

## 2014 End of Session Report

This year was a landmark legislative year in the District of Columbia. In March, the D.C. Council approved the Condominium Amendment Act of 2013, which was primarily drafted by members of the District of Columbia's Legislative Action Committee

The passage of the Condominium Amendment Act was the culmination of years of work by the DC LAC, which had an almost constant presence in the Wilson Building over recent years. Indeed, a number of members of the LAC testified on behalf of the Condominium Amendment Act, while the bill's passage arose out of extensive lobbying of members of the Council. The following is a summary of the significant changes to the Condominium Act arising out of this effort.

- Require unit owners to obtain condominium owner's insurance coverage with dwelling (whether residential or commercial) property coverage at a minimum of \$10,000 and condominium owner personal liability insurance coverage at a minimum of \$300,000 or such other amount as may be determined by the executive board.
- Unless the Bylaws provide otherwise, if the cause of any damage to or destruction of any portion of the condominium originates from the common elements, the association's property insurance deductible is a common expense. If the Bylaws do not indicate who shall be responsible for payment of any such deductible amount, if the cause of any damage to or destruction of any portion of the condominium originates from a unit, the owner of the unit where the cause of the damage or destruction originated is responsible for the association's property insurance deductible not to exceed \$5,000. If the owner is responsible for the association's property insurance deductible or an uncovered loss up to \$5,000, such amount shall be an assessment against the owner's unit.
- Adopt the business judgment rule to govern decisions of the Board of Directors, rather than the reasonableness standard currently applied by the D.C. Court of Appeals. Currently, D.C. common law imposes a reasonableness standard to review the decisions of a Condominium's Board of Directors.
- Make technical amendments to permit the relocation of unit boundaries and subdivision of units unless prohibited by the Association's Condominium Instruments.
- Amend the process for amending the Condominium Instruments by providing mortgagees with sixty (60) days to respond to a notice of a proposed amendment to the condominium instruments. Any failure to respond within sixty (60) days will be deemed to be consent to the proposed amendment.
- Require all meetings of the Board to be open to members in good standing.
- Permit notice of board meetings to be delivered electronically.
- Require minutes of Board meetings to be reviewable by the members and provide members with the right to examine minutes of the Association upon a written request and five days' notice.
- Require that a copy of the agenda be available for review by members prior to a Board meeting.
- Allow Board members to participate in Board meetings by teleconference.

- Create a right for the Board to enter executive session for certain purposes.
- Create an open forum section during each Board meeting.
- Permit ballots and proxies to be submitted electronically.
- Provide certain clarifications regarding the Association's right to specially assess benefited members for costs of maintaining limited common elements.
- Permit Condominium Boards to pledge as collateral for a loan or otherwise assign the Association's assessment income unless prohibited by the Condominium Instruments.
- Amend the lien section of the statute to specify that the lien includes late fees, interest, expenses and attorney fees and to clarify the super priority of the Association's lien extends back six (6) months from the date of recordation of a memorandum of lien or filing of suit.
- Clarify the Association's power to convey title upon non-judicial foreclosure.
- Require the Association to maintain financial books and records subject to the unit owner's right to examination, except certain confidential documents that may be excluded from review by unit owners.
- Provide Association's with the power to adopt leasing restrictions following the approval of either the Executive Organ or a vote of the membership, provided, however, that the right of existing owners to lease their units shall be unaffected by any leasing cap.
- A change proposed by the development industry designed to allow condominium developers to use purchase deposits during the construction and development process provided they are backed up by bonds or other security.

Fees-The other major legislative effort before the LAC is defensive in nature. Towards the end of last year, Councilwoman Bowser introduced the B20-648, entitled "The Condominium Fee Fairness Act of 2014," which, if adopted will require all condominium associations to participate in a mandatory mediation process prior to foreclosing on a condominium lien. The LAC has gone on record in opposition to the Bill, and plans to aggressively lobby the D.C. Council. Public hearings were scheduled for May 7, 2014, at which a number of members of the DC LAC testified against the Bill.

The next positive legislative effort being pursued by the LAC is to adopt legislation for the growing number of property owners' associations in D.C. At a minimum, such legislation will include a statutory lien and foreclosure process, although it is possible that such legislation will include other provisions relating to property owners' associations. Also, we expect that the DC LAC will propose a bill to address certain issues relating to developing condominiums, which will include changes to the warranty bond and certain requirements for the transition of books and records to the Association