



IN ASSOCIATION

A NEWSLETTER FROM

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This newsletter has been prepared to provide readers with information concerning the law of condominiums and community associations in Connecticut. It is not meant to be a substitute for competent professional advice. Readers are urged to consult with competent legal counsel before taking action.

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**CONNECTICUT AMENDS THE
COMMON INTEREST OWNERSHIP ACT**

On July 8, 2009, Governor Rell signed Public Act 09-225, which makes a number of amendments to the Connecticut Common Interest Ownership Act. The Act governs all communities created in Connecticut since January 1, 1984. Some sections of the Act also apply to communities created before 1984.

The amendments to the Act are many in number and broad in scope. Some are designed to allow older associations to take advantage of the powers and flexibilities afforded by the Act, without having to amend their governing documents. Some are designed to make associations more responsive to unit owners and to make their governance more transparent. Others are designed to address issues that the original language of the Act left unclear.

Most of the amendments will not take effect until July 1, 2010. This gives associations time to learn more about the amendments and, if necessary, amend their governing documents and change their current procedures to comply with the amendments.

A few amendments, particularly those that apply to communities created before 1984, took effect on passage. This means that associations can take advantage of these amendments at once.

Copies of the Common Interest Ownership Act, Public Act 09-225, and other statutes governing condominium and homeowner associations are available on our website, ctcondolaw.com.

This Newsletter lists the amendments that are most likely to affect most existing associations. Our office will be holding seminars over the next twelve months to discuss these amendments and their impact on associations. In the meantime, please feel free to contact us should your association have any questions or concerns regarding the amendments.

HOW YOUR ASSOCIATION SHOULD RESPOND TO THE AMENDMENTS

The impact these amendments will have on your association will depend in part on the age of your community. As discussed below, some of the amendments do not apply to communities created before 1984.

Some of the amendments should have no impact on most communities. For example, it is unlikely that your community will have to take advantage of the amendments concerning termination after a disaster.

However, other amendments may supersede the current provisions of your governing documents. This means that your association will have to comply with the requirements of the amended provisions of the Act, rather than its own documents. For example, the new requirements regarding insurance that the association must purchase may conflict with the current requirements of your documents. Nevertheless, the association must purchase insurance as required by the Act. The association may want to amend its governing documents to comply with the amended provisions of the Act in order to avoid confusion.

Additionally, other amendments may require the association to create new internal procedures. For example, the association will need to create procedures for giving notice of and conducting meetings of its board to comply with the Act.

Our office is preparing appropriate document amendments and policies for our association clients, so that they can comply with these amendments. Unfortunately, there are no “one size fits all” amendments or policies that will work for all associations. Your association should consult with its legal counsel to discuss amendments and procedures that are appropriate for your community.

AMENDMENTS NOW IN EFFECT

Of all of the amendments to the Common Interest Ownership Act, only three became effective immediately on passage. One of these amendments is merely a technical revision that is of little concern. The other two, however, are of particular interest to communities created before 1984.

Mortgage Consent to Document Amendments

Mortgagee Consent Under Older Documents. The documents of most communities created before 1984 required the consent of unit mortgagees for even the most routine document amendments.

Obtaining the consent of mortgagees is a difficult, if not impossible task. In today's market, mortgages are frequently bought, sold and transferred from one mortgage company to another. Often, the mortgage companies neglect to record assignments of the mortgage on the land records, making it very difficult to locate the current holder of the mortgage. Additionally, mortgage companies are very slow to respond to requests from associations, if they ever respond at all.

Mortgagee Consent Under the Common Interest Ownership Act. Subsection 47-236(i) of the Common Interest Ownership Act sets out a process for making it easier to obtain mortgagee consent. It provides that if the association sends notice of the proposed amendment to the mortgagee by certified mail, return receipt requested, and the mortgagee fails to respond within 45 days, the mortgagee is deemed to have given its consent. Furthermore, Subsection 47-236(i) provides that the association can rely on the land records when determining who is the current mortgagee.

Amendments to Subsection 47-236(i). As originally drafted, Subsection 47-236(i) only applied to amendments to the declarations of communities created since January 1, 1984. However, the amendments to the Act now make Subsection 47-236(i) applicable to amendments to the declarations and bylaws of all common interest communities, regardless of when they were created.

Association Borrowing

The Right to Pledge Future Income. Many associations borrow money from commercial lenders to fund capital repairs and improvements. In most cases, the lender requires the association to give it an assignment of its future income, including the right to collect common charges from unit owners, as collateral for the loan.

Subsection 47-244(a)(14) of the Common Interest Ownership Act, as originally drafted, empowers associations to assign their future income, but only to the extent permitted by the declaration. This means that the declaration must expressly authorize the assignment of future income in order for the association to proceed with a loan.

The declarations of most communities created since January 1, 1984, permit the association to assign its right to future income. In most cases, the assignment requires the vote of unit owners having a majority of the voting power in the association.

Problems for Older Communities. The declarations of most communities created before 1984 do not empower their associations to assign their future income. Nevertheless, older communities are the ones most likely to require capital repairs, given the age of the buildings and facilities. Before an older association can obtain a loan, however, it must first amend the declaration to authorize the assignment of its future income. This can be an expensive and time-consuming process.

Empowering Older Communities. The amendments to the Act revise Subsection 47-244(a)(14) to permit any association, regardless of when created, to assign its future income without having to amend its declaration. The Act requires that the assignment be approved by the vote of unit owners having at least a majority of the total voting power in the association.

...if the association sends notice of the proposed amendment to the mortgagee by certified mail, return receipt requested, and the mortgagee fails to respond within 45 days, the mortgagee is deemed to have given its consent

Nevertheless, associations should still review their documents carefully before borrowing money and undertaking capital repairs and improvements. The documents may contain provisions limiting the association's ability to proceed, which may have to be amended.

AMENDMENTS TAKING EFFECT ON JULY 1, 2010

All of the other amendments to the Common Interest Ownership Act take effect on July 1, 2010. As noted below, some of these amendments apply only to communities created since January 1, 1984, while others apply to all communities regardless of when created. Additionally, some of the amendments have not yet been codified with section numbers within the statutory scheme of the Act. Until they are codified, we cannot determine whether these amendments apply to all communities, or just those created since January 1, 1984.

Expanding the Sections of the Act that Apply to Preexisting Communities

Section 47-216 of the Common Interest Ownership Act lists which sections of the Act apply to communities created before January 1, 1984. This list has been expanded to include the following sections, which do not currently apply to older communities:

- Section 47-218 – Applicability of the Act to Amendments to the Governing Documents.
- Section 47-221 – Default Definition of Unit Boundaries.
- Subsection 47-236(b) – Statute of Limitations for Challenging an Amendment to the Declaration.
- Subsection 47-236(i) – Mortgagee Approval of Amendments
- Section 47-237 – Termination of a Common Interest Community.
- Section 47-250 – Meetings of the Unit Owners and the Board.
- Section 47-255 – Insurance.
- Section 47-257 – Assessments for Common Expenses.

These sections only apply to preexisting communities with regard to facts or circumstances arising after July 1, 2010. For example, Subsection 47-236(b) provides that declaration amendments may not be challenged more than one year after they are recorded. This provision only applies to amendments that are adopted after July 1, 2010. It does not apply to any amendments adopted before July 1, 2010.

Termination of the Community After a Disaster

(Applies to all communities)

(Applies to pre-1984 communities for the first time)

The amendments to Section 47-237 add a special set of rules that permits a court to terminate or restructure a community that has been substantially destroyed and where it is not possible to locate or assemble the unit owners to vote on termination.

Notices of Pending Litigation

(Applies to all communities)

The amendments create a new requirement that the board promptly notify the owners of any legal proceeding in which the association is a party. This new requirement is found in Subsection 47-244(c) of the Act. Except as discussed below, this requirement applies to any lawsuit filed in a Connecticut court and any administrative proceeding before any government entity, such as the local planning and zoning commission or the Commission on Human Rights and Opportunities (CHRO).

The amendments create a new requirement that the board promptly notify the owners of any legal proceeding in which the association is a party.

...a board’s decision not to pursue enforcement under one set of circumstances does not prevent the board from taking action under another set of circumstances.

Exceptions. This requirement does not apply to the following claims or actions:

- Claims involving enforcement of association rules. Claims involving enforcement of the declaration or bylaws, however, must be disclosed.
- Claims seeking the recovery of unpaid assessments or other sums due the association.
- Defending the association’s lien on a unit in a foreclosure action commenced by a third party, such as a mortgage holder.

Taking Enforcement Action and Compromising Claims
(Applies to all communities)

There has been some question as to whether an association has the discretion to decline to act each and every time an owner violates the governing documents, and whether an association can compromise claims made by or against the association. The amendments to the Act provide some guidance.

Discretion When Deciding How to Proceed. Section 47-244 of the Act sets out the powers of the association. The amendments create a new Subsection (g) to Section 47-244.

Subsection 47-244(g) permits the board to decide whether enforcement action is necessary and to compromise claims. It also provides that the association has no duty to take action in the following cases:

1. The association’s legal position does not justify further action;
2. The covenant, restriction or rule at issue either is inconsistent with applicable law, or a court is likely to conclude that it is inconsistent with law;
3. Even though a violation may exist or may have occurred, it is not so material that a reasonable person would object or it does not justify expending association resources; or
4. It is not in the association’s best interest to take action.

Decisions Are Made on a Case-by-Case Basis. The amendments also create a new Subsection (h) to Section 47-244. It provides that a board’s decision not to pursue enforcement under one set of circumstances does not prevent the board from taking action under another set of circumstances. Therefore, if the association decides not to act in one case, it is not forever barred from taking action in a later case.

However, the board may not be arbitrary or capricious in taking enforcement action. In other words, there must be some factor that distinguishes one set of circumstances from another, which led to the board taking action in one case but not the other.

Meetings of the Unit Owners and the Board
(Applies to all communities)
(Applies to pre-1984 communities for the first time)

Section 47-250 of the Common Interest Ownership Act sets forth the requirements for meetings of associations. Originally, Section 47-250 contained requirements only for meetings of the unit owners, but not the boards of the association. However, the amendments to Section 47-250 create requirements for board meetings, as well as new requirements for meetings of the unit owners.

Meetings of the Unit Owners. The following are new requirements for holding meetings of the unit owners under Subsection 47-250(a), as amended:

- If the required number of unit owners request that the secretary call a special meeting of the unit owners, and the association fails to send a notice of the meeting to all owners within fifteen days

after receipt of the request, then the owners who submitted the request may directly give notice of the meeting to all of the unit owners. This requirement is taken from the Connecticut Revised Nonstock Corporations Act. The Nonstock Act applies to most associations because they are incorporated as nonstock corporations. However, some associations, particularly those of smaller communities, are not incorporated. By adding this requirement to the Common Interest Ownership Act, it will apply to all associations, whether or not incorporated.

- At any meeting of the unit owners, the owners must be given “a reasonable opportunity to comment on any matter affecting the community or the association.”
- The declaration or bylaws may allow for meetings of unit owners to be conducted by telephone, video or other conferencing process, but only if:
 1. The meeting notice states the conferencing process to be used;
 2. The notice provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and
 3. The process provides all unit owners the opportunity to listen and take part in the discussion.

Meetings of the Board and Committees. Subsection 47-250(b) sets forth the following requirements for holding meetings of the board and any committee that has the power to act on behalf of the association:

- Board meetings and committee meetings must be open to the unit owners and to any person designated by an owner as his or her representative, except during executive session.
- At each board meeting, the board must provide unit owners with an opportunity to comment on any matter affecting the community and the association.
- Boards and committees may hold an executive session to do only the following:
 1. Consult with the association’s attorney concerning legal matters;
 2. Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;
 3. Discuss labor or personnel matters;
 4. Discuss contracts, leases, and other transactions to purchase or provide goods or services, currently under negotiation, including the review of bids or proposals; or
 5. Prevent public knowledge of a matter to be discussed, if the board or committee determines that public knowledge would violate the privacy of any person.
- Boards and committees may meet in executive session only during a regular or special meeting.
- No final votes or actions may be taken while in executive session.
- A gathering of board members where they do not conduct association business is not a meeting of the board.
- The board may not use incidental or social gatherings of board members or any other method to avoid the open meeting requirements.
- Instead of meeting, the board may act by unanimous consent, so long as each member of the board consents to the action in writing. The secretary of the association must promptly give notice to all unit owners of any action taken by unanimous consent.
- Even though the board may act without a meeting, it must still meet at least two times a year.
- Board meetings must take place either at the community or at a place convenient to the community. However, the bylaws may vary the location of the meetings.

Right of the Unit Owners to Comment at Board and Committee Meetings. One of the major goals

Board meetings and committee meetings must be open to the unit owners

At each board meeting, the board must provide unit owners with an opportunity to comment on any matter affecting the community and the association.

of the amendments to the Act is to make the governance of the association more open and responsive to unit owners. To further this goal, Subsection 47-250(b) requires the following:

- At each board meeting, the board must provide unit owners with an opportunity to comment on any matter affecting the community and the association.
- At least ten days before a meeting of the board, the association must give notice of the meeting to all board members and all unit owners. The notice must state the time, date, place, and agenda of the meeting. However, notice is not required in the following situations:
 1. Where the meeting is included in a schedule given to all unit owners; or
 2. The board calls the meeting to deal with an emergency.
- If any materials are distributed to the board before the meeting, then at the same time, the board must make copies of those materials available to unit owners. However, the board need not make available copies of unapproved minutes or materials that the board will consider in executive session.
- Unless prohibited by the declaration or bylaws, the board may meet by telephone, video or other conferencing process, but only if:
 1. The meeting notice states the conferencing process to be used;
 2. The notice provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and
 3. The process provides all unit owners the opportunity to listen to the discussion and offer comments.

Challenging Actions of the Board. The Act recognizes that the leaders of most associations are usually volunteers who are not attorneys or professional managers. They do the best they can with the resources available to them.

The Act also recognizes that there must be a balance between protecting the rights of unit owners and the need of associations to make decisions that will not be overturned.

With these thoughts in mind, Subsection 47-250(b), as amended, provides as follows:

- Even if an action by the board does not comply with Subsection 47-250(b), as amended, the action is valid unless set aside by a court.
- Anyone challenging the validity of an action of the board for failure to comply with Subsection 47-250(b) must file a lawsuit within 60 days after the later of the following:
 1. The board approves the minutes of the meeting at which it took the action; or
 2. The record of the action is distributed to unit owners.

If the lawsuit is not filed within 60 days, then the action is no longer vulnerable to a challenge based on noncompliance with Subsection 47-250(b).

The Use of *Robert's Rules of Order* (Applies to all communities)

Associations Must Conduct Meetings in Accordance with *Robert's Rules of Order Newly Revised.* Conducting a meeting of any sizeable group can be challenging. The use of a thoughtful set of parliamentary rules is often helpful. Sometimes they are essential, like when the issue is contentious.

The documents of a few associations specify a particular set of parliamentary rules to govern meetings of the unit owners. Other associations have adopted standing resolutions designating

parliamentary rules. In either case, the parliamentary rules most often used by associations are the latest edition of *Robert's Rules of Order Newly Revised*.

Most associations, however, have not adopted a set of parliamentary rules.

Subsection 47-250(c) of the Act, as amended, provides that associations must conduct their meetings in accordance with the most recent edition of *Robert's*.

Exceptions. An association need not conduct the meeting in accordance with *Robert's* in either of the following situations:

- If the declaration, the bylaws, or other law requires different rules or procedures, those rules or procedures supersede *Robert's*. For example:
 1. Under *Robert's*, the membership elects the officers. In an association, the membership is the unit owners. Under the Connecticut Revised Nonstock Corporation Act, as well as the governing documents of most associations, the unit owners elect directors, but not officers. The directors elect the officers. The Nonstock Corporation Act and the governing documents supersede *Robert's*.
 2. The governing documents may require the use of a different set of parliamentary rules, such as *The Standard Code of Parliamentary Procedure* by Alice Sturgis.
- Unit owners having two-thirds of the voting power present at a meeting may vote to suspend the use of *Robert's*. The owners would then be free to vote on another rule to govern that situation.

Voting at Meetings of the Association

(Applies to communities created since 1984)

The amendments to Section 47-252 of the Common Interest Ownership Act are designed to make associations more responsive to their unit owners. The amendments also seek to address technical issues that have arisen with regard to voting, which were not clearly addressed by the Act as originally drafted.

Voting at a Meeting. Section 47-252(b), as amended, now provides that a majority of the votes cast at a meeting is the decision of the unit owners. Either the Act or the declaration may require a higher percentage. However, this provision supersedes any higher requirement contained in the bylaws.

Voting by Proxy. Unless prohibited by the declaration or bylaws, owners may vote by either directed or undirected proxies. In a directed proxy, the owner tells the proxy holder how he or she must vote on a given issue. In an undirected proxy, the proxy holder may vote as he or she sees fit.

However, under Subsection 47-252(b), as amended, no single person can cast votes for more than 15% of the total voting power in the association through the use of undirected proxies. There is no such limitation on the use of directed proxies.

Voting Without a Meeting. Under Section 47-252, as amended, an association may hold a vote without a meeting, unless prohibited or limited by the declaration or bylaws. The Act refers to voting without a meeting as voting by ballot. The following requirements apply to voting by ballot:

- The association must notify the owners that the vote will be taken by ballot:
- The association must deliver a paper or electronic ballot to every owner entitled to vote on the matter.

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The documents of many pre-1984 communities contain insurance requirements that do not comply with Section 47-255. The requirements of Section 47-255 supersede the documents in these cases.

- The ballot must set forth each proposed action or office to be filled.
- The ballot must provide an opportunity to vote for or against the action or the candidate for office.
- When the association delivers the ballots, it must also:
 1. Indicate the number of responses needed to meet the quorum requirements.
 2. State the percentage of votes necessary to approve each matter other than election of directors.
 3. Specify the time and date by which the owner must deliver the ballot to the association to be counted. This time and date may not be less than three days after the date the association delivers the ballot.
 4. Describe the time, date and manner by which owners may deliver information regarding the matter to be voted on to the association for distribution to all of the other owners.
- Once someone delivers a ballot to the association, he or she cannot revoke it. Furthermore, the ballot is not revoked by the death or disability of the voter. However, the declaration or bylaws may permit the revocation of ballots.
- A vote taken by ballot is only valid if the number of votes cast by ballot equals or exceeds the association's quorum requirements for holding a valid meeting.

Areas of Concern. The amendments do not address a number of procedural issues that are likely to come up as soon as the association tries to hold a unit owner vote by ballot, especially if the request for the vote originates in a petition from a group of unit owners. The following are just a few examples:

- Who determines whether a particular vote will be taken at a meeting or by a ballot without a meeting?
- How does an association determine the wording of the resolution to be voted on?
- How do unit owners exchange information and opinions concerning the proposal?

We are developing procedures that an association can adopt as an amendment to its bylaws if it wishes to conduct elections or make other decisions by ballot. Alternatively, your association may wish to adopt an amendment that prohibits voting without a meeting altogether.

Association Insurance

(Applies to all communities)

(Applies to pre-1984 communities for the first time)

Section 47-255 of the Act governs the kinds of insurance that the association must purchase. Until now, Section 47-255 applied only to communities created since January 1, 1984. However, these amendments now make Section 47-255 applicable to pre-1984 communities.

The documents of many pre-1984 communities contain insurance requirements that do not comply with Section 47-255. The requirements of Section 47-255 supersede the documents in these cases.

In addition to amending its applicability, Section 47-255 has been amended to add the following requirements:

- Associations are now required to purchase fidelity insurance. Depending on the language of the policy, fidelity insurance may cover the theft of association funds by its officers, directors or managers. Notwithstanding this requirement, associations that have hired professional managers should already be covered by fidelity insurance in accordance with Section 20-460 of the Connecticut General Statutes.
- If a community contains attached units divided by common walls, such as party walls, or stacked units divided by common floors and ceilings, then the master insurance policy must cover the

units, in addition to common elements.

- If the master policy covers the units, then it must also cover improvements and betterments to the units installed by unit owners, unless:
 1. The declaration limits the authority of the association to insure betterments and improvements; or
 2. The board, after giving unit owners notice and an opportunity to comment, decides not to insure the improvements and betterments.
- In either case, if the association does not insure all improvements and betterments, then the association must do the following:
 1. Create a list of fixtures, improvements and betterments in units that the association considers standard. The master policy will then cover the cost of replacing only standard fixtures, improvements or betterments.

For example, the association may decide that the standard countertop will be laminate, even though some owners have granite countertops. In the event of a fire, if the countertop needs replacing, the master policy will cover the cost of installing new laminate countertops. If the owner wishes to install new granite countertops, he or she is responsible for the difference in cost.

2. The list must be provided to all unit owners at least once per year.
3. The list must be included in all resale certificates issued by the association.

Unit Owner Liability for the Costs of Repairs and Replacements

(Applies to all communities)

(Applies to pre-1984 communities for the first time)

Subsection 47-257(e) of the Common Interest Ownership Act originally provided that if a common expense was caused by the misconduct of a unit owner, then the association may assess the expense solely against that owner's unit. The purpose of this provision was to make unit owners liable for their own bad behavior.

The amendments to Subsection 47-257(e) expands the type of behavior for which owners may be liable to the following:

- Wilful misconduct. In its simplest terms, wilful misconduct means that someone took action, intending to cause the harmful results.
- Failure to comply with a written maintenance standard created by the association.
- Gross negligence. In its simplest terms, gross negligence means that someone knew or should have known about the harmful results when he or she took action, even if those results were not the intended outcome.

If the association incurs an expense because a unit owner, his or her tenant, or the guest or invitee of a unit owner or tenant, engages in any of the above behavior, then the association may assess that expense solely against that owner or tenant's unit.

Before levying the assessment, however, the association must provide the owner or tenant with notice and an opportunity to be heard. Furthermore, the assessment is limited to the portion of the expense that is not covered by the master insurance policy. This includes the following expenses:

1. Losses of a nature that are not covered by the policy; and
2. Losses or portions of losses that are not covered because of the deductible.

Foreclosure of Unpaid Assessments

(Applies to all communities)

Section 47-258 of the Act empowers the association to foreclose its lien on a unit to collect unpaid assessments.

The amendments add a new Subsection 47-258(m) to the Act. Subsection 47-258(m) sets out the following new requirements that must be met before the association can begin a foreclosure action:

- The outstanding balance owed by the unit owner must equal at least two months of common expense assessments under the current annual budget;
- The association must make a written demand for payment, either by hard copy or electronically; and
- The board must specifically vote to begin a foreclosure against that unit, or adopt a standard policy that provides for foreclosure against that unit.

Resale Certificates

(Applies to all communities)

The amendments to the Act expand the disclosures that associations must include in resale certificates. The amendments also modify how the association calculates the fee for preparing resale certificates.

Contents of a Resale Certificate. Subsection 47-270(a) of the Act, as originally drafted, lists the information that the association must include in a resale certificate. In addition to the original list, the amendments to Subsection 47-270(a) also require the association to include the following:

- A statement of whether there are any pending suits or administrative proceedings in which the association is a party. Originally, the certificate needed only to disclose suits in which the association is a defendant. This new requirements includes any pending foreclosures brought by the association or any other holder of a lien against the unit. However, it does not include other types of collections.
- If the association does not insure all improvements and betterments in units, then the certificate must include a schedule of standard fixtures, improvements and betterments that are covered by the association's insurance.
- A statement disclosing the number of units whose owners are at least 60 days' delinquent in paying their common charges at the time the certificate is issued.
- A statement disclosing the number of foreclosures filed by the association during the past 12 months.
- A statement disclosing the number of foreclosures filed by the association which are still pending as of a specified date. That date must be within 60 days of the issuance of the resale certificate.
- Any established maintenance standards adopted by the association.

Fee for Preparing the Resale Certificate. Prior to these amendments, Subsection 47-270(b) permitted the association to charge up to \$125.00, including the costs of copies of the documents, for preparing a resale certificate. However, Subsection 47-270(b), as amended, will permit the association to charge \$125.00 plus an additional fee for copies. The association may charge either:

- A copying fee of five cents per page for paper copies of the documents; or
- A flat fee of \$10.00 for an electronic copy of the documents.

The amendments to the Act expand the disclosures that associations must include in resale certificates. The amendments also modify how the association calculates the fee for preparing resale certificates.

Maintenance and Inspection of Association Records

(Applies to all communities)

Section 47-260 of the Act, as originally drafted, required the association to maintain financial records and other records as necessary to prepare resale certificates. It also gave unit owners broad rights to inspect association records. The amendments revise Section 47-260 to describe the records the association must keep in more detail. It also identifies certain classes of records that the association may withhold from inspection.

Required Records. An association must keep the following records:

- Detailed records of funds received and spent in connection with the association's operation and administration, along with other appropriate accounting records.
- Minutes of all meetings of the owners and the board (except executive sessions), a record of all actions taken by the owners or the board without a meeting, and a record of all actions any committees take for the association in place of the board.
- The names of unit owners in a form that allows the preparation of a list of their names in alphabetical order, the addresses that the association uses to communicate with them, and the number of votes each owner is entitled to cast.
- The original or restated organizational documents if such documents are required by law other than the Act (such as the Revised Nonstock Corporation Act), the bylaws and all amendments to them, and all rules currently in effect.
- All financial statements and tax returns of the association for the past three years.
- The names and addresses of the current members of the board and officers.
- The most recent annual report delivered to the Secretary of the State, if required.
- Financial and other records with sufficient detail to prepare resale certificates.
- Copies of the association's current contracts.
- Records of the association's actions to approve or deny any requests for design or architectural approval from unit owners, such as notices of and minutes from the board or a committee.
- Ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

Record Inspection by Unit Owners. With limited exceptions, the amendments require the association to make all of its records available for examination and copying by unit owners or their authorized agents.

Owners or their agents may inspect records during reasonable business hours or at a mutually convenient time and location. The owner must give the association five days' notice in writing of his or her request to inspect and copy the records. The request must specify in reasonable detail the records to be reviewed and copied. Owners may obtain copies by photocopying or other means. Other means can include e-mails of scanned documents, assuming the association can send such files and the unit owner requests them. However, an association does not have to assemble or create information in response to a request from an owner.

The amendments allow an association to charge a reasonable fee for providing copies of any records and for supervising a unit owner's inspection of its records. They prevent a unit owner from using any information the association provides for commercial purposes.

Records That May Be Withheld. The association may withhold records from inspection and copying if they concern the following:

- Personnel, salary, and medical records relating to specific individuals, such as employees of the association.

The amendments allow an association to charge a reasonable fee for providing copies of any records and for supervising a unit owner's inspection of its records.

The association may adopt rules to establish and enforce construction and design criteria and aesthetic standards in the community. If it does, it must also adopt procedures for enforcing those rules and for approving construction applications.

- Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently under negotiation.
- Existing or potential litigation, mediation, arbitration, or administrative proceedings.
- Existing or potential actions before a court or other government tribunal for enforcement of the declaration, bylaws, or rules of the community.
- Communications with the association's attorney that are protected by the attorney-client privilege or the attorney work-product doctrine.
- Information that cannot be disclosed under other laws.
- Records of an executive session of the executive board.
- Files concerning individual units other than the files of the requesting owner.

Adopting Rules

(Applies to communities created since 1984)

(Uncertain as whether this applies to communities created before 1984)

Section 34 of Public Act 09-225 contains new provisions governing the adoption of rules.

Procedure for Adopting and Changing Rules.

- The board must give all unit owners at least 10 days notice prior to adopting or repealing any rule.
- The notice must contain the text of the rule or proposed change, the board's intention to adopt, amend or repeal the rule and the date on which the board will act on the proposed rule or change, after considering any comments from owners.
- Following adoption of a new rule or the amendment or repeal of an existing rule, the association must notify the owners of its action and provide them with a copy of any new or revised rule.

Rules Concerning Construction and Design Criteria. The association may adopt rules to establish and enforce construction and design criteria and aesthetic standards in the community. If it does, it must also adopt procedures for enforcing those rules and for approving construction applications. These procedures must include a reasonable time within which the association must act after application has been submitted by the owner, and the consequences of its failure to act.

Rules Concerning Flags and Signs. Associations may adopt rules regulating the display of the United States flag. However, these rules must be consistent with federal law.

The association may not prohibit an owner from displaying the following on his or her unit or the limited common elements adjoining the unit:

- The Connecticut state flag.
- Signs regarding candidates for public office or association office, or ballot questions.

However, the association may adopt rules governing the time, place, size, number and manner of those displays.

Other Issues Concerning Rules.

- Associations may not prohibit owners from peaceful assembly on the common elements to consider matters related to the community. However, the association may adopt rules governing the time, place and manner of those assemblies.
- An association's internal business operating procedures need not be adopted as rules.
- All of the rules must be reasonable. In determining reasonableness, a court will look at the following factors:

1. Whether the association had the authority to adopt the rule under Connecticut law or its governing documents; and
2. Whether the rule is based on reasoned decision-making, or is arbitrary and capricious. In other words, if an owner challenged a rule in court, the association would be required show that it considered the issue and had reasons for adopting the rule in question.

Giving Notices to Unit Owners

(Applies to communities created since 1984)

(Uncertain as whether this applies to communities created before 1984)

Section 35 of Public Act 09-225 is a new provision designed to clarify how the association gives notices to unit owners.

Delivery as Specified by the Unit Owner. Section 35 provides as follows:

- If a unit owner designates a specific mailing address, the association must deliver paper copies of notices to that address.
- If a unit owner designates a specific e-mail address, the association must deliver electronic copies of notices to that e-mail address.

Other Permitted Methods of Delivery. Section 35 also states that the association may deliver notices as follows:

- Hand delivery to the unit owner. This requires actually placing a copy of the notice into the hands of the unit owner.
- Delivery by hand to the address of the unit.
- Mailing a copy of the notice to the unit by United States mail or a commercial delivery service, such as Federal Express.
- Delivery to the unit owner by e-mail, but only if the unit owner has furnished the association with an electronic address.
- Delivery by any other method reasonably calculated to provide notice to the unit owner. According to the official comments to the Uniform Common Interest Ownership Act, on which the Connecticut Act is based, these methods may vary by community. The comments offer as possible examples posting the notice on the community's bulletin board or on sandwich boards at the community entrance.

When Notices Become Effective. Section 35 provides that notices are effective when sent by the association.

So long as the association makes a good faith effort to give notice to a unit owner using one of the above methods, the fact that the owner never actually received the notice will not invalidate any action taken by the association.

Areas of Concern. In cases where an owner designates a specific mailing address or e-mail address, it is unclear whether the association may instead choose to send notices using one of the other permitted methods under Section 35. This is an issue that we are reviewing further.

Removing Board Members

(Applies to communities created since 1984)

(Uncertain as whether this applies to communities created before 1984)

Reduction of the Votes Required to Remove Board Members. As originally drafted, Subsection 47-245(g) of the Act provided the unit owners may remove board members by the vote of two-

So long as the association makes a good faith effort to give notice to a unit owner using one of the above methods, the fact that the owner never actually received the notice will not invalidate any action taken by the association.

thirds of the owners present, in person or by proxy, at a meeting for that purpose, at which a quorum is present.

Section 36 of the Public Act replaces Subsection 47-245(g). Section 36 provides that unit owners may remove any member of the board, with or without cause, if the total number of votes cast in favor of removal exceeds the total number of votes cast against it. This reduces the percentage of votes needed to remove board members from two-thirds to a majority of the votes cast.

Conducting the Vote. The unit owners may vote to remove a board member at a meeting or by ballot without a meeting. The vote to remove a board member must be listed in the notice of the meeting or notice of a vote by ballot.

Adopting Budgets and Special Assessments

(Applies to communities created since 1984)

(Uncertain as whether this applies to communities created before 1984)

As originally drafted, Subsection 47-245(c) set out a process for adopting or rejecting the association's annual budget. This process applied only to communities created since 1984, and only to budgets, not special assessments.

The amendments moved these requirements into Section 37 of Public Act 09-225. Until Section 37 is codified with a section number within the statutory scheme of the Act, we cannot be certain of whether it will now also apply to pre-1984 communities.

Adoption of Special Assessments. Section 37 of Public Act 09-225 also creates new requirements for adopting special assessments.

Under these requirements, unit owners need not approve a proposed special assessment, if the assessment, together with all other special and emergency assessments proposed by the board in the same calendar year, does not exceed 15% of the annual budget. However, if the special assessment, together with all other special and emergency assessments, does exceed 15%, then owners must have an opportunity to reject the assessment. The procedures for rejecting the assessment are identical to the current procedures for rejecting an annual budget.

Exceptions for Emergency Assessments. Under Section 37, the board may determine, by a two-thirds vote, that a special assessment is necessary to respond to an emergency. The special assessment is effective immediately in accordance with the terms of the vote.

The board must promptly provide notice of the emergency assessment to all unit owners. The board may spend the funds raised by the emergency special assessment only for the purposes described in the vote.

Impact on Communities Created Since 1984. While these requirements are new to the Act, they are, for the most part, commonly found in the declarations of most communities created since 1984. The differences between Section 37 and the typical post-1984 declarations are as follows:

- Under a typical post-1984 declaration, owners must have an opportunity to reject the special assessment if that assessment exceeds 15% of the annual budget. Under Section 37, however, the owners must have an opportunity to reject a special assessment if the total of all special and emergency assessments levied in the current year exceed 15% of the annual budget. The provisions of Section 37 supersede the declaration.
- Most post-1984 declarations do not differentiate between emergency assessments and other special assessments.

...unit owners may remove any member of the board, with or without cause, if the total number of votes cast in favor of removal exceeds the total number of votes cast against it. This reduces the percentage of votes needed to remove board members from two-thirds to a majority of the votes cast.

New Clients

We are often asked if we are accepting additional clients.

We are, and are always happy to meet with interested parties to discuss our firm and how we may serve them.

Construction Defect Litigation

(Applies to communities created since 1984)

Section 38 of Public Act 09-225 gives the board the clear authority to decide whether and when the association may litigate claims against the declarant for construction defects.

The amendments prohibit the declaration from requiring a vote of the unit owners as a condition of starting litigation.

The amendments now require the association to give notice of the defect to the responsible parties before taking action and gives the responsible parties an opportunity to propose a cure before the association can begin litigation, mediation, arbitration, or administrative action.

- The amendments set out a detailed procedure, with time limits for the responsible party to respond with a proposed plan, and for the association to accept or reject the proposal.
- Any statute of limitation affecting the association's right of action against a declarant or other person is tolled during the initial 45-day period and during any extension of that period from the commencement and diligent accomplishment of the remediation plan.

Exceptions. There are several exceptions to the requirement for written notice and remediation plans before an association may start a legal proceeding:

- A unit owner may start a legal proceeding with respect to his or her unit and any limited common elements assigned to that unit, regardless of any action by the association.
- The notice and plan requirement does not preclude the association from making repairs necessary to mitigate its damages, or to correct any defect that poses a significant and immediate health or safety risk.
- The notice and plan requirement does not prevent an association from seeking equitable relief at any time, or obtaining a prejudgment remedy in court against a declarant to secure the payment of its claims.
- A declarant cannot receive the Act's protections from legal proceedings if it has not complied with the requirements for transitioning control of the association to the unit owners.

HOW TO CONTACT US

If you should call our office and the automated answering system answers, you may use the following extensions to reach us if we are in the office or to leave a message in our individual voice mailboxes. You may also contact us at the following e-mail addresses:

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