

COMMON INTEREST COMMUNITIES

HIERARCHY OF LAWS

WHICH LAW OR LAWS APPLY?

1. Common Interest Communities are like mini governments. They have a hierarchy of laws which apply to them.
 - A municipality – Federal laws, state laws, municipal laws all apply
 - Common Interest Community – (order of priority)
 - a. Federal laws
 - b. State statutes
 - c. Municipal laws
 - d. Common Interest Community Declaration
 - e. Common Interest Community Bylaws
 - f. Common Interest Community Rules
2. Generally speaking, when it comes to common interest communities where there is a conflict between the forgoing authorities, the authority with the higher priority controls.
3. Federal Laws
 - A. These tend to be legislation on a very specific stand-alone topic. The Supremacy Clause of the U. S. Constitution (Article VI, Clause 2) provides federal law shall supersede state law when both legislate over the same topic.
 - Fannie Mae/Freddie Mac – Residential secondary mortgage market regulations
 - Fair Housing Act – Residential fair housing (anti-discrimination) requirements
 - American's With Disabilities Act ("ADA") – Legislation geared to protecting those with disabilities
4. State Statutes

A. You must first determine which statutory scheme applies

- Common interest communities created on or after January 1, 1984 the Connecticut Common Interest Ownership Act (“CIOA”) applies [CGS 47-200 et. seq.]
- If common interest community formed before January 1, 1984 the Connecticut Unit Ownership Act (typically created prior to 1976) [repealed] or the Connecticut Condominium Act (typically created between 1976 and 1984) may apply
- If common interest community created prior to January 1, 1984 CGS 47-216 of CIOA becomes **VERY** important
- CGS 47-216 contains a list of those CIOA statutes which apply to common interest communities created prior to January 1, 1984
- The list continues to grow. The list was significantly expanded by the 2009 amendments to CIOA

B. Does the language in the statute control all by itself?

- When a statute is involved the language of the statute must be read very closely
- Sometimes the language in the statute contains a clear deferral to the terms contained in the common interest community Declaration
- Example – CGS 47-244 which outlines the powers a unit owners association shall and may have
- Subsection (a) of this statute gives a list of the powers a unit owners association can and may have
- Subsection (a) of this statute contains qualifying language which states “...subject to the provisions of the declaration...”
- When reviewing the powers a unit owners association has the provisions contained in CGS 47-244 and the language of the common interest community declaration must be read together

C. Where the language in the statute creates gray areas, you may need to see if state court caselaw decisions provide interpretations of the statute.

D. State statutes are constantly being “tweaked” by “Public Acts” which are new laws which either amend existing laws or create an entirely new law covering new subject matter.

5. Municipal Laws

- Usually very specific health & safety issues
- Building codes
- Fire codes (example: gas grills regulations regarding distance from structures)

6. Common Interest Community Declaration

- This document is recorded on the land records as are all of the amendments to this document
- As a result, a title search can provide a complete set of documents showing the common interest community declaration as well as all of the amendments to the declaration
- This document and all amendments to this document are a part of any resale package required by CGS 47-270
- CIOA Declarations typically follow a similar format making searching for answers to particular questions easier
- Declarations for pre-CIOA communities much more all over the place and more difficult to interpret

7. Common Interest Community Bylaws

- Typically, not record on land records but may be recorded on land records
- The most boiler plate of all the common interest community governing documents as it largely regurgitates state laws provisions pertaining to governance of the unit owner’s association

8. Common Interest Community Rules

- Almost always **NOT** recorded on the land records
- One exception – pre-CIOA declarations sometimes have Rules attached as an Exhibit to the Declaration
- Another exception – Use & occupancy restrictions. An example of this would be rental restrictions designed to meet secondary mortgage market requirements. These rental restrictions are not enforceable unless recorded on the land records [See CGS 47-261b(e)(3)].