardi, Co-Chair
David Abel		
Janet Aronson		
Allison Field		
Joesph Mirra		
Barbara Vieira		

Claudette Carini, CAI - New England Chapter Executive Director, spearheaded the organization of the Rhode Island LAC.

For more information about the Rhode Island LAC and other state legislation, please contact: [Claudette Carini](#), Chapter Executive Director, CAI - New England Chapter.