

SB 57 - AS AMENDED BY THE HOUSE

03/26/2015 1011s
3June2015... 1644h

2015 SESSION

15-0439
05/01

SENATE BILL **57**

AN ACT relative to the membership and governance of condominium unit owners' associations.

SPONSORS: Sen. Stiles, Dist 24; Sen. Boutin, Dist 16; Sen. Cataldo, Dist 6; Rep. Sterling, Ches 14; Rep. Umberger, Carr 2; Rep. Porter, Hills 1; Rep. A. Christie, Rock 37

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill revises statutes governing the contents of condominium bylaws, meetings of the unit owners' association, and the qualifications and duties of board members.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to the membership and governance of condominium unit owners' associations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Contents of Bylaws. RSA 356-B:35 is repealed and reenacted to read as follows:

2 356-B:35 Contents of the Bylaws.

3 I. There shall be recorded simultaneously with the declaration a set of bylaws providing for
4 the self-government of the condominium by an association of all the unit owners. The unit owners'
5 association may be incorporated.

6 II. The bylaws shall provide the means by which the association shall elect a board of
7 directors. The bylaws shall specify the powers and responsibilities of the same and the number and
8 terms of its members. The bylaws may delegate to such board, among other things, any of the
9 powers and responsibilities assigned by this chapter to the unit owners' association. The bylaws
10 shall also specify which, if any, of its powers and responsibilities the unit owners' association or its
11 board may delegate to a managing agent. The board of directors shall have a fiduciary relationship
12 to members of the unit owners' association.

13 III. The bylaws shall provide for election by the board of directors or, if the declaration
14 requires, by the association members, of a president, treasurer, secretary, and any other officers of
15 the association the bylaws specify.

16 IV. The bylaws shall specify the qualifications, powers and duties, terms of office, and
17 manner of electing and removing board members and officers and filling vacancies.

18 V. The bylaws shall specify the officers who may prepare, execute, certify, and record
19 amendments to the declaration on behalf of the association.

20 VI. The bylaws shall specify a method for the association members to amend the bylaws.

21 VII. The bylaws shall provide that the unit owners' association shall act on behalf of each
22 unit owner in condemnation proceedings against the common areas of the condominium.

23 VIII. The bylaws shall contain any provision necessary to satisfy requirements of this
24 chapter or the declaration concerning meetings, voting, quorums, and other activities of the
25 association.

26 IX. The bylaws shall provide for any matter required by laws of this state other than this
27 chapter to appear in the bylaws of organizations of the same type as the association.

28 X. Subject to the declaration and this chapter, the bylaws may provide for any other

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1 necessary or appropriate matters, including matters that may be adopted as rules.

2 XI. In any case where an amendment to the declaration is required by RSA 356-B:18, II, III,
3 or IV, the person or persons required to execute the same shall also prepare and execute, and record
4 simultaneously with such amendment, an amendment to the bylaws. The amendment to the bylaws
5 shall allocate votes in the unit owners' association to new units on the same basis as was used for the
6 allocation of such votes to the units depicted on site plans and floor plans recorded pursuant to
7 RSA 356-B:20, I and II, or shall abolish the votes appertaining to former units, as the case may be.
8 The amendment to the bylaws shall also reallocate rights to future common profits, and liabilities for
9 future common expenses not specially assessed, in proportion to relative voting strengths as reflected
10 by the said amendment.

11 2 Meetings, Voting Procedures, Executive Board Members and Officers. RSA 356-B:37 through
12 40 are repealed and reenacted to read as follows:

13 356-B:37 Meetings.

14 I. Meetings of the unit owners' association shall be held in accordance with the provisions of
15 the condominium instruments at least once each year after the formation of the association. The
16 bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly
17 scheduled meeting, and at least 7 days in advance of any other meeting, provide to each unit owner
18 notice of the time, place, and purpose or purposes of such meeting in conformity with RSA 356-B:37-
19 a. The minimum time to give notice may be reduced or waived for a meeting called to deal with an
20 emergency. Purposes of the meeting shall include any budget changes or proposal to remove an
21 officer or member of the board of directors. The secretary or other duly authorized officer of the unit
22 owners' association, who shall also be a member of the board of directors of the unit owners'
23 association, shall prepare an affidavit which shall be accompanied by a list of the addresses of all
24 unit owners currently on file with the association and shall attest that notice of the association
25 meeting was provided to all unit owners on that list in a manner conforming to RSA 356-B:37-a. A
26 copy of the affidavit and unit owners list shall be available at the noticed meeting for inspection by
27 all owners then in attendance and shall be retained with the minutes of that meeting. The affidavit
28 required in this section shall be available for inspection by unit owners for at least 3 years after the
29 date of the subject meeting.

30 II. An association shall hold a special meeting of unit owners to address any matter affecting
31 the unit owners or the association if its president, a majority of the board of directors, or unit owners
32 having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the
33 association request that the secretary call the meeting. If the association does not notify unit owners
34 of a special meeting within 30 days after the requisite number or percentage of unit owners request
35 the secretary to do so, the requesting members may directly notify all the unit owners of an
36 informational meeting, the purpose of which shall be to present the issue to fellow residents and unit
37 owners. Only matters described in the meeting notice required by RSA 356-B:37-a may be

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1 considered at a special meeting.

2 III. Except as otherwise provided in the bylaws, meetings of the association shall be
3 conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.

4 IV. Unit owners shall be given a reasonable opportunity at any meeting to comment
5 regarding any matter affecting the association.

6 V. The declaration or bylaws may allow for meetings of unit owners to be conducted by
7 telephonic, video, or other conferencing process, as provided in RSA 356-B:37-b.

8 VI. The board of directors shall make copies of the minutes of all meetings available to the
9 unit owners within 60 days of the meeting or 15 days of the date such minutes are approved by the
10 board, whichever occurs first. The association may opt to provide the minutes electronically or
11 publish them on the association website, in which case the owners shall be informed of the web
12 address.

13 356-B:37-a Notice to Unit Owners. An association shall deliver any notice required to be given
14 by the association under this chapter to any mailing or electronic mail address a unit owner
15 designates. If the unit owner does not designate an address, the association shall deliver notices by
16 hand delivery, United States mail postage paid, or commercially reasonable delivery service to the
17 mailing address of each unit.

18 356-B:37-b Meetings by Telephonic, Video, or Other Conferencing Process. When the
19 declaration or bylaws provides, the association, committees thereof, and the board of directors may
20 meet by telephonic, video, or other conferencing process if:

21 I. The meeting notice states the conferencing process to be used and provides information
22 explaining how unit owners may participate in the conference directly or by meeting at a central
23 location or conference connection.

24 II. The process provides all unit owners the opportunity to hear the discussion and to
25 comment.

26 356-B:37-c Meetings of the Board of Directors and Committees of the Association. The following
27 requirements apply to meetings of the board of directors and committees of the association
28 authorized to act for the association:

29 I. Meetings shall be open to the unit owners except during executive sessions.

30 II. For purposes of this section, a gathering of board members at which the board members
31 do not conduct association business is not a meeting of the board of directors. The board of directors
32 and its members may not use incidental or social gatherings of board members or any other method
33 to evade the open meeting requirements of this section.

34 III. At each board meeting, the board of directors shall provide a reasonable opportunity for
35 unit owners to comment regarding any matter affecting the association.

36 IV. Unless the meeting is included in a schedule given to the unit owners or the meeting is
37 called to deal with an emergency, the secretary or other officer specified in the bylaws shall give

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1 notice of each meeting of the board of directors to each board member and to the unit owners. The
2 notice shall be given at least 10 days before the meeting and shall state the time, date, place, and
3 agenda of the meeting.

4 V. If any materials are distributed to the board of directors before the meeting, the board of
5 directors at the same time shall make copies of those materials reasonably available to unit owners,
6 except that the board of directors need not make available copies of unapproved minutes or matters
7 that are to be considered in executive session.

8 VI. In the case of self-managed community associations, meetings of the board of directors or
9 committees expressly for purposes of implementation of decisions made in open meetings shall be
10 exempt from the requirements of RSA 356-B:37, 356-B:37-a, and this section.

11 356-B:37-d Executive Session. The board of directors and association committees may hold an
12 executive session only during a regular or special meeting of the board or a committee. No final vote
13 or action may be taken during an executive session. An executive session may be held only to:

14 I. Consult with the association's attorney.

15 II. Discuss existing or potential litigation or mediation, arbitration, or administrative
16 proceedings.

17 III. Discuss labor or personnel matters.

18 IV. Discuss contracts, leases, and other commercial transactions to purchase or provide
19 goods or services currently being negotiated, including the review of bids or proposals, if premature
20 general knowledge of those matters would place the association at a disadvantage or prevent public
21 knowledge of the matter to be discussed if the board of directors or a committee determines that
22 public knowledge would violate the privacy of any person.

23 356-B:38 Quorums.

24 I. Unless the condominium instruments otherwise provide, a quorum shall be deemed to be
25 present throughout any meeting of the unit owners' association until adjourned if persons entitled to
26 cast more than 33 1/3 percent of the votes are present at the beginning of such meeting. The bylaws
27 may provide for a smaller percentage, not less than 25 percent, or for a larger percentage for
28 associations having fewer than 25 units.

29 II. Unless the condominium instruments specify a larger majority, a quorum shall be
30 deemed to be present throughout any meeting of the board of directors if persons entitled to cast
31 more than 1/2 of the votes in that body are present at the beginning of such meeting.

32 III. If a quorum is not met for an annual meeting, the board shall reschedule the meeting
33 within 60 days and provide proper notice and proxies.

34 356-B:39 Voting.

35 I. The bylaws may allocate to each unit depicted on site plans and floor plans that comply
36 with RSA 356-B:20, I and II, a number of votes in the unit owners' association proportionate to the
37 undivided interest in the common areas appertaining to each such unit.

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1 II. Otherwise, the bylaws shall allocate to each such unit an equal number of votes in the
2 unit owners' association, subject to the following exception: each convertible space so depicted shall
3 be allocated a number of votes in the unit owners' association proportionate to the size of each such
4 space, vis-a-vis the aggregate size of all units so depicted, while the remaining votes in the unit
5 owners' association shall be allocated equally to the other units so depicted.

6 III. Since a unit owner may be more than one person, if only one of such persons is present
7 at a meeting of the unit owners' association, that person shall be entitled to cast the votes
8 appertaining to that unit. But if more than one of such persons is present, the vote appertaining to
9 that unit shall be cast only in accordance with agreement of a majority in interest of the owners
10 unless the condominium instruments expressly provide otherwise, and such consent shall be
11 conclusively presumed if any one of them purports to cast the votes appertaining to that unit without
12 protest being made forthwith by any of the others to the person presiding over the meeting. Since a
13 person need not be a natural person, the word "person" shall be deemed for the purposes of this
14 paragraph to include, without limitation, any natural person having authority to execute deeds on
15 behalf of any person, excluding natural persons, which is, either alone or in conjunction with another
16 person or persons, a unit owner.

17 IV.(a) The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly
18 executed by or on behalf of the unit owner, or, in cases where the unit owner is more than one
19 person, by or on behalf of all such persons. A person may not cast undirected proxies representing
20 more than 10 percent of the votes in the association. The proxy or proxies shall list the name of the
21 person who is to vote. No such proxy shall be revocable except by actual notice to the person
22 presiding over the meeting, by the unit owner or by any of such persons, that it be revoked. Any
23 proxy shall be void if it is not dated or if it purports to be revocable without the required notice. The
24 proxy of any person shall be void if not signed by a person having authority, at the time of the
25 execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate
26 automatically upon the adjournment of the first meeting held on or after the date of that proxy. The
27 board of directors shall deliver to the unit owners, together with their notice of meeting and agenda,
28 proxy forms bearing a control number which the board of directors shall correlate to the list of all
29 unit owners then entitled to vote. At the noticed meeting, the board of directors shall recover all
30 proxies and compare them to the control list maintained for that purpose. Any proxies which are on
31 a form other than that provided by the board of directors or which do not correlate with the control
32 list maintained by the board of directors shall be disregarded for purposes of determining whether a
33 quorum was present at the meeting and for purposes of casting any vote at that meeting.

34 (b) The board of directors shall retain all proxies delivered to the board of directors and
35 all independent written confirmation of any such proxies for inspection by the unit owners for a
36 period of not less than 3 years from the date of the unit owners' association meeting.

37 V. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent

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1 or less of the units, then in any case where a majority vote is required by the condominium
2 instruments or by this chapter, the requirement for such a majority shall be deemed to include, in
3 addition to the specified majority of the votes, assent by the unit owners of a like majority of the
4 units.

5 VI. If more than 50 percent of the votes are acquired by a single person after developer
6 control is terminated, a 2/3 majority shall be required to change bylaws, budgets, and any contracted
7 property management.

8 356-B:39-a Voting Without a Meeting. Unless prohibited or limited by the declaration or
9 bylaws, an association may conduct a vote without a meeting. In that event, the following
10 requirements apply:

11 I. The association shall notify the unit owners that the vote will be taken by ballot in the
12 manner prescribed by RSA 356-B:37-a, and deliver a paper or electronic ballot to every unit owner
13 entitled to vote on the matter.

14 II. The ballot shall:

15 (a) Set forth each proposed action and provide an opportunity to vote for or against the
16 action.

17 (b) Indicate the number of responses needed to meet the quorum requirements.

18 (c) State the percent of votes necessary to approve each matter other than election of
19 directors.

20 (d) Specify the time and date by which a ballot must be delivered to the association to be
21 counted, which time and date may not be fewer than 10 days after the date the association delivers
22 the ballot.

23 (e) Describe the time, date, and manner by which unit owners wishing to deliver
24 information to all unit owners regarding the subject of the vote may do so.

25 III. Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after
26 delivery to the association by death or disability or attempted revocation by the person that cast that
27 vote.

28 IV. Approval by ballot pursuant to this section is valid only if the number of votes cast by
29 ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

30 356-B:40 Members of the Board of Directors and Officers.

31 I. Except as provided in the declaration, the bylaws, paragraph II, or other provisions of this
32 chapter, the board of directors acts on behalf of the association. In the performance of their duties,
33 officers and members of the board of directors appointed by the declarant shall exercise the degree of
34 care and loyalty to the association required of a trustee. Officers and members of the board of
35 directors not appointed by the declarant shall exercise the degree of care and loyalty to the
36 association required of an officer or director of a corporation organized under RSA 292, and are
37 subject to the conflict of interest rules governing directors and officers under RSA 292. The

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1 standards of care and loyalty described in this paragraph apply regardless of the form in which the
2 association is organized.

3 II. The board of directors shall not:

4 (a) Amend the declaration except as otherwise provided in this chapter.

5 (b) Amend the bylaws.

6 (c) Terminate the unit owners' association.

7 (d) Elect members of the board of directors but may fill vacancies in its membership for
8 the unexpired portion of any term or, if earlier, until the next regularly scheduled election of
9 executive board members.

10 (e) Determine the qualifications, powers, and duties, or terms of office of members of the
11 board of directors.

12 II-a. An officer shall not directly receive any salary or compensation from the association for
13 the performance of duties as an officer or board member and shall not in any other way benefit
14 financially from service to the association.

15 II-b. If annually approved by a 2/3 majority of the voting interests present at a properly
16 called meeting of the association, the association may waive the requirements of paragraph II-a.

17 III. The board of directors shall adopt budgets as provided in RSA 356-B:40-c.

18 IV. Subject to the provisions of paragraph V, the declaration may provide for a period of
19 declarant control of the association, during which a declarant, or persons designated by the
20 declarant, may appoint and remove the officers and members of the board of directors. A declarant
21 may voluntarily surrender the right to appoint and remove officers and members of the board of
22 directors before the period ends. In that event, the declarant may require during the remainder of
23 the period that specified actions of the association or board of directors, as described in a recorded
24 instrument executed by the declarant, be approved by the declarant before they become effective.
25 Regardless of the period provided in the declaration, and except as provided in RSA 356-B:36, a
26 period of declarant control terminates no later than the earliest of:

27 (a) Sixty days after conveyance of 60 percent of the units that may be created to unit
28 owners other than a declarant;

29 (b) Two years after all declarants have ceased to offer units for sale in the ordinary
30 course of business;

31 (c) Two years after any right to add new units was last exercised; or

32 (d) The date the declarant, after giving notice in a record to unit owners, records an
33 instrument voluntarily surrendering all rights to control activities of the association.

34 V. Not later than 60 days after conveyance of 1/4 of the units that may be created to unit
35 owners other than a declarant, at least one member and not less than 25 percent of the members of
36 the board of directors shall be elected by unit owners other than the declarant. Not later than 60
37 days after conveyance of 1/2 of the units that may be created to unit owners other than a declarant,

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1 not less than 1/2 of the members of the board of directors shall be elected by unit owners other than
2 the declarant.

3 VI. Not later than the termination of any period of declarant control, the unit owners shall
4 elect a board of directors with at least 3 members, a majority of whom shall be unit owners. Unless
5 the declaration provides for the election of officers by the unit owners, the board of directors shall
6 elect the officers. The members of the board of directors and officers shall take office upon election or
7 appointment.

8 VII. If the condominium instruments provide that any officer or officers must be unit
9 owners, then any such officer who disposes of all of his or her units in fee or for a term or terms of
10 more than one year shall be deemed disqualified from continuing in office unless the condominium
11 instruments otherwise provide, or unless the officer acquires or contracts to acquire another unit in
12 the condominium under terms giving the officer a right of occupancy thereto effective on or before the
13 termination of the right of occupancy under such disposition or dispositions.

14 VIII. If the condominium instruments provide that any officer or officers must be unit
15 owners, then notwithstanding the provisions of RSA 356-B:12, I, the term "unit owner" in such
16 context shall, unless the condominium instruments otherwise provide, be deemed to include, without
17 limitation, any director, officer, partner in, or trustee of any person which is, either alone or in
18 conjunction with another person or persons, a unit owner. Any officer who would not be eligible to
19 serve as such were he or she not director, officer, partner in, or trustee of such a person shall be
20 deemed disqualified from continuing in office if the officer ceases to have any such affiliation with
21 that person, or if that person would itself have been deemed to have disqualified itself from
22 continuing in such office under paragraph I were it a natural person holding such office.

23 IX. Any officer is a suitable person to receive service of process in any proceeding against the
24 association.

25 X. For the purpose of receipt of notification by a municipality of a local land use board
26 hearing, the officers shall be responsible for serving as agents of the unit owners' association.

27 356-B:40-a Disclosure of Fees by Managing Agent and Contractors.

28 I. If the unit owners' association or the board of directors has delegated certain powers and
29 duties to a managing agent, the managing agent shall disclose any referral fees received from
30 contract work performed on behalf of the association to the board of directors prior to the next
31 regularly scheduled board meeting, unless the terms of any referral fees are disclosed in the
32 managing agent's contract with the unit owners' association, in which case disclosure of fees actually
33 received shall not be required.

34 II. The managing agent also shall disclose to the board of directors the amount and purpose
35 of any fees, other than maintenance fees, received from a unit owner, unless the terms of any such
36 fees are disclosed in the managing agent's contract with the unit owners' association, in which case
37 disclosure of fees actually received shall not be required.

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1 III. Any contractor licensed by the state of New Hampshire who performs work for a unit
2 owner shall disclose on the bill any referral fee charged by the contractor.

3 356-B:40-b Removal of Officers and Directors.

4 I. Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners
5 present in person or by proxy at any meeting of the unit owners at which a quorum is present, may
6 remove any member of the board of directors and any officer elected by the unit owners, with or
7 without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in
8 opposition to removal, provided that:

9 (a) A member appointed by the declarant may not be removed by a unit owner vote
10 during the period of declarant control.

11 (b) The unit owners may not consider whether to remove a member of the board of
12 directors or an officer elected by the unit owners at a meeting of the unit owners unless that subject
13 was listed in the notice of the meeting.

14 II. At any meeting at which a vote to remove a member of the board of directors or an officer
15 is to be taken, the member or officer being considered for removal shall have a reasonable
16 opportunity to speak before the vote.

17 356-B:40-c Adoption of Budgets and Special Assessments.

18 I. The board of directors, at least annually, shall adopt a proposed budget for the unit
19 owners' association for consideration by the unit owners. Not later than 30 days after adoption of a
20 proposed budget, the board of directors shall provide to all the unit owners a summary of the budget,
21 including any reserves, and a statement of the basis on which any reserves are calculated and
22 funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after
23 providing the summary for a meeting of the unit owners to consider ratification of the budget.
24 Unless at that meeting 2/3 of all unit owners or any larger number specified in the declaration reject
25 the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is
26 rejected, the budget last ratified by the unit owners continues until the unit owners ratify a
27 subsequent budget.

28 II. The board of directors, at any time, may propose a special assessment. Except as
29 otherwise provided in paragraph III, the assessment is effective only if the board of directors follows
30 the procedures for ratification of a budget described in paragraph I and the unit owners do not reject
31 the proposed assessment.

32 III. If the board of directors determines by a 2/3 vote that a special assessment is necessary
33 to respond to an emergency:

34 (a) The special assessment becomes effective immediately in accordance with the terms
35 of the vote.

36 (b) Notice of the special assessment shall be provided promptly to all unit owners.

37 (c) The board of directors may spend the funds paid on account of the special assessment

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1 only for the purposes described in the vote.

2 3 Insurance; Reference Change; Insurance or Bond Required. Amend RSA 356-B:43, II to read
3 as follows:

4 II. When any policy of insurance has been obtained by or on behalf of the unit owners'
5 association, written notice of the obtainment thereof and of any subsequent changes therein or
6 termination thereof shall be promptly furnished to each unit owner by the officer required to send
7 notices of meetings of the unit owners' association. Such notices shall be sent in accordance with
8 ~~[the provisions of the last sentence of RSA 356-B:37]~~ ***RSA 356-B:37-a.***

9 4 Applicability. A unit owners association shall have 2 years from the effective date of this act to
10 amend or revise its bylaws and condominium instruments to comply with the requirements of this
11 act. Any bylaws, condominium instruments, or amendments thereto, adopted after January 1, 2016
12 shall comply with the requirements of this act.

13 5 Effective Date. This act shall take effect January 1, 2016.