

IN ASSOCIATION

Volume VII Issue 1

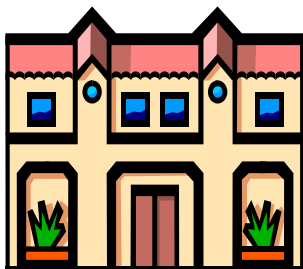
SPRING 2005

A Newsletter from
The Law Office of
Matthew N. Perlstein
10 Waterside Drive
Suite 303
Farmington, CT 06032

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

Inside This Issue

Preparing for a Meeting	1
Mold Matters	3
Gold in Them Thar Commom Elements	4
Dealing with Increased Insurance	6
E-Mail Addresses	7
News About Our People	8
Office Telephone System	8



PREPARING FOR A MEETING

One of the best ways to avoid problems and surprises at an association meeting is to plan for the meeting in advance. If you identify the issues that may come up at the meeting, the actions that the homeowners must take, and the procedures that must be followed, and prepare for them, the meeting will run more smoothly.

We have prepared a checklist to help associations plan and prepare for meetings. Matt Perlstein used it as part of the materials for his presentation on "Voting Nightmares" at the 2005 CAI national community association law seminar.

Preparation Prior to Calling the Meeting

- A. Identify issues to be addressed and draft required amendments and resolutions.
- B. Identify requirements for approval
 1. Items that can be approved by the board after notice and an opportunity to be heard.
 2. Ratifications and vetoes by unit owners.
 3. Items that can be approved by a majority of those present and voting or eligible to vote versus a majority of all unit owners.
 4. Items that require approval by a supermajority, particularly for the approval of document amendments.
 5. Items that must also be approved by outsiders such as mortgagees and municipalities.
- C. Determine whether cumulative voting or "plonking" are permitted in elections.
- D. Determine quorum requirements.
- E. Determine whether proxies are required or will be needed or useful.
 1. Determine proxy requirements and limitations contained in the statutes and the documents.
 2. Determine whether the association will circulate form proxies with the notice of the meeting and what form of proxy to use.
- F. Determine requirements for calling and noticing the meeting.
 1. Who calls the meeting.
 2. Who is required to give the notice.
 3. What must the notice contain.
 4. Are there items that cannot be taken up unless they are mentioned in the notice or the agenda.
 5. Must the text or summary of a proposed amendment, budget, etc. be included with the notice.
 6. Determine when the notice must be given.
 - a) What are the minimum and maximum notice periods.
 - b) Are the date of mailing and the date of the meeting included or excluded from the notice period.

Preparing Continued on page 2

Preparing continued from page 1

One of the best ways to avoid problems and surprises at an association meeting is to plan for the meeting in advance.

- c) Watch out for inconsistent notice periods. The Connecticut Common Interest Ownership Act, for example, has different notice periods for ordinary meetings of the association and meetings to ratify budgets.
 - d) If the issue is controversial and important, consider giving notice far enough in advance so that a revised notice can be prepared and sent for the same meeting date if a problem arises with the original notice.
 - e) Determine how the notice is to be given or sent.
 - (1) Whenever possible, use a procedure under which notice is complete when it is sent, not when it is received.
 - (2) To what addresses are the notices to be sent.
 - f) Are others entitled to notice such as mortgagees, relatives of unit owners, or municipalities.
 - g) Have the notice package reviewed by some individuals, ideally unit owners in the community, who have had nothing to do with its preparation to see whether they read it in the same way as it is read by the people who drafted it.
7. Determine whether a parliamentarian or outside chair is necessary or would be helpful.
 8. Make sure that the place where the meeting is to be held is available.

Preparation Prior to Holding the Meeting

- A. Prepare a “resource library.”
 1. Authoritative copies of all association documents including declaration, bylaws, rules, certificate of incorporation, and standing resolutions.
 2. Applicable statutes, including corporation statutes if applicable.
 3. Parliamentary manuals.
 4. Backup material for specific items to be addressed at the meeting.
- B. Prepare for attendance and sign-in.
 1. Up to date list of unit owners.
 2. Have enough trained people and copies of the list of unit owners on hand to provide for a timely sign-in.
- C. Establish procedure for checking in and verifying proxies and dealing with proxy challenges.
- D. Have extra proxy forms on hand for members who may need to leave before the meeting is over.
- E. Prepare for procedural issues.
 1. If the documents or standing resolutions do not mandate a parliamentary manual, prepare a motion to adopt a manual for the meeting.
 2. Draft procedural resolutions for specific items on the agenda where the standard authorities do not address the issue or do not address it in a manner appropriate for the association. Some examples:
 - a) Limitations on debate with regard to the number of times each person may speak on an issue and for how long, as well

Preparing continued on page 3

Preparing continued from page 2

as a time to end debate (crucial if you are meeting in the community room of the local public library and the library closes at 9 p.m.)

- b) Procedures for nominating and introducing candidates and conducting elections.
- G. Identify procedure for continuing the meeting if it runs too long or if a required quorum or extraordinary majority is not present.
- H. Prepare handouts.
 - 1. Assume that everyone has lost or forgot to bring everything sent out with the notice of the meeting and will need a duplicate copy at the meeting.
 - 2. If any material is going to be discussed or referred to at the meeting, bring copies to distribute. Few things make unit owners crankier than being told that the budget backup, renovation contract, reserve study, etc. is available for inspection at the management office, but is too cumbersome for the association to hand out copies at the meeting at which the unit owners are being asked to vote on the matter.
- I. Prepare lists of anticipated questions and the answers to them.
- J. Prepare ballots.
 - 1. Ballots are essential if the units have weighted or percentage votes or if someone may call for a secret ballot.
 - 2. Always have more ballots than you anticipate there will be votes taken.
- K. Bring extra pens or pencils.
- L. Prepare vote counting procedures. Depending on the size of the association, this can be as simple as making sure to bring a pad on which to

tally the vote and a couple of calculators on which to add up the tally, or as complex as a computer with a spreadsheet program set up to total the results.

- M. Make sure that the secretary or some other individual who understands what must be included in the minutes will be present to take minutes.
- N. Prepare to keep order. If the meeting is likely to become excessively contentious, consider hiring a police officer.



MOLD MATTERS FIX IT NOW! FIGHT ABOUT IT LATER

Over the past few years, we have seen a number of large verdicts in lawsuits against community associations for failure to remedy mold problems in their communities. Your association can possibly avoid vulnerability to a large verdict by taking fast action once the mold is discovered and fighting over the cost of remediation afterwards.

The courts of several states have recently awarded large verdicts to unit owners who sued their associations for failing to remedy mold in the community, causing health risks. For example, a court in Texas awarded \$32 million to a unit owner, a court in Arizona awarded \$4 million to a unit owner, and a court in California awarded \$18 million to a unit owner. Closer to home, a Massachusetts court recently ordered an association to pay \$500,000 to a unit owner for failing to remediate mold in her unit.

These numbers should be a cause for concern for any association. However, your association can take steps to reduce the likelihood of such an award if you discover mold in the community.

First, act quickly once you discover the mold. The main reason behind the award in the Massachusetts case was that the association was

Mold Continued from page 3

slow to take action to remedy the mold. Had the association acted faster, it may have avoided such a high verdict.

The boards of community associations are usually made up of unit owners that are volunteer lay people. It frequently takes a longer period of time for an association to implement action than other types of business organizations. Further, associations tend to question the relative responsibilities between itself and the unit owners before addressing maintenance issues. Issues of mold, however, are exceptions to this usually safe and acceptable practice. The association needs to take quick action when addressing mold. The longer the delay in remediation, the greater the likelihood of health risks to the community. After the association has remedied the mold and removed the health risks, it can then address questions of responsibility for the cost. It is far better for the association to take fast action and fight over the cost afterwards than it is to take no action and face costly litigation. Again, had the association in the Massachusetts case acted immediately, the lawsuit may have been avoided or the verdict may have been substantially less.

An association we represent recently addressed mold found in the community. The association quickly remediated the mold. It then worked with the unit owner to resolve all questions about liability, thus avoiding a potential lawsuit. The matter was resolved within a matter of a few weeks, and without expensive litigation.

Even if an association eventually agrees to pay a greater portion of the remediation costs than a strict interpretation of its documents may require, it is money well spent when compared to a large jury verdict. Moreover, the association's immediate attention contributes to a happier and healthier community.



THERE IS GOLD IN THEM THAR COMMON ELEMENTS

Many communities were never fully developed, and have large areas of open land. Some of these communities have realized significant benefits by arranging for the further development of these open areas.

Due to the economic downturn in the late 1980s and early 1990s, many communities in Connecticut were only partially developed. The original zoning approvals for the community called for more units than were actually built, and the original developer reserved development rights to build units that were not constructed. In most cases, the development rights are now expired, leaving the community with empty land. This land remains in the community as a common element.

With the rising demand for housing in many parts of our state, some developers are willing to pay significant sums to obtain development rights to build new units in existing communities. Some communities have experienced significant advantages in arranging for the further development of the open space. For example, if the community includes a clubhouse, swimming pool, or other expensive amenities, it may be helpful to have more units sharing the cost. If the developer left foundations with no buildings on them, incomplete roads, or ungraded open space, a new developer can complete the work and remove eyesores while developing new units. Additional units may increase the supply of volunteer leaders. Additional units may also make professional management an economical choice.

How Do We Create New Development Rights?

In 1995, the Connecticut Legislature amended the Connecticut Common Interest Ownership Act, making it possible for community associations to create new development rights, or to extend existing rights that are about to expire. This requires amending the declaration of the community by the vote or agreement of at least 80% of all unit owners. The statute also contains special

Gold continued on page 5

The association needs to take quick action when addressing mold. The longer the delay in remediation, the greater the likelihood of health risks to the community.

Gold Continued from page 4

protections for any unit owners who may have a “unique minority interest” that would be affected by the development rights.

How Do We Know What Development Rights Are Worth?

Market demand determines the value of development rights. Some sophisticated appraisers have developed methods of valuing development rights. A market study by an appraiser can assist your association in the sale of development rights by providing an estimate of what the rights are worth. It also gives you an understanding of the process that a developer must go through to complete the project.

Who Gets the Money?

Proceeds from the sale of development rights can be paid to your association or directly to the owners of the existing units. A financial advisor experienced in working with community associations can advise you of the tax implications of these options.

How Can We Control What the New Developer Does?

The Connecticut Common Interest Ownership Act provides for limitations on development rights and how they are exercised. Most declarations contain few limits on the development rights. Limitations frequently include a time limit, a limit on the number of units that can be built, and a vague reference to architectural consistency. In creating new development rights, your association can and should consider greater limitations. You may limit unit size and type, construction materials and quality of construction. You may set specific requirements concerning hours of construction, the condition of the construction site, and the timing of the construction of additional units. If the new developer is required to complete amenities or improvements such as roads, lighting, or plantings, these details can also be itemized.

What is the Process?

First, determine whether your community is interested. Start by taking an informal survey of the unit owners. You may find that many unit owners are very happy having a big back yard, and no amount of money could compensate them for the inconvenience and disruption of new construction. If 80% of the community members do not support the establishment of new development rights, there is no point in proceeding further.

If there is community support, then assess the market for development rights by talking to real estate brokers and builders in your area. If there is a market for your development rights, then your association will want to obtain a market study to determine their value. At this point, you should also contact an attorney knowledgeable in the creation or extension of those rights.

Once your association has determined the value of the rights, and the restrictions you would place on the rights, begin searching for development buyers. You may choose to use a real estate broker. However, you should be careful to state in the listing agreement that any commission is contingent on the unit owners approving the development rights amendment. After your association has found a buyer and entered into a contract, the terms of the contract, such as price, time limits and other restrictions, can be incorporated into the amendment presented to the unit owners for approval.

Do not amend the declaration to create new development rights before you have a buyer. As soon as you have created the development rights, someone has to own them. We do not usually advise our association clients to hold development rights. Development rights are taxable as real estate from the time they are created. If your association creates development rights, and then holds them while finding a buyer, it will have to pay taxes on them until they are sold. Also, your association will probably not know exactly what a developer wants to build. If you want to maximize the sale price, consistent with the needs and interests of the unit owners, you should let the developer have some input in

Some communities have experienced significant advantages in arranging for the further development of their open space.

Gold continued on page 6

Gold continued from page 5

the process of creating the new development rights.

Again, the possibility of creating and selling new development rights may offer a number of benefits to communities that were not fully developed. In order to realize those benefits, associations must seek out knowledgeable professional advice, educate their unit owners about the process of creating new development rights, and negotiate carefully for the benefit of the community.

If your association is interested in selling development rights, please contact



DEALING WITH INCREASED INSURANCE PREMIUMS AND DEDUCTIBLES

Due to a downturn in the insurance market, many community associations are paying higher premiums and assuming higher deductibles to obtain insurance coverage than ever before. Higher premiums lead to increases in the common charges, and higher deductibles result in a larger amount of repair costs being paid for by the association and not an insurance company.

Your association can amend its governing documents to better deal with these trends. Amendments that enable your board to regulate the maintenance of high risk components in units will reduce the likelihood of increases in the premiums. Amendments that reallocate costs of repairs not covered by insurance will help your association absorb higher deductibles.

Amendments Designed to Keep Your Premiums from Rising Significantly

By amending your governing documents, your association can take

action to reduce the likelihood of significant increases in your insurance premiums.

When calculating a premium, an insurance company examines the loss history of your association. If your association has a higher number of losses, you will most likely pay a higher premium.

If your association can reduce the number of losses, you can reduce the likelihood of increases in the premium. Reducing the number of losses requires a higher level of preventative maintenance. Since your association maintains the common elements, it may set standards with regards to that maintenance. However, your association cannot easily dictate maintenance standards that must be observed by unit owners in maintaining their units. Frequently, damage to the community is the result of the failure of items within units.

Your association can amend its documents to empower your board to designate certain items within units as “high risk components.” A high risk component is an item that tends to cause substantial damage when that item fails. Common examples of high risk components are hot water heaters and water hoses connected to dishwashers and washing machines. After your board has designated an item as a high risk component, the board is then empowered to set maintenance and repair standards concerning that component. For example, your board may designate a hot water heater as a high risk component, and require unit owners to replace their hot water heaters every ten years. Your board may designate a dishwasher hose as a high risk component, and require unit owners to replace the hose with a certain type of hose that is specially designed to reduce the chance of failure. Like rules, your board would make these designations and adopt maintenance standards after giving unit owners notice and an opportunity to comment.

By identifying and dictating proper maintenance of high risk components, your association can reduce the likelihood that these components will fail. Reducing this likelihood can reduce the number of claims made under the insurance policy, which reduces the likelihood that the premium will increase.

Insurance continued on page 7

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.

Insurance continued from page 6

Amendments Designed to Reallocate Repairs Costs Not Covered by Virtue of Deductibles

No matter how much preventative maintenance you perform, accidents still happen. This is why your association carries insurance.

A short time ago, insurance companies offered associations coverage subject to relatively modest deductibles. The insurance company paid nearly all of the repair costs. Unfortunately, deductibles are now on the rise. Increased deductibles mean that your association pays a larger share of the repair costs. Under the documents of most conventional communities, repair costs not paid by insurance proceeds are paid by assessments against all units, regardless of whether the damage was to units, common elements or both. With deductibles on the rise, however, associations cannot absorb these repair costs.

Your association can amend its governing documents to enable it to divide the uncovered repair costs proportionally between the damaged units and common elements, based on the extent of the necessary repairs. The cost of repairing the common elements remains a common expense payable by all unit owners. This makes sense because each unit owner shares in the ownership of the common elements. However, the cost of repairing the units is assessed solely against the units repaired. Since only the owners of those units benefit from this expense, only those unit owners should pay the expense.

For example, suppose a fire damaged Unit A, Unit B and the common elements between the units. The total repair costs amount to \$100,000. The cost of repairing Unit A is \$40,000, the cost of repairing Unit B is \$40,000, and the cost of repairing the common elements is \$20,000. The policy is subject to a deductible of \$10,000. Under the provisions of most conventional communities, the association would pay the entire repair costs not covered because of the deductible, amounting to

\$10,000. This money would come either from the reserves or from assessments levied against all of the unit owners.

If the association has amended its documents as described above, the uncovered repair costs are divided proportionally between the units and the common elements. In this example, 20% of the total repair costs is attributable to the common elements. Thus, 20% of the uncovered repair costs, or \$2,000, is payable by all of the unit owners. The repairs to Unit A are 40% of the total repair costs, and the repairs Unit B are also 40% of the total costs. Thus, 40% of uncovered repair costs, or \$4,000, is assessed against Unit A, and \$4,000 is assessed against Unit B. This allocation accounts for the entire cost of the repairs.

More importantly, the assessments against the damaged units to cover the repair costs are covered by property insurance policies currently available to individual unit owners. As a result, much more of the repair costs are covered by insurance. The association absorbs far less than it would absent the amendment.

If your association needs to amend its documents to deal with the rising costs of insurance premiums and deductibles, please contact our office. We are happy to review your documents, prepare the necessary amendments and assist you throughout the amendment process.



E-MAIL ADDRESSES

Matthew N. Perlstein	mnp@ctcondolaw.com
Scott J. Sandler	sjs@ctcondolaw.com
Lawrence C. Malick	lcm@ctcondolaw.com
Elizabeth A. Dickens	liz@ctcondolaw.com
Susan M. Bourret	susan@ctcondolaw.com
Jackie Castonguay	jackie@ctcondolaw.com

NEWS ABOUT OUR PEOPLE

Matt Perlstein, Larry Malick and Scott Sandler attended the Community Associations Institute National Law Seminar in New Orleans in February, 2005. The Law Seminar provides attorneys and other professionals with the opportunity to share ideas and experiences concerning legal issues affecting community associations. Matt was a featured speaker during the Law Seminar on the topic of running effective association meetings.

Scott Sandler has been elected Vice President of the Connecticut Chapter of the Community Associations Institute. Scott has served as a member of the board of the Chapter for the past year, working to address the needs of the associations who are members of the Chapter. Scott also serves as Co-Chairman of the Chapter's Trade Show Committee. On November 18, 2004, Scott participated in a panel for association managers on association insurance issues sponsored by the Chapter.

Larry Malick serves on the Publication Committee of the Connecticut Chapter of the Community Associations Institute, which oversees preparation of the Chapter's magazine, *Common Interest*. Larry was a featured speaker at the ABC's Course, a workshop for association leaders, held in Cromwell on October 2, 2004 and sponsored by the Connecticut Chapter of the Community Associations Institute. The members of the boards of many different associations attended the workshop and benefitted from the presentations.

*Law Offices of
Matthew N. Perlstein*

*Providing legal services
to condominium and
community associations
including:*

*Common Charge
Collection*

*Document
Amendments*

Association Borrowing

Rules Enforcement

*Document
Interpretation*

*Transition from
Declarant Control*

*Other Association
Legal Matters*

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

OFFICE TELEPHONE SYSTEM

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
Lawrence C. Malick:	Extension 16
Elizabeth A. Dickens:	Extension 10
Susan M. Bourret:	Extension 14
Jackie Castonguay:	Extension 13

