



**Champion Advocacy
Associates**

March 12, 2024

The Honorable Joseph Solomon, Jr.
Chairman, House Corporations Committee
State House
Providence, RI 02903

Re: H.7862 and H.7864 – Acts Relating to Property – Condominium Law

Dear Chairman Solomon and Committee Members:

The Rhode Island Mortgage Bankers Association (“RIMBA”) respectfully oppose H.7862 and H.7864 (the “Implied Approval Bills”). The Implied Approval Bills would require a mortgagee or other secured lender (hereinafter referred to as a “mortgagee”) to object, in writing within 60 days, to a proposed action requiring approval of mortgagees under the condominium act, the condominium declaration, or condominium association bylaws or the mortgagee would be deemed to have approved the action. Implied approval of amendments to condominium documents is contemplated by the requirements of the Fannie Mae Selling Guide (as published March 6, 2024), but the proposed language of the Implied Approval Bills would conflict with those requirements by providing that the time period within which a negative response must be received by the requesting party is 60 days *after properly mailing the same*, whereas the Selling Guide requires that the mortgagee must be given 60 days *from the date the request is received* within which to submit a response. Adoption of either of the Implied Approval Bills as currently drafted could prevent the sale of mortgage loans secured by interests in condominiums located in Rhode Island to Fannie Mae and other governmental conduits in the secondary mortgage market. This would effectively shut down the market for condominium sales in Rhode Island.

In order for any loan secured by a condominium to be saleable in the secondary mortgage market, the documents comprising the condominium, including the applicable condominium act, the condominium declaration, and condominium association bylaws must be reviewed for compliance with the Selling Guide and various legal opinions and warranties provided by the lender regarding such compliance. The Selling Guide is approximately 1,200 pages in length and its provisions are extremely detailed. Attached for your information is a copy of the portion of Section B4-2.2-03 of the Selling Guide, which sets out additional eligibility requirements for review of condominium documents for units in new or newly converted condo projects. The portion thereof found on page 664 sets out the requirements for implied amendments to condominium documents as follows:

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Condo Project Legal Document Review Requirements - For Units in New or Newly Converted Condo Project	
Amendments to Documents	<p>Required provisions related to amendments to project documents are as follow:</p> <ul style="list-style-type: none"> • The project documents must provide that amendments of a material adverse nature to mortgagees be agreed to by mortgagees that represent at least 51% of the votes of unit estates that are subject to mortgages. • The project documents must provide for any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for other reasons to be agreed to by mortgagees that represent at least 51% of the votes of the unit estates that are subject to mortgages. • The project documents may provide for implied approval to be assumed when a mortgagee fails <u>to submit a response to any written proposal for an amendment within 60 days after it receives proper notice of the proposal</u>, provided the notice was delivered by certified or registered mail, with a return receipt requested. Notwithstanding the foregoing, project documents that were recorded prior to August 23, 2007, may provide for implied approval to be assumed when a mortgagee fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested. <i>[emphasis supplied]</i>

The underscored language makes clear the requirement that the mortgagee must “submit a response” within 60 days after it receives proper notice. RIMBA believes that “submit a response” means place a response in the mail so the timing of the Implied Approval Bills fails on both accounts.

Although RIMBA believes that affirmative consent is preferable, and has long been the law in Rhode Island, RIMBA would not object to the Implied Approval Bills on two conditions:

1. The Implied Approval Bills are amended by changing the sentence that begins on line 14 of page 3 of each bill and carries onto line 15, as follows:

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“If a unit mortgagee fails to mail ~~provide~~ a written denial of approval to the party requesting approval within sixty (60) days after receipt of proper notice of the mailing of the request, the unit mortgagee”

2. The committee obtains, with the assistance of RIMBA, a letter from FNMA confirming that adoption of Implied Approval Bills amended as aforesaid will not bar approval of condominiums in Rhode Island or adversely affect the salability of Rhode Island condominium loans in the secondary market.

Unless the foregoing actions are taken, RIMBA opposes adoption of the Implied Approval Bills. We would be happy to discuss this with you further at your convenience.

Sincerely,


Lenette Forry-Menard, Lobbyist
Rhode Island Mortgage Bankers Association