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The Municipal Services Act

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In these difficult economic times, it is especially important for community associations to be fiscally responsible. One source of substantial cost savings that associations sometimes overlook is New Jersey's Municipal Services Act. Under the Act, a municipality must provide a "qualified private community" with the following categories of services on its roads and streets, or reimburse the community for its costs to obtain them elsewhere: (1) removal of snow, ice and other obstructions, but not including street sweeping or cleaning; (2) the cost of electricity for street lighting, but not including installation or maintenance of lamps and other equipment; and (3) collection of leaves, recyclable materials and garbage. The Act is intended to help eliminate double payment for these services by residents of qualified private communities who pay for them through both their property taxes and association common expenses.

The vast majority of condominiums and other community associations in northern New Jersey are "qualified private communities" under the Act's definition: residential condominiums, cooperatives, or fee simple communities in which the cost of maintaining the roads and providing essential services is paid for by a not-for profit entity, such as a condominium association, consisting exclusively of unit owners who do not receive any tax abatement or exemption related to construction.

If a municipality chooses to perform the designated services, it must do so "in the same fashion" as it does on public streets. Although the Act does not require a municipality to provide additional services such as street cleaning or maintenance of fire hydrants, an association may be able to obtain them through negotiation.

A municipality that selects the payment option must enter into a written agreement with the association to reimburse it annually for its actual costs to obtain the covered services, not exceeding the amount that the municipality would have spent to provide the services directly itself. The association must use the reimbursed funds to pay for the services and must provide an accounting for them to the municipality.

The proposed amount and method of calculating the reimbursement can vary widely among different municipalities; some municipalities' proposals are quite fair and others are unreasonably low. Therefore, an association should carefully negotiate with a municipality in order to assure it receives the maximum amount to which it is entitled. For example, some municipalities have offered associations a snow removal reimbursement limited to a pro-rated amount of the wages paid to a public works employee for the few minutes he drives the municipal snow plow through the association's premises. An association should firmly reject this kind of low ball offer and demand that the reimbursement include a fair allocation of all of the municipality's direct and indirect (overhead) costs in any way attributable to snow removal, such as

supervisory and administrative personnel costs; chemical de-icing agents; capital costs and fuel for snow plows, trucks, and salt spreaders; a share of employee health insurance, pension, and other benefits; and overtime. An association also should confirm that the municipality does not conceal its true costs by mis-allocating a portion of them to “non-snow removal” budgetary line items, such as partially allocating labor costs to general overtime wages for the DPW. The association should request the municipality to provide a detailed explanation of how it arrived at its total costs, and a copy of its annual audited financial statements or other acceptable supporting documentation.

Of course, the Act’s requirements, like any statute, are subject to interpretation by the courts. For example, in one case a New Jersey appellate court held that an association was entitled to an “enhanced” reimbursement that was 50% greater than the municipality’s average snow plowing costs, because the association’s roads were among the steepest in the municipality and were more difficult and more expensive to plow than the public roads. The court also found, however, that this same association was not entitled to reimbursement for that part of its street lighting that was “vastly superior” to the lighting on the municipal roads, because the developer had voluntarily installed it without being required to do so by the municipality.

Pursue your association’s rights under the Act – you may save tens of thousands of dollars each year.