

# Condominium Update

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## High Court Restores Condo Rulemaking Power

*Narrow Reading of Board Authority Reversed*

On September 5, 2006, the Connecticut Supreme Court reversed an appellate ruling reported in the September 2005 edition of *Condominium Update*. The appellate court had held that a condominium's board could not enforce a rule restricting the length of dog leashes to 20 feet when its declaration did require leashes but did not limit their length.

The state Supreme Court agreed with several commentators who had criticized this outcome, and held that the board acted within its rulemaking power. "The declaration should not be so narrowly construed as to eviscerate the association's intended role as the governing body of the community," the Court explained in its unanimous ruling. Since a condominium is a "sub society" in which unit owners give up some of the freedoms of traditional home ownership, the Court held that a board-enacted rule is valid unless it is inconsistent with "either an express provision of the declaration or a right reasonably inferable therefrom."

Condo boards should always review their community rules to ensure they are consistent with their declarations, but this important decision from our highest court will protect the rules which are.

In other litigation news, two condominiums lost separate lawsuits against unit owners in November which should serve as reminders to other communities. A condo in Southbury lost its case to enforce increased common charges because copies of the new budget were only distributed to residents at the annual meeting itself rather

than in advance as the declaration required. Also, a jury awarded \$742,000 against a Groton condominium after a woman injured her back when she fell down a stairwell. Another resident had temporarily repaired a railing with duct tape and reported it to a board member three years earlier, but permanent repairs were never made.

## Proposed Legislation Would Affect Condos

The General Assembly convened its 2007 session in January, and several bills have been introduced which would significantly affect Connecticut's condominiums.

House Bill 5062 would "provide for uniform condominium association rules and executive boards applicable to condominiums on a state-wide basis." The details of this proposal have not yet been announced.

House Bill 5304 would establish an "Office of Condominium Advocate" to provide free information to unit owners about their rights and responsibilities, as well as a "Board of Arbitration" within the Attorney General's Office to resolve disputes between residents and boards or managers as an alternative to court litigation.

House Bill 5045 would repeal the sales tax paid by condominiums on necessary services provided tax-free to municipalities, such as garbage collection and snow removal.

House Bill 6934 would allow law enforcement officers to enforce public safety laws concerning pets in condominium common areas.

Senate Bill 590 would impose term limits on board members and officers. House Bill 5692 would require that

unit owners be given advance notice of and access to board meetings.

Senate Bill 658 would “prohibit smoking in condominiums,” presumably limited to common areas.

House Bill 6052 would allow a manager’s license to be revoked or suspended for negligence in its services to the association or its board. House Bill 5685 would go further and allow the association to sue for restitution from a management company which breaches a duty to a unit owner.

House Bill 5286 would make it more difficult or impossible to allocate the costs of insurance differently among unit owners. It would clarify that the association’s coverage is primary over any similar policy of the unit owner, and eliminate the ability of multi-story communities to exclude improvements installed by residents from the association’s policy. It would also require that claim deductibles be common expenses rather than charged to any particular resident, even if that resident’s conduct caused the loss which triggered the coverage.

Conversely, House Bill 6651 would require unit owners to buy their own homeowner’s insurance instead of the association.

Public hearings on these bills will be scheduled in the coming weeks and months. If you have an opinion on any of them, be sure to contact your representatives in Hartford.

## New Federal Law on Flag Displays

On July 24, 2006, President George W. Bush signed into law the “Freedom to Display the American Flag Act.” This federal law states that “[a] condominium association,

cooperative association, or residential real estate management association may not adopt or enforce any policy, or enter into any agreement, that would restrict or prevent a member of the association from displaying the flag of the United States on residential property within the association with respect to which such member has a separate ownership interest or a right to exclusive possession or use.”

In other words, the rule appearing in many condo declarations which prohibits “anything to be hung or displayed” on the outside of a unit cannot be used to justify a ban on displaying the American flag or fining a resident who does so.

The new law contains two important exceptions. First, it does not apply to flags which are displayed improperly or disrespectfully. Second, condominium boards are allowed to impose reasonable restrictions on the “time, place, or manner” of the display “necessary to protect a substantial interest” of the association. Although these terms are vague, a board could probably stop a resident from posting an oversize flag which blocked roadway visibility. Less clear would be whether a board might legally prohibit, for example, the installation of a stand-alone flagpole or a flag which blocked another unit’s scenic view.

**For more information** about rulemaking powers, pending legislation, flag displays, 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](mailto:ajcohen@pullcom.com).

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