



Senate

General Assembly

File No. 696

January Session, 2009

Substitute Senate Bill No. 1119

Senate, April 20, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT ESTABLISHING AN OFFICE OF CONDOMINIUM
OMBUDSMAN AND REVISING CERTAIN COMMON INTEREST
COMMUNITY REQUIREMENTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2010*) (a) For the purposes of
2 this section and sections 2 to 4, inclusive, of this act:

3 (1) "Board of directors" means a board of directors, as defined in
4 section 47-68a of the general statutes, of a condominium;

5 (2) "Commissioner" means the Commissioner of Consumer
6 Protection;

7 (3) "Community association manager" means a community
8 association manager, as defined in section 20-450 of the general
9 statutes;

10 (4) "Common interest community" means a common interest
11 community, as defined in section 47-202 of the general statutes;

12 (5) "Condominium" means a condominium, as defined in section 47-
13 68a of the general statutes;

14 (6) "Executive board" means an executive board, as defined in
15 section 47-202 of the general statutes, of a common interest
16 community; and

17 (7) "Unit owner" means a unit owner, as defined in section 47-68a of
18 the general statutes, of a condominium unit, or section 47-202 of the
19 general statutes, of a common interest community unit.

20 (b) There is established an Office of Condominium Ombudsman
21 within the Department of Consumer Protection. The Office of
22 Condominium Ombudsman shall be under the direction of the
23 Commissioner of Consumer Protection, or the commissioner's
24 designee.

25 (c) With respect to the Office of Condominium Ombudsman, the
26 Commissioner of Consumer Protection, or the commissioner's
27 designee may:

28 (1) Investigate and resolve complaints concerning unit owners,
29 boards of directors, executive boards, community association
30 managers, and managing agents of condominiums or common interest
31 communities;

32 (2) Analyze the laws regarding condominiums and common interest
33 communities and make recommendations to the Governor and the
34 General Assembly for legislation;

35 (3) Publish information concerning laws and regulations related to
36 condominiums and common interest communities; and

37 (4) Refer any complaint received by the office to the appropriate law
38 enforcement agency for prosecution, if deemed appropriate by the
39 commissioner.

40 (d) The Commissioner of Consumer Protection may adopt

41 regulations, in accordance with chapter 54 of the general statutes, to
42 implement this section and sections 2 to 4, inclusive, of this act.

43 Sec. 2. (NEW) (*Effective January 1, 2010*) (a) Any unit owner or group
44 of unit owners may file a request with the Office of Condominium
45 Ombudsman that the commissioner or the commissioner's designee
46 review the complaint of the unit owner or group of unit owners
47 regarding alleged violations of any provision of chapter 825 of the
48 general statutes or chapter 828 of the general statutes, as the case may
49 be, or a bylaw of a condominium association or common interest
50 community association concerning the budget and appropriation of
51 condominium association or common interest community association
52 funds, the calling and conduct of condominium association or common
53 interest community association meetings, or access to public records of
54 the condominium association or common interest community
55 association, provided (1) the complaint of the unit owner or group of
56 unit owners was reviewed through the dispute resolution process
57 established in section 3 of this act, or (2) the unit owner or group of
58 unit owners has filed a sworn affidavit that the condominium
59 association or common interest community association has not
60 established such dispute resolution process. Such request shall be in
61 writing, on such form as the commissioner may prescribe, and shall be
62 accompanied by a fee of thirty-five dollars. Upon receipt of such
63 request and after a determination by the commissioner or designee
64 that such complaint presents a colorable claim of a violation of any of
65 said provisions of statute or bylaws and that such complaint was not
66 filed with malicious intent to unjustly vex or trouble the condominium
67 association or common interest community association, the
68 commissioner or the commissioner's designee shall notify the
69 condominium association or common interest community association
70 that is the subject of the complaint of such request and the fee required
71 by this subsection. Not later than thirty days after receiving notice of
72 the complaint from the commissioner or the commissioner's designee,
73 the condominium association or common interest community
74 association shall pay to the commissioner a fee of thirty-five dollars. If
75 such condominium association or common interest community

76 association fails to pay such fee not later than thirty days after the date
77 of such notice, the commissioner shall assess a penalty of one hundred
78 dollars against such condominium association or common interest
79 community association, in addition to such thirty-five-dollar fee.

80 (b) The commissioner or the commissioner's designee may mediate
81 a complaint pursuant to a request filed under subsection (a) of this
82 section.

83 (c) The commissioner or the commissioner's designee may conduct
84 an investigation and make findings and recommendations regarding
85 any matter concerning a violation of chapter 825 of the general
86 statutes, chapter 828 of the general statutes, or the bylaws of a
87 condominium association or common interest community association.

88 (d) After notice and hearing pursuant to chapter 54 of the general
89 statutes, the commissioner may:

90 (1) Issue an order to any person found to have violated any
91 provision of chapter 825 or 828 of the general statutes, or the bylaws of
92 the condominium association or common interest community
93 association, requiring such person to cease such violation;

94 (2) Order any person found to have violated any such provision to
95 make restitution for damages caused by such violation;

96 (3) Assess a penalty up to two hundred dollars per knowing
97 violation; or

98 (4) Through the Attorney General, petition the superior court for the
99 judicial district where the violation occurred for the enforcement of
100 any order issued by the commissioner, or for appropriate temporary
101 relief or a restraining order, and shall certify and file in the court a
102 transcript of the entire record of all hearings, including all testimony
103 upon which such order was made and the findings and orders made
104 by the commissioner. The commissioner shall provide written notice of
105 the filing of such petition to the condominium association or common
106 interest community association not later than three business days after

107 the date such petition is filed in the superior court. The court may
108 grant such relief by injunction or otherwise, including temporary
109 relief, as it deems equitable and may make and enter a decree
110 enforcing, modifying and enforcing as so modified, or setting aside, in
111 whole or in part, any order of the commissioner.

112 (e) Any person aggrieved by a final decision of the commissioner
113 may appeal therefrom in accordance with section 4-183 of the general
114 statutes.

115 (f) Any fee or penalty collected pursuant to this section shall be
116 deposited in the General Fund.

117 Sec. 3. (NEW) (*Effective from passage*) Not later than January 1, 2010,
118 each condominium association or common interest community
119 association shall establish a dispute resolution process for unit owner
120 complaints regarding compliance by the condominium association or
121 common interest community association with any provision of chapter
122 825 of the general statutes, chapter 828 of the general statutes, or a
123 bylaw of a condominium association or common interest community
124 association concerning the budget and appropriation of condominium
125 association or common interest community association funds, the
126 calling and conduct of condominium association or common interest
127 community association meetings, or access to public records of the
128 condominium association or common interest community association.
129 The dispute resolution process shall provide the opportunity for the
130 unit owner to be heard regarding such complaint. Any complaint that
131 is not resolved through the dispute resolution process established
132 under this section may be filed with the Office of Condominium
133 Ombudsman on or after January 1, 2010, pursuant to section 2 of this
134 act.

135 Sec. 4. (NEW) (*Effective January 1, 2010*) On January 1, 2010, and
136 annually thereafter, each condominium association and common
137 interest community association shall provide the Commissioner of
138 Consumer Protection a certified copy of the last annual or biennial
139 report of the association filed with the Secretary of the State, and shall

140 pay a fee to the commissioner in an amount as follows: (1) Fifty dollars
141 for each condominium association or common interest community
142 association with twenty or fewer units; (2) one hundred dollars for
143 each condominium association or common interest community
144 association with more than twenty units but less than one hundred
145 units; and (3) two hundred dollars for each condominium association
146 or common interest community association with one hundred or more
147 units. Any condominium association or common interest community
148 association that fails to pay such fee shall, in addition to such fee, be
149 assessed a penalty of one hundred dollars for each year such fee was
150 not paid. The Attorney General, upon referral by the commissioner,
151 may bring an action in the superior court to collect such fees and
152 penalties.

153 Sec. 5. Section 20-452 of the general statutes is repealed and the
154 following is substituted in lieu thereof (*Effective January 1, 2010*):

155 (a) Any person seeking a certificate of registration shall apply to the
156 department in writing, on a form provided by the department. Such
157 application shall include the applicant's name, residence address,
158 business address, business telephone number and such other
159 information as the department may require.

160 (b) Each application for a certificate of registration as a community
161 association manager shall be accompanied by an application fee of
162 sixty dollars and a registration fee of [one] four hundred dollars. The
163 department shall refund the registration fee if it refuses to issue a
164 certificate of registration.

165 Sec. 6. Subsection (d) of section 20-457 of the general statutes is
166 repealed and the following is substituted in lieu thereof (*Effective*
167 *January 1, 2010*):

168 (d) All certificates issued under the provisions of sections 20-450 to
169 20-462, inclusive, as amended by this act, shall expire [annually]
170 biennially on the thirty-first day of January. The fee for renewal of a
171 certificate shall be [one] four hundred dollars.

172 Sec. 7. Section 47-216 of the general statutes is repealed and the
173 following is substituted in lieu thereof (*Effective October 1, 2009*):

174 (a) Except as provided in section 47-217, sections 47-204, 47-205, 47-
175 206, 47-222, 47-223, 47-240, 47-244, as amended by this act, 47-253, 47-
176 258, 47-260, as amended by this act, 47-270 and 47-278, and
177 [subsection] subsections (b), (i) and (j) of section 47-236, and section 47-
178 202 to the extent necessary in construing any of those sections, apply to
179 all common interest communities created in this state before January 1,
180 1984; but those sections apply only with respect to events and
181 circumstances occurring after January 1, 1984, and do not invalidate
182 existing provisions of the declaration, bylaws or surveys or plans of
183 those common interest communities.

184 (b) Section 47-210 and subsections (b) to (d), inclusive, of section 47-
185 225 apply to all common interest communities created in this state
186 prior to January 1, 1984, but shall not invalidate existing provisions of
187 the declarations, bylaws or surveys or plans of those common interest
188 communities.

189 Sec. 8. Subsection (a) of section 47-244 of the general statutes is
190 repealed and the following is substituted in lieu thereof (*Effective*
191 *October 1, 2009*):

192 (a) Except as provided in subsection (b) of this section, and subject
193 to the provisions of the declaration, the association, even if
194 unincorporated, may:

195 (1) Adopt and amend bylaws and rules and regulations;

196 (2) Adopt and amend budgets for revenues, expenditures and
197 reserves and collect assessments for common expenses from unit
198 owners;

199 (3) Hire and discharge managing agents and other employees,
200 agents and independent contractors;

201 (4) Institute, defend or intervene in litigation or administrative

202 proceedings in its own name on behalf of itself or two or more unit
203 owners on matters affecting the common interest community;

204 (5) Make contracts and incur liabilities;

205 (6) Regulate the use, maintenance, repair, replacement and
206 modification of common elements;

207 (7) Cause additional improvements to be made as a part of the
208 common elements;

209 (8) Acquire, hold, encumber and convey in its own name any right,
210 title or interest to real property or personal property, but (A) common
211 elements in a condominium or planned community may be conveyed
212 or subjected to a security interest only pursuant to section 47-254 and
213 (B) part of a cooperative may be conveyed, or all or part of a
214 cooperative may be subjected to a security interest, only pursuant to
215 section 47-254;

216 (9) Grant easements, leases, licenses and concessions through or
217 over the common elements;

218 (10) Impose and receive any payments, fees or charges for the use,
219 rental or operation of the common elements, other than limited
220 common elements described in subsections (2) and (4) of section 47-
221 221, and for services provided to unit owners;

222 (11) Impose charges or interest or both for late payment of
223 assessments and, after notice and an opportunity to be heard, levy
224 reasonable fines for violations of the declaration, bylaws, rules and
225 regulations of the association;

226 (12) Impose reasonable charges for the preparation and recordation
227 of amendments to the declaration, resale certificates required by
228 section 47-270 or statements of unpaid assessments;

229 (13) Provide for the indemnification of its officers and executive
230 board and maintain directors' and officers' liability insurance;

231 (14) [Assign] Except as otherwise provided by the declaration,
232 assign its right to future income, including the right to receive common
233 expense assessments [, but only to the extent the declaration expressly
234 so provides] by the vote of unit owners of units to which at least fifty-
235 one per cent of the votes in the association are allocated;

236 (15) Exercise any other powers conferred by the declaration or
237 bylaws;

238 (16) Exercise all other powers that may be exercised in this state by
239 legal entities of the same type as the association;

240 (17) Exercise any other powers necessary and proper for the
241 governance and operation of the association; and

242 (18) Require, by regulation, that disputes between the executive
243 board and unit owners or between two or more unit owners regarding
244 the common interest community must be submitted to nonbinding
245 alternative dispute resolution in the manner described in the
246 regulation as a prerequisite to commencement of a judicial proceeding.

247 Sec. 9. Section 47-260 of the general statutes is repealed and the
248 following is substituted in lieu thereof (*Effective October 1, 2009*):

249 [(a) The association shall keep financial records sufficiently detailed
250 to enable the association to comply with section 47-270. All accounting,
251 financial and other books and records of the association, including, but
252 not limited to, minutes of meetings and voting records of the executive
253 board, shall be made reasonably available by the executive board or a
254 managing agent of the association for examination and copying by any
255 unit owner, or the unit owner's authorized agent, upon the request of
256 such unit owner or agent.

257 (b) Notwithstanding any provision of the declaration or bylaws to
258 the contrary, at least fourteen days prior to entering into any loan
259 agreement on behalf of the association, the executive board shall (1)
260 disclose in writing to all unit owners the amount and terms of the loan
261 and the estimated effect of such loan on any common expense

262 assessment, and (2) afford the unit owners a reasonable opportunity to
263 submit written comments to the executive board with respect to such
264 loan.]

265 (a) The association shall create and maintain the following records:

266 (1) Detailed records of receipts and expenditures affecting the
267 operation and administration of the association and other appropriate
268 accounting records;

269 (2) Minutes of all meetings of its unit owners and of the executive
270 board, a record of all actions taken by the unit owners or the executive
271 board without a meeting, and a record of all actions taken by a
272 committee in place of the executive board on behalf of the association;

273 (3) The names of unit owners in a form that permits preparation of a
274 list of the names and addresses of all owners in alphabetical order
275 showing the number of votes each owner is entitled to cast;

276 (4) The association's original or restated organizational documents,
277 if any, and bylaws and all amendments to such documents currently in
278 effect;

279 (5) Any financial statements and tax returns of the association for
280 the past three years;

281 (6) A list of the names and business addresses of its current
282 executive board members and officers;

283 (7) If incorporated, its most recent annual report delivered to the
284 Secretary of the State;

285 (8) Financial and other records sufficiently detailed to enable the
286 association to comply with section 47-270;

287 (9) All current written contracts to which the association is a party;

288 (10) Records of actions taken by an executive board or committee in
289 place of the executive board to approve or deny any requests from unit

290 owners for design or architectural approval; and

291 (11) Ballots, proxies and other records related to voting by unit
292 owners for one year after the election to which they relate.

293 (b) Subject to the provisions of subsections (c) and (d) of this section,
294 a unit owner or the unit owner's authorized agent may examine and
295 copy all records kept by the association. Such right of examination may
296 be exercised:

297 (1) Only if the unit owner describes with reasonable particularity
298 the records the unit owner desires to inspect or copy;

299 (2) Only during reasonable business hours, unless the association
300 and the unit owner or the unit owner's authorized agent agree to
301 another time;

302 (3) At the office of the association, the office of the association's
303 managing agent, or at a location within the town or towns in which the
304 common interest community is located, or a town that immediately
305 borders the town or towns in which the common interest community is
306 located, unless the association and the unit owner or the unit owner's
307 authorized agent agree to another location; and

308 (4) After the unit owner provides five days' written notice to the
309 association, unless the unit owner or the unit owner's authorized agent
310 and the association agree to an extension of time.

311 (c) Records kept by an association may be withheld from inspection
312 and copying to the extent the records concern:

313 (1) Personnel files of the employees or agents of the association;

314 (2) The medical records of any person that are in the possession of
315 the association;

316 (3) Contracts, leases and other commercial transactions to purchase
317 or provide goods or services, currently under negotiation;

- 318 (4) Pending or potential litigation;
- 319 (5) Matters involving state or local administrative or other formal
320 proceedings before a government agency for enforcement of the
321 declaration, bylaws or rules;
- 322 (6) Communications with legal counsel that are otherwise protected
323 by the attorney-client privilege or the attorney work product doctrine;
- 324 (7) Disclosure of information in violation of law;
- 325 (8) Records of an executive session of the executive board; or
- 326 (9) Individual unit files other than those of the requesting unit
327 owner.
- 328 (d) Notwithstanding any provision of this chapter, the association
329 shall withhold from inspection and copying any record that is required
330 to be maintained as confidential under any state or federal law or any
331 regulation of a federal or state agency.
- 332 (e) The association may charge a fee for providing copies of any
333 records under this section and for supervising the unit owner's
334 inspection, provided such fees shall not exceed the actual cost of any
335 materials and labor incurred by the association.
- 336 (f) Any right to copy records under this section shall include the
337 right to receive copies by photocopying or other means, including
338 copies through an electronic transmission if available and so requested
339 by the unit owner.
- 340 (g) The association shall not be required to compile or synthesize
341 information pursuant to this section. Information provided pursuant to
342 this section may not be used by any person for a commercial purpose.
- 343 (h) An association may provide unit owners with greater access to
344 association records than is required by this section.

345 Sec. 10. (NEW) (*Effective October 1, 2009*) A condominium

346 association shall deliver any notice required to be given by the
 347 association under chapter 825 of the general statutes to any mailing or
 348 electronic mail address a unit owner designates.

349 Sec. 11. (NEW) (*Effective October 1, 2009*) An association, as defined
 350 in section 47-202 of the general statutes, shall deliver any notice
 351 required to be given by the association under chapter 828 of the
 352 general statutes to any mailing or electronic mail address a unit owner
 353 designates.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2010</i>	New section
Sec. 2	<i>January 1, 2010</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>January 1, 2010</i>	New section
Sec. 5	<i>January 1, 2010</i>	20-452
Sec. 6	<i>January 1, 2010</i>	20-457(d)
Sec. 7	<i>October 1, 2009</i>	47-216
Sec. 8	<i>October 1, 2009</i>	47-244(a)
Sec. 9	<i>October 1, 2009</i>	47-260
Sec. 10	<i>October 1, 2009</i>	New section
Sec. 11	<i>October 1, 2009</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - Cost	330,000	626,000
State Comptroller - Fringe Benefits ¹	GF - Cost	324,000	324,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a cost of approximately \$654,000 to the state in FY 10 and an estimated full year cost to the state beginning in FY 11 of \$950,000. The lower cost in FY 10 is due to partial year funding. The cost is due to the need for 10 additional positions in the Department of Consumer Protection (DCP) plus associated fringe benefits. These positions would include two staff attorneys, five Special Investigators, one Consumer Information Representative and one Paralegal Specialist 1. These estimates are based upon the funding levels associated with Nevada's Office of the Condominium Ombudsman. Nevada currently has just over 469,000 condominium units while Connecticut has approximately 240,000 units. Connecticut has 4,000 condominium associations while Nevada has approximately 3,000. Nevada currently operates their program with fifteen staffers.

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 1119*****AN ACT ESTABLISHING AN OFFICE OF CONDOMINIUM OMBUDSMAN AND REVISING CERTAIN COMMON INTEREST COMMUNITY REQUIREMENTS.*****SUMMARY:**

This bill establishes an Office of Condominium Ombudsman within the Department of Consumer Protection (DCP) under the DCP commissioner's or her designee's direction. It gives the DCP commissioner certain powers relating to investigating and resolving complaints concerning common interest communities, and analyzing and making recommendations concerning the laws that govern them.

The bill allows any unit owner or group of unit owners to file a request with the Office of Condominium Ombudsman that the commissioner or his designee review their complaint regarding alleged violations of the Common Interest Ownership Act (CIOA), or the Condominium Act or a bylaw of a condominium association or common interest community association bylaw concerning certain matters. (see BACKGROUND). The bill requires that by January 1, 2010, each condominium association or common interest community association must establish a dispute resolution process for unit owner complaints regarding compliance by the association with the law and any association bylaw concerning the matters the bill gives the DCP commissioner to investigate.

The dispute resolution process must provide the opportunity for the unit owner to be heard regarding the complaint. Any complaint that is not resolved through this process may be filed with the Office of Condominium Ombudsman on or after January 1, 2010.

The bill increases the registration fee from \$100 to \$400 for a

certificate of registration as a community association manager. The bill makes the registration certificate expire biennially instead of annually. It increases the renewal fee for a certificate from \$100 to \$400.

The bill makes certain provisions in CIOA apply to condominiums created before CIOA was enacted.

Current law allows associations to assign its rights to future income, including the right to receive common expense assessments, to the extent the declaration explicitly authorizes them to do. The bill instead gives them this authority except to the extent the declaration limits this right.

The bill establishes more detailed requirements for retaining and sharing association records with unit owners than is contained in current law. It allows certain records to be withheld from inspection and requires that certain other records be withheld.

The bill requires a condominium association and a common interest community association to deliver required notices to any mailing or electronic mail address a unit owner designates.

EFFECTIVE DATE: January 1, 2010 for the provisions dealing with the ombudsman and DCP's authority to investigate complaints, October 1, 2009 for the provisions amending certain provisions of CIOA and the Condominium Act, and upon passage for the provision requiring associations to establish a dispute resolution process by January 2010.

DCP COMMISSIONER-POWERS AND DUTIES

The bill authorizes the DCP commissioner or his designee to:

1. investigate, mediate, and resolve complaints concerning unit owners, boards of directors, executive boards, community association managers, and managing agents of condominiums or common interest communities;
2. analyze the laws regarding condominiums and common

- interest communities and recommend legislation to the governor and the General Assembly;
3. publish information concerning laws and regulations related to condominiums and common interest communities;
 4. refer any complaint received by the office to the appropriate law enforcement agency for prosecution, deemed appropriate by the commissioner; and
 5. adopt regulations to implement the bill.

DISPUTE RESOLUTION PROCESS

The bill requires that by January 1, 2010, each condominium association or common interest community association must establish a dispute resolution process for unit owner complaints regarding compliance by the association with the law and any association bylaw concerning the matters the bill gives the DCP commissioner to investigate.

The dispute resolution process must provide the opportunity for the unit owner to be heard. Any complaint that is not resolved through this process may be filed with the Office of Condominium Ombudsman on or after January 1, 2010.

COMPLAINTS FROM UNIT OWNERS

The bill allows any unit owner or group of unit owners to file a request with the Office of Condominium Ombudsman that the DCP commissioner or his designee review their complaint regarding alleged violations of the CIOA, or the Condominium Act or a condominium association or common interest community association bylaw concerning:

1. the budget and appropriation of condominium association or common interest community association funds,
2. the calling and conduct of condominium association or common interest community association meetings, or

3. access to public records of the condominium association or common interest community association.

The bill allows this only if

1. the complaint of the unit owner or group of unit owners was reviewed through the dispute resolution process the bill establishes or
2. the unit owner or group of unit owners has filed a sworn affidavit that the association has not established such a dispute resolution process.

Review Process

The request must be in writing, on whatever form the commissioner prescribes, and be accompanied by a \$35 fee.

The commissioner must notify the condominium association or common interest community association that is the subject of the complaint if he first determines that the complaint (1) presents a “colorable claim” of a violation of any law or the association’s bylaws and (2) was not filed with malicious intent to unjustly vex or trouble the association. (The bill does not define the term “colorable claim” but apparently it means a claim that could be reasonably asserted given the facts presented and the current law. (Black’s Law Dictionary)). The bill requires the association to pay to the commissioner a \$35 fee within 30 days after receiving notice. If the association fails to pay the fee within 30 days, the commissioner must assess a \$100 penalty against it in addition to the \$35 fee.

Commissioner’s Power and Authority

The bill authorizes the commissioner to conduct an investigation and make findings and recommendations.

After notice and hearing, the commissioner may:

1. issue an order to any person found to have violated the law or association bylaws to cease such violation;

2. order any violator to make restitution for damages caused by such violation;
3. assess a penalty of up to \$200 for each knowing violation; or
4. through the Attorney General, petition the Superior Court for the judicial district where the violation occurred for the enforcement of any order the commissioner issued, or for appropriate temporary relief or a restraining order, and certify and file in the court a transcript of the entire record of all hearings, including all testimony upon which such order was made and the commissioner's findings and orders.

The bill requires the commissioner to provide written notice of the filing of the petition to the association within three business days after the date the petition is filed in the Superior Court. The court may grant relief by injunction or otherwise, including temporary relief, as it deems equitable and may make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, any order of the commissioner.

The bill authorizes any person aggrieved by the commissioner's final decision to appeal to the Superior Court.

The bill requires any fee or penalty collected to be deposited in the General Fund.

ANNUAL OR BIENNIAL REPORTS

The bill requires on January 1, 2010 each condominium association and common interest community association to provide annually to the DCP commissioner a certified copy of the last annual or biennial report of the association filed with the Secretary of the State, and pay the commissioner a fee of:

1. \$50 for each association with 20 or fewer units;
2. \$100 for each association with more than 20 but fewer than 100 units; and

3. \$250 for each association with 100 or more units.

Any association that fails to pay the fee must, in addition to the fee, be assessed a penalty of \$100 for each year the fee was not paid. The Attorney General, upon referral by the commissioner, may bring an action in the Superior Court to collect the fees and penalties.

APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES

Certain CIOA provisions automatically apply to condominiums created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after December 31, 1983 (CGS § 47-216). The bill makes the following additional provisions in CIOA apply to these older common interest communities:

1. 47-236(b) requires that court challenges to the validity of an amendment the association adopts must be brought within one year after the amendment is recorded; and
2. 47-236(i) specifies that if any provision in a common interest community declaration requires the consent of a security interest holder in a unit as a condition of amending the declaration, the holder is deemed to have consented if the association does not receive a written refusal to consent within 45 days after it delivers notice of the proposed amendment or mails it by certified mail with return receipt.

POWERS AND DUTIES OF ASSOCIATION

Current law allows an association to assign its rights to future income, including the right to receive common expense assessments, to the extent the declaration explicitly authorizes it to do. The bill instead gives them this authority except to the extent the declaration limits this right. Thus under current law, if the declaration is silent, the association may not assign its rights to future income; under the bill the association would be able to do so since the declaration contains no limitation. The bill specifies that the association may assign its rights to future income only by majority vote of the unit owners.

§ 9 ASSOCIATION RECORDS

The bill eliminates the requirement that at least 14 days before entering into any loan agreement on the association's behalf the executive board (1) disclose in writing to all unit owners the amount and terms of the loan and the loan's estimated effect on any common expense assessment, and (2) give the unit owners a reasonable opportunity to submit written comments to the executive board regarding the loan.

The bill establishes more detailed requirements for retaining and sharing CIOA association records with unit owners than is provided by existing law.

Both current law and the bill require an association to keep financial records sufficiently detailed to enable the association to comply with the resale notice requirements CIOA imposes. The bill also requires the association to keep:

1. detailed records of receipts and expenditures affecting the association's operation and administration and other appropriate accounting records;
2. minutes of all meetings of its unit owners and executive board other than executive sessions, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions a committee takes in place of the executive board on the association's behalf;
3. the names of unit owners in a form that permits preparation of a list of the names of all owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;
4. its original or restated organizational documents, if any, and its bylaws and all amendments;
5. all financial statements and tax returns of the association for the

- past three years;
6. the names and addresses of its current executive board members and officers;
 7. its most recent annual report delivered to the Secretary of the State, if any;
 8. copies of current contracts to which it is a party;
 9. records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and
 10. ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote they relate to.

Examination and Copying

Subject to the exceptions specified below, the bill makes all records an association retains available for examination and copying by unit owners or their authorized agents (1) during reasonable business hours or at a mutually convenient time and location and (2) upon five days' notice that reasonably identifies the specific records requested.

Protected Records

The bill allows records to be withheld from inspection and copying to the extent that they concern:

1. personnel, salary and medical records relating to specific individuals;
2. contracts, leases, and other commercial transactions to purchase or provide goods or services, currently being negotiated;
3. existing or potential litigation or mediation, arbitration or administrative proceedings;
4. 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;

5. communications with the association's attorney that are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
6. information, which if disclosed, would violate law other than CIOA;
7. records of an executive session of the executive board; or
8. individual unit files other than those of the requesting owner.

Protected Records

The bill requires the association to withhold from inspection and copying any record that is required to be maintained as confidential under any state or federal law or any regulation of a federal or state agency.

Fees for Copying

The bill allows an association to charge a fee for providing copies of any records and for supervising the unit owner's inspection, provided the fees may not exceed the actual cost of any materials and labor the association incurs.

Copying Records

Under the bill, any right to copy records must include the right to receive copies by photocopying or other means, including copies through an electronic transmission if available and the unit owner asks for it.

The bill specifies that (1) an association is not required to compile or synthesize information, and (2) information provided pursuant to the bill may not be used for a commercial purpose.

Greater Access to Records

The bill provides that an association may provide unit owners with greater access to association records than it requires.

BACKGROUND

CIOA, the Condominium Act, and the Unit Ownership Act

Three different sets of laws govern condominiums, depending on when they were created. CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after January 1, 1984 (CGS § 47-200 et seq.). The Condominium Act governs condominiums created from 1977 through 1983. (PA 76-308; CGS §§ 47-68a to 47-90c). Condominiums created before the Condominium Act was adopted are governed by the Unit Ownership Act (PA 1963, No. 605, July 10, 1963; CGS §§ 47-67 to 47-115 Revised to 1975).

Certain CIOA provisions automatically apply to condominiums created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after December 31, 1983. The CIOA insurance provisions amended by this act do not automatically apply to pre-CIOA condominiums (CGS § 47-216).

The law permits condominiums created before January 1, 1984 to amend their governing instruments (declaration, bylaws, survey, or plans) to conform to portions of CIOA that do not automatically apply. Thus, a pre-CIOA condominium may adopt any of these CIOA provisions it wishes and does not have to adopt all of CIOA. Any amendment must be adopted in accordance with the law that applied when the condominium was created and with the procedures and requirements specified by the condominium's declaration and bylaws (CGS § 47-218).

Related Bill

HB 6672, favorably reported by the Judiciary Committee, makes several similar changes to CIOA concerning association powers and duties, and association records.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 39 Nay 0 (04/01/2009)