

# IN ASSOCIATION

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A Newsletter from  
PERLSTEIN, SANDLER  
& McCracken, LLC

10 Waterside Drive  
Suite 303  
Farmington, CT 06032

Telephone (860) 677-2177  
Telecopier (860) 677-1147

Visit our website:  
[www.ctcondolaw.com](http://www.ctcondolaw.com)

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## THE LEGISLATIVE ISSUE

*During the 2007 legislative session, the Connecticut Legislature considered a number of proposed bills affecting the operation of condominium and homeowner associations. By the end of the session, the legislature voted to enact three bills. These are Public Acts No. 07-068, 07-217 and 07-243, which became effective on October 1, 2007.*

*Public Acts No. 07-068 and 07-243, contain amendments to the Condominium Act and the Common Interest Ownership Act, will have an impact on the operations of associations created under both statutes. The Condominium Act governs the operations of all condominiums created between January 1, 1977 and December 31, 1983. The Common Interest Ownership Act governs the operations*

*of all common interest communities, including condominiums, cooperatives and planned communities, created since January 1, 1984.*

*Public Act No. 07-217 made a number of technical corrections to the language of the Condominium Act and the Common Interest Ownership Act. These technical corrections were to clarify the language of the Acts, and have little or no impact on the operations of associations.*

*In this Newsletter, we discuss the amendments contained in Public Acts No. 07-068 and 07-243, how they may affect your association, and what your association can do to comply with the amended laws.*

## NEW LAWS CONCERNING BUDGET RATIFICATION

*Public Act No. 07-243 amended Subsection 47-81(b) of the Condominium Act and Subsection 27-245(c) of the Common Interest Ownership Act, to give unit owners an additional opportunity to express their views during the association's budget process.*

### What the New Laws Require

Under the amendments contained in Public Act No. 07-243, if the association must hold a meeting of the owners to ratify its budget, then it must also do the following:

1. The association must have a complete copy of the budget available for inspection by unit owners at the meeting.
2. At the meeting, or any time beforehand, the association must provide a reasonable opportunity for all unit owners to express their views concerning the proposed budget.

### How Associations Adopt Budgets

Communities Created Prior to 1984. Prior to the enactment of the Common Interest Ownership Act in 1984, Connecticut law did not specify any procedures for adopting association budgets. If the community was created prior to 1984, your budget adoption process depends solely on your governing documents. The governing documents of many pre-1984 communities permit the board of the association to adopt a budget and levy common expenses without any input from the unit owners.

Communities Created Under the Common Interest Ownership Act. Under the Common Interest Ownership Act, which governs communities created in 1984 and after, the board still has the power to adopt a budget. However, once the board adopts a budget, it must submit the budget to the unit owners, who are given an opportunity to veto it.

*Budget Ratification Continued on page 2*

*New Laws Concerning Budget Ratification continued from page 1*

Subsection 47-245(c) of the Common Interest Ownership Act sets out the procedure:

First, the board prepares and adopts a budget. Then the association calls a meeting of the unit owners and provides notice of the meeting. The meeting must take place between 14 and 60 days after the association gives the notice. The association must provide the unit owners a summary of the budget with the meeting notice. At the meeting, the unit owners may vote to reject the budget. Rejection requires the approval of a majority of the total voting power in the association. However, the declaration may require a larger percentage of votes to reject the budget. If the unit owners do not reject the budget, the budget is considered to be ratified even if there are not enough unit owners present at the meeting to satisfy the association's quorum requirements. If the unit owners reject the budget, then the last budget that was ratified by the unit owners remains in effect until a new budget is ratified.

### **Applicability of the Amendments**

Strictly speaking, these additional requirements only apply to the following associations:

1. Associations created prior to 1984, but only if their governing documents require a meeting of the unit owners to approve the budget; and
2. The association of any common interest community created under the Common Interest Ownership Act.

Even if these requirements do not apply to your association, however, we suggest giving unit owners prior notice of a proposed budget and an opportunity to submit comments to the board. First, unit owners will appreciate it. Second, it is always possible someone will offer information or an opinion that the association would find useful in creating the final budget.

### **How to Implement the Amendments**

Complying with the first requirement, having a copy of the budget at the meeting, is easy. Many of our association clients actually send a copy of the budget, rather than just a "summary," with the meeting notice. If your association prefers to

send a summary, then it should be sure to have a complete copy of the budget available at the meeting.

Complying with the second requirement, regarding the expression of views by all unit owners, may be a little more complicated. A concern exists that allowing all unit owners to express their view will result in endless discussion and debate.

However, if your association adopts appropriate parliamentary procedures, such as Robert's Rules of Order, it can maintain an orderly and productive meeting. For example, under Robert's, the association may limit the length of time and number of times that any one person may speak during the debate.

For more information on the usefulness of parliamentary procedures, please look at the Fall 2005 issue of this Newsletter. You can read and print all past issues of this Newsletter on our website, [www.ctcondolaw.com](http://www.ctcondolaw.com). Additionally, if you contact our office, we would be happy to provide you with copies of any past issues.



## **NEW LAWS CONCERNING INSURANCE**

*Public Act No. 07-68 amended Sections 47-83 and 47-84 of the Connecticut Condominium Act and Section 47-255 of the Connecticut Common Interest Ownership Act. These sections govern the requirements of insurance that associations must purchase, and repairs to damaged or destroyed portions of the community.*

### **Flood Insurance**

The National Flood Insurance Act (42 U.S.C. 4101, P.L. 93-234) provides that before a federally regulated or insured lender takes a mortgage on real estate located in a flood zone, as defined by the Act, the real estate must be covered by federal flood insurance. This insurance can be expensive.

*New Laws and Insurance continued on page 3*

*New Laws and Insurance continued from page 2*

In some communities, not all of the units are located in a flood zone and there have been disputes in these communities as to whether the association, or the owners of the units located in the flood zone, must purchase and pay for the flood insurance.

The documents in most communities, even those located in flood zones, do not address the question of who is required to purchase and pay for flood insurance. These documents usually permit the association to purchase "other forms of insurance" if the board votes to do so, but they do not require it.

The legislature attempted to address part of this problem in Public Act 07-68, by amending the Condominium Act and the Common Interest Ownership Act to require the associations to purchase flood insurance if:

1. The governing documents require the association to purchase flood insurance; or
2. The unit owners direct the association to purchase flood insurance.

The Condominium Act applies only to condominiums. Although the Common Interest Ownership Act applies to condominiums, cooperatives and planned communities, this amendment speaks only to condominiums. Nevertheless, the Common Interest Ownership Act would require the association of any common interest community to purchase flood insurance if the documents require it.

Neither the Common Interest Ownership Act nor the Condominium Act describe how the unit owners are to direct the association to purchase flood insurance. Under the governing documents of most condominiums in Connecticut, unit owners could adopt such a resolution by a majority vote of those present, in person or by proxy, at a duly called association meeting.

### **Allocations Based on Risk**

Under the Common Interest Ownership Act, the declaration of a community may require the

association to allocate insurance costs among the units based on the risk they pose. The idea behind this provision is that unit owners should not have to pay higher insurance costs because of the activities of their neighbors.

For example, if a community has a substantial number of investor-owned units, the insurance company is likely to charge a higher premium. Let's assume that if an association had no investor-owned units, it would pay \$10,000 per year in premiums. However, because a number of the units are owned by investors, the association must pay \$15,000 per year. Under the Act, the declaration may require the association to allocate the difference in the premiums, \$5,000, solely against the investor-owned units. The association would therefore assess \$10,000 against all of the units in accordance with their allocated interests, but would assess the remaining \$5,000 only against the investor-owned units.

This provision also applies to flood insurance. Suppose only a few units in a condominium are located in a flood zone. If the declaration contained an appropriate provision, only those units in the flood zone would be responsible for paying the insurance premium.

Public Act No. 07-68 amended the Condominium Act to provide, like the Common Interest Ownership Act, that the declaration of a condominium created under the Act may require the association to allocate insurance costs based on the risk.

It is key to remember that both acts require the declaration to contain specific language requiring the association to allocate insurance costs based on risk. If the declaration of your community does not contain this language, you may wish to amend it to take advantage of this requirement.

### **Allocation of Repair Costs**

We have long believed that associations may assess uninsured costs of repairing units, resulting from a deductible under the master insurance policy, solely against the damaged

Under the Common Interest Ownership Act, the declaration of a community may require the association to allocate insurance costs among the units based on the risk they pose.

*New Laws and Insurance continued from page 3*

units. However, doing so requires that the declaration contain appropriate language. The amendments contained in Public Act No. 07-68 confirm this.

Under Subsection 47-84(a) of the Condominium Act and Subsection 47-255(h) of the Common Interest Ownership Act, the cost of repairing or replacing damaged portions of the community, in excess of insurance proceeds, is a common expense. Subsection 47-257(c) of the Common Interest Ownership Act permits the declaration to require the association to assess common expenses that benefit fewer than all units solely against the units benefited. Repairing a damaged unit only benefits that unit. Therefore, the declaration may require the association to assess any common expense associated with the repair solely against that unit.

Section 47-257 of the Common Interest Ownership Act does not automatically apply to pre-1984 communities. However, pre-1984 communities may amend their documents to permit them opt into the provisions of 47-257.

There are some who have argued that the association cannot assess repair costs incurred by virtue of a deductible solely against the damaged units. This is most likely the result of confusion between the deductible, which serves merely as an exclusion under the insurance policy, and the cost of repair, which is an association expense.

The amendments to Subsection 47-84(a) of the Condominium Act and Subsection 47-255(h) of the Common Interest Ownership Act now clarify that when these provisions speak of repair costs in excess of insurance proceeds, they include costs incurred by virtue of deductibles.

Again, both Acts require the declaration to contain specific language requiring the association to allocate uninsured repair costs solely against the damaged units. If the declaration of your community does not contain this language, you may wish to amend it to take advantage of this requirement.

The amendments to Subsection 47-84(a) of the Condominium Act and Subsection 47-255(h) of the Common Interest Ownership Act now clarify that when these provisions speak of repair costs in excess of insurance proceeds, they include costs incurred by virtue of deductibles.

## NEW LAWS CONCERNING ACCESS TO ASSOCIATION RECORDS

*Public Act No. 07-243 amended the sections of the Connecticut Condominium Act and the Connecticut Common Interest Ownership Act that govern the rights of unit owners to examine association records. The amendments to the Common Interest Ownership Act apply to all common interest communities, regardless of when they were created.*

As you consider how these new laws affect your association, remember the following:

1. No association ever got into trouble by telling its unit owners more than they wanted to know.
2. If you act as if you have something to hide, people will begin to think that you have something to hide.

### Issues Regarding Examination of Records

Access to records has always been a sensitive subject between unit owners and associations. Certainly, some unit owners overuse or abuse the process with what amounts to fishing expeditions. However, access to information is essential to democratic government.

One of the most common complaints by unit owners is that the association isn't making information available to them. For example, a unit owner recently posted the following on a website:

I am part of a homeowners association . . . . A few of the homeowners have suspicion of misappropriation of funds. We have asked to review bank statements, invoices, and receipts. The president, secretary and treasurer refused which makes us all the



more suspicious. Can they legally withhold those records?

By the way, the stated mission of the website is "to help citizens in homeowner associations to take back their homes from the two generations of crooked lawyers, politicians, judges and vendors who have stolen them."

Complaints such as these are becoming more frequent. Recently, the Superior Court and the legislature addressed this sensitive issue.

### Laws Governing Access to Records

Since 1976, the Connecticut Statutes have contained provisions permitting unit owners to inspect association records. Subsection 47-81(b) of the Condominium Act provided:

Records maintained by the declarant, by the association or by the manager shall be available for examination and copying by any unit owner, his duly authorized agents or attorneys, at the expense of the unit owner, during normal business hours and after reasonable notice.

Subsection 47-260(a) of the Common Interest Ownership Act provided:

All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.

Section 47-260 applies to all common interest communities, regardless of when they were created.

The Common Interest Ownership Act says nothing about whether the association can charge for copies and for supervising the inspection of the records, but many documents contain provisions permitting such charges.

### Amendments Enacted by the State Legislature

Public Act No. 07-243 amended both Section 47-81 of the Condominium Act and Section 47-260 of the Common Interest Act, to state explicitly that the records unit owners may inspect include minutes of meetings and the voting records of the executive board.

### A Recent Court Decision

In June of 2006, in *Koslow v. Woodbridge Lake Property Owners Association, Inc.*, the Connecticut Superior Court held that unit owners had "the unrestricted right to view all accounting records," including "information concerning individual employee titles, dates of employment, and wages and benefits." Under other statutes, some of these records might have been held to be confidential. However, the court concluded that the provisions of the Common Interest Ownership Act superseded these other statutes.

### How to Comply

The requirement that associations must permit unit owners to view the voting records of the board implies that associations must maintain voting records. This means that whenever the board takes a vote, the minutes must reflect not only the wording of the resolution, but how each individual director voted.

For example, the minutes might read like this:

Mr. Brown made the following motion:

Moved that the association contract with XYZ Grounds Care for snow removal for the coming winter in accordance with their proposal dated June 15 and that the manager is authorized to sign a contract with XYZ.

Access to information is essential to democratic government.

*New Laws and Association Records continued from page 5*

Ms. Greene seconded the motion.

After debate, the vote on the motion was as follows:

Mr. Brown: Yes

Ms. Greene: Yes

Ms. Blue: No

Mr. Red: Yes

Ms. Black: Did not vote. (Was out of the room when the vote was taken.)

Mr. Gray: Did not attend the meeting.

If the vote is unanimous, the minutes could reflect that the motion was approved unanimously. However, if Ms. Blue had voted yes in the above example, and the minutes said that the vote was unanimous, the minutes could have been read to imply that Ms. Black voted yes, even though she was actually out of the room at the time.

### **Some Records Should Remain Confidential**

There are some very legitimate reasons why the association may want to keep certain records and information confidential. For example:

1. There are a number of statutes and regulations which require that certain information be kept confidential. These include matters relating to debt collection, disabilities and medical conditions.
2. Communications between the association and its lawyers relating to pending or threatened litigation are protected under the rules of evidence. In order to preserve the confidentiality of these communications in court, the association must be careful not to disclose them to third parties, including, ordinarily, unit owners who are not officers or directors.
3. If the association is soliciting bids, or negotiating contracts for goods or services, the process could be compromised if a potential contractor were able to learn the details of bids or proposals submitted by his or her competitors before the association selected a

contractor and signed the contract.

Unfortunately, the *Koslow* court did not address these issues. In fact, it specifically noted that the payroll records that the plaintiffs were seeking, were not covered by the state statute pertaining to the confidentiality of certain personnel records.

The Commissioners on Uniform State Laws are currently considering a number of revisions to the Uniform Common Interest Ownership Act, on which the Connecticut act is based. These revisions include changes to the section pertaining to association records. The revision provides in part:

Records kept by an association may be withheld from inspection and copying to the extent that they concern:

- (1) Personnel matters relating to specific persons or a person's medical records;
- (2) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
- (3) Pending or potential litigation;
- (4) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the declaration, bylaws, or rules;
- (5) Communications with legal counsel which are otherwise protected by the attorney-client privilege or the attorney work product doctrine;
- (6) Disclosure of information in violation of law;
- (7) Records of an executive session of the executive board; or
- (8) Individual unit files other than those of the requesting owner.

The requirement that associations must permit unit owners to view the voting records of the board implies that associations must maintain voting records.

*New Laws and Association Records continued on page 7*

*New Laws and Association Records continued from page 6*

While all of these matters may not be protected under the current provisions of Connecticut law, your association should consider checking with its attorneys before making available the records on this list.

### **The Use of Executive Session Meetings**

For whatever reason, many boards close their meetings to unit owners. Closed meetings are referred to as executive sessions.

Boards can and should make use of executive sessions when they are discussing matters that properly should not be made public, such as pending litigation, contract negotiations, or employee medical issues. However, executive sessions should not be used simply because the board finds it easier to conduct business when there are no other unit owners in the room.

Unless a vote relates to pending or threatened litigation, the board should not vote while in executive session. The documents of many communities specifically prohibit boards from taking votes in executive session.

Please contact us if your association has any questions regarding records that unit owners may examine, or how to maintain accurate records.

Unless a vote relates to pending or threatened litigation, the board should not vote while in executive session.

## **NEW LAWS CONCERNING ASSOCIATION BORROWING**

*Public Act No. 07-243 contains amendments to the Condominium Act and the Common Interest Ownership Act, imposing new requirements on associations seeking to borrow money. The amendments to the Common Interest Ownership Act apply to all common interest communities, including condominiums, cooperatives and planned communities, regardless of when they were created.*

### **What the New Laws Require**

Under Section 47-81 of the Condominium Act and Section 47-260 of the Common Interest Ownership Act, as amended, if an association wishes to borrow money, it must now do the following at least 14 days before entering into the loan agreement:

1. Disclose to all unit owners, in writing, the amount and terms of the loan;
2. Disclose to all unit owners, in writing, the estimated effect of the loan on any future assessments for common charges; and
3. Provide all unit owners with an opportunity to submit written comments to the board concerning the proposed loan.

Section 47-260 of the Common Interest Ownership Act applies to all common interest communities, regardless of when they were created.

### **What the Disclosures Should Contain**

1. A statement that the association is sending the notice pursuant to Section 47-81 of the Condominium Act or Section 47-260 of the Common Interest Ownership Act, whichever

*New Laws and Association Borrowing continued from page 7*

is applicable.

2. A statement regarding the purpose of the loan, such as raising funds for capital repairs or improvements.

3. A statement regarding the material terms of the loan. These are usually found in the commitment letter from the lender. At a minimum, this statement should include:

- a. The name of the lender.
- b. The principal amount of the loan. If the commitment letter indicates that the loan is for a construction line of credit, the exact amount of which will not be known until the construction has been completed and funded, the notice should state that fact and the maximum amount of the credit line, e.g.: "an amount not to exceed \$300,000."
- c. The term or the length of the loan. If the loan includes a construction line of credit, the notice should inform the unit owners of both the length of the construction phase and the term of the note during the amortization phase, e.g.: "a construction draw period of up to six months followed by an amortization period of five years."
- d. The interest rate or the formula that will be used to determine the interest rate.
- e. The prepayment penalty. Ordinarily an association would not want to enter into a loan agreement that called for a prepayment penalty. However, if the loan commitment calls for one, the notice should state the amount and under what

circumstances it will be payable.

- f. An explanation of the collateral for the loan. Most associations that borrow money from a commercial lender secure the loan with an assignment of the association's right to collect common charges. If the association is posting some other form of collateral, or none at all, the notice should state so.

4. The anticipated closing date, if known.

5. The effect of the loan on common charges. For example, the notice should set forth any estimated increase in monthly common charges as a result of the association's obligation to repay the loan. The notice should state whether the debt service will be included as a line item in the annual budget or addressed in a separate special assessment. If there will be a special assessment, the notice should state the amount of the payments and when they will be due.

6. An invitation to submit comments. The notice should invite the unit owners who have comments to submit them to the association within 14 days.

### **How to Implement These Requirements**

Though not required by Connecticut law, the declarations of most communities created since 1984 permit the association to assign its right to collect common charges, if approved by the vote 51% of the voting power in the association. If your declaration contains such a provision, you can provide the required disclosures together with notice of the association meeting at which the unit owners are asked to approve the assignment of common charges. The association should send the meeting notice and disclosures to the unit owners at least 14 days prior to the meeting date.

*New Laws and Association Borrowing continued on page 9*

*New Laws and Association Borrowing continued from page 8*

If your declaration does not require a vote of the unit owners to approve the assignment of common charges, then be sure to send the disclosure at least 14 days prior to the closing.

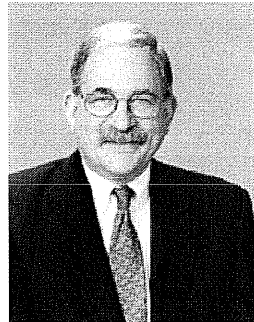
The procedures that an association must follow to approve a loan are complex and technical. If your association is considering a loan, it should speak with its attorney as early in the process as possible.



## NEWS ABOUT OUR PEOPLE

### New Clients

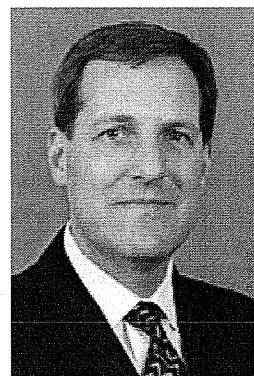
*We are often asked if we are accepting additional clients. We are, and are always happy to meet with interested parties to discuss our firm and how we may serve them.*



Matt Perlstein was a featured speaker at the Leadership Forum – Ask the Experts, a workshop for association leaders, held in Farmington on September 29, 2007 and sponsored by the Connecticut Chapter of the Community Associations Institute. The members of the boards of many different associations attended the workshop and benefited from the presentations.



Scott Sandler has been elected President of the Connecticut Chapter of the Community Associations Institute. Scott will assume the presidency of the Chapter in January of 2008. Scott has been a member of the board of the Chapter since 2004, working to address the needs of the associations who are members of the Chapter.



Greg McCracken continues to serve on the Executive Committee of the Real Property Section of the Connecticut Bar Association. He is the Chairman of the Common Interest Communities Subcommittee of the Land Use, Planning and Zoning Committee of the Section of State and Local Government Law of the American Bar Association, and he is the Reporter for the forthcoming second edition of the *Common Interest Ownership Manual*.

## TELEPHONE EXTENSIONS

If you should call our office and the automated answering system answers, you may use the following extensions to reach us if we are in the office or to leave a message in our individual voice mailboxes:

Matthew N. Perlstein:	Extension 12
Scott J. Sandler:	Extension 15
Gregory W. McCracken:	Extension 29
Lawrence C. Malick:	Extension 16
Barbara S. Sack:	Extension 18
Elizabeth A. Dickens:	Extension 10
Donna L. Diver:	Extension 14
Mya Beth Williamson:	Extension 30
Jackie Castonguay:	Extension 13

### *PERLSTEIN, SANDLER & McCracken, LLC*

*Providing legal services  
to condominium and  
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including:*

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*Other Association  
Legal Matters*

*10 Waterside Drive  
Suite 303  
Farmington, CT 06032  
Phone (860) 677-2177  
Fax (860) 677-1147*

*Visit our website:  
[www.ctcondolaw.com](http://www.ctcondolaw.com)*

## E-MAIL ADDRESSES

Matthew N. Perlstein:	<a href="mailto:mnp@ctcondolaw.com">mnp@ctcondolaw.com</a>
Scott J. Sandler:	<a href="mailto:sjs@ctcondolaw.com">sjs@ctcondolaw.com</a>
Gregory W. McCracken:	<a href="mailto:gwm@ctcondolaw.com">gwm@ctcondolaw.com</a>
Lawrence C. Malick:	<a href="mailto:lcm@ctcondolaw.com">lcm@ctcondolaw.com</a>
Barbara S. Sack:	<a href="mailto:bss@ctcondolaw.com">bss@ctcondolaw.com</a>
Elizabeth A. Dickens:	<a href="mailto:liz@ctcondolaw.com">liz@ctcondolaw.com</a>
Donna L. Diver:	<a href="mailto:donna@ctcondolaw.com">donna@ctcondolaw.com</a>
Mya Beth Williamson:	<a href="mailto:mya@ctcondolaw.com">mya@ctcondolaw.com</a>
Jackie Castonguay:	<a href="mailto:jackie@ctcondolaw.com">jackie@ctcondolaw.com</a>