

Condominium Update

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Is My Association “Grandfathered” Against Newer Condo Laws?

Two different sets of laws govern condominiums in Connecticut. Knowing whether one, the other, or a combination of both applies to yours is crucial to the proper and legal administration of your community.

The first set of laws is the Condominium Act of 1976, which was designed to totally replace the condominium laws existing at that time. In 1984, the laws were updated again with the creation of the Common Interest Ownership Act, or “CIOA.” But state lawmakers were reluctant to change the ground rules under which hundreds of communities were already operating by 1984, so they chose to leave the Condominium Act on the books when they adopted CIOA – and left complicated instructions on how to tell which of the two would apply depending on the type of community and the situation it faced.

CIOA always applies to communities which were created on or after January 1, 1984, except for a few specialized, nonresidential, or conversion communities in very limited circumstances. The Condominium Act never applies to these newer communities in any way. But the opposite is not true for communities created before 1984. CIOA goes on to say that several, but not all, of its provisions also apply to these older communities with a few narrow exceptions. In other words, almost all condominiums created before 1984 are governed by different provisions of *both* of these sets of laws at the same time.

The most important of these provisions deal with the powers of the association’s board to sign contracts, hire

and fire employees, enact and enforce rules, and so on; the liabilities of unit owners; what records the association must keep and its resale certificate obligations; how to collect unpaid dues and fines through liens and lawsuits; and the procedures for amending the declaration.

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For example, nearly all condos, even those created before 1984, now have “inchoate” (automatic) liens on units for delinquent assessments and should not file paper liens in the land records as the Condominium Act used to require. Only if the declaration, bylaws or other founding documents explicitly incorporate the older laws or procedures do they prevent CIOA’s application.

Older communities can also choose to “opt in” to CIOA. Still, they cannot adopt the “rights, powers or privileges” CIOA offers without its “correlative obligations, liabilities and restrictions” – in other words, they must take the good with the bad. But it may be worth it. As recently as this past February, a Connecticut court ruled that individual unit owners might be held personally liable for the injuries of a person who slipped and fell in a common area. The judge said that whether such liability existed would depend on when the community was created – before or after 1984 – since only CIOA immunizes unit owners, while the Condominium Act says they can be responsible in proportion to their share of ownership. An older

condominium which chooses to “opt in” to CIOA could protect its residents from this kind of legal liability.

A condominium’s board, management company or attorney must very closely examine its documents on a case-by-case basis and compare them to the complex statutory framework for determining which law will govern a particular situation. CIOA will usually control unless the community was created before 1984 and either the Condominium Act is invoked in the founding documents by name, those documents are specifically inconsistent with CIOA on the issue, or the issue is not addressed in the statutory sections CIOA enumerates as superseding the older law. If the Condominium Act controls instead, you may wish to consider amending your declaration to “opt in” to the newer law since the benefits it provides might outweigh the burdens it imposes.

Update Your Registered Agent

Most condominium associations take the form of nonstock corporations. These kinds of entities are required by law to appoint a “registered agent” as the official recipient of any lawsuit, subpoena or other legal document. The agent’s name and address must be registered with the Connecticut Secretary of State in Hartford.

Because a corporation is legally deemed to have received and read any document its registered agent gets, it is crucial that the right agent is chosen. Unfortunately, many condominiums never update this filing after the original property developer lists himself as agent when the condo is created, or after a board president listed as agent leaves office or moves away. If these people are no longer in contact with the condo’s board, the association can be sued without its knowledge and even become liable for a judgment by default.

Many condominiums choose attorneys to serve as their registered agents, since attorneys will know what to do with the legal paperwork they receive. On the Secretary of State’s website at www.concord.sots.ct.gov, you can click on “business filings” to see who is registered as your association’s agent and on “Connecticut Nonstock Corp.” to download the form for changing the registered agent.

Keep Up with Your Annual Town Clerk Filings

All condominiums are required to provide the Town Clerk of the town in which they are located a written notice of the name and mailing address of an officer or managing agent. The purpose of the notice is to let potential buyers of units know where to look up a contact person so that they can request resale certificates, which give important information about the community and unit account. The notice must be given to the Town Clerk in January every year, and also updated within 30 days if the name or mailing address changes for any reason.

For more information about determining which laws govern your community, submitting town clerk filings, updating your registered agent or any condominium issue, please contact Adam J. Cohen in our Bridgeport office at 203-330-2230 or by e-mail at ajcohen@pullcom.com.

Adam J. Cohen is a member of the firm’s Litigation Department and focuses his practice on the issues which face communities and businesses. He regularly lectures to, writes about and represents condominiums and residential associations in matters ranging from revenue collection to commercial disputes.