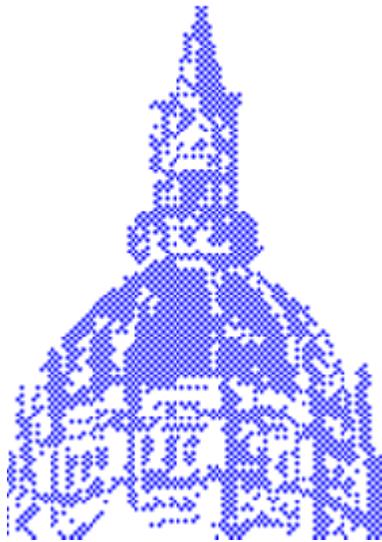


Office of Legislative Research
Connecticut General Assembly



ACTS AFFECTING REAL ESTATE



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(Revised)

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NOTICE TO READERS

This report provides brief highlights of new laws affecting real estate enacted during the 2009 regular and special sessions. Each summary indicates the public act (PA) number and effective date.

Not all provisions of the acts are included here. Complete summaries of all 2009 public acts will be available when OLR's Public Act Summary book is published; some are already on OLR's website (www.cga.ct.gov/olr/OLRPASums.asp).

Readers are encouraged to obtain the full text of acts that interest them from the Connecticut State Library, House Clerk's Office, or General Assembly's website (www.cga.ct.gov/).

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BOND FINANCING FOR DEVELOPMENT PROJECTS

PA 09-61 extends the sunset dates for two Connecticut Development Authority (CDA) programs that provide bond financing for large-scale development projects. Both programs use the new or incremental tax revenues the projects generate to repay the bonds (i.e., tax increment financing). Prior law prohibited CDA from approving new projects under the programs on or after July 1, 2010. The act extends the sunset date to July 1, 2012. EFFECTIVE DATE: Upon passage (May 27, 2009)

BROWNFIELDS

PA 09-235 makes many changes affecting the regulatory framework for identifying, investigating, remediating, and developing contaminated property (brownfields). It expands the protections from liability for municipalities when they take various steps (e.g., entering and inspecting property and acquiring and conveying it) to promote brownfield remediation.

The act makes it easier for parties acquiring a brownfield to recover investigation and remediation costs from those responsible for contaminating the property. It does so by reducing

the criteria for obtaining recovery and establishing procedures and deadlines for starting recovery actions.

The act establishes a program protecting brownfield developers from liability for contamination that escapes from a brownfield before they acquired it. It also (1) creates a regulatory mechanism allowing developers to remediate the soil and use the property while conducting long-term groundwater monitoring and remediation and (2) allows any party, rather than just the owner or a municipality, to complete an environmental condition assessment form.

The act reduces the regulatory criteria state agencies must meet when developing contaminated mill sites in floodplains. It also requires state and quasi-public agencies to provide for the use of green remediation technologies when soliciting bids, requesting proposals, or negotiating contracts for brownfield remediation.

EFFECTIVE DATE: October 1, 2009, except for the (1) floodplains, Transfer Act, and municipal inspection provisions, which are effective upon passage, and (2) municipal liability protections, innocent third party status, and reimbursement provisions, which are effective July 1, 2009.

COMMON INTEREST OWNERSHIP ACT

PA 09-225 makes numerous changes and additions to the Connecticut Common Interest Ownership Act (CIOA). It establishes definitions for several terms used in CIOA and amends several other definitions. It makes several portions of CIOA apply to common interest communities created before January 1, 1984.

The act makes several changes concerning the powers and duties of unit owners' associations. It significantly changes the law regarding meetings of unit owners and the executive board. It creates new open meeting requirements for all executive board meetings, other than executive sessions, and meetings of any committees that have decision-making authority. It allows unit owners to vote by absentee ballot and by written or electronic ballot, unless the declaration or bylaws provide otherwise.

It makes several changes regarding insurance. For example, it requires the association (1) to carry fidelity insurance and (2) if the community has more than 12 units, give unit owners, at least annually, a list of fixtures and improvements, including wall, floor, and ceiling coverings, that the association's insurance property insurance covers. It allows an association to assess a unit owner an amount that

exceeds its insurance proceeds in cases of willful misconduct, gross negligence, or failure to comply with the association's written maintenance standards by the unit owner or the owner's tenants, guests, or invitees.

It extends the association's priority lien over first and second mortgages to the extent of six months' common charges to include the amount of the association's reasonable attorney's fees and its court costs, unless the declaration provides otherwise. It establishes new limitations on the right of the association to proceed in foreclosure against a unit owner, including prohibiting a foreclosure action until a unit owner owes at least two months' common charges, the association has made a payment demand, and the board has expressly authorized initiation of the foreclosure or has adopted a standard policy that provides for foreclosure against units.

It establishes certain requirements regarding (1) the display of the American and state flags and political signs, subject to association rules as to time, place, and manner, and (2) peaceful assembly of unit owners on the common elements.

The act (1) provides a procedure under which a declarant may offer the association a remediation plan that the association must at least consider before initiating litigation against the declarant regarding construction defects;

(2) expands the liability of the declarant for false or misleading statements that appear in a public offering statement; and (3) requires disclosures of certain financial information in public offering statements.

EFFECTIVE DATE: July 1, 2010

CONVEYANCE OF STATE LAND

PA 09-4, Sept. Sp. Sess., conveys several parcels of land from the state to municipalities, amends several previous conveyances, and requires the state to enter into leases with municipalities for some other properties.

EFFECTIVE DATE: Upon passage (September 25, 2009).

DOT PROPERTY SALES AND MEDIATION

PA 09-186 (vetoed July 2, 2009 and veto overruled July 20, 2009) permits the Department of Transportation (DOT) to sell property acquired for potential use as the Route 7 expressway between Danbury and Norwalk (§ 3, as amended by § 25 of PA 09-203). It also establishes a mediation process for certain property sold by DOT because it is no longer necessary for highway purposes.

EFFECTIVE DATE: July 1, 2009 for § 3 and upon passage for § 9

FORECLOSED PROPERTY REGISTRATION SYSTEM

PA 09-144 creates a registration system for tracking the owners of uninhabited one-to four-family dwellings obtained by strict foreclosure or foreclosure by sale ("registrants"). It specifically allows municipalities to enforce against a registrant any provision of the statutes or municipal ordinance on the repair or maintenance of real estate after the municipality has provided notice and an opportunity to remedy the situation.

It prohibits municipalities from imposing registration requirements outside of the act unless they were in effect before its effective date. The act also prohibits municipalities from adopting an ordinance or regulation on the property maintenance activities of a person who obtained title by foreclosure. However, any ordinances or regulations adopted before the act's effective date remain in effect and municipalities can enact or enforce ordinances or regulations that apply generally to all property owners. The act also provides that these provisions do not prohibit or limit a municipality from adopting or enforcing an ordinance or regulation adopted under statutes relating to (1) the prevention of housing blight, (2) the maintenance of safe and

sanitary housing, or (3) the abatement of nuisances.
EFFECTIVE DATE: October 1, 2009

HOUSING DEVELOPMENT IN ENTERPRISE ZONES

PA 09-40 eliminates the option community development organizations previously had to use Department of Economic and Community Development grants to build or rehabilitate either decent or affordable rental or owner-occupied housing in enterprise zones. It instead specifies that the organizations may use the grants to build or rehabilitate housing only for low- and moderate-income people.
EFFECTIVE DATE: October 1, 2009

LAND RECORDS

PA 09-213 eliminates the duty of a town clerk to make a notation in the land records in connection with various documents recorded in the town's land records, including liens, mortgages, and certain certificates and condominium related documents. Instead, it requires that the town clerk record a (1) discharge of lien, attachment, or other encumbrance, or (2) certain certificates on the town's land records.
EFFECTIVE DATE: October 1, 2009

LAND USE PERMITS

PA 09-181 extends the initial and extended expiration deadlines that apply to subdivisions, wetlands permits, and relatively small-scale site plans that were approved between July 1, 2006 and July 1, 2009. The new timeframes range from six to 11 years after a project's approval date.
EFFECTIVE DATE: Upon passage

MORTGAGE PRACTICES

PA 09-207 creates the crime of residential mortgage fraud. It provides that a person who commits a single act of residential mortgage fraud is guilty of a class D felony, while a person who commits two or more acts is guilty of a class C felony. The act also:

1. modifies the interest rate that makes a home loan "nonprime";
2. extends, by one year, the banking commissioner's authority to adjust interest rate parameters for nonprime loans;
3. allows the commissioner to deem certain mortgage professional license applications abandoned and keep the application fee; and

4. applies an existing prohibition against increasing the interest rate after default in certain loans to all residential mortgage loans.

EFFECTIVE DATE: October 1, 2009 for most provisions

MORTGAGES AND FORECLOSURES

PA 09-209, as amended by **PA 09-219**, implements the 2008 federal Secure and Fair Enforcement for Mortgage Licensing (S.A.F.E.) Act by imposing conditions on licensing for mortgage professionals, including education and testing. It (1) changes confidentiality and surety bond requirements, (2) expands the banking commissioner's enforcement and investigative authority, and (3) prohibits a number of actions by licensees. The act also expands the prohibition on influencing residential real estate appraisals to everyone, rather than just mortgage brokers.

The act changes how eligibility for the Emergency Mortgage Assistance Program is determined by (1) allowing the Connecticut Housing Finance Authority to decide what constitutes a significant reduction in a borrower's income and (2) expanding the circumstances that constitute a financial hardship beyond a borrower's control. This new law also expands eligibility for the CT

FAMILIES refinancing program to include homeowners with fixed-rate mortgages and makes the foreclosure mediation program established under PA 08-176 mandatory, rather than optional, beginning July 1, 2009.

The act specifies that no judgment of strict foreclosure or foreclosure by sale can be entered before July 1, 2010 unless the mediation period has expired or otherwise terminated, whichever is earlier, or the mediation program is not otherwise required or available. EFFECTIVE DATE: July 1, 2009 for most provisions

MUNICIPAL ASSESSMENTS AND RELATED APPEALS

PA 09-196 requires tax assessors to determine the fair market value of large income-producing property based on the sale of comparable property, regardless of location, and the other statutorily authorized methods. It explicitly allows assessors to request net income and expense data any time they value income-producing property, not just during a town-wide revaluation. If an assessor changes a property's value, the act requires him or her to record their reasons for the changes.

The act raises the ceiling above which boards of assessment appeals may refuse to hear appeals regarding specific types of property. It also allows

property owners aggrieved by an assessment and denied a hearing to appeal directly to Superior Court.

Boards of assessment appeals may increase or decrease a property's gross assessment when acting on an appeal. The act freezes these changes until the next revaluation unless the assessor changes them to correct an assessment error, comply with a court order, or reflect a change in the property's physical characteristics. If the assessor changes the assessment for other reasons, he or she must explain them in writing to the board.

The act also eliminates the 13-member working group established in 2006 to study how the revaluation process could be improved.

EFFECTIVE DATE: Upon passage for most provisions

MUNICIPAL PROPERTY REVALUATIONS

PA 09-60, as amended by **PA 09-196**, allows a municipality to (1) delay a revaluation scheduled for the 2008, 2009, or 2010 assessment year until the 2011 assessment year and (2) suspend a current revaluation phase-in for up to three years, also until the 2011 assessment year.

It allows two or more municipalities to agree to revalue their property for property tax purposes according to the same schedule, even if it requires some to revalue later than their

individual statutory schedules require.

It repeals a law that allowed municipalities to adjust, with the approval of their legislative bodies, real property values in the assessment years between revaluations.

EFFECTIVE DATE: Upon passage and applicable to assessment years beginning on or after October 1, 2008.

MUNICIPAL ROAD IMPROVEMENTS

PA 09-92 specifies the type of infrastructure project a municipality may implement without first requesting the planning commission's (or combined planning and zoning commission's) recommendations. By law, a municipal agency or legislative body cannot start a proposed infrastructure or public works project without seeking the commission's recommendations. But the law also exempts them from having to do so when maintaining or repairing existing property or public ways. The act extends this exemption to road resurfacing projects.

EFFECTIVE DATE: July 1, 2009

MURDER AND INHERITANCE

PA 09-201 expands the circumstances under which a person cannot inherit, receive part of the estate, or receive life

insurance or annuity benefits from someone for whose death he or she was responsible.

By law, a murderer cannot inherit or receive part of the estate from (1) the victim or (2) another person if the homicide or death terminated an intermediate estate or hastened the time of enjoyment. The act also excludes someone (1) convicted as a principal or accessory of felony murder, arson murder, 1st degree manslaughter with or without a firearm, or a similar crime in another jurisdiction or (2) who would have been found guilty of one of these offenses if he or she had survived, as determined by the Superior Court by a preponderance of the evidence in an action brought by an interested person.

EFFECTIVE DATE: October 1, 2009

REGIONAL PLANNING ORGANIZATION PRE-APPLICATIONS

PA 09-165 requires each regional planning organization (RPO) to establish a voluntary process for applicants to state or local agencies, departments, or commissions for projects of regional significance to request a pre-application review. Under the act, a project of regional significance is an open air theater, shopping center, or other development to be built by a private developer that is planned to create more than (1) 500,000 square feet of indoor commercial

or industrial space, (2) 250 housing units in a one-to-three-story building, or (3) 1,000 parking spaces.

The results or information obtained from the pre-application review cannot be appealed under any provision of the statutes and are not binding on the applicant or any authority, commission, department, agency, or other official having jurisdiction to review the proposed project. The RPO must prepare a report of the agencies' comments reviewing the proposal and give a copy of the report to the applicant and each reviewing agency.

EFFECTIVE DATE: October 1, 2009

RESIDENTIAL PROPERTY CONDITION REPORT

PA 09-127 requires the consumer protection commissioner to adopt regulations, by April 1, 2010, to set forth the current form for the residential property condition report, which, by law, a real estate seller must give a prospective purchaser before executing a binder or contract in any residential real estate transaction (i.e., sale, exchange, or lease with option to buy).

The act requires that, in addition to things the law already requires the report to include, it must also contain information concerning (1) leased items on the premises, including propane tanks, water heaters, major appliances, and alarm systems,

and (2) whether the real property is located in a designated historic zone.

EFFECTIVE DATE: Upon passage (June 2, 2009)

ROUTE 11 GREENWAY AUTHORITY COMMISSION

PA 09-97 explicitly authorizes the Route 11 Greenway Authority Commission to enter into covenants or agreements with landowners to purchase options to acquire, by purchase or other means, land or interests in land. EFFECTIVE DATE: July 1, 2009

STATE LAND FOR HUNTING

PA 09-173 (§ 3) prohibits the DEP commissioner from reducing the amount of state land in one location where hunting is permitted without providing for an equal amount of land elsewhere in the state (i.e., no net loss of state land where hunting is permitted). The act establishes a baseline of state land where hunting is permitted as not less than the percentage of such land as of July 1, 2008. EFFECTIVE DATE: Upon passage (July 1, 2009)

TAX CREDITS FOR GREEN BUILDINGS

SB 2052, Sept. Sp. Sess., (§ 7), establishes a corporate tax credit for taxpayers who build “green buildings” (i.e., those meeting certain energy and environmental standards) for

income years starting on and after January 1, 2012. The act (1) limits the credit for all projects at \$25 million dollars, (2) specifies the projects and their costs that are eligible for the credit, and (3) allows taxpayers to claim 25% of the credit in any tax year, with the remainder allowed to be carried forward for up to five years.

The Office of Policy and Management secretary, in consultation with the revenue services commissioner, must (1) adopt implementing regulations by January 1, 2011, and (2) provide the governor and Planning and Development and Finance, Revenue and Bonding committees a preliminary report by July 1, 2012 and final report by July 1, 2013 on the tax credit program.

EFFECTIVE DATE: Upon passage (October 5, 2009).

TAX EXEMPTION IN ENTERPRISE ZONES

PA 09-93 changes the criterion under which property owners qualify for a property tax exemption when they improve homes, apartments, condominiums, and other types of residential property in the state’s 17 enterprise zones. By law, municipalities must exempt a portion of the property’s assessed value attributed to the improvements over seven years.

Under the act, property owners who improve rental units or convert them into condominiums must rent or sell them only to people earning up to 200% of the median income for the area in which the municipality is located, as determined by the U.S. Department of Housing and Urban Development (HUD), instead of 200% of the municipality's median family income.

PA 09-234 (§ 3) makes the same change.
EFFECTIVE DATE: Upon passage (June 2, 2009)

TIME SHARES

PA 09-156 eliminates the current, more limited time share laws and replaces them with additional and more detailed provisions. These laws generally apply to all time sharing plans offered within Connecticut.

The act generally prohibits the offering or disposition of any time share interest unless a time share plan is registered with Department of Consumer Protection (DCP). A time share resale broker who acts on behalf of a time share owner who is not a developer must be licensed as a real estate broker pursuant to state law before offering a time share interest in Connecticut.

The act specifies time share advertising requirements and prohibitions. It also requires a developer to provide a

prospective purchaser, before he or she signs any agreement to acquire a time share interest, with a disclosure statement containing information the act specifies. The developer must obtain the prospective purchaser's written acknowledgement that he or she received the disclosure statement.

The act requires a time share plan developer to properly record the time share instrument in the land records of all towns where an accommodation is located.

The DCP commissioner may suspend or revoke a registration, place a registration on probation, reprimand a developer, impose a civil penalty of up to \$5,000 for each violation, or take any other disciplinary action the act authorizes if, after notice and hearing, the commissioner determines that a developer has materially violated any provision of the act or the Unfair Trade Practices Act.

The act makes it a class A misdemeanor for a developer to (1) offer or dispose of a time share interest in a time share property that has not been registered with the department or (2) accept reservations and deposits from prospective purchasers for such a time share except as the act permits.

The act exempts any time share property established within Connecticut on or before December 31, 2009 from its provisions and specifies that it is subject to the general statutes

and Connecticut regulations that exist on that date.

EFFECTIVE DATE: January 1, 2010

WATER COMPANY LAND LEASES

PA 09-232 (§§ 47 & 48) allows the Department of Public Health (DPH) to grant a permit under certain conditions for the lease of class I land associated with a groundwater source used for public drinking water to another water company that serves at least 1,000 people or 250 customers and maintains an approved water supply plan. The lessee water company must demonstrate that the lease will improve the existing public drinking water system's conditions and will not have a significant adverse effect on the public drinking water supply's purity or adequacy.

EFFECTIVE DATE: Upon passage (not yet signed)

ZONING FOR CREMATORIES

PA 09-232 (§§ 39 & 40) prohibits local zoning regulations from permitting a crematory to be located within 500 feet of any residential structure or land zoned for residential purposes that the crematory's owner does not own. The prohibition applies to (1) both human and large animal crematories and (2) towns

that zone under either the statutes or special act charters.

EFFECTIVE DATE: October 1, 2009

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