

# Community Trends®



## LEGISLATIVE UPDATE

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High-rise condominium living is similar to condominium life in townhomes, mid-rises, and other types of structures in many ways. There is the distinction of individual units and the common elements; the imposition of rights and obligations upon the individual owners and the condominium association; and the enforcement of rules

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and restrictions to ensure that residents in close proximity peaceably co-exist with their neighbors.

But high-rise structures are unique. The urban environment and the neighborhoods surrounding high rise condominiums are distinctive, as are their aesthetic qualities. This same environment gives rise to potential liabilities that New Jersey courts have addressed.

### **Immunity under the Landowners’ Liability Act**

Of interest to community associations managing developments that include walkways that run along the Hudson River is the December 30, 2015 decision of *Fujino Niiya v. Grand Cove Master Association, Inc.* 2015 N.J.Super.

Unpub. LEXIS 3035. Grand Cove is a residential development with the Hudson River as its eastern boundary. The development includes a walkway along the Hudson River on which the plaintiff fell.

The public in New Jersey enjoys a right of access to tidally flowed lands. The lands which abut coastal waterways are required to be made available to the public. Due to the exposure to potential liability for injuries resulting from accidents on their properties due to the public right of access, the state legislature provided protection to property owners whose land is open to the public.

The protection of property owners is granted under New Jersey’s Landowners’ Liability Act, N.J.S.A. 1A:42A-8 (“LLA”), which provides in part:

*An owner, lessee or occupant of premises upon which public access has been required as a condition of a regulatory approval of, or by agreement with, the Department of Environmental Protection, regardless of whether public notice is provided, shall be liability only for:*

- a. *Willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity...*

The conduct of the association in this case was found to be neither “willful” nor “malicious”.

The LLA provides immunity from certain liability suits to property owners whose land is open for the public’s use and enjoyment along the state’s waterfronts. The LLA is a version of a recreation use statute intended to encourage

property owners to provide free public access for outdoor activities such as hunting, fishing, hiking and even simply walking in a waterfront park. Although initially designed to provide incentive to owners of agricultural lands and woodlands to open up their lands to the public without fear of liability, the Act was broadened in 1991 to extend more generally to “premises” on both natural and improved property, even if part of a “commercial enterprise.”

In granting summary judgment for the condominium association, the judge noted that this was “precisely the situation contemplated by the Legislature” in enacting the LLA. The plaintiff had access to the walkway along the river because of the laws and regulations opening up otherwise private spaces to the public. However, “a critical aspect of that public policy” was “to limit the liability of private developers who provide and maintain access for the public to enjoy the land abutting the Hudson River.”

## **Standardized Condominium Project Questionnaire**

The approval of projects by Fannie Mae and Freddie Mac and the completion of condominium project questionnaires are part of the administration of most condominiums and, particularly, high-rise condominiums where lenders are concerned about the common aspects and operations of the structures. The goal is to ensure that loans are made that meet guidelines which qualify them to be sold to the secondary mortgage market. Everyone knows how crucial it is to have ready lending sources with attractive terms to facilitate the sale and purchase of condominium units within a development. Lenders require a questionnaire to be completed by the community association, or its property manager, as part of the loan application process.

On March 29, 2016, the Federal Housing Finance Agency, which regulates Fannie Mae and Freddie Mac, promulgated a standardized questionnaire to increase consistency and to improve the process for determining the eligibility of mortgages secured by units in condominiums. For board members, and their managing agents and legal counsel, the questionnaires are frequently confusing,

inconsistent, and time-consuming to complete. The questionnaires generally include information about the project, the ownership and/or status of the units, and the financial controls and insurance in effect. However, there is almost no uniformity in the questionnaires used by different lending institutions and, as a result, following previously completed and accepted forms for a given development is often not possible.

The new “full form” and a “short form” questionnaires have been identified as:

**Condominium Project Questionnaire - Full Form** (Fannie Mae Form 1076/ Freddie Mac Form 476), which provides a list of eligibility questions to support a full condominium project approval process for new and established condominium projects, and

**Condominium Project Questionnaire - Short Form** (Fannie Mae Form 1077/Freddie Mac Form 477), which provides a shorter list of questions to facilitate a limited or streamlined review of condominium projects.

The full form as well as the short form can be found on the CAI-NJ website at [www.cainj.org/scpq](http://www.cainj.org/scpq).

A lender’s use of these new condominium project questionnaire forms is currently optional but it is likely that, with time, the standardized forms will be used universally and help expedite the evaluation of condominium projects.

The forms set forth a clear and consistent format and terminology for the insertion of information, regardless of the lender. The community association will know become familiar with the data that is common to the forms. If the same form is used has been completed for a community regardless of the lender, once the association or the property manager has completed the form, only the data that changes will have to be updated.

With a clear and consistent format and terminology, community association boards, property managers, legal counsel and lenders should be able to expedite the submission of information and the completion of project eligibility review. Anyone who has completed these forms will know what welcome relief these standardized forms will provide. ■