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## THE CONNECTICUT GENERAL ASSEMBLY ENACTS NEW LAWS CONCERNING COMMUNITY ASSOCIATIONS AND MANAGERS

*During the 2014 legislative session, the Connecticut General Assembly enacted two public acts concerning community associations, one of which also concerns managers. At present, we have no reason to believe that Governor Malloy will veto these acts.*

- I. Public Act No. 14-215: Amendments to the Common Interest Ownership Act. This act amends a number of provisions to the Common Interest Ownership Act ("CIOA") as follows. The majority of these amendments become effective on October 1, 2014, and apply to all communities in Connecticut, regardless of when created. A small number of these amendments are more limited in scope. Some of these more limited amendments become effective immediately, while others will not take effect until January 1, 2015:
  - A. Amendments Taking Effect on October 1, 2014. The following amendments apply to all common interest communities in Connecticut, regardless of when created:
    1. Meeting Minutes and Voting Records. Public Act No. 14-215 amends Subsection 47-250(b) of CIOA to require that the minutes of all board meetings contain a record of how each board member cast his or her vote on any final action proposed to be taken by the board, unless:
      - a. The proposed action is approved by the unanimous consent of the board; or
      - b. The proposed action is approved without objection by any member of the board.

Given these new requirements, it will be the duty of the secretary of the association, or whomever else is taking the minutes of the meeting, to

carefully record a tally of how each board member cast his or her vote on any final action.

2. Election of Directors by Plurality Vote. Public Act No. 14-215 amends Subsection 47-252(b) to permit associations to elect directors by a plurality vote.

When there are more candidates seeking election than there are open seats, it is possible for one candidate to receive the greatest number of the votes, but for that number to still be less than a majority of the total number of votes cast. Plurality voting permits the candidate who receives the greatest number of votes to be elected, even if that number of votes is not a majority.

Many associations have long conducted elections by plurality vote. However, when the General Assembly amended CIOA in 2009, in part to clarify what constitutes a majority vote of the unit owners, it inadvertently called into question the permissibility of conducting an election by plurality vote.

Subsection 47-252(b) of CIOA presently states that at a meeting of the unit owners, a majority of the votes cast shall be the decision of the association, unless either the governing documents or CIOA requires a higher number. This provision works well when the unit owners are asked to vote either in favor of or against a certain action. However, Subsection 47-252(b) does not work as well when it comes to elections when there are more candidates seeking election than there are open seats.

Public Act No. 14-215 amends Subsection 47-252(b) to make it clear that associations may elect board members by a plurality vote.

The amendment to Subsection 47-252(b) also applies to the election of officers, but only if the governing documents of the community require that officers are elected by the unit owners, rather than the board members. In most Connecticut communities, the officers are elected by the board members, not by the unit owners.

3. Disclosing Financial Reports in Resale Certificates. Public Act No. 14-215 amends Subsection 47-270(a) of CIOA to add a new disclosure that associations must include in any resale certificates that they issue.

If the association has had a certified public accountant report on its financial statement during the five years preceding the date on which the resale certificate is issued, then the certificate must disclose the following:

- a. The fiscal period represented by that financial statement; and
- b. Whether the report prepared by the accountant was a compilation, review or audit.

If the association has not had an accountant report on its financial statement, then the certificate should state so.

4. Increase in the Maximum Amount of Fines That May Be Levied Against Managers. Public Act No. 14-215 increases the maximum amount of fines that the Department of Consumer Protection may levy against managers, from \$500 to \$1,000.
5. Clarification on Permitting Private Transfer Fees. During the 2013 legislative session, the General Assembly enacted Section 47-17a of the General Statutes, which prohibits private transfer fees payable to third parties on the sale of real estate. This statute specifically excluded from the prohibition fees paid to a community association “organized under CIOA.” This means that the association of a community formed under CIOA could impose a transfer fee paid to the association on the sale of a unit. Unfortunately, the language of the statute left open the question of whether the association of a community created prior to the effective date of CIOA could also charge a transfer fee.

Public Act No. 14-215 amends Section 47-17a to clarify that the association of any common interest community, regardless of when created, may charge a transfer fee on the sale of a unit.

6. Correction of Internal Cross-References. CIOA has been amended many times since it was first enacted 30 years ago. New provisions have been added, and existing provisions have moved. Public Act No. 14-215 amends CIOA to correct certain internal cross-references to account for these changes.
- B. Amendments Taking Effect Immediately. Public Act No. 14-215 contains amendments to clarify the procedures by which only communities having 2,400 or more units adopt budgets and special assessments. These amendments will have no impact on any other association.
  - C. Amendments Taking Effect on January 1, 2015. Public Act No. 14-215 contains amendments that only apply to master associations that meet the following qualifications. Generally speaking, a master association is an association that is

charged with operating a group of individually-formed common interest communities, referred to as constituent communities, which are governed and operated collectively, in whole or in part, as one single community:

1. The constituent communities contain at least 400 units in total;
2. The master association is governed by a board of directors consisting of one individual from each constituent community, who serves on the board of that community and represents its interests on the board of the master association; and
3. The master association board members have votes that are weighted in proportion to the number of units in the constituent community that they represent.

These amendments will have no impact on any other association.

II. Public Act No. 14-84: An Act Concerning an Optional Method of Foreclosure. Public Act No 14-84, which becomes effective on October 1, 2014, creates a new process for conducting a foreclosure by market sale. The Act is purportedly designed to make it easier for homeowners and first mortgage holders to approve and complete short sales, by making it more difficult, if not impossible, for the holder of a junior lien to negotiate to receive at least some payment from the proceeds of the sale.

When the holder of a mortgage completes a foreclosure, the association will receive payment of the its priority lien, equal to nine months' of common charges plus attorneys' fees and costs. Unfortunately, in many or most cases, the association is unable to collect the junior portion of its lien, which does not enjoy priority over the mortgage.

As an alternative to foreclosure, some homeowners will attempt to conduct a short sale. The owner will put the home on the market and hope to find a buyer that is willing pay an amount that is close to market value. The owner then asks the mortgage holder to accept, as payment in full, an amount that is less than what is owed on the mortgage.

Because there is no foreclosure, any liens that were junior to the mortgage have not been extinguished. The owner and the mortgage holder must negotiate with the junior lien holders to accept some amount, often discounted, as payment in full. If the homeowner, mortgage holder, and junior lien holders cannot reach an agreement, then the short sale will not be completed. Instead, the mortgage holder will proceed with a foreclosure and the junior liens will be extinguished in the process. Thus, junior lien holders have some incentive to negotiate with the homeowner and mortgage holder.

Public Act 14-84 essentially eliminates the need for homeowners and mortgage holders to reach an agreement with the junior lien holders. The Act will not have any impact on the ability of associations to collect their priority liens. However, it eliminates the possibility of negotiating for payment of at least a portion of the junior portion of the association's lien if the homeowner is able to complete a short sale.

The Act applies to situations that meet the following criteria:

- A. The homeowner has one or more mortgages on his or her home, which he or she is using as a primary residence. In other words, this bill does not apply to property held by someone for solely for investment purposes.
- B. The homeowner is delinquent in paying the first mortgage on the home, and the holder of the first mortgage intends to proceed with a foreclosure.
- C. The home is worth less than the total amount of the outstanding balance of the first mortgage plus any liens that enjoy priority over that mortgage, based on an appraisal obtained by the mortgage holder.

If these criteria are met, then the homeowner and the holder of the first mortgage may agree to attempt to sell the unit on the open market. Any proposed purchase and sale agreement must meet the approval of both the homeowner and the mortgage holder, and subsequently be ratified by the court. The process is designed to permit the mortgage holder to obtain a judgment within three or four weeks of filing the action, and for the sale to take place within a month or two thereafter.

If the home is a unit in a common interest community, the association should receive notice of the foreclosure, just as it does now with other mortgage foreclosures. When the court enters its judgment, the association and all other any junior lien holders are given a right of first refusal. This means that a junior lien holder may choose to purchase the unit on the same terms and conditions as the proposed purchase and sale agreement already approved by the homeowner and mortgage holder. In most cases, it will likely make no sense to exercise this right.

If the association does not exercise this right, then the junior portion of its lien will be extinguished. The association will still collect the nine-month priority from the new owner of the unit after the sale is completed.