

BYLAWS

Bylaws, Article IV, Section 1 - Number and Qualifications

- A minority of the directors do not have to be unit owners [*Subsection 47-245(f)*].
However, the bylaws can, as they do here, set more restrictive requirements.

Bylaws, Article IV, Section 2 - Powers and Duties

In addition to the requirements of this section:

- The board must promptly provide notice to the unit owners of legal proceedings in which the association is a party [*Subsection 47-244(c)*]. Legal proceedings include lawsuits in which the association is a plaintiff or defendant and administrative proceedings, such as complaints filed with the Connecticut Commission on Human Rights and Opportunities or applications before a local planning and zoning commission. However, the association is not required to give notice of the following types of proceedings:
 - Actions to enforce the rules of the association. *This exclusion does not extend to actions to enforce the declaration or bylaws.*
 - Foreclosures brought by the association to collect unpaid common charges.
 - Foreclosures brought by the holder of a mortgage on a unit.
- The board has the power to decide whether enforcement action is necessary and when to compromise claims [*Subsection 47-244(g)*].
 - The board has no duty to take enforcement action if it determines that:
 - The association's legal position does not justify further action [*Subsection 47-244(g)(1)*];
 - The covenant, restriction or rule at issue either is inconsistent with applicable law, or a court is likely to conclude that it is inconsistent with law [*Subsection 47-244(g)(2)*];
 - Even though a violation may exist or may have occurred, it is not so material that a reasonable person would object or it does not justify expending association resources [*Subsection 47-244(g)(3)*];
or

- It is not in the association's best interest to take action [*Subsection 47-244(g)(4)*].
- The board's decision not to pursue enforcement under one set of circumstances does not prevent the board from taking action under another set of circumstances [*Subsection 47-244(h)*].
 - If the association decides not to act in one case, it is not forever barred from taking action in a later case [*Subsection 47-244(h)*].
- The board may not be arbitrary or capricious in taking enforcement action [*Subsection 47-244(h)*].
 - There must be some factor that distinguishes one set of circumstances from another, which led to the board taking action in one case but not the other [*Subsection 47-244(h)*].
 - The minutes of the meeting at which an association decides whether to take action or compromise a claim, or the written resolution itself, should set forth the reasons on which the board based its decision [*Subsection 47-244(h)*].
 - If the association is facing or has faced a similar situation in which it reached a different decision of whether to proceed, then the resolution should set out what distinguishes the two situations from each other [*Subsection 47-244(h)*].
- The board may suspend any right or privilege of a unit owner who fails to pay an assessment, but may not [*Subsection 47-244(a)(19)*]:
 - Deny a unit owner or other occupant access to the owner's unit or its limited common elements;
 - Suspend a unit owner's right to vote or participate in meetings of the association;
 - Prevent a unit owner from seeking election as a director or officer of the association; or
 - Withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety or property of any person.

Notwithstanding the requirements of this section:

- The association may borrow money and assign its right to future income as security for a loan only provided [*Subsection 47-261e(e)*]:
 - The loan transaction and the assignment have been approved by the board; and
 - A majority of all the unit owners vote in favor of or agree to the assignment.
 - The approval of the unit owners may be given either by the vote or by the agreement of those unit owners [*Subsection 47-261e(e)*].
- The association must give all unit owners written notice of the terms of any loan the association enters into, whether or not the loan is secured by a pledge of future common charges [*Subsection 47-261e(d)*].
 - The notice must set out the amount and terms of the loan and the estimated effect of the loan on any common expense assessment, including special assessments.
 - The unit owners must be given an opportunity to submit written comments to the board concerning the loan.
 - The notice must be sent at least 14 days before the loan closes and in sufficient time to allow the board to consider any comments from the unit owners.

Notwithstanding the requirements of Subsection 2(n):

- *See comments to Article VIII, Section 2 concerning the adoption of rules.*

Bylaws, Article IV, Section 4 - Removal of Directors

Notwithstanding the requirements of this section:

- A director elected by the unit owners may be removed with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal. The vote may be taken either at a meeting or by ballot without a meeting [*Section 47-261d(a)*]. *See the comment to Bylaws Article V, Section 13 concerning votes taken without a meeting.*

- If the vote is taken at a meeting, the director being considered for removal must have a reasonable opportunity to speak before the vote is taken. If the vote is taken by ballot without a meeting, the director being considered for removal must be given a reasonable opportunity to deliver information to the unit owners as provided in Subsection 47-252(d) of CIOA [*Section 47-261d(b)*].
- The unit owners may not consider whether to remove a director unless that subject was listed in the notice of meeting [*Section 47-261d(a)*].
- *Section 47-261d contains additional provisions relating to associations where the officers are elected by the unit owners, rather than by the executive board. Since your documents do not permit the direct election of officers, these provisions do not apply.*

Bylaws, Article IV, Section 5 - Vacancies

Notwithstanding the requirements of this section:

- The board may fill a vacancy in its membership only for the shorter of:
 - Until the next regularly scheduled election of directors; or
 - Until the end of the term of the vacant directorship [*Subsection 47-245(b)(3)*].

Bylaws, Article IV, Section 6 - Organization Meeting

- *See the comment to Bylaws Article IV, Section 7 - Regular Meetings. These apply to organizational meetings as well.*

Bylaws, Article IV, Section 7 - Regular Meetings

In addition to the requirements of this section:

- The board may meet by telephonic, video or other conferencing process if the following occur [*Subsection 47-250(b)(7)*]:
 - The notice of the meeting must state the conferencing process to be used and provide information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

- The process provides all unit owners the opportunity to hear or perceive the discussion and comment on any matter affecting the common interest community or the association during unit owner comment periods.
- *If you are not familiar with the legal and technical procedures for holding meetings by teleconference, do not attempt this without advice.*
- Instead of meeting, the board may act by unanimous consent as documented in a document or other record signed or otherwise authenticated by all its directors. The secretary must promptly give notice to all unit owners of any action taken by unanimous consent [Subsection 47-250(b)(8)].

Notwithstanding the requirements of this section:

- All meetings of the board shall occur at the common interest community or a location convenient to the common interest community [Subsection 47-250(b)(3)].
- Unless a meeting of the board or a committee authorized to act for the association is included in a schedule given to the unit owners, the secretary or other officer specified in the bylaws must give notice of each board meeting to each director and to each unit owner [Subsection 47-250(b)(5)].
 - *A committee is authorized to act for the association when it can exercise one or more of the powers listed in Bylaws Article IV, Section 2 or Section 47-244 of CIOA. A committee is not authorized to act for the association if it only makes recommendations to the board or implements decisions made by the board.*
 - The notice must be given at least five days before the meeting and state the time, date, place and agenda of the meeting.
 - If, at the meeting, the board will vote on a change in the rules, additional notice must be given. *See comment to Bylaws Article VIII, Section 2 concerning notice for adoption of rules.*
- If any materials are distributed to the board or a committee authorized to act for the association, before the meeting, the board or committee must at the same time make copies of those materials reasonably available to unit owners. This requirement excludes copies of unapproved minutes and materials that are to be considered in executive session [Subsection 47-250(b)(6)]. *The statute does not state what the association must do to make copies “reasonably available to unit owners.” We recommend that the association make extra copies which can be*

picked up by the unit owners at the community and also mail or email copies to unit owners who request them.

- At each board meeting, or meeting of a committee authorized to act for the association, the board or committee shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association [*Subsection 47-250(b)(4)*]. *The board can adopt reasonable rules and procedures prohibiting unit owners from interrupting the regular conduct of business and the time of other speakers, setting reasonable limits on the number of speakers at any one meeting and the repetitiveness of unit owner comments, and limiting the total time the unit owner comment period may consume during any one meeting.*

Notwithstanding anything contained in this section or anything else contained in the declaration or bylaws:

- Meetings of the board or of a committee authorized to act for the association must be open to unit owners and to any person whom a unit owner designates as his or her personal representative, except when the board meets in executive session [*Subsection 47-250(b)(1)*];
- The board and any committees authorized to act for the association may hold an executive session only during a regular or special meeting [*Subsection 47-250(b)(1)*];
- The board or a committee authorized to act for the association may meet in executive session only to do the following [*Subsection 47-250(b)(1)*]:
 - Consult with the association's attorney about legal matters;
 - Discuss existing or potential litigation, mediation, arbitration, or administrative proceedings;
 - Discuss labor or personnel matters;
 - Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or
 - Prevent public knowledge of the matter to be discussed if the board or committee determines that public knowledge would violate the privacy of any person.

- No final vote or action may be taken during an executive session [*Subsection 47-250(b)(1)*].

Bylaws, Article IV, Section 8 - Special Meetings

- *See the comment to Bylaws Article IV, Section 7 - Regular Meetings. These apply to special meetings as well.*

Bylaws, Article IV, Section 9 - Waiver of Notice

Notwithstanding the requirements of this section:

- A director may waive notice to himself or herself only. A director may not waive notice of a board meeting to unit owners [*Subsection 47-250(b)(5)*].

Bylaws, Article IV, Section 10 - Quorum of Board of Directors

Notwithstanding the requirements of this section:

- A quorum of the board is present for purposes of determining the validity of any action taken at a meeting of the board only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken [*Subsection 47-251(b)*]. *The bylaws can require a higher quorum but not a lower one.*
- If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the board unless a greater vote is required by the declaration or bylaws [*Subsection 47-251(b)*].

Bylaws, Article IV, Section 11 - Fidelity Bonds

In addition to the requirements of this section:

- The association is required to carry fidelity insurance for anyone who either handles or is responsible for funds held or administered by the association, whether or not they receive compensation for their services. The insurance policy should name the association as the insured and should cover the maximum funds that will be in the custody of the association or its manager at any time while the policy is in force, and in no event less than the sum of three months' assessments plus reserve funds [*Subsection 47-255(a)(4)*].

Bylaws, Article V, Section 3 - Annual Meeting

In addition to the requirements of this section:

- Unit owners shall be given a reasonable opportunity at any unit owners' meeting to comment regarding any matter affecting the common interest community or the association. This unit owner right to comment is not limited to the items on the agenda of the meeting. Ordinarily, it can be best accomplished by a separate unit owner comment period [*Subsection 47-250(a)(4)*]. *The association may adopt reasonable rules and procedures prohibiting unit owners from interrupting the regular conduct of business and the time of other speakers, setting reasonable limits on the number of speakers at any one meeting and the repetitiveness of unit owner comments, and limiting the total time the unit owner comment period may consume during any one meeting.*

Bylaws, Article V, Section 5 - Special Meetings

- *See the comment to Bylaws Article V, Section 3 - Annual Meeting. This applies to special meetings as well.*

Notwithstanding the requirements of this section:

- Unit owners having at least 20% of the votes in the association may request that the secretary call a special meeting [*Subsection 47-250(a)(2)*]
- Only matters described in the meeting notice may be considered at a special meeting [*Subsection 47-250(a)(2)*].

Bylaws, Article V, Section 6 - Notice of Meetings

In addition to the requirements of this section:

- If the association does not notify unit owners of a special meeting within 15 days after the required number or percentage of unit owners request the secretary to do so, the requesting unit owners may directly notify all the unit owners of the meeting [*Subsection 47-250(a)(2)*].
- The notice of any meeting must state the time, date and place of the meeting, and the items on the agenda, including [*Subsection 47-250(a)(3)*]:
 - A statement of the general nature of any proposed amendment to the declaration or bylaws;

- Any budget changes; and
- Any proposal to remove a director.
- The association must notify unit owners of the time, date and place of each annual or special unit owners meeting not less than 10 days or more than 60 days before the meeting date [Subsection 47-250(a)(3)]. *Because your bylaws do not specify an end time frame for giving notice, stay within both the limitation set out within the bylaws and the limitation set out in this paragraph. In other words, your association will need to send out notices not less than 10 days but no more than 60 days prior to the meeting.*
- *See the comments to Bylaws Article XIII, Section 1 concerning how notice of the meeting is to be given.*

Bylaws, Article V, Section 9 - Order of Business

In addition to the agenda items listed in this section:

- The agenda must include a unit owner comment period. *See the comment to Bylaws Article V, Section 3 concerning how the unit owner comment period must be conducted [Subsection 47-250(a)(4)].*

Bylaws, Article V, Section 10 - Parliamentary Procedure

In addition to the requirements of this section:

- Unit owners casting two-thirds of the votes allocated to owners present at the meeting may act to suspend *Robert's Rules of Order* [Subsection 47-250(c)].

Bylaws, Article V, Section 12 - Proxies

Notwithstanding the requirements of this section:

- A single person may not cast votes representing more than 15% of the total votes in the association pursuant to undirected proxies [Subsection 47-252(c)(6)]. *An undirected proxy is a proxy that does not include any directions to the proxy holder concerning how the unit owner wants the proxy holder to vote. However, the bylaws can be amended to eliminate this restriction.*
- A proxy terminates one year from its date, unless it specifies a shorter term. [Subsection 47-252(c)(5)]

Bylaws, Article V, Section 13 - Voting

- *CIOA has been amended to permit associations to conduct a vote of the unit owners without a meeting. While twenty percent of the unit owners can call a meeting, only the board can call for a vote without a meeting. This vote can be taken either by paper ballot or by electronic ballot. While CIOA permits votes to be taken without a meeting, it does not contain all of the rules and procedures needed to conduct such a vote. Neither does it require that any vote be taken without a meeting. For this reason, we do not recommend that any association conduct a vote without a meeting unless it first amends its bylaws or otherwise establishes the necessary procedures for conducting the vote [Subsection 47-252(d)].*

Notwithstanding the requirements of this section or any other provisions of the declaration or bylaws:

- The association may not suspend a unit owner's right to vote, to participate in meetings or to run for or hold office because the unit owner is not current in his or her common charges or other payments owed to the association [Subsection 47-244(a)(19)].

Notwithstanding the requirements of this section:

- The majority of the votes cast, not the vote of a majority of the unit owners present in person or by proxy, is the decision of the unit owners except where a higher percentage vote is required [Subsection 47-252(b)(2)].

Bylaws, Article VI, Section 2 - Election of Officers

In addition to the requirements of this section:

- Officers can be elected by the unit owners instead of by the board of directors, but only if the declaration or bylaws contain a provision authorizing the unit owners to elect the officers [Section 47-261d].

Bylaws, Article VII, Section 1 - Determination of Common Expenses and Fixing of Common Charges

In addition to the requirements of this section:

- Not later than thirty days after adoption of a proposed budget, the board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded [Subsection 47-261e(a)].
 - *Many associations find it to be more efficient to provide a complete copy of the budget, including notes, rather than just a summary.*
- The budget or the summary must include [Subsection 47-261e(a)]:
 - A statement of the amount to be contributed to the reserves during the fiscal year or a statement that no contributions are being made;
 - A statement of the current balance in the association's reserves; and
 - A statement of the basis on which any reserves are calculated and funded.
- Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for either a meeting of the unit owners or a vote by ballot without a meeting to consider approval of the budget [Subsection 47-261e(a)].
- If, at that meeting or in the vote by ballot, a majority of the voting power of all unit owners votes to reject the budget, the budget is rejected; otherwise the budget is approved [Subsection 47-261e(a)].
 - The absence of a quorum at such meeting or participation in the vote by ballot shall not affect rejection or approval of the budget.
- If a proposed budget is rejected, the budget last approved by the unit owners continues until unit owners approve a subsequent budget [Subsection 47-261e(a)].
- The vote to approve or reject the budget may be taken either at a meeting of the unit owners or by a vote without a meeting. *See the comment to Bylaws Article V, Section 13 concerning votes taken without a meeting.*

Notwithstanding the requirements of this section, the following provisions apply to the adoption of special assessments:

- The board, at any time, may propose a special assessment. Not later than thirty days after adoption of a proposed special assessment, the board shall provide to all unit owners a summary of the special assessment [Subsection 47-261e(b)].
- If such special assessment, together with all other special assessments, including emergency assessments, proposed by the board in the same calendar year, do not exceed 15% of the association's last adopted periodic budget for that calendar year, the special assessment is effective without approval of the unit owners [Subsection 47-261e(b)].
- Otherwise, the board shall set a date not less than 10 days or more than 60 days after providing the summary for either a meeting of the unit owners or a vote by ballot without a meeting to consider approval of the special assessment [Subsection 47-261e(b)].
- If, at such meeting or in the balloting, a majority of the voting power of all unit owners votes to reject the special assessment, the special assessment shall be rejected; otherwise the special assessment shall be approved [Subsection 47-261e(b)].
 - The absence of a quorum at such meeting or participating in the vote by ballot shall not affect the rejection or approval of the special assessment [Subsection 47-261e(b)].
- The board may determine, by a two-thirds vote, that a non-budgeted assessment is necessary to respond to an emergency [Subsection 47-261e(b)]. *This may require two board resolutions, one that declares an emergency and one that adopts the assessment.*
 - The special assessment is effective immediately in accordance with the terms of the board resolution without a vote of the unit owners.
 - The board must promptly provide notice of the emergency assessment to all unit owners.
 - The board may spend the funds raised by the emergency special assessment only for the purposes described in the vote.

Bylaws, Article VII, Section 7 - Default in Payment of Common Charges

In addition to the requirements of this section:

- The association may not commence an action to foreclose its lien against a unit, unless [*Subsection 47-258(m)*]:
 - The unit owner owes an amount equal to at least two months of common expense assessments based on the most recently adopted budget;
 - The association has made demand for payment of the amount in a written communication; and
 - The board either has voted to commence the foreclosure specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit.

Bylaws, Article VII, Section 8 - Foreclosure of Liens for Unpaid Common Charges

- *The priority of the association's lien over first and second mortgages was previously altered by the original text of Section 47-258(b) of CIOA.*

Bylaws, Article VII, Section 9 - Maintenance, Repair and Replacement

In addition to the provisions of Subsection 9(a):

- If any common expense is caused by:
 - the willful misconduct;
 - the gross negligence; or
 - the failure to comply with the written maintenance standard promulgated by the association

of any unit owner or tenant or of a guest or invitee of a unit owner or tenant, the association may, after notice and hearing, assess the portion of that common expense in excess of any insurance proceeds received by the association under its insurance policy, whether that portion results from the application of a deductible or otherwise, exclusively against that owner's unit [*Subsection 47-257(e)*]. *The terms "willful misconduct" and "gross negligence" have particular legal significance. Do not attempt to determine whether a certain action falls under these terms without the assistance of knowledgeable legal counsel.*

If your association wishes to adopt and promulgate written maintenance standards in addition to those standards that may already exist in your documents, consult with a knowledgeable attorney before you do to ensure that the standards, and the way in which they are adopted and publicized, meet the requirements of your documents and CIOA. If you would like us to assist you with this, please let us know. We have identified those document provisions that may create a written maintenance standard promulgated by the association in the comments following those provisions.

In addition to the provisions of Subsection 9(b):

- *This subsection may establish a maintenance standard as described in Subsection 47-257(e) of CIOA. It should be disclosed in resale certificates [47-270(a)(16)].*
 - *See also the comment to Bylaws Article VII, Section 9(a) concerning the assessment of common expenses related to failure to observe maintenance standards.*

Bylaws, Article VII, Section 11 - Additions, Alterations or Improvements by Unit Owners

Notwithstanding the requirements of this section:

- The association may adopt rules to establish and enforce construction and design criteria and aesthetic standards in the community [*Subsection 47-261b(c)*].
 - If it does, it must also adopt procedures for enforcing those rules and for approving construction applications [*Subsection 47-261b(c)*].
 - These procedures must include a reasonable time within which the association must act after application has been submitted by the owner, and the consequences of its failure to act [*Subsection 47-261b(c)*].

Bylaws, Article VIII, Section 2 - Rules and Regulations

Notwithstanding the requirements of this section:

- At least ten days before adopting, amending or repealing any rule, the board shall give all unit owners notice of [*Subsection 47-261b(a)*]:
 - The board's intention to adopt, amend or repeal a rule and shall include with such notice the text of the proposed rule or amendment, or the text of the rule proposed to be repealed; and

- the date on which the board will act on the proposed rule, amendment or repeal after considering comments from unit owners.
- Before the board votes it must receive and consider any comments submitted by the unit owners or made during the comment period [*Subsection 47-261b(a)(2)*].
- Following the adoption of a change or the repeal of the provision, the association must notify the owners of its action and provide them with a copy of the amendment or change [*Subsection 47-261b(b)*].
- The association may not prohibit display, on a unit or on a limited common element adjoining a unit, of the flag of this state, or signs regarding candidates for public or association office or ballot questions, but the association may adopt rules governing the time, place, size, number and manner of those displays [*Subsection 47-261b(d)*].
- Any rule regulating the flag of the United States must be consistent with federal law [*Subsection 47-261b(d)*].
- Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place and manner of those assemblies [*Subsection 47-261b(e)*].
- An association's internal business operating procedures need not be adopted as rules [*Subsection 47-261b(g)*].
- All of the rules must be reasonable [*Subsection 47-261b(h)*]. In determining reasonableness, a court will look at the following factors:
 - Whether the association had the authority to adopt the rule under Connecticut law or its governing documents; and
 - Whether the rule is based on reasoned decision-making, or is arbitrary and capricious. In other words, if an owner challenged a rule in court, the association would be required show that it considered the issue and had reasons for adopting the rule in question.

Bylaws, Article X - Insurance

- *See comment concerning fidelity insurance to Bylaws Article IV, Section 11.*

- If the insurance described in this article, as modified by the overlay, is not reasonably available, the association promptly shall cause notice of that fact to be giving to all unit owners [*Subsection 47-255(c)*].

Bylaws, Article X, Section 2 - Physical Damage

Notwithstanding the requirements of this section:

- The association must either:
 - Insure all betterments and improvements, including those installed by unit owners [*Subsection 47-255(b)*]; or
 - Prepare and publish a schedule of standard fixtures, improvements and betterments that the association will insure [*Subsections 47-255(b)(1)-(3)*]. *There are a number of technical issues that must be addressed in preparing and publishing a schedule of standard fixtures. Do not attempt this without the assistance of a knowledgeable attorney. If you would like us to assist you with this, please let us know.*
- The association is required to carry flood insurance on any buildings or units located in a flood hazard area, as defined and determined by the National Flood Insurance Act, if the unit owners vote to obtain such insurance [*Subsection 47-255(a)(2)*].

Notwithstanding the requirements of Subsection 2(c):

- Insurance policies required by this section shall provide all of the following [*Subsection 47-255(d),(e) and (g)*]:
 - The insurer waives its right to subrogation under the policy against any unit owner or member of such unit owner's household.
 - No act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the association, will void the policy or be a condition to recovery under the policy.
 - If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.
 - The loss shall be adjusted with the association.

- Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and, in the absence of such designation, to the association, in either case to be held in trust for each unit owner and such unit owner's mortgagee.
- The insurer may not cancel or refuse to renew the policy until 60 days after notice of the proposed cancellation or non-renewal has been mailed to the association, each unit owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.
- The name of the insured shall be substantially as follows: "Walnut Beach Condominium Association, Inc. for the use and benefit of the individual owners."

Bylaws, Article XI, Section 1 - Duty to Repair or Restore

Notwithstanding the requirements of this section:

- Any portion of the property for which insurance is required under Section 47-255 of CIOA, or for which insurance carried by the association is in effect, whichever is more extensive, shall be repaired or replaced promptly by the association unless the community is terminated, repair or replacement would be illegal under any state or local statute or ordinance governing health or safety or 80% of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt vote not to rebuild.

Bylaws, Article XI, Section 3 - Collection of Construction Funds

Notwithstanding the requirements of this section:

- The cost of repair or replacement in excess of insurance and condemnation proceeds shall be a common expense [Subsection 47-255(h)(1)].

Bylaws, Article XI, Subsection 6(e) - Determination Not to Repair or Restore

Notwithstanding the requirements of this subsection:

- The community must be restored unless [Subsection 47-255(h)(1)]:
 - It is terminated under the provisions of Section 47-237 of CIOA [Subsection 47-255(h)(1)(A)].

- Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety [*Subsection 47-255(h)(1)(B)*].
- Eighty percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild [*Subsection 47-255(h)(1)(C)*].

Bylaws, Article XII, Section 1 - Records and Audits

In addition to the requirements of this section, the association must keep the following records:

- Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records [*Subsection 47-260(a)(1)*].
- Minutes of all meetings of the association's unit owners and board, a record of all actions taken by the unit owners or board without a meeting, and a record of all actions taken by a committee in place of the board on behalf of the association. Minutes of meetings of the board in executive session are optional [*Subsection 47-260(a)(2)*].
- The names of unit owners in a form that permits the association to prepare 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 [*Subsection 47-260(a)(3)*].
- The association's original or restated organizational documents, the association's bylaws and all amendments to them, and all rules of the association that are currently in effect [*Subsection 47-260(a)(4)*].
- All financial statements and tax returns of the association for the past three years [*Subsection 47-260(a)(5)*].
- A list of the names and addresses of the association's current directors and officers [*Subsection 47-260(a)(6)*].
- The association's most recent annual report that was delivered to the Secretary of the State [*Subsection 47-260(a)(7)*].
- A record of the existence of any pending lawsuits or administrative proceedings in which the association is a party [*Subsection 47-260(a)(8) and Subsection 47-270(a)(7)*].

- If the association must insure the units and decides to exclude from coverage certain improvements or betterments installed in the units by the unit owners, the schedule of standard fixtures, improvements, and betterments in the units that are covered by the association's insurance [*Subsection 47-260(a)(8) and Subsection 47-270(a)(8)*].
- A record of all foreclosure actions brought by the association within the previous 12 months [*Subsection 47-260(a)(8) and Subsection 47-270(a)(15)*].
- Any unit maintenance standards adopted by the association under Subsection 47-257(e) of the Common Interest Ownership Act [*Subsection 47-260(a)(8) and Subsection 47-270(a)(16)*].
- Copies of current contracts to which the association is a party [*Subsection 47-260(a)(9)*].
- Records of actions by the board or a committee to approve or deny any requests by unit owners for design or architectural approval from the association [*Subsection 47-260(a)(10)*].
- Ballots, proxies, and other records relating to voting by unit owners, for a period of one year after the election, action, or vote to which they relate [*Subsection 47-260(a)(11)*].

Bylaws, Article XII, Section 4 - Examination of Records

In addition to the requirements of this section:

- Examination rights cover all records, not just books of account, subject to the exceptions listed below.
- As an alternative to having the records available during normal business hours, the association may make them available at a time and location that is mutually convenient to it and the unit owner [*Subsection 47-260(b)(1)*].
- Examination of records must be permitted upon reasonable notice, which means five days' notice in a written or electronic communication that identifies the specific records of the association that the unit owner is requesting [*Subsection 47-260(b)(2)*].
- The association has no obligation to compile or create information in response to a request by a unit owner for the inspection and copying of its records [*Subsection 47-260(g)*].

- Any information that the association provides in response to a request by a unit owner for the inspection and copying of its records may not be used for commercial purposes [*Subsection 47-260(h)*].

Notwithstanding the requirements of this section:

- The association must withhold its records from inspection and copying to the extent that they concern the following matters:
 - Personal information, which means information capable of being associated with a particular individual through one or more identifiers, including, but not limited to, a Social Security number, a driver's license number, a state identification card number, an account number, a credit or debit card number, a passport number, an alien registration number or a health insurance identification number, and does not include publicly available information that is lawfully made available to the general public from federal, state or local government records or widely distributed media [*Subsection 47-260(c)*].
 - Personnel, salary, and medical records relating to any specific individual, unless the individual agrees to waive the records' protection from disclosure to the requesting unit owner [*Subsection 47-260(c)*]; or
 - Information whose disclosure would violate any law, including but not limited to, CIOA as amended [*Subsection 47-260(c)*].
- The association may withhold the following records from inspection and copying that concern the following matters [*Subsection 47-260(d)*]:
 - Contracts, leases, and other commercial transactions for the purchase of goods or services that are under current negotiation;
 - Existing or potential litigation or mediation, arbitration, or administrative proceedings;
 - Existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for the enforcement of the declaration, bylaws, or rules;
 - Communications with the association's attorney that are protected by the attorney-client privilege or the attorney work-product doctrine; in other words, confidential communications between the attorney and the association for the provision of legal advice and documents prepared by

the attorney for the association in connection with existing or potential lawsuits involving the association;

- Records of an executive session of the board; and
- Files and records for individual units other than the unit of the requesting unit owner.
- *The association should consider adopting a policy concerning the inspection of the foregoing records.*
- The association may charge a reasonable fee for providing copies of any records and for supervising the unit owner's inspection of the records [Subsection 47-260(e)].
- The right to copy records includes the right to receive copies by photocopying or other means, including copies sent by electronic transmission if the association has the capability to send copies in this way and the unit owner requests that they be sent in this way [Subsection 47-260(f)].

Bylaws, Article XIII, Section 1 - Notices

Notwithstanding the requirements of this section:

- If a unit owner furnishes the association with a mailing address that is not the unit, the association should send notices to that address rather than the unit. These notices can be given by hand delivery, U.S. mail with postage paid, or commercially reasonable delivery service [Subsection 47-261c(a)].
- If the unit owner furnishes the association with an electronic (e-mail or fax) address, the association may give notice to the unit owner by electronic means at the electronic address [Subsection 47-261c(a)]. *We recommend the use of a form in which the unit owner designates his or her electronic address, agrees to receive notices from the association by electronic means only, and agrees to notify the association of changes to his or her electronic address.*
- Notices are effective when sent [Subsection 47-261c(b)].

Bylaws, Article XIII - Miscellaneous - Resale Certificates and Statements of Unpaid Assessments

Your documents do not specifically address the association's duty to furnish resale certificates. CIOA has required the association to furnish resale certificates since January

1, 1984. The specific requirements for furnishing resale certificates have changed. In addition to the existing requirements for resale certificates the following requirements now apply as well.

- The fee for furnishing a resale certificate may not exceed \$125 plus:
 - If the association furnishes paper copies of documents, five cents per page furnished; or
 - If the association furnishes electronic copies of documents, ten dollars for all of the electronic copies [*Subsection 47-270(b)(1)*].
- The 2009 amendments to CIOA have added several requirements to what must be included in a resale certificate. They are listed below [*Subsection 47-270(a)*]. *If you need help preparing an updated form resale certificate, please contact us.*
 - A list of any pending suits or administrative proceedings in which the association is a party. This new requirement includes any pending foreclosures brought by the association or any other holder of a lien against the unit. However, it does not include other types of collections [*Subsection 47-270(a)(7)*].
 - If the association has adopted a list of standard fixtures, improvements and betterments that are covered by the association's insurance, the copy of the list must be included in the resale certificate [*Subsection 47-270(a)(8)*].
 - *See comment to Bylaws Article X, Section 2 concerning creating a list of standard fixtures, improvements and betterments that are covered by the association's insurance.*
 - A statement disclosing the number of units whose owners are at least 60 days' delinquent in paying their common charges on a specified date within 60 days of the date the certificate is issued [*Subsection 47-270(a)(14)*].
 - A statement disclosing the number of foreclosures filed by the association during the past 12 months [*Subsection 47-270(a)(15)*].
 - A statement disclosing the number of foreclosures filed by the association which are still pending as of a specified date. That date must be within 60 days of the issuance of the resale certificate [*Subsection 47-270(a)(15)*].
 - Any established maintenance standards adopted by the association [*Subsection 47-270(a)(16)*]. *See comments to Bylaws Article VII,*

Subsection 9(a) concerning common charges attributable to fewer than all units.

Bylaws, Article XIV, Section 3 - Waiver

- *See comment to Bylaws Article IV, Section 2 relating to the board enforcing a right or compromising a claim.*

Bylaws, Article XV - Amendments to Bylaws

- *See comment to Declaration Article XX.*