

2025 Condo/HOA Conference and Expo
Connecticut Chapter of Community Associations Institute

Legal Hazard Buoy – Bermuda Triangle Session

Speakers: Kasey Burchman, Esq. – Feldman, Perlstein & Greene, LLC; Gregory McCracken, Esq. – Jacobs, Walker, Rice & Barry, LLC, and Christopher K. Leonard, Esq. – Collins Hannafin, PC

Moderator: Benjamin Whittemore, CMCA, Paladin Property Management

“Our knowledgeable speakers will focus on the three main legal trouble hazards that can sink a community: Compliance Hierarchy, Communication and Transparency and how to avoid the perils of the legal sea e.g. the proper reasons for holding executive sessions, allowing for the inspection of records, ensuring that your association is in compliance with state laws and the value of effective communication.”

Transparency – Open Meetings and Records

At its heart, transparency is a common interest community is governance in the sunshine, meaning open meetings of the executive board and appropriate access to records of the community association. The Common Interest Ownership Act or “CIOA,” which is Chapter 828 of the Connecticut General Statutes, Sections 47-200 through 47-299, covers both of these points in detail. CIOA applies to almost all common interest communities in Connecticut.

1. Subsection 47-250(b) of CIOA covers open board meetings.

- Meetings of the executive board must be open to unit owners and to a representative designated by any unit owner, except during executive sessions, which CIOA permits to avoid harm to the association and other people that may result from discussions that are open to any unit owners and representatives.
- The board may hold executive sessions only during a regular or special board meeting.
- No final vote or action may be taken during an executive session.
- The board may hold an executive session only to do the following:
 - Consult with the association’s attorney concerning legal matters (to preserve the attorney-client privilege covering confidential legal advice and protect the attorney work product doctrine and the use of these products to the detriment of the association);

- Discuss existing or potential litigation or mediation, arbitration or administrative proceedings (to avoid the disclosure of objectives, strategies, and strengths and weaknesses of the association's cases to opponents);
 - Discuss labor or personnel matters (to protect the association's bargaining position from adverse parties and the privacy of employees);
 - Discuss contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage (again, to protect the association's bargaining positions for obtaining what the association requires); or
 - Prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person (again, to protect people's privacy).
- If a matter does not fall within this list, the board must discuss it in open session.
 - This requirement also applies to committees that exercise the association's powers (which are set out in Section 47-244 of CIOA).

2. Section 47-260 of CIOA covers examination of copying of records.

- All records that a community association retains must be available for examination and copying by a unit owner or the owner's authorized agent.
 - This requirement applies no matter what the declaration or bylaws may say to the contrary.
 - Examination may occur in person or electronically.
 - Examination must occur during reasonable business hours or at a mutually convenient time and location.
 - A unit owner or agent must reasonably identify in writing the specific records of the association that are requested for examination and copying.
 - Examination must occur within 30 days of the written request to the association, and within five business days of receipt of the written request, the association must provide two dates within the 30-day period when the records may be examined, copied, or both.

- The association must withhold some records that it retains from examination and copying, to protect people's privacy, secret ballots of unit owners, and to comply with other laws. Such records concern:
 - Personnel, salary and medical records relating to specific individuals, unless waived by the persons to whom such records relate;
 - Any unredacted paper or electronic ballot, any unredacted proxy form and any other unredacted record that identifies a vote cast by a unit owner; or
 - Information the disclosure of which would violate any law other than CIOA.
- The association can withhold some records from examination and copying in its discretion. The reasons line up with the reasons that the board may meet in executive session. If the association does not decide to withhold all of them, it should adopt a policy as to which records it will withhold, to avoid selective enforcement. Such records concern:
 - Contracts, leases and other commercial transactions to purchase or provide goods or services, currently being negotiated;
 - Existing or potential litigation or mediation, arbitration or administrative proceedings;
 - Existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws or rules;
 - Communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
 - Records of an executive session of the executive board; or
 - Individual unit files other than those of the requesting owner. (This is a new category from previous ones, and it protects records of payments and delinquencies, enforcement of governing documents, and other records of the association pertaining to a specific unit or owner.)
- An association can charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's examination of records.
 - A management agreement may cover charges for copying and examination of records.

- The association should not charge more than what a manager charges it for copies. If there is no manager, a photocopy shop can set the price with what it charges the association.
- For supervision, the hourly rate of a clerical employee of a manager is probably appropriate. If there is no manager, association directors or officers should at least receive minimum wage for providing supervision.
- The right of a unit owner or agent to copy records includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner.
 - Photocopies are typical, and electronic copies are not necessarily available, even if unit owners ask for them.
 - Associations with professional managers may be able to post commonly requested records on a website accessible only to unit owners, which they may view and download electronically.
 - Other records can be produced in paper form for examination and copying in person.
 - As an alternative, the association can arrange with unit owners to run paper records through a scanner to produce images that can be emailed to delivered on electronic media.
- CIOA does not require an association to compile or synthesize information.
 - The association does not need to take information in existing records and provide it in a different form.
 - It also does not need to create information that is not in the association's records.
 - These issues typically come up when unit owners ask questions, rather than request records for examination. CIOA does not require associations to answer all questions from unit owners.
- Unit owners and their agents may not use information in the association's records for commercial purposes (think businesses for profit that have no relationship with the association).