Condominium Update

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Insurance Requirements for Residential Associations

Unit Owners Protect Their Investment – and Each Other's

Condominiums, cooperatives and other "common interest communities" have special insurance needs and obligations. Keeping up with these requirements is essential to protecting the association and each individual resident. If buildings are damaged by fire, a frozen pipe bursts or someone is injured in a common area, whether the association carries the right kind and amount of insurance can make the difference between an administrative headache and a financial disaster.

A community of this kind is required to maintain property insurance on its common elements, liability insurance for the entity which manages it and any other type of insurance required in its declaration or other governing documents. Except for Connecticut condominiums created before 1984, the property coverage must be for at least 80 percent of the current value of all of the community's improvements. The association and its management can also acquire any other type of insurance they deem prudent, such as directors and officers insurance or worker's liability coverage.

It is often advisable to exclude from the community's property insurance coverage any improvement installed by a unit owner, past or present. This will protect the association from insuring property of which it has no familiarity or control. However, Connecticut law only permits such exclusions in communities which have "horizontal boundaries," that is, multiple levels of residential units.

Typically, the insurance premiums are considered common expenses which are divided equally among all unit owners, and many associations' founding documents so require. However, the law does allow premiums to be assessed disparately based on future risk. Courts have stressed that this is a prospective inquiry, not a retrospective one. Therefore, when an association's premiums increase due to losses attributable to only one resident or a small group of residents, this alone is generally inadequate to justify charging the increases solely to them.

> **"By keeping informed and being good neighbors, the residents of condominiums and similar associations can make sure that their homes – and their wallets – remain appropriately protected."**

Unit owners are, of course, allowed to purchase their own insurance. However, the association's policies are required to provide that they are primary over any overlapping coverage provided by a unit owner's own insurance (again, except for condominiums created before 1984). These laws are designed to give every unit owner an interest in preventing a loss claim by any other. Therefore, association boards should remind all residents to lock their windows and doors, turn off their outside water pipes in the winter, and otherwise protect their property just like any other homeowner would.

Since many existing communities were originally built

in the 1970s and 1980s, their insurance needs may be now changing – both because their structures are aging and because their values are fluctuating. By keeping informed and being good neighbors, the residents of condominiums and similar associations can make sure that their homes – and their wallets – remain appropriately protected.

Paper Liens for Unpaid Assessments Obsolete

Many condominiums and management companies mistakenly believe that they either can or must file a written lien in the town's land records against the unit of a resident who has fallen behind in his assessments before collecting through a foreclosure lawsuit or the proceeds of a later resale. This misconception is apparently the result of re-using internal forms and guidelines which have been generally obsolete for more than 20 years.

In 1984, the state statutes were amended to give nearly all condominiums automatic or "inchoate" rights to enforce their dues against a delinquent resident's unit, without filing anything in the land records, and doubled the time for foreclosing on the lien to two years. The existence of the condominium's own original declaration is considered notice to the world – and to the delinquent resident – that the unit is encumbered by a lien for the money owed to the association.

This change in the law applies to every condominium in Connecticut, whether created before or after 1984, except for those whose declarations explicitly require paper liens or compliance with pre-1984 procedures. Otherwise, filing paper liens in the land records not only wastes at least $43 in clerk's fees per account – it also misleads the association into waiting for the resident to sell the unit one day in expectation of payment out of a closing. If more than two years passes before such a closing, the right to foreclose is lost and the association itself could conceivably be sued for clouding the unit owner's title.

New Law Encourages "Condo Education"

Governor Rell recently signed Public Act 06-23, which 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. This new law goes into effect on October 1, 2006.

For more information about insurance requirements, lien enforcement procedures or condo education programs, 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 the firm's Litigation Department. He has represented condominiums, taxing districts and residential associations in matters ranging from revenue collection to commercial disputes.

On **November 4, 2006**, Adam J. Cohen will participate in the Second Annual Southern Connecticut Health Care for Condos Trade Show in Stamford, CT. For more information, please contact the Community Associations Institute Connecticut Chapter at 860-633-5692.