

CHAPTER 311
HB 353 - FINAL VERSION

11Mar2015... 0489h
01/14/2016 2540s
01/14/2016 3009s
1June2016... 2086CofC
1June2016... 2160EBA

2016 SESSION

15-0684
05/03

HOUSE BILL **353**

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

SPONSORS: Rep. Williams, Hills 4; Rep. Almy, Graf 13; Rep. LeBrun, Hills 32; Sen. Cataldo,
Dist 6

COMMITTEE: Commerce and Consumer Affairs

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Sixteen

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

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

1 311:1 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 RSA 356-B:35 is repealed and reenacted to read as follows: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 IV-a. The bylaws may require an employee of a managing agent or condominium
19 association to complete a background check prior to employment. The cost of the background check
20 shall be borne by the managing agent or the association.

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

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

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

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

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1 association.

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

4 X. Subject to the declaration and this chapter, the bylaws may provide for any other
5 necessary or appropriate matters, including matters that may be adopted as rules.

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

15 311:2 Meetings, Voting Procedures, Executive Board Members and Officers. RSA 356-B:37
16 through 40-b are repealed and reenacted to read as follows:

17 356-B:37 Meetings.

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

34 II. An association shall hold a special meeting of unit owners to address any matter
35 affecting the unit owners or the association if its president, a majority of the board of directors, or
36 unit owners having at least 33 percent, or any lower percentage specified in the bylaws, of the votes
37 in the association request that the secretary call the meeting. If the association does not notify unit

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owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of an informational meeting, the purpose of which shall be to present the issue to fellow residents and unit owners. Only matters described in the meeting notice required by RSA 356-B:37-a may be considered at a special meeting.

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

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

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

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

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

356-B:37-b Meetings by Telephonic, Video, or Other Conferencing Process. When the declaration or bylaws provides, the association, committees thereof, and the board of directors may meet by telephonic, video, or other conferencing process, provided that the requirements of RSA 356-B:37-c are also met.

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

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

II. Not less than once each quarter, and at such additional times as may be specified in the condominium bylaws, the board of directors shall, subject to the provisions of RSA 356-B:37-d, hold an open regular meeting during which unit owners shall be afforded a reasonable opportunity to comment on any matter affecting the association. At its discretion, the board of directors may meet in a meeting not open to unit owners provided the meeting is recorded and the recording is made

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1 available to unit owners for up to 30 days upon request.

2 III. Unless the meeting is included in a schedule given to the unit owners or the meeting is
3 called to deal with an emergency, the secretary or other officer specified in the bylaws shall give
4 notice of each meeting of the board of directors to each board member and to the unit owners. The
5 notice shall be given at least 10 days before the meeting and shall state the time, date, place, and
6 agenda of the meeting.

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

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

14 356-B:37-d Executive Session. The board of directors and association committees may hold an
15 executive session only during a regular or special meeting of the board or a committee. No final
16 vote or action may be taken during an executive session. An executive session may be held only to:

17 I. Consult with the association's attorney.

18 II. Discuss existing or potential litigation or mediation, arbitration, or administrative
19 proceedings.

20 III. Discuss labor or personnel matters.

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

26 356-B:38 Quorums.

27 I. Unless the condominium instruments otherwise provide, a quorum shall be deemed to be
28 present throughout any meeting of the unit owners' association until adjourned if persons entitled
29 to cast more than 33 1/3 percent of the votes are present at the beginning of such meeting. The
30 bylaws may provide for a smaller percentage, not less than 25 percent, or for a larger percentage for
31 associations having fewer than 25 units; provided, however, this paragraph shall not apply if the
32 condominium is comprised of time sharing interests.

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

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

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1 356-B:39 Voting.

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

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

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

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

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provided, however, this paragraph shall not apply if the condominium is comprised of time sharing interests.

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

V. If 50 percent or more of the votes in the unit owners' association appertain to 25 percent or less of the units, then in any case where a majority vote is required by the condominium instruments or by this chapter, the requirement for such a majority shall be deemed to include, in addition to the specified majority of the votes, assent by the unit owners of a like majority of the units.

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

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

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

II. The ballot shall:

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

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

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

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

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

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

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

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

I. Except as provided in the declaration, the bylaws, paragraph II, or other provisions of

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1 this chapter, the board of directors acts on behalf of the association. In the performance of their
2 duties, officers and members of the board of directors appointed by the declarant shall exercise the
3 degree of care and loyalty to the association required of a trustee. Officers and members of the
4 board of directors not appointed by the declarant shall exercise the degree of care and loyalty to the
5 association required of an officer or director of a corporation organized under RSA 292, and are
6 subject to the conflict of interest rules governing directors and officers under RSA 292. The
7 standards of care and loyalty described in this paragraph apply regardless of the form in which the
8 association is organized.

9 II. The board of directors shall not:

- 10 (a) Amend the declaration except as otherwise provided in this chapter.
11 (b) Amend the bylaws.
12 (c) Terminate the unit owners' association.
13 (d) Elect members of the board of directors but may fill vacancies in its membership for
14 the unexpired portion of any term or, if earlier, until the next regularly scheduled election of
15 executive board members.
16 (e) Determine the qualifications, powers, and duties, or terms of office of members of the
17 board of directors.

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

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

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

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

- 33 (a) Sixty days after conveyance of 60 percent of the units that may be created to unit
34 owners other than a declarant;
35 (b) Two years after all declarants have ceased to offer units for sale in the ordinary
36 course of business;
37 (c) Two years after any right to add new units was last exercised; or

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

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

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

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

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

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

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

33 356-B:40-a Managing Agent and Contractors; Disclosure of Fees; Qualifications.

34 I. If the unit owners' association or the board of directors has delegated certain powers and
35 duties to a managing agent, the managing agent shall disclose any referral fees received from
36 contract work performed on behalf of the association to the board of directors prior to the next
37 regularly scheduled board meeting, unless the terms of any referral fees are disclosed in the

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managing agent's contract with the unit owners' association, in which case disclosure of fees actually received shall not be required.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (c) The board of directors may spend the funds paid on account of the special
7 assessment only for the purposes described in the vote.

8 311:3 Insurance; Reference Change; Insurance or Bond Required. Amend RSA 356-B:43, II to
9 read as follows:

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

15 311:4 New Section; Applicability. Amend RSA 356-B by inserting after section 6 the following
16 new section:

17 356-B:6-a Applicability of Chapter.

18 I. In the event of a conflict between the declaration or bylaws, the provisions of RSA 356-B
19 shall control.

20 II. A unit owners association may amend or revise the condominium documents to comply
21 with the requirements of RSA 356-B without the need to obtain mortgagee approval if the changes
22 do not affect the mortgagee's equity or security interest in the property.

23 311:5 Effective Date. This act shall take effect August 1, 2016.

24 Approved: June 24, 2016

25 Effective Date: August 1, 2016

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