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Major Statutory Overhaul Affects Residential Associations Statewide

On July 1, 2010, new legislation went into effect that represents the most comprehensive overhaul of Connecticut's laws governing condominiums and other residential associations in more than twenty-five years. Some of the more important provisions include:

Board Meetings
- Unit owners must be notified of each board and committee meeting by mail or e-mail at least five days in advance.
- Owners will have the right to attend and speak at most board meetings, and *Robert's Rules of Order* must be followed.
- The board can act unanimously without a meeting so long as they notify the owners afterward.

Owners' Meetings
- No one person will be able to cast more than 15 percent of the association's votes with undirected proxies unless the declaration or bylaws allow it.
- Association-owned units will count toward quorums and votes.
- Unit owners will be able to take votes by referendum instead of a meeting.

Board Powers
- The board will have wide discretion in rules enforcement, can deny nonessential privileges as punishment and can regulate – but not ban – state flags, political signs, and owner meetings in common areas.
- The board must give owners 10 days notice before and promptly after amending rules.
- The automatic lien for unpaid assessments will be extended from two to three years.
- Board members can be removed from office by a simple majority vote of the unit owners for any reason.

Insurance
- For most communities, insurance will have to cover anything installed by unit owners unless the board lists the original unit components so that owners will know what to insure themselves.
- The board will rarely be able to make a person who causes property damage pay for the insurance deductibles and repair costs unless an existing written maintenance standard applies.

Recordkeeping
- More financial, meeting, design application and voting records will have to be maintained, including all ballots and proxies going back one year.
- Unit owners will be entitled to inspect and copy most records on request.

Developer Relations
- Developers must be given an opportunity to propose and implement a repair plan before the association can sue for construction defects.
- It will be easier for boards to terminate the original developer's vendor contracts and for unit owners to sue developers for misleading public offering statements.

Resale Certificates
- Resale certificates will need to provide new disclosures, including information about unit owner delinquency rates.
- The board can charge a flat $125 fee plus 5 cents per page for photocopying the certificate and its attachments.

For more information about this new legislation and strategies for complying with it, please contact Adam J. Cohen at 203.330.2230 or at ajcohen@pullcom.com.

Commercial Real Estate Foreclosures: Planning to Prevent Trouble Ahead

As the real estate market finally begins to stagger to its feet, unfortunately there may be a knockout punch awaiting. In its February 2010 report, "Commercial Real Estate Losses and the Risk to Financial Stability," the Congressional Oversight Panel expressed great concern that commercial real estate loan losses over the next four years could jeopardize the stability of many banks, particularly community banks, and moreover the general economy.

Commercial real estate loans made over the last decade totaling $1.4 trillion will require refinancing at some point between 2010 and 2014. The Panel found that nearly half of these loans are now "underwater," meaning the borrower owes more on the loan than the underlying property is worth. As a result, lenders and borrowers bear two primary risks: that the borrower may not be able to make the required principal and interest payments under the loan, and/or that when the loan matures, the borrower may not be able to get refinancing.

When a commercial mortgage loan becomes troubled, all parties must address a number of issues quickly. A lender should conduct a due diligence review of its file, the loan and the collateral as soon as possible. If the default is not cured or the parties are unable to restructure the loan, the lender must foreclose on the property, take a deed in lieu of foreclosure or exercise other remedies that may be available. But these steps pose additional concerns, including potential problems with the property or tenants of the property that may be inherited by the lender if it takes title.

If a commercial borrower sees a potential default on the horizon, it should approach the lender as early as possible to try and restructure the loan. If it is unable to reach an agreement, to cure the default or avoid the default all together, the borrower has a couple of options before resorting to litigation, including selling the property, raising capital through equity investors or simply turning over the keys to the property to the lender. If these efforts are to no avail or the borrower still wants to keep the property, there are generally two options available. The first is to restructure the loan through Chapter 11 reorganization. If this is not an option for the property owner, then litigating the foreclosure action is the next best option. Borrowers that choose to litigate the foreclosure must be aware of the possible defenses to a foreclosure and how to assert them and understand the long-term effects or ramifications of fighting the foreclosure.

Thousands of commercial properties were purchased at the height of the real estate market and were highly leveraged, and after a long recession, the pressure is mounting on commercial property owners and their lenders. Both need to be aware of the current climate and take steps now, before it is too late, to address the issues that will arise when a commercial loan goes into default.

Modified from an article that originally appeared in the Fairfield County Business Journal.

For additional information about this topic, please contact Brion J. Kirsch at 203.330.2249 or at bkirsch@pullcom.com.

If It's Built Before 1978, Assume That It Has Lead Paint.

If you own, manage, or lease housing built before 1978 you MUST disclose to tenants and buyers that the structure is assumed to contain lead-based paint. Two recent significant fines levied by EPA on apartment complex owners in Connecticut serve as reminders of this requirement, which is actively enforced by both state and federal officials.

You are not required to conduct an investigation for lead-based paint at your property, but if you do, all the results of the investigation must be disclosed to a prospective tenant or buyer.

If your house or apartment was built before 1978, there is a presumption that it contains lead-based paint, and you must give every prospective tenant or purchaser a

copy of the EPA pamphlet "Protect Your Family from Lead in Your Home." You must also include lead notification language in all sales or rental documents, permit a tenant or purchaser to conduct a lead investigation if they choose to do so, and maintain records to prove your compliance with these regulations. The failure to comply with the notification requirements alone, even if a subsequent investigation reveals that there is no lead-based paint there, is a violation of the law and will lead to a significant financial penalty. Property owners, property managers and real estate agents are all subject to the requirement.

Exposure to lead in paint is particularly dangerous for young children, pregnant women and older people. The most common exposure paths for children are the ingestion of peeling or flaking paint or dust from lead-based paint at areas where friction occurs, such as at the base of windows or in the soil beneath windows. A lead paint investigation will include study of the soil surrounding a building, and if lead is found there, the abatement plan will include excavation of the contaminated soil.

Liability for failing to give the proper notice to tenants and buyers is not limited to possible fines from EPA – litigation on behalf of children with high blood lead levels is also possible.

Compliance with lead paint regulations is not difficult; anyone involved in housing built before 1978 should put procedures in place to be certain that they are complying with this law. The consequences of not doing so are too serious to ignore.

For additional information about this topic, please contact Diane W. Whitney at 860.424.4330 or at dwhitney@pullcom.com.

Condomiunium Unit Owners' Potential Liability

Operators of retail stores should consider decisions in two recent "slip and fall" cases in Connecticut. In one case, the court ruled that a tenant in a four-store "strip" center might be liable for injury a customer suffered in the parking area, even though the tenant's lease assigned maintenance responsibility to the landlord. In the other case, the owner of a retail condominium unit was held potentially liable for an injury suffered by an individual who was not the store's customer in a parking area that constituted a common element of the condominium; the condominium association did not carry liability insurance, but relied on the unit owners to do so (probably a violation of the Common Interest Ownership Act).

Obviously, a condominium association should carry proper liability insurance, and a unit owner or tenant must carry insurance that covers potential liability for parts of the property for which the unit owner or tenant has no responsibility. Less obviously, we suggest that the condominium declaration or lease, whichever is relevant, in addition to assigning responsibility for common areas to the association or landlord, explicitly prohibit any unit owner or tenant from undertaking maintenance activities within the common areas. A tenant in this situation is ordinarily required by its lease to indemnify its landlord against claims arising out of the tenancy; however, the tenant would want the lease to specify further that, in case of an injury in a common area to someone who is not under the tenant's actual control (i.e. not the tenant's employee or contractor), liability rests with the landlord rather than with the tenant.

For additional information about this topic, please contact Andrew A. Glickson at 203.674.7935 or at aaglickson@pullcom.com.

Editor's Notes

Congratulations to our real estate and environmental attorneys who were listed in the 2010 *Chambers USA: America's Leading Lawyers for Business*: Lee D. Hoffman, Christopher P. McCormack, Michael G. Proctor and Diane W. Whitney. For more information, go to www.chambersandpartners.com.

For further information about our real estate practice, please contact *Groundbreaking News* editor James P. White Jr. at 203.330.2132.

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