

CIOA Revisions Overview Session Handout 2009 – 2010

CAI-CT - 100 Western Blvd. – Glastonbury, CT 06033

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CAI-CONNECTICUT: GETTING READY FOR THE CHANGES TO CIOA

I. Introduction

The purpose of this outline and presentation is to begin the process of familiarizing you with the types of changes that have been made to the laws governing common interest communities in the State of Connecticut. A text of Connecticut Public Act 09-225 appears on the Connecticut CAI website <http://www.caictor2/> under the "legislative issues" section located on the left side of the home page. These changes are sweeping and there is no quick fix available. Associations will need to consult with their manager, attorney, insurance agent and accountant in order to plan the best course of action to deal with these changes. Your job, with the help of professional advisors, is to identify the statutory changes that you will be required to follow and those that provide helpful options in meeting the needs of your association. Make the statutory changes work for your community. It will take effort and thoughtfulness. At this time there is still some uncertainty as to the application of some of the changes to Pre-1984 communities. There are also questions as to the meaning and scope of some of the changes as applied to post-1984 communities. With the exception of a couple of provisions the changes to the statute go into effect in July 2010.

Digital Age —are you ready?

The changes to the statute modernize the way we communicate, vote and attend meetings as well as the way we maintain records.

Quasi Governmental Nature of the Amendments

Many of the amendments aim to treat community associations more like mini governments. Themes include Freedom of Speech, Freedom of information (POI), Transparency of Process, Formality and Accountability and Public vs. Private property rights.

Pre-84 vs. Post-84

With the changes, more of the Common Interest Ownership Act applies to pre-84 associations. Provisions such as how board meetings are handled and the extent of insurance coverage are good examples.

Choices in Front of Associations

Associations will have some decisions to make regarding how they want to handle these changes. A condensed "road-map" that will identify the changes in the law and the conflicts with your documents to allow you to operate within the law come July is a possible temporary option. You can revise your documents to make only the changes required by statute or revise the documents to adopt both the required items and some of the optional ones. Some pre-1984 associations may want to start from scratch and opt in to most or all of CIOA. There are pros and cons in each of these possibilities and you will need to partner with your counsel and other professionals to determine what is best for your community.

II. The Amendments

Unit Owner / Board Meetings, Special Meetings and Voting

- (a) **Unit Owner Meetings.** The association must hold an annual unit owners meeting. At each unit owner meeting the unit owners shall be given a reasonable opportunity to comment regarding any matter affecting the common interest community. In addition, the declaration or bylaws may allow for unit owner meetings to be conducted via telephonic, video or other conferencing process. Notice of a unit owner meeting shall be not less than ten (10) nor more than sixty (60) days in advance. Section 35 of the Act provides for alternate methods of providing notice such as via e-mail if the unit owner requests it.
- (b) **Board (and Committee) Meetings.** Board meetings and committee meetings shall be open to the unit owners or their designated agents except during executive session. Executive session may only be held to (1) consult with the association's attorney regarding a legal matter; (2) discuss existing or potential mediation, arbitration or administrative proceedings; (3) to discuss contracts or other transactions currently being negotiated and (4) to prevent public knowledge of a matter if the board believes it will violate the privacy of any person. Unit owners must be given a reasonable opportunity to comment regarding any matter affecting the common interest community. Unit owners must also be given ten (10) days notice of any board or committee meeting and copies of board packets must be made reasonably available. All final decisions of the board (or committee) must be made in open session.
- (c) **Special Unit Owner Meetings.** The requirements for calling a Special Meeting of the unit owners has been clarified to some extent. A Special Meeting may still be called by the president, a majority of the executive board or by unit owners having at least 20% of the vote (or any lower percentage specified in the bylaws). The changes clarify that it is the board (the secretary) that calls the meeting. However, the changes go on to state that if the association fails to call a meeting within 15 days after a request by the requisite number of unit owners, the requesting unit owners may directly notify all members of the association themselves. Only matters described in the meeting notice may be considered at the meeting.

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- (d) Robert's Rules. All meeting of the association are to be conducted using Robert's Rules of Order unless the declaration or bylaws provides otherwise or 2/3 of the unit owners at a meeting vote to suspend their use. Careful consideration should be made as to whether Robert's Rules is appropriate for the community. A simple set of meeting rules may work much better.
- (e) Voting. Unit Owners may vote in person, by proxy or when a vote is conducted without a meeting, by paper or electronic ballot.

Proxies. The statute specifically provides for directed and undirected (general) proxies. A person may not cast more than 15% percent of the overall vote in the association via an undirected proxy.

Ballots. If the association decides to hold a vote without a meeting, it must deliver the ballots (paper or electronic) and also: (1) indicate the number of responses needed to meet the quorum requirements, (2) state the percentage of votes needed to approve each matter, (3) specify the time and date by which the ballot must be delivered to be counted which may not be less than three (3) days after delivery, and (4) describe the time, date and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so. A vote pursuant to this method is valid only if the total number of votes cast equals or exceeds the quorum requirements for a meeting. The provisions regarding Proxies and Ballots do not automatically apply to pre-1984 communities.

Budgets, Special Assessments, Collections

- (a) Budgets. Executive board shall at least annually adopt a proposed budget. Not later than thirty (30) days alter the adoption of that budget the board shall provide the unit owners with a summary of the budget, including any reserves and a statement of the basis on which the reserves have been calculated and funded. Simultaneously, the board shall set a date not less than ten (10) nor more than sixty days (60) for a meeting to approve or to vote on the budget by ballot without a meeting. Budgets get approved in the same way as they currently do.
- (b) Special Assessments. Special assessments may be proposed at any time. If the special assessment, along with all other special assessments and emergency assessments for a given year, do not exceed 15% of the current budget, no unit owner approval is needed. Otherwise the special assessment must be adopted in the same manner as a budget.
- (c) Emergency Assessments, If the executive board determines by a 2/3 vote that a special assessment is necessary to respond to an emergency, (1) the assessment becomes effective immediately in accordance with the vote, (2) notice of the assessment must be provided promptly to the unit owners, and (3) the board may Tend the funds ^{only} for the purpose provided in the vote.

- (d) Collections. An association may not commence a foreclosure action against a unit owner unless: (1) the unit owner at the time the action is commenced owes at least two months of common expense assessments based on the current budget, (2) the association has made demand for payment in a record, and (3) the board has either voted to commence the foreclosure specifically against that unit or has adopted a standard collection policy that provides for foreclosure generally.

Note: At this time it is unknown if the requirements regarding budgets, special assessments and emergency assessments will automatically apply to pre-1984 communities. This will be clarified when the public act is codified into the statute. The section regarding collections will apply to pre-1984 communities.

Access to Association Records

New definition for the word "Record" - used as a noun it means "information that is inscribed on a tangible medium or that is stored in an electronic form or other medium and is retrievable in perceivable form."

The statute contains a detailed list of association records that must be kept and the method by which the unit owners may review them. The statute also identifies records that may be withheld from unit owner review. The statute provides that the association may charge a reasonable fee for copies and for supervising the unit owner's review of books and records. The association does not have an obligation to synthesize or compile information for a unit owner.

Expanded Attention Given to the Rules

New definition - "Rule" means a policy, guideline, restriction, procedure or regulation of an association however denominated which is adopted by an association pursuant to section 35 of the act which is not set for in the declaration or bylaws and which governs the conduct of persons or the use or appearance of the property.

- (a) Adoption, Amendment and Repeal. No rule shall be adopted, amended or repealed unless the unit owners are given at least ten (10) days notice of the board's intention to do so along with a copy of the rule and date on which the board intends to act on the proposed rule after considering comments from the unit owners. Once the board acts on the rule they must send out notice to the unit owners with a final copy of the rule.
- (b) Architectural Controls. Subject to the provisions of the declaration, an association may adopt rules regarding construction and design criteria and aesthetic standards. If an association does so, it must also adopt procedures for enforcement and for approval of requests to make change. The procedure for the requests to make change shall include a reasonable time within which the association must act and the consequences for its failure to act.

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- © Displays. Any rule regarding the display of the flag of the United States must be consistent with federal law. An association may not prohibit the display of the flag of Connecticut on a unit or a limited common element adjoining a unit or signs regarding candidates for public or association office or ballot questions. However, the association may promulgate rules regarding the time, place, size, number and manner of those displays.

- (d) Unit Owner Assembly. Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community but the association may adopt rules regarding the time, place and manner of such assemblies.

- (e) Business Operating Procedures. The association's internal business operating procedures need not be adopted as a rules.

Note: At this time it is unknown if any of the requirements outlined above will automatically apply to pre-1984 communities. This will be clarified when the public act is codified into the statute.

Insurance

- (a) Association Coverage. The insurance provisions of CIOA expressly apply to pre-84 associations. The most important aspect about the changes to the insurance section is the treatment of unit owner installed "betterment and improvements." If the definition of "Unit" contains horizontal boundaries or vertical boundaries located within common walls between units, the association's policy ^{must} include the Unit and "betterments and improvements" unless the declaration limits the association's authority to obtain such insurance with regard to "betterments and improvements." If the declaration limits this authority, then the association shall: (1) prepare and maintain a schedule of standard fixtures, improvements and betterments that will be covered (including wall, floor and ceiling coverings), (2) provide the schedule to the unit owners on a annual basis, and (3) include the schedule in the resale package.

- (b) Deductible Charge Backs. The statute dictates the method under which an association can charge back to a unit owner(s) the association's deductible under its master policy. There are three ways. If the loss was due to the unit owner's : (1) willful misconduct, (2) gross negligence or (3) their failure to comply with the association's written maintenance standard. We don't know what the "written maintenance standard" is supposed to look like at this time.

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Resale Certificates

(a) All communities, whether created before or after 1984, will need to modify their _____

Resale Certificate forms to add additional disclosures. They include:

- (1) Any administrative proceedings or litigation in which the association is a party. Currently it is only those actions in which the association is a defendant.
- (2) If the association opts to exclude owner installed fixtures, improvements and betterments the list of "standard" fixtures which will be insured.
- (3) The number of units which are 60 days or more delinquent in paying their common charges.
- (4) The number of foreclosure actions commenced by the association in the last twelve (12) months.
- (5) The number of foreclosure actions commenced by the association which are still pending on a specified date within 60 days of the certificate.
- (6) All established maintenance standards that the unit owner can be held responsible for violating.

(b)The fee which can be charged for providing the resale certificate has been clarified. For any years the statute permitted a flat fee of \$75. A 2005 change in the law replaced that with the association's actual out of pocket preparation costs capped at \$125. Many associations and property managers (wrongly) charged the maximum automatically. The new changes authorize the full \$125 as a maximum flat fee, plus either five cents per page for photocopying or \$10 for an electronic formal.