

HB 5434 (as amended by House "A")* AN ACT CONCERNING MINOR AND TECHNICAL CHANGES TO THE COMMON INTEREST OWNERSHIP ACT.

SUMMARY:

This bill makes several changes to the Common Interest Ownership Act (CIOA):

1. Adds to the list of CIOA provisions which automatically apply to common interest communities created in Connecticut before January 1, 1984;
2. Applies requirements for declaration amendments affecting the priority of a security holder's interest to bylaw amendments on the same issue;
3. Provides for the election of officers by either unit owners or the executive board, unless otherwise specified in the declaration;
4. Provides that association rules that restrict residential leasing are unenforceable unless the restriction is recorded in land records;
5. Modifies requirements for resale certificates, including changes regarding disclosure of the number of owners delinquent in paying their common charges and deleting a requirement regarding itemized costs; and
6. Reduces the required days' notice for executive board meetings from 10 to five, except for meetings called to adopt, amend, or repeal a rule, and specifies the notice requirement for meetings concerning a rule.

The bill also makes minor and technical revisions to CIOA.

*House Amendment "A" adds provisions 1 through 6 as detailed above to the underlying bill, which makes technical and minor changes to CIOA.

EFFECTIVE DATE: July 1, 2010

APPLICATION OF CIOA TO OLDER COMMON INTEREST COMMUNITIES

Generally, CIOA applies to common interest communities created in Connecticut on or after January 1, 1984. However, certain provisions of CIOA, to the extent necessary to construe these provisions, apply to common interest communities created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after January 1, 1984, and do not invalidate existing declarations, bylaws, or surveys or plans of those common interest communities (CGS § 47-216). The bill makes the following additional CIOA provisions automatically apply to these older common interest communities:

1. CGS § 47-245(f), which provides for the election of (1) an executive board by the unit owners and (2) officers by the board unless the declaration or bylaws provide for their election by unit owners;

2. CGS § 47-251, which sets quorum requirements for association and executive board meetings, including setting a 20% requirement for association meetings and a majority requirement for executive board meetings (unless the bylaws provide otherwise);
3. CGS § 47-252, which sets permissible voting methods including proxy voting, establishes requirements for proxy voting, allows voting without a meeting if certain conditions are met, and concerns other voting matters;
4. CGS § 47-261b, which concerns rules adopted by the association or executive board, including providing notice requirements and setting specific requirements for rules on construction and design criteria and aesthetic standards, flag or sign display, peaceful assembly, and behavior in residential units;
5. CGS § 47-261c, which sets permissible methods of delivery for any required notices sent by an association to unit owners, and provides that notices are effective when sent;
6. CGS § 47-261d, which sets requirements and restrictions for votes to remove an officer or director, and provides that any board member or officer considered for removal must have a reasonable opportunity to respond before the vote on removal; and
7. CGS § 47-261e, which sets requirements for budgets, special assessments, and loan agreements, including providing notice and voting requirements.

All of the foregoing provisions were amended or added by PA 09-225, and are effective July 1, 2010.

BYLAW AMENDMENTS REQUIRING CONSENT OF PERSON HOLDING SECURITY INTEREST

The bill extends to bylaw amendments which affect the priority of a security holder's interest the current requirements for declaration amendments affecting the same issue. By law, if CIOA or the declaration or bylaws of any common interest community (no matter when created) require the consent of a person holding a security interest in a unit as a condition to the effectiveness of any amendment to the declaration, that consent is deemed granted if no refusal to consent in a record is received by the association within 45 days after the association notifies the interest holder of the proposed amendment. However, there is an exception: actual consent in a record is required for an amendment that affects the priority of a holder's security interest if the declaration or bylaws requires that consent as a condition to the amendment's effectiveness. This exception does not apply to amendments regarding the priority of the association's lien or the ability of the holder to foreclose its security interest.

OFFICER ELECTIONS

Under current law, an association's bylaws must, among other requirements, provide for election by the executive board of a president, treasurer, secretary, and any other officers specified by the bylaws. The bill modifies this requirement to provide for election of such officers by either the executive board or the unit owners, unless otherwise specified in the declaration.

ASSOCIATION RULES RESTRICTING RESIDENTIAL LEASING

By law, an association can adopt rules that affect the use of or behavior in residential units to accomplish certain objectives, including the restriction of leasing of the units to the extent the rules are reasonably designed to meet underwriting requirements of lenders that make first mortgages on units or purchase such mortgages. The bill modifies this to specify that no such leasing restriction is enforceable unless notice of it is recorded on the land records on each town encompassing any part of the common interest community. The notice must be indexed by the town clerk in the grantor index of land records in the association's name.

RESALE CERTIFICATE

By law, a unit owner must provide a purchaser with a certificate containing specified information before selling the unit. Among the information that must be included is a statement disclosing the number of units whose owners are at least 60 days' delinquent in paying their common charges on the date of the statement. The bill modifies this to require that the statement disclose the number of such 60-day delinquencies on a specified date within 60 days of the statement date.

By law, within 10 business days of a unit owner's request in a record and the owner's payment of a fee, the association must provide the resale certificate. The bill eliminates the requirement that the association must itemize the actual printing, photocopying, and related costs associated with the resale certificate and provide a list of such costs to the unit owner with the certificate and accompanying documents.

NOTICE REQUIREMENT FOR EXECUTIVE BOARD MEETINGS

By law, the secretary or other officer specified in the bylaws must provide notice of executive board meetings to board members and unit owners. The notice must include the meeting's time, date, place, and agenda. Under the bill, the notice must be given five, instead of 10, days before the meeting. These notice requirements do not apply to meetings (1) included in a schedule given to unit owners or (2) called to deal with an emergency.

The bill specifies that these requirements do not apply to meetings called to adopt, amend, or repeal a rule. For such meetings, the executive board must provide (1) at least 10 days' notice of its intention to adopt, amend, or repeal a rule; (2) the text of the proposed rule or change; and (3) the date on which the board will act on the proposal after considering unit owners' comments.