

CLINTON YACHT HAVEN

DOCKOMINIUM

DOCUMENT OVERLAY

AN OUTLINE OF THE IMPACT OF THE
2009 AMENDMENTS TO THE
COMMON INTEREST OWNERSHIP ACT

Prepared on March 8, 2011



INTRODUCTION

This overlay reflects the changes made to the Connecticut Common Interest Ownership Act, commonly referred to as “CIOA,” by Public Act 09-225, as modified by a series of technical amendments set out in Public Act 10-186. In this overlay, we refer to them collectively as the 2009 amendments. The amendments relating to association borrowing and mortgagee consent to document amendments have an effective date of July 8, 2009. All of the other amendments have an effective date of July 1, 2010.

The contents of this overlay reflect the interpretation of these amendments as of the date the overlay was prepared. These may be affected by future amendments to CIOA, as well as by court decisions interpreting and applying its provisions. While we always try to alert our association clients to any changes in the law that may affect them, we do not plan to update this overlay each time the law changes.

Some parts of CIOA were amended prior to 2009. This overlay does not reflect these prior amendments or their effect on your community. It is intended solely to show how your documents have been affected by the 2009 amendments.

Some of the 2009 amendments supersede provisions which are currently in your documents. This means that if there is a conflict between your documents and CIOA, as it has been amended, you must follow CIOA and not your documents.

Some of the 2009 amendments create new rights and duties or require the association and the unit owners to follow new or additional procedures. These apply to your association even though they are not mentioned in your documents.

This overlay follows the numbering system used in your documents. Whenever an existing provision of your documents has been modified or superseded by the 2009 amendments, we have set out the number and title of that provision in your documents, followed by a summary of the new requirements contained in the 2009 amendments. Wherever the 2009 amendments have created a new requirement which is not in your documents, we have set out a summary of the requirement under the article or section of your existing documents that most closely relates to the new requirement.

Where one of the 2009 amendments affects several portions of your documents, we have set out the requirements of the amendment in the location or locations where we believe they will be most useful, and have included cross-references to these provisions from the other portions of your documents that are affected by that particular amendment.

Wherever possible, we have included a reference to the applicable section of CIOA as amended by the 2009 amendments at the end of each of our comments.

We have tried to identify all of the provisions of your documents that are affected by the 2009 amendments. It is possible, however, that some of these amendments may also affect other provisions of your documents as they apply in certain situations and to certain activities. If you have any questions concerning the requirements of any provision of your documents or how these provisions are affected by the 2009 amendments generally, by other provisions of CIOA or by other statutes, please feel free to contact us.

Your association may want to amend its documents to incorporate the changes made by the 2009 amendments to CIOA. It may also want to prepare one or more charts or matrixes, showing the requirements for maintenance, governing procedures, insurance and other matters. We are available to assist you in any of these activities.

DOCUMENTS REVIEWED

Included with this overlay is a copy of the documents we have reviewed and to which the overlay refers. We have made a marginal notation on the documents next to each provision that is commented on in the overlay.

The following is a list of the documents we have reviewed:

- The declaration of your community, including amendments, if any, recorded through December 28, 2010. Copies of these are attached and include the following:
 - The Declaration of Condominium (Clinton Yacht Haven Dockominium) by G. Y. Yorkhaven, Inc. dated December 28, 1987 and recorded on December 28, 1987 in Volume 177 at Page 263 of the Clinton Land Records.
 - Amendment #1 to Declaration dated February 29, 1988 and recorded on May 4, 1988 in Volume 180 at Page 946 of the Clinton Land Records.
 - Second Amendment to Declaration dated December 30, 1988 and recorded on January 4, 1989 in Volume 189 at Page 24 of the Clinton Land Records.
 - Five amendments exercising development rights, the last of which is dated September 27, 1993 and recorded on September 29, 1993 in Volume 225 at Page 891 of the Clinton Land Records.
 - Eighth Amendment to Declaration dated September 27, 1993 and recorded on September 29, 1993 in Volume 225 at Page 891 of the Clinton Land Records.

- Ninth Amendment to Declaration dated December 18, 2001 and recorded on December 26, 2001 in Volume 309 at Page 257 of the Clinton Land Records.
- The bylaws of your association and amendments, if any, as you have furnished them to us. Copies of these are attached and include the following:
 - Bylaws of Clinton Yacht Haven Dockominium Association, Inc. dated 1987.

You have represented to us that these reflect your bylaws as of January 19, 2011 as they appear from the records of your association.

- The rules of your association as you have furnished them to us. Copies of these are attached and include the following:
 - Rules of Clinton Yacht Haven.

You have represented to us that these reflect your rules as of January 19, 2011 as they appear from the records of your association.

DECLARATION

Declaration, Section 7.5 - Repairs Resulting from Negligence

- *See comments to Declaration Section 26.2 concerning repairs resulting from negligence.*

Declaration, Subsection 10.1(a)

- *See the comments to Declaration Section 16.2 concerning the board's power to regulate signs.*

Declaration, Subsection 10.1(d)

- *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 Declaration Section 26.2 concerning the assessment of common expenses related to failure to observe maintenance standards.*

Declaration, Subsection 10.1(e)

- *See the comments to Declaration Section 16.2 concerning the board's power to regulate signs.*

Declaration, Subsection 13.1(c)

- *See the comments to Declaration Section 16.2 concerning the board's power to regulate signs.*

Declaration Section 13.2 - Exterior Improvements and Landscaping within Limited Common Elements

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)*].

Declaration, Section 16.1 - Minutes of Executive Board Meetings

- *See comments to Bylaws Subsection 5(b) concerning examination of records.*

Declaration, Section 16.2 - 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:

- Officers and members of the board not appointed by a declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under Chapter 602 of the Connecticut General Statutes, [The Connecticut Revised Nonstock Corporation Act] and are subject to the conflict of interest rules governing directors and officers under Chapter 602. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized [*Subsection 47-245(a)*].
- 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.

- *When the board considers adopting or amending a rule, it must follow the procedures set out in the comments to Declaration Section 27.1 of this overlay.*

Declaration, Subsection 16.2(s)

Notwithstanding the provisions of this section:

- Whenever a committee is authorized to act for the association, as opposed to making recommendations to the board, that committee's meetings are subject to the same requirements as are board meetings [*Subsection 47-250(b)*]. *See, in particular, comments to Declaration Sections 16.2, 17.1, 17.3 and 27.1, and Bylaws Subsection 3(g).*

Declaration, Section 16.3 - Executive Board Limitations

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)*].

Declaration, Section 17.1 - Access

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)*];

Declaration, Section 17.2 - Notice

- *See comments to Bylaws Subsections 3(g) and 11(a) concerning notices.*

Declaration, Section 17.3 - Executive Sessions

- The board and any committees of the board 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)*].

Declaration, Article XXII - Right to Assign Future Income

Notwithstanding the requirements of this article:

- The assignment of future common charges must be approved by unit owners holding at least a majority of the voting power of the association [*Subsection 47-261e(e)*].
- 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.

Declaration, Section 23.7

- *See comment to Declaration Section 25.5 concerning mortgagee consent required.*

Declaration, Section 25.5 - Prior Consent Required

Notwithstanding the requirements of this section:

- The holder of a security interest required to consent to any amendment to the declaration or bylaws is deemed to have given that consent if the association has not received a refusal to consent 45 days after the association has delivered notice of the proposed amendment to the holder of the interest or mails the notice to the holder by certified mail, return receipt requested [*Subsection 47-236(i)*];
- The association may rely on the last recorded security interest of record in delivering or mailing notice to the holder of that interest [*Subsection 47-236(i)*];
- An amendment to the declaration that affects the priority of a security interest held by a mortgage holder or the ability of that holder to foreclose its security interest may not be adopted without that holder's consent in a written communication which is forwarded to the association either in the original or in electronic form [*Subsection 47-236(i)*].

Declaration, Section 26.2 - Common Expenses Attributable to Fewer than all Units

In addition to the provisions of Subsection 26.2(e):

- 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.

Declaration, Section 26.3 -Lien

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.

Declaration, Section 26.4 - Budget Adoption and Ratification

In addition to the requirements of this section:

- *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.
- 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 Subsection 4(h) concerning votes taken without a meeting.*
- *See the comments to Bylaws Subsection 11(a) concerning how notice of the meeting is to be given.*

Declaration, Section 26.5 - Ratification of Nonbudgeted Assessments

Notwithstanding the provisions of this section:

- The standard for when a vote must be taken on a special assessment has changed. If the total of all non-budgeted assessments during the current calendar year, including the assessment just adopted by the board, exceeds 15% of the current annual budget, the current special assessment must be ratified by the unit owners in the same manner as a budget under Declaration Section 26.4 **as modified by this overlay**, even if the current special assessment by itself is less than 15% of the current budget [*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.

Declaration, Section 27.1 - Right to Notice and Comment

Notwithstanding the requirements of this section:

- Notice of a proposal to adopt or amend a rule must be given at least 10 days before the meeting at which the board will receive comments and vote [*Subsection 47-261b(a)*].
 - The association must give notice to the unit owners in compliance with Bylaws Subsection 11(a) **as modified by this overlay**.
 - The notice must contain [*Subsection 47-261b(a)*]:
 - The text of the proposed change or amendment or of the provision being repealed;
 - The board's intention to adopt the proposed change or amendment; and
 - The date on which the board will act on the proposed change or amendment, after considering any comments from 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 an amendment or change, the association must notify the owners of its action and provide them with a copy of the amendment or change [*Subsection 47-261b(b)*].
- Notices of other proposed actions to which this section applies must be given at least five days before the meeting at which the board will receive comments and vote [*Subsection 47-250(b)(5)*]

Declaration, Section 27.2 - Right to Notice and Hearing

Notwithstanding the requirements of this section:

- The association must give notice to the affected unit owners in compliance with Bylaws Subsection 11(a) **as modified by this overlay**.

Declaration, Section 27.3 - Appeals

Notwithstanding the requirements of this section:

- The association must give notice to the affected unit owners in compliance with Bylaws Subsection 11(a) **as modified by this overlay**.

BYLAWS

Bylaws, Subsection 3(b) - Powers and Duties

- *See the comments to Declaration Section 16.2 concerning powers and duties.*

Bylaws, Subsection 3(d) - Removal of Members of the Executive Board

Notwithstanding the requirements of this subsection:

- 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 comment to Bylaws Subsection 4(h) 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(a)].
- 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, Subsection 3(e) - Vacancies

- *See the comment to Declaration Section 16.3 concerning how vacancies on the board are to be filled.*

Bylaws, Subsection 3(g) - Meetings of the Executive Board

In addition to the requirements of this subsection:

- The board must meet at least two times per year [Subsection 47-250(b)(3)];

- 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 subsection:

- 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 Declaration Section 16.2 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 Declaration Section 27.1 concerning notice and comment.*

- 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 a 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.*
- *See the comments to Declaration Sections 17.1 and 17.3 concerning open meetings and executive sessions.*
- 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, Subsection 3(h) - Quorum of the Executive Board

Notwithstanding the requirements of this subsection:

- 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)*].
- 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, Subsection 3(i) - Election of Officers

- *CIOA has been amended to permit the unit owners to elect officers but only if the declaration or bylaws provides for such an election. Otherwise, the officers are elected by the board [Subsection 47-245(f)].*

Bylaws, Subsection 3(j) - Liability of the Executive Board

Notwithstanding the requirements of this section:

- Officers and members of the board not appointed by a declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under Chapter 602 of the Connecticut General Statutes, [The Connecticut Revised Nonstock Corporation Act] and are subject to the conflict of interest rules governing directors and officers under Chapter 602. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized [Subsection 47-245(a)].

Bylaws, Subsection 3(k) - Resale Certificates and Statements of Unpaid Assessments

Notwithstanding the requirements of this subsection:

- 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 and 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)].

- 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 Declaration Section 26.2 concerning common charges attributable to fewer than all units.*

Bylaws, Subsection 4(a) - Annual Meeting

In addition to the requirements of this subsection:

- 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, Subsection 4(c) - Special Meetings

- *See the comment to Bylaws Subsection 4(a) - Annual Meeting. This applies to special meetings as well.*

Notwithstanding the requirements of this subsection:

- 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)*].

Bylaws, Subsection 4(d) - Notice of Meetings

In addition to the requirements of this subsection:

- 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)*].
- *See comment to Bylaws Subsection 11(a) concerning notice to unit owners.*

Bylaws, Subsection 4(e)(ii)

- *See comment to Bylaws Subsection 3(h) concerning quorum requirements.*

Bylaws, Subsection 4(f) - Conduct of the Meetings

In addition to the agenda items listed in this subsection:

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

In addition to the requirements of this subsection:

- 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, Subsection 4(g) - Majority of Votes

Notwithstanding the requirements of this subsection:

- 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, Subsection 4(h) - Method of 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 subsection 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)].

Bylaws, Subsection 4(h)(ii)

Notwithstanding the requirements of this subsection:

- 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.*

Bylaws, Subsection 4(h)(iii)

Notwithstanding the requirements of this subsection:

- Votes allocated to a unit owned by the association shall be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association [Subsection 47-252(g)]. *This requirement is of significance only in connection with votes to amend the declaration, to reject the budget, to approve a borrowing, or other votes measured against the total voting power of the association. In these situations, seek advice of counsel.*

Bylaws, Subsection 5(a)

In addition to the requirements of this subsection, 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 insures 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, Subsection 5(b)

In addition to the requirements of this subsection:

- 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 subsection:

- 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, Subsection 7(e)

- *See comments to Declaration Section 26.2 concerning repairs resulting from misconduct.*

Bylaws, Subsection 7(h)

- *See comments to Declaration Section 26.4 concerning adoption of the budget.*

Bylaws, Section 8 - Collection of Common Expenses

- *See comments to Declaration Section 26.3 concerning liens.*

Bylaws, Subsection 11(a) - Notices

Notwithstanding the requirements of this subsection:

- 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, Subsection 11(d) - Waiver

- *See the comments to Declaration Section 16.2 relating to the board enforcing a right or compromising a claim.*

RULES

Rules, Section 3.1

- *This section 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 Declaration Section 26.2 concerning the assessment of common expenses related to failure to observe maintenance standards.*

Rules, Section 8.4

- *This section 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 Declaration Section 26.2 concerning the assessment of common expenses related to failure to observe maintenance standards.*

Rules, Section 8.6

Notwithstanding the provisions of this section:

- *See the comments to Declaration Section 16.2 concerning adoption of rules regulating flags and signs.*