

2016 End of Session Report

Clotheslines – The so-called “Clothesline Bill,” which has been filed repeatedly over the past several years, got further this year than ever, Matt Gaines, an associate in Marcus, Errico, Emmer & Brooks and chair of the Massachusetts LAC, reports, winning Senate approval before dying in the House. Unlike earlier versions, which simply specified that condominium owners had the right to install clothes lines, this [SB 2408](#) specified that associations could reasonably restrict their location. “That was a definite improvement,” Gaines says, but it didn’t address concerns about how the law will apply in urban condominium communities, where green space is limited. The LAC suggested language specifying that owners can place the clotheslines on their own decks or balconies, but nowhere else. While that language wasn’t incorporated in the legislation this year, “I think we’ll see this measure again,” Gaines predicts, “and we’ll propose that compromise language again, too.”

Association records – Another measure the LAC has seen before, dealing with owners’ access to association records, surfaced again this year, meeting the same fate as in past sessions -- it won approval in the Senate but died in the House. [SB 723](#) adds teeth to existing records access requirements for condominium owners, specifying that if an association board refuses to provide records an owner requests and the owner sues successfully to obtain them, the association must pay the owner’s legal costs. While the LAC doesn’t object to the purpose of the law, Gaines says, “we don’t much like the way it is drafted.” The primary concern is the bill’s failure to address unreasonable requests – for example, the owner who requests the same records repeatedly, or who makes open-ended requests “for all association records going back 10 years – and demands that they be delivered within 48 hours.”

The LAC’s proposed solution is to add language authorizing associations to charge for producing the records. “We’ve suggested the model used for Freedom of Information requests,” he says, with no charge for the first two hours of time required to produce the records, but “a reasonable fee” allowed for requests that require more than two hours. Lawmakers didn’t include that language this year, but this is another measure that Gaines expects to see again.

Ombudsman – [HB 1110](#) provided the Attorney General shall establish a statewide condominium ombudsman program for receiving, investigating and resolving through administrative action complaints received by unit owners, boards of directors, board members, community associations, and other parties. The bill was accompanied to study order.

Construction defect claims by associations – [SB 815](#) provided actions of tort for damages arising out of any deficiency to be commenced only within three years next after the cause of action accrues, unless the Declarant remains in control of the organization of unit owners at the time the cause of action would otherwise accrue, in which case the cause of action shall not accrue prior to the Declarant Control Termination Date; provided, however, that in no event shall actions be commenced more than six years after the later of the dates of: (1) the Declarant Control Termination Date; (2) the opening of the improvement to use; or (3) substantial completion of all phases of the condominium or expiration of the phasing right (whichever is earlier) and the taking of possession for occupancy by the owner. The bill was accompanied to study order.