

Condominium Update

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Proposed Legislation Would Affect Condos

A number of bills now being considered by the Connecticut General Assembly could affect condominiums as well as their residents and leadership.

Perhaps the most important is Senate Bill 1006 which would establish a Community Association Commission within the state's Department of Consumer Protection to test, license, regulate, investigate and impose fines against condominium management companies, and to also hear complaints against condo boards and officers. This bill would also greatly expand the recordkeeping obligations of condominium associations and allow towns to clarify the powers of animal control officers with respect to the common areas of condominiums.

“**Senate Bill 725 would establish a term limit of six years for each member of a condominium's board of directors, and prohibit family members from serving on a board simultaneously.**”

House Bill 5853 would establish a uniform set of community association rules and executive board requirements for every condominium in the

state. Rules developed by and tailored for specific condominiums would apparently be abolished.

Senate Bill 725 would establish a term limit of six years for each member of a condominium's board of directors, and prohibit family members from serving on a board simultaneously. Similar proposals made in the past have concerned some communities which have trouble finding enough residents willing to serve.

House Bill 5367 would create an “Office of the Ombudsmen” within the state attorney general's office to mediate or decide disputes between condominium owners and associations.

Another proposal, Senate Bill 140, would “authorize condominium associations to recoup unpaid condominium fees in the case of a foreclosure of a unit.” Keep in mind that condominium fees are automatically secured with “inchoate” liens for up to two years, and should be promptly enforced by the association's attorney during and after a foreclosure commenced by a mortgage bank or other encumbrancer.

A number of bills have been introduced in an effort to promote energy conservation. House Bills 5279, 5991, 5995 and 6429 would give all residents an absolute right to dry laundry on outdoor clotheslines and drying racks, and invalidate condominium rules and leasing agreements to the contrary. House Bill 6130 would allow unit owners to install solar panels on their units notwithstanding the prohibition in most condominium declarations against altering the outer appearance of buildings.

You can read the full text of these proposals, monitor their status and find contact information

for your representatives in Hartford on the Connecticut General Assembly's website at www.cga.ct.gov.

Courts Clarify Condominium Powers and Liabilities

Connecticut courts have issued a number of important rulings over the past several months which clarify some long-standing legal ambiguities for condominiums. Perhaps the most important is *Powder Farm Park Association v. SKF Leeder Hill*, in which a superior court limited the extent to which judges will second-guess the decisions made by condominium boards and officers. The court analogized to the "business judgment rule" used for businesses, which says that courts will defer to the decisions of the heads of for-profit companies since they are better qualified than judges to make them.

The *Powder Farm* case says a resident or third party generally cannot sue a condominium board simply for making an incorrect or "unreasonable" decision. Instead, the decision must have been made without authority or in bad faith before judges will consider holding the board or officers liable. Courts will not entertain lawsuits against the board or officers as long as they had the power to make the decision in the first place and did so with the association's best interests at heart, even if the decision turned out to have been wrong.

Another notable case is *Dudek v. Milford Professional Condominium Association*, which makes clear that whether a unit owner can be held personally liable for injuries caused by an unsafe common area depends on when the condominium was created. This is because a major overhaul of the laws governing condominiums, which included better

protections for unit owners, did not take effect until January 1, 1984. The result is that unit owners in communities created before that date can be held liable in proportion to their respective percentage interests, while unit owners in newer communities cannot be held personally liable at all. Note that older condominiums may be able to amend their governing documents to "opt in" to the newer law or give its unit owners similar protections.

In another case, *Somers West Towne Houses v. LAS Properties*, the Connecticut Appellate Court clarified that a board's proposed budget is deemed automatically effective unless a majority of all the unit owners – not just those present at a meeting, even with a quorum – votes to reject it.

Finally, in *Park Royal of Bridgeport Condo Association v. Brewster Park*, a superior court held that, once a condominium starts a foreclosure against a unit for delinquent assessments, it cannot charge late fees or interest on later payments which it refuses to accept, and it may not even have the option to accept such payments without the court's approval. Properly-crafted bylaws or rules may have been able to prevent this situation.

For more information about pending legislation, recent court cases, or any other issue of interest to condominiums, please contact **Adam J. Cohen in our Bridgeport office at 203-330-2230 or by email at ajcohen@pullcom.com**.

Adam J. Cohen chairs the firm's Community Law Section and is a member of its Litigation Department. He 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.