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## KIND-OF MANDATORY EDUCATION

By Adam J. Cohen, Esq.

There's an old saying about the difference between leading a horse to water and making him drink. Given that important distinction, Connecticut's recent condominium education law may just as well have been called the Equine Beverage Act of 2006.

The purpose of Connecticut General Statute §47-261a, which Governor Jodi Rell signed into law effective on October 1, 2006, was obviously to help the tens of thousands of people living in condominiums and similar communities in this state become better informed about their rights and obligations. Most people never actually read the offering statements, declarations, bylaws, and statutes which govern these issues and would have difficulty understanding them if they did. Of course, an educational requirement which was legally mandated would be ignored by most residents, would discourage willingness to serve on boards, and would probably be impossible to actually enforce. Compulsory "school" for anyone who buys a condo would make truants of an awful lot of people.

The compromise which our legislature crafted was to make the horse-leading mandatory, but drinking optional. Section 47-261a says that condominium leaders "shall encourage" all residents, board members, and managing agents "to attend ... 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 word "shall" in any law usually means must, but this only applies to the board's encouragement effort – no particular person is obligated to actually attend such a program. In other words, the members of a condo board (or a particular officer to whom it delegates the responsibility) are legally required to promote these education programs to their residents, their managers, and even themselves.

The law says little else, except that the program "may [be] conducted by a private entity at a time and place convenient to a majority of the members" and that its price "may be designated as a common expense." No details are provided about who is qualified to teach such a program, the details about what should be covered in it, or how often it should occur (if more than once is even necessary). The law does not explain what the penalty might be, if any, should the board neglect or choose not to "encourage" attendance at such a program.

Nevertheless, it's not too difficult to envision the kinds of measures which would satisfy Section 47-261a. First, the board should at least

investigate what kinds of programs are available, compare prices, and consider various arrangements. For example, separate programs for the officers, residents, and manager might (or might not) be preferable to a joint program for everyone. A lawyer, property manager, or other person with specialized expertise in this area should be chosen as the instructor or for the panel. Second, every effort should be made to maximize interest and participation. A casual poll or even a formal meeting or vote might be helpful to decide the best scheduling or to solicit requests for topics to be included. The event should be well-publicized and board members should set good examples for residents by attending enthusiastically. Finally, the major topics which would seem sensible to be covered in any program would include at least the following:

- the differences between a condominium, other types of residential communities, and traditional (non-communal) property ownership
- the purposes and major themes of the Common Interest Ownership Act, the Condominium Act, and the Revised Nonstock Corporation Act
- the differences between common elements, limited common elements, and individual units, and who owns which
- the behavior, maintenance, voting, financial, and access rights and obligations of residents and their guests and tenants
- the managerial, maintenance, rulemaking, and enforcement powers and responsibilities of boards and their officers and/or managing agents

It would be hard to see how a board which follows these guidelines when arranging an education program could be accused of shirking its obligations under this new law, no matter how vague and ambiguous it is.

Section 47-261a is not really a bad law, or even a poorly-written law. In fact, similar "encouragement" legislation of all kinds has often failed miserably due to overly-detailed implementing rules which turn out to be totally unworkable in practice. Connecticut's condo education law is probably right to avoid these pitfalls by simply pointing out the importance of educating people about how residential communities are supposed to work, or at least requiring that the information be made available. As for those who choose not to participate, at least they can't complain that they had no opportunity. Some horses just never seem thirsty. ■

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**Editor's Note:** CAI-CT offers our very popular *Ask the Experts: Leadership Forum* several times throughout the year in various locations. Participants in this program have the opportunity to learn from our team of experienced speakers and to network with a wide array of association board members. Our next course is being offered on Saturday, Feb. 2, 2008 in Southington, CT. Please see page 26 for information about registration. This course meets the requirements for Public Act 06-23. All successful participants receive a certificate of completion.