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From: **Community Associations Institute - NJ Chapter** <info-cainj.org@shared1.ccsend.com>

Date: Mon, Mar 4, 2024 at 9:41 AM

Subject: NJ-LAC ALERT!

To: <judi.scofbt@gmail.com>



NJ-LAC ALERT TO OUR CAI MEMBERS!

NEW JERSEY LEGISLATIVE ACTION COMMITTEE & CAI-NJ BOARD OF DIRECTORS

CAI-NJ Successful in Lawsuit Against DCA Regulations

Freehold, NJ – March 4, 2024 – Today CAI-NJ announced the successful conclusion of three (3) years of litigation against the NJ Department of Community Affairs over multiple provisions of the Radburn regulations adopted by the Department in May 2020.

In May 2020, the NJ Department of Community Affairs adopted regulations under the Radburn election law that was enacted in 2017. The original law was narrowly crafted to address election practices that lacked transparency and inclusiveness and provided for relaxed bylaw amendment procedures for New Jersey's common-interest communities. The bill reflected a careful balancing of interests in which our CAI-NJ LAC was instrumental in crafting.

The regulations that were subsequently adopted by the DCA extended beyond the limited scope of the legislation to create onerous, complicated, and in many circumstances, contradictory provisions that made compliance difficult and expensive. Soon after the adoption of the Department of Community Affairs (DCA) regulations, CAI-NJ filed suit to contest many components of the regulations. On February 22, 2024, the New Jersey Appellate Division published its decision in the matter and CAI-NJ succeeded in gaining reversal and modification of several provisions of the DCA regulations.

First, the regulations previously required that when a board meets in closed or executive session concerning one of the four matters excluded by statute from consideration in a board meeting open to the owners [1] the board was still required to vote in a meeting open to the owners without disclosing any private information. This led to unfortunate scenarios where a board would vote in a meeting open to the owners without disclosing the true nature of the decision, thereby engendering unnecessary suspicion. The court agreed that the DCA's regulation was contrary to statutory law and overturned it. Going forward, board action concerning the four matters excluded under the statute

as identified above may remain in executive session without the need for a second vote in open session.

The next provision the court reversed was the DCA's regulation mandating that in community associations with any affordable housing unit(s), a seat must be reserved solely for election by the affordable owners. While CAI-NJ supports the need for affordable housing and the fair treatment of affordable housing owners, it objected to this regulation based on the lack of any legislative support for it and the Court agreed. Many issues have occurred in these situations ranging from disproportionate representation on a board by a relatively small number of affordable housing units, to a lack of affordable housing owners willing to be a candidate thereby leading to issues concerning how such vacant seats may be filled. The reversal by the Court addresses these concerns.

The next provision the Court reversed in the DCA's regulations was the requirement to include a sample ballot with bylaw amendment voting packages. Due to the confusion created by sending multiple ballots CAI objected to this additional requirement that was not set forth in the Radburn Election Law, which, in addition to elections, also dealt with amendments to bylaws. The Appellate Division agreed and overturned this regulation. Therefore, a sample ballot will no longer be required for bylaw amendment voting packages.

Finally, although not an outright reversal, the court more clearly defined the DCA's regulation concerning the public counting of ballots. The Court held that only the part of the election inspectors' duties that involved the reading of the ballots for one or more candidates needed to occur publicly. The verbal discussion necessary to reconcile members' standing, authenticate signatures, and accurately allocate weighted votes could be conducted out of public view. Under the double-envelope voting system, this change would permit the opening of the outer envelope and inner envelope with the ballots to all take place outside the membership view, with only the actual counting of the ballots occurring publicly.

While other challenged regulations ultimately remain unchanged, the reversal and modification of the regulations outlined above was a success for the Chapter's members and associations may now take advantage of the revisions to the regulations because of the Appellate Court's decision.

1 The four categories excluded from being discussed or voted on in open session being: (1) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; (2) any pending or anticipated litigation or contract negotiations; (3) any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer, or (4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association.

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