

Condominium Update

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Follow the Rules for Borrowing Money

Special rules apply when condominiums want to borrow money for capital improvements or other purposes. Connecticut law generally allows associations to enter loan agreements except to the extent their declarations and other governing documents say otherwise. For example, some declarations allow borrowing for only certain purposes or up to certain amounts. Unless the documents require the approval of the unit owners (either for any loan, or for the uses to which the money would be put), the directors can approve and execute the loan themselves at a properly-noticed board meeting.

These loans are not like a mortgage on a home. Condominiums usually do not own real estate, since the common areas are owned jointly by all of the unit owners. Therefore, the only thing they can offer a bank as collateral is a pledge of their right to collect assessments from the unit owners. This is often structured as a “lockbox,” in which the association maintains an account at the lending bank where the monthly payments are automatically directed and withdrawn by the bank.

Some loan agreements might even entitle the bank to require the board to increase common charges as needed to repay the loan over time. If the condominium defaults, the bank may be authorized to seize the money in the lockbox account and even bypass the board to collect common charges from the unit owners directly.

At least 14 days before closing on the loan, the board must send all unit owners a written

summary of its terms and its estimated effect on common charges. The unit owners must be given a reasonable opportunity to submit written comments to the board about the loan. Once approved by the board, the loan may also need to be disclosed on resale certificates for pending sales of units, even before the details are finalized or the closing is held. The declaration or bylaws may impose additional procedures or notice requirements.

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If your association is considering a loan, get an attorney involved early. Most banks will not make a loan until the condominium hires a lawyer to write an opinion letter confirming that the association’s documents are in order and authorize it to go through with the transaction.

If the declaration or bylaws are unclear or outdated, the bank may insist that they be amended. Defects and ambiguities could result in less favorable terms or losing the loan altogether.

Condo Education Law

Remember that Connecticut law now requires the leadership of condominiums to “encourage” all residents, board members and managing agents “to attend, when available, a basic education program concerning the purpose and operation of common interest communities and associations, and the rights and responsibilities of unit owners, associations, and executive board officers and members.” The price of the program can be designated as a common expense. If you are interested in a program for your community, contact Adam J. Cohen at 203-330-2230.

Hiring a Management Company

Choosing the right property manager for your condominium is essential for keeping the property maintained, the finances secure and the board well-informed. Management services can include collecting and disbursing the association’s funds, maintaining records, issuing resale certificates, addressing resident concerns, helping to conduct meetings, securing and implementing professional advice and coordinating the association’s overall operations. Obviously, this is an important decision. The association is putting its residents’ homes, money and affairs into the manager’s hands.

Management companies are regulated by the Connecticut Real Estate Commission and the Department of Consumer Protection. They are licensed and, if they handle an association’s money, must post fidelity bonds. You can contact these agencies to verify their licenses or

learn about complaints which have been made against them. The more you find out about a manager in advance, the better able you will be to select the right one for your community.

To be valid, management agreements must limit the amounts of any payment or non-emergency contract the manager can make on the association’s behalf without the written approval of a condo officer. The agreement cannot require the association to use the manager for other types of services, and the agreement cannot be sold or assigned to a different manager without board approval. Other than these, the association and manager are generally free to negotiate whatever terms they wish for the relationship.

The agreement should, however, give as much detail as possible about how powers and responsibilities are allocated between the manager and the board, and what services will incur charges above the general base rate. As with any contract, clarity and precision will avoid disputes and unpleasantness later.

For more information about loan agreements, education programs, hiring a management company, or any other condominium issue, please contact **Adam J. Cohen in our Bridgeport office at 203-330-2230 or by email at ajcohen@pullcom.com**.

Adam J. Cohen is a member of Pullman and Comley’s Litigation Department and chair of the firm’s Community Law Section. Adam represents communities and businesses. He regularly lectures to, writes about and represents condominiums and other residential associations in matters ranging from revenue collection to commercial disputes.