

Community Trends®



LEGISLATIVE UPDATE

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This Senior Summit issue gives me the opportunity to demonstrate to CAI members how issues come before the Legislative Action Committee, how the LAC works and, no matter the efforts of the LAC and CAI's lobbyist, MBI*GluckShaw, the wheels of the legislature turn at their own pace. Sometimes the initiatives the LAC takes on begin with an experience or circumstances unrelated to community associations and their professionals. But, with time, it becomes abundantly clear that the interests of CAI members will be impacted and the LAC gets involved.

MBI*GluckShaw is the source of advice of proposed or pending bills. Through MBI's continuous research and monitoring, and contacts, the LAC discovers the events which precipitated legislators to propose bills due to the needs of their constituency. The LAC comes to understand the goals and nuances of proposed bills, superimposing the concerns we have for our community associations upon those bills. We try to create a clear path that serves our community associations, while reconciling the conflicting interests of other parties. The following discussion of the notification of next-of-kin bill upon a resident's death demonstrates the twists and turns that crafting law takes.

Notification of next-of-kin upon a resident's death. The first bill intended to facilitate notice upon the death of a resident in a housing facility was introduced on September 15, 2014, by Assemblywoman L. Grace Spencer, as A-3630. The bill consisted of two pages requiring any entity responsible for the management of any type of housing restricted to senior citizens to adopt guidelines

for the notification of next-of-kin in the event of the death of a senior citizen resident. "Senior citizen" was defined as a person 55 years of age or older. Given the parameters of the bill as introduced, many CAI members and their managers of common interest communities intended for residents age 55 and older would be required to comply. The bill was referred to Assembly Human Services Committee.

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On December 11, 2014, an Assembly Committee substitute bill was adopted. The bill expanded from two pages to six pages. The amended bill had five sponsors and a co-sponsor. Instead of simply defining a "senior citizen" as a person 55 years of age or older, it went further and defined senior housing facilities that were to be subject to the proposed law as condominium, cooperatives and mutual housing corporations subject to the Planned Real Estate Development Full Disclosure Act and the Retirement Community Full Disclosure Act.

This definition captured the age-restricted communities served by CAI. The amended bill was identical to the bill

introduced in the Senate as S-2656, on which the committee also reported favorably. The bill, if passed into law, would have compelled residents to provide to management and update emergency contact information, and managers would have been obligated to notify the next-of-kin of the death of a resident. The LAC saw the problems that would arise from the bill in its communities where, for the most part, its residents seek independence and lead active lives. MBI*GluckShaw contacted the office of Assemblywoman Spencer during 2015 and expressed these concerns.

On April 4, 2016, Assemblywoman Spender introduced a new bill, A-3489. This bill changed the definition of "qualified housing facility" to which the bill was to apply to consist of a rooming house, boarding house, residential health care facility, assisted living facility, nursing home, continuing care retirement community, and public housing designed for seniors. The bill also changed the age of the occupants to which the bill applies to those 62 years of age or older. Because of the change in the definition of the facilities to which the bill applied, if passed into law, the bill no longer applied to the homes in common interest communities.

However, as of this writing, there are other bills, intended to deal with the same situation, being considered by our legislature. Specifically, Senator Ronald Rice has introduced S-1131, which includes definitions that cover communities subject to the Planned Real Estate Development Full Disclosure Act. In the coming weeks and months, the LAC, along with its lobbyists, will seek amendments to S-1131.

The Radburn Association, Inc. The Radburn Association was created in 1929 to own and control the common facilities — parks, pools, and other amenities and facilities — in the Radburn Community. In most community associations in New Jersey, individual unit owners automatically become members of the association upon taking title to a home. Each unit owner has the right to vote and elect directly members to the association's board of trustees. The voting rights of the members, for the election of members to the board or for other purposes, are spelled out in the governing documents of the community, namely the master deed or declaration, and the bylaws.

The Radburn Association's structure differs from this governance scheme. Nine trustees sit on the board of trustees but they do not all get elected by a direct vote of the homeowners. One trustee is automatically installed by virtue of being elected by the residents as President of the Radburn Citizens' Association, which is comprised of all Radburn residents. Six more trustees are elected by the residents of Radburn. Any adult Radburn resident (whether or not an owner) may run for a board position.

Once nominees are identified, each of the nine trustees of the Board of Trustees considers the qualifications of each candidate and ranks the nominees so that the top four ranked candidates are placed on the ballot and stand for election by all Radburn residents. Two are elected from the four candidates and serve a three year term. Terms are staggered, so that each year, two new trustees are elected to the Board.

This governance structure and other disputes have been the subject of litigation commenced generally by Radburn residents against the Radburn Association and certain officers. In its decision dated March 18, 2010, the Appellate Division of the Superior Court of New Jersey affirmed the trial court's decision in favor of the Radburn Association.

This cursory explanation of the manner in which trustees are elected to the Board is not intended to give our readers a complete explanation of the Radburn structure or to suggest that the LAC is either in favor of or against the position of the Radburn Association or the residents who commenced the litigation against the Radburn Association; rather, it is intended to describe a unique governance arrangement which exists at a community in New Jersey, which may or may not be problematic. Just as the LAC must reconcile bills which have been introduced to deal with problems encountered in housing facilities upon the death of residents, the Radburn community has been brought to the LAC's attention in the context of bills S-1586/A-2027 concerning the membership and management of homeowners associations. These and other bills have been proposed to remedy the problems which some see at Radburn.

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The single certainty and similarity in the consideration which the LAC gives to all bills which comes before it is that the outcome of its considerations and the positions it espouses will be for the collective good of the community associations throughout the State and the CAI membership. Its actions will also be consistent with existing statutes, regulations, and established case law.

H.R. 4696 Helping our Middle-Income Earners (the "HOME Act"). While not only of financial value to seniors in our communities, H.R. 4696 is a bill introduced in the House of Representatives on March 3, 2016 that will impact all community association members. This bill amends the Internal Revenue Code to allow individual taxpayers an income-based tax deduction, up to \$5,000, for qualified

homeowners association assessments paid during the taxable year. The bill defines "qualified homeowners association assessments" as regularly occurring, mandatory financial assessments: (1) that are paid by a taxpayer to a homeowners association for the taxpayer's principal residence, (2) that directly benefit such residence, and (3) that arise from the taxpayer's mandatory and automatic membership in such association. The bill requires homeowners associations to file an informational return that sets forth the name, address, and taxpayer identification number of a taxpayer from whom the association receives assessments and the amount of such assessments.

I will keep you informed of the LAC's deliberations and the progress of these bills in the coming months. ■