

PERLSTEIN, SANDLER & McCracken, LLC
ATTORNEYS AND COUNSELORS AT LAW

10 WATERSIDE DRIVE, SUITE 303
FARMINGTON, CT 06032
TELEPHONE (860) 677-2177 FACSIMILE (860) 677-1147

MATTHEW N. PERLSTEIN
SCOTT J. SANDLER
GREGORY W. McCracken

OF COUNSEL
LAWRENCE C. MALICK*
*ALSO ADMITTED IN COLORADO

**PRESENTATION OF SCOTT J. SANDLER, ESQ.
REGARDING RAISED BILL NO. 1119
AN ACT ESTABLISHING AN OFFICE OF CONDOMINIUM OMBUDSMAN
AND REVISING CERTAIN COMMON INTEREST COMMUNITY REQUIREMENTS**

I. SUMMARY OF PRESENTATION:

Raised Bill No. 1119 proposes to do the following:

- A. Establish an office of a condominium ombudsman to investigate and resolve complaints filed by unit owners against their associations or against the officers, directors or managers of their associations.
- B. Eliminate cumbersome and expensive procedures that many associations must currently follow in order for them to take advantage of certain powers and flexibilities granted by the Common Interest Ownership Act.
- C. Clarify the kinds of records that associations must keep, and the ability of the unit owners to examine those records.
- D. Empower the animal control officer to enter onto the common elements of the community to impound animals that are not under the control of their owners.

For the reasons set forth below, the Connecticut General Assembly should not adopt the provisions of the bill that establish an office of a condominium ombudsman, but should adopt the balance of the bill.

II. BIOGRAPHY OF SCOTT J. SANDLER:

Mr. Sandler is a graduate of the State University of New York at Albany (B.A., Economics, 1997) and Quinnipiac College School of Law (J.D., 2000). He was an Associate Editor of the Quinnipiac Law Review. He is a member of the American Bar

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Association, the Connecticut Bar Association and the Hartford County Bar Association. Since 2001, Mr. Sandler has focused on representing condominium, community and homeowners associations.

Mr. Sandler is the President of the Connecticut Chapter of the Community Associations Institute. He is also the Vice Chairman of the Chapter's Legislative Action Committee.

Mr. Sandler is a member of the law firm of Perlstein, Sandler & McCracken, LLC, in Farmington, Connecticut which currently provides legal services to over 350 condominium and homeowner associations throughout the State.

III. ANALYSIS:

- A. **The General Assembly SHOULD NOT adopt the provisions of Raised Bill No. 1119 that establish an office of a condominium ombudsman because these provisions are unfair and imbalanced, and will result in unnecessary costs incurred by both unit owners living in common interest communities and the State of Connecticut.**

Raised Bill No. 1119 seeks to create a mechanism of resolving disputes between unit owners and their associations without the need for litigation. While this is certainly a laudable goal, the bill itself is unfair and imbalanced, and will cause both unit owners and the State of Connecticut to incur significant and unnecessary expenses.

1. **The bill is unfair to associations.** The bill permits any unit owner who has a perceived claim against his or her association to file a complaint with the ombudsman. The cost of filing the complaint is \$35.00.

The bill then requires an association against whom a complaint is filed to pay a fee of \$35.00 to the ombudsman, regardless of whether the complaint has any merit. If the association does not pay the fee within 30 days of receiving notice of the complaint, then it must pay a penalty of \$100.00 in addition to the fee.

It is ridiculously unfair to require associations to pay a fee to defend themselves from claims. Even in the case of litigation, the defendant in a lawsuit is never required to pay a fee to defend him or herself. The defendant may even proceed without an attorney if he or she wishes.

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Furthermore, in the case of a criminal defendant who cannot afford an attorney, it is the government's responsibility to provide the defendant with an attorney. Forcing a party to pay a fee to defend him or herself runs contrary to our entire legal system.

2. The bill is imbalanced. The bill permits unit owners to submit complaints against their associations or the officers, directors and managers of their associations to the ombudsman's office. However, if a unit owner is violating the governing documents of the community, the bill does not enable associations to submit a complaint against the owner.

If the purpose of the bill is really to provide an efficient means of dispute resolution, then it should afford associations with the same benefits as it does individual unit owners.

3. The bill will cause unit owners to incur significant and unnecessary expenses. This bill is an invitation to any unit owner who disagrees with his or her association to file a complaint with the ombudsman. It opens the proverbial floodgates, and does so at the expense of unit owners generally, and the State of Connecticut.

Certainly litigation can be an expensive and time-consuming process. However, these costs serve to filter out claims that lack merit. Generally, people are not likely to proceed with litigation unless they have a reasonable expectation of obtaining a favorable outcome.

However, if the only expense to an owner is paying a fee of \$35.00, the owner has virtually no reason not to file a complaint, regardless of its merit. In fact, a particularly vindictive person will continuously file complaints, forcing the association to pay filing fees as required by the bill, just for the nuisance value.

It is unlikely that an association would attempt to respond to any complaint filed by a unit owner without the benefit of legal counsel. However, the cost of retaining and consulting with legal counsel would be a common expense that must be shared by all of the unit owners in the community. By opening the floodgates, the association, and by extension all of the unit owners, will incur significant expenses responding to claims that lack any merit.

4. The bill will cause the State of Connecticut to incur significant and unnecessary expenses. The ombudsman's office will be virtually buried in complaints filed by unit owners, most of which will lack any merit. The office, which is funded by the State of Connecticut, will require significant amounts of funding in order to process and address these complaints. Especially in light of the current economic climate, the State of Connecticut simply cannot afford to fund the ombudsman's office.

B. The Connecticut General Assembly SHOULD adopt the portions of Raised Bill No. 1119.

1. Raised Bill No. 1119 will eliminate cumbersome and expensive procedures that many associations must currently follow in order for them to take advantage of certain powers and flexibilities granted by the Common Interest Ownership Act.

- a. Amendments to Section 47-416 of the Common Interest Ownership Act. Under Subsection 47-216(a) of the Common Interest Ownership Act, certain provisions of the Act apply automatically to communities created prior to the enactment of the Act. Other sections of the Act apply to preexisting communities only if those communities amend their governing documents to opt into those provisions. Unfortunately, amending the documents of a preexisting community can be a costly, time consuming, onerous, and in some cases, virtually impossible task.

Section 47-236 of the Act contains provisions that would make it easier for the association of a preexisting community to amend its documents, and give the association more certainty in the application of those amendments. However, these provisions do not automatically apply to a preexisting community.

- i. Limitations on challenges to amendments. Subsection 47-236(b), which currently applies only to common interest communities created since January 1, 1984, provides a one-year statute of limitations for challenging a validly adopted amendment to the governing documents of a community. However, communities created prior to 1984 are governed by a different statute of limitations, one that permits

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challenges to amendments years after their adoption. As a result, the applicable statute of limitations varies based on when the community was declared.

When it comes to the governance of a common interest community, the unit owners and the association need certainty. Overturning an amendment several years after its adoption could wreak havoc on the operation of a community, calling into question actions taken by the association since its adoption. That is why the Act establishes the one-year limitation.

This amendment to the Act would enable older communities to enjoy the same certainty in their operations as newer communities. The amendment would also eliminate a nonsensical difference in the application of statutes of limitations to communities created at different times.

- ii. Rights of secured lenders. Years ago, mortgages were frequently held by local banks for all or most of the life of the loan. It was not unusual for one lender to hold mortgages on nearly all of the units in a common interest community. To protect the lender's interest, the governing documents typically required the consent of the lender to approve any amendments to the documents.

Today, the mortgage market is very different. Mortgages are frequently bought and sold by mortgage companies, many of whom have no local branches. These mortgage companies often take months, if not years, to record assignments of the mortgage on the land records, making it difficult to identify the true holder the mortgage. Furthermore, mortgage companies tend to be unresponsive to requests for their consent to proposed amendments, making it difficult, if not impossible, to adopt them.

Subsection 47-236(i) of the Act tries to address this problem. It provides that if the association writes to a

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secured lender to obtain its consent, and the lender fails to respond within 45 days, the lender is deemed to have given its consent. Unfortunately, Subsection 47-236(i) does not automatically apply to communities created prior to 1984.

This amendment to the Act would permit older associations to enjoy some of the flexibilities of the Act, and relieve them of a burden created by changing market conditions, while continuing to protect the interests of the lenders.

- b. Amendments to Section 47-244 of the Common Interest Ownership Act. Under the current language of the Act, associations may assign their right to collect common charges only to the extent provided by the declaration. An assignment of this right is usually required by commercial lenders as security for a loan to the association.

The declarations of most common interest communities created prior to 1984 do not contain any provisions empowering the association to assign its right to collect common charges. This means that if the association intends to borrow money to undertake some kind of capital improvement project, it must first amend the declaration to add a provision permitting the association to assign its right to collect common charges. As mentioned above, amending the declaration is a very costly and difficult procedure.

This amendment would empower the associations of communities declared prior to 1984 to assign their right to collect common charges, so long as the assignment is approved by unit owners having at least 51% of the total voting power in the association, without the need for amending the declaration.

2. Raised Bill No. 1119 will clarify the kinds of records that associations must keep, and the ability of the unit owners to examine those records. Unit owners must be granted access to association records in order to fully understand and participate in the governance of their communities. Certain records, however, should not be open for inspection. For example, records concerning pending litigation should be kept confidential to protect the relationship between the association and its attorney. Medical

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records of individuals that have come into the possession of the association and the individual personnel files of the employees of the association should be kept confidential to protect the privacy of those individuals.

This amendment, which is based in large part on proposed revisions to the Uniform Common Interest Ownership Act, drafted by the Commissioners on Uniform State Laws, strikes a fair and proper balance between the needs of the unit owners generally, the needs of the association as a corporate entity, and the needs of individuals.

3. Raised Bill No. 1119 will empower the animal control officer to enter onto the common elements of the community to impound animals that are not under the control of their owners. The provisions of Chapter 435 of the Connecticut General Statutes were not drafted in a way that fully addresses problems of animals on the common elements of a condominium or forms of common interest communities.

For example, Section 22-364 provides that dog owners may not allow their dogs to roam "upon land of another." Section 22-232 empowers animal control officers to impound dogs that are roaming in violation of Section 22-364. In 1975, the Connecticut Attorney General issued an opinion in which he concluded that animal control officers have no authority to impound the dog of a unit owner of a condominium, that is roaming loose on the common elements, because the unit owner shares an ownership interest in the common elements. A copy of this opinion is attached hereto as Exhibit A.

While the conclusion of the attorney general is technically correct, the result is contrary to public safety, and illustrates how Chapter 435 does not take into consideration animals in common interest communities. Associations may have the power to create and enforce rules governing pets on the common elements of their communities. However, the association has no authority to impound a pet that is running loose, which poses an immediate threat to people or property. The animal control officer must have the authority to enter onto the common elements to impound such an animal.

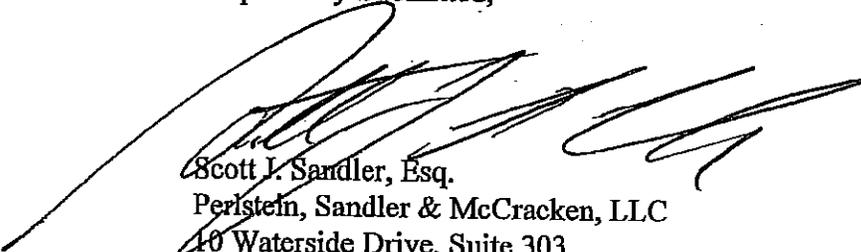
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The amendments to Chapter 435 contained in Raised Bill No. 1119 are designed to address the needs and particularities of condominiums and common interest communities, and to further protect the safety of the public.

If I can furnish the Committee with any further information or assistance, please do not hesitate to contact me.

Respectfully Submitted,



Scott J. Sandler, Esq.

Perlstein, Sandler & McCracken, LLC

10 Waterside Drive, Suite 303

Farmington, CT 06032

Telephone: (860) 677-2177

Facsimile: (860) 677-1147

sjs@ctcondolaw.com

EXHIBIT A

1975 WL 28381 (Conn.A.G.)

Office of the Attorney General
State of Connecticut

*1 October 30, 1975

Honorable George M. Wilber,
Commissioner of Agriculture

Dear Commissioner Wilber:

This is in response to your request dated August 1, 1975, for an opinion concerning the application of Sec. 22-364, Connecticut General Statutes (hereafter "C.G.S."), to common areas in condominiums. You specifically requested an opinion "as to what extent and jurisdiction does a Connecticut Canine Control Officer have in respect to enforcing Sec. 22-364 regarding dogs roaming at large in . . . common areas".

A condominium can be defined as "an estate in real property consisting of a separate interest in a residential building on such real property together with an undivided interest-in-common in other portions of the same property". 31 C.J.S. Condominiums, Sec. 146. Further, Section 47-74(b)(1) C.G.S. (part of the Unit Ownership Act) states that each owner of a condominium unit is "entitled to an undivided interest in the common areas and facilities." Each owner of a individual condominium unit is, therefore, an owner of the common areas of the condominium as well.

Section 22-364, C.G.S., prohibits dog owners from allowing their dogs to "roam at large upon the land of another and not under control of the owner or keeper or the agent of the owner or keeper". Section 22-332 C.G.S. allows canine control officers to impound dogs roaming in violation of Sec. 22-364. A condominium unit owner's dog roaming upon common areas of the condominium, however, does not fall within the purview of Sec. 22-364 because the dog is on land of his owner; a Connecticut Canine Control Officer, therefore, has no jurisdiction over such a dog.

Parenthetically, Sec. 47-75(a) C.G.S. states,

"Each unit owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his unit. Failure to so comply shall be ground for an action to recover damages or for injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of unit owners or, in a proper case, by an

aggrieved unit owner." (emphasis supplied)

It appears, therefore, that the bylaws or the rules and regulations of the condominium can be written to provide a framework to adequately control dogs roaming in the common areas.

If a dog roaming condominium common areas does not belong to a condominium unit owner, then Sec. 22-364 of the General Statutes applies as it would in any other situation.

Very truly yours,
Carl R. Ajello
Attorney General

James J. Grady
Assistant Attorney General

1975 WL 28381 (Conn.A.G.)
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