

## Legally Speaking...



Adam Cohen, Esq.

# Supreme Court Holds that Foreclosure Policies Must Be Adopted As Rules – *Because a Lawyer is a Person*

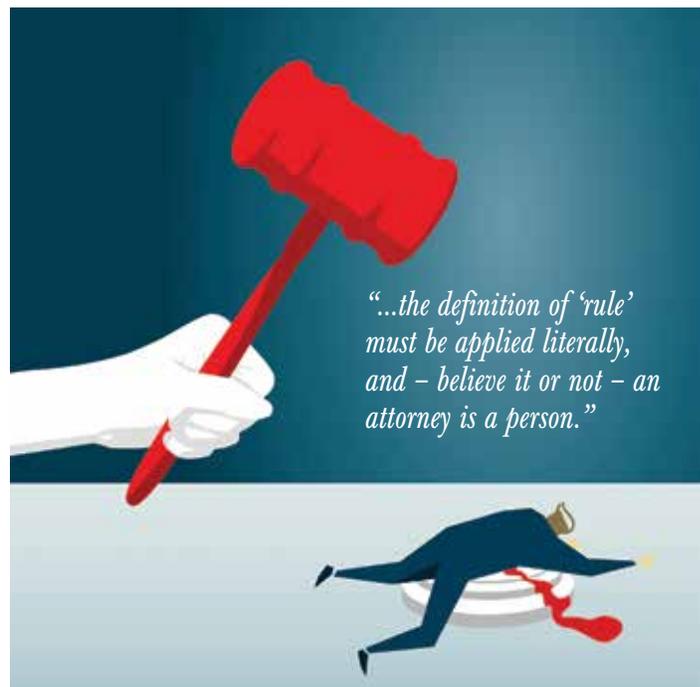
By Adam J. Cohen, Esq.

In the sweeping 2010 amendments to the Common Interest Ownership Act (CIOA), the Connecticut legislature directed in General Statutes § 47-258(m)(1)(C) that “An association may not commence an action to foreclose a lien on a unit ... unless ... the executive board has either voted to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit.” Our state’s highest court has now clarified what that means. The key step in the Court’s rationale was – wait for it – that a lawyer is a person.

On April 26, 2016, the Connecticut Supreme Court officially released its decision in *The Neighborhood Association, Inc. v. Limberger*, which was an appeal from an ordinary condominium foreclosure. The case was commenced under a written policy authorizing the association’s attorney to foreclose units which owed at least two months’ worth of common charges. The board had previously adopted that policy at an open meeting but without circulating copies to the unit owners. The association won a judgment in the trial court, but the delinquent unit owner appealed on the argument that the policy should have been adopted under the formalities of a “rule” which include sending its full text to every owner before and after the board meeting and considering their comments during it.

The Supreme Court explained that it had to reconcile different parts of CIOA to resolve the dispute. The statute does not define “standard policy” or explain how to adopt one. However, the statute defines “rule” as “a policy, guideline, restriction, procedure or regulation of an association, however denominated ... which governs the conduct of persons or the use or appearance of property,” while going on to say that “[a]n association’s internal business operating procedures need not be adopted as rules.” Under the 2010 amendments to CIOA, “rules” are only enforceable if a full-text draft is sent to every unit owner at least ten days before the board votes on it, if the board considers comments from the unit owners before voting, and if the as-approved text is sent to every owner afterward. Since the foreclosure policy in this lawsuit had been approved by the association’s board without notices to or comments from the unit owners, its legal validity turned on whether the legislature intended the term “rule” to include a “standard [foreclosure] policy” or instead was excluded from that term as an “internal business operating procedure.”

The association argued that its foreclosure policy was an internal business operating procedure, since the purpose of a “rule” was to regulate the behavior of community residents and visitors, not the actions of the association’s attorney on the association’s behalf. The



Supreme Court disagreed. By a 5-2 vote, a majority of the justices held that the phrase “conduct of persons” in the definition of “rule” must be applied literally, and – believe it or not – an attorney is a person. The association’s policy setting out when its attorney could start foreclosure proceedings therefore governed the conduct of a person, and therefore qualified as a “rule,” and therefore required that the notice and comment formalities be followed before it would be valid. Since the board had not done that, the statute did not allow the association to begin a foreclosure based on that policy, and the lawsuit had to be dismissed.

The Court acknowledged that its interpretation could arguably render the exception for “internal operating procedures” meaningless, since nearly everything a condominium association does involves the “conduct” of a “person” in some way. The Court was careful to note that other condominium policies on issues less important than foreclosures – such as how vendor bids are solicited, how outside managers perform their duties, and signing up to use a pool table in a clubhouse – would continue to qualify as internal operating procedures for which rule formalities remain unnecessary. But since foreclosure can cost a unit owner his home, the Court reasoned that the stricter procedures

for community input was appropriate.

This ruling affects hundreds, if not thousands, of condominiums and pending foreclosures across Connecticut. After the 2010 amendments to CIOA, association boards and managers routinely adopted foreclosure policies exactly the way this one did, relying on their reasonable interpretation that these were internal operating procedures instead of rules. Still other associations may be continuing to use older policies which predate the 2010 amendments, or have no such written policies at all. Every association in Connecticut should therefore immediately work with its legal counsel to determine whether it has a written foreclosure policy which satisfies the statutory requirement for unit owner notice and comment, and if not, should considering adopting one under the proper procedure. Until they do so or as an alternative, boards can choose to vote on referring delinquent units for foreclosure on a case-by-case basis. ■

*Adam J. Cohen is an attorney with the Law Firm of Pullman & Comley, LLC headquartered in Bridgeport, Connecticut. As the Chair of its Community Associations Section, he represents and gives seminars to condominiums, tax districts, and other communities in matters ranging from amendments of governing documents to revenue collection strategies and commercial disputes.*

## Legislative Update

Well it happened again... Our 2016 attempt to get an Animal Control bill passed was snatched away. Once again, we got very close to the bill's passage, but an objection from an ACO (Animal Control Officer) took a big bite out of all the support we had for the bill. We tried to negotiate, but simply ran out of time before the final bell of the session rang.

We also attempted to negotiate a legislative fix for the late April Connecticut Supreme court decision that severely impacted active foreclosure cases. We tried to find support for a validating act that would at minimum protect the foreclosure proceedings that were currently in play. Nevertheless, it is important to all common interest communities to understand that they must now adopt foreclosure polices through the notice and hearing process or else they might not be on firm legal grounds to proceed with any foreclosure actions. (Please see Adam Cohen's article addressing this matter on this spread.)

Our ad hoc committee of the LAC is now working on the details of our 4th Annual Legal & Legislative Symposium which will take place on Thursday, October 27, 2016 at Oronoque Village Clubhouse. Save the date! If you have any topics you would like us to include, please let us know ASAP (see ad below). ■

*"We tried to find support for a validating act that would at minimum protect the foreclosure proceedings that were currently in play."*

Save the Date!

Thursday  
September 29, 2016

CAI-CT Turns 40 —  
**RUBY ANNIVERSARY PARTY & THE CAMMIES**

**40**

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**SEE DETAILS ON PAGE 9...**



### CAI-CT'S 4TH ANNUAL LEGAL & LEGISLATIVE SYMPOSIUM

Proceeds to benefit legislative advocacy.

**Date:** Thursday, October 29, 2016

**Time:** 1:00 - 5:00 pm

**Place:** Oronoque Village Clubhouse, Stratford, CT

\$50 CAI-CT members; \$75 Non-members

Our panel of legal experts will cover topics important to your community.

*(All proceeds to benefit legislative advocacy for Connecticut Community Associations).*

#### **BRING YOUR QUESTIONS!**

This will be a great opportunity to ask our legal professionals your pressing questions about association operations.



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**Seating will be limited.  
To Register visit  
[www.caict.org](http://www.caict.org).**