

C&S COMMON SENSE

CONDO AND HOA NEWS FROM SANDLER, HANSEN & ALEXANDER, LLC COMMUNITY ASSOCIATION LAWYERS

A NEWSLETTER FROM



98 Washington Street,
Third Floor
Middletown, CT 06457

Telephone
(860) 398-9090

Facsimile
(860) 316-2993

Website
www.shacondo.legal

CONTENTS

The Importance and Limitations of a Written Contract?.....1

Staggered Terms, in Simple Terms2

What the F&@% is a Limited Common Element?.....5

News About Our People7

Contact Us8

This newsletter has been prepared to provide readers with information concerning the law of condominiums and community associations in Connecticut. It is not meant to be a substitute for competent professional advice. Readers are urged to consult with competent legal counsel before taking action.

THE IMPORTANCE AND LIMITATIONS OF A WRITTEN CONTRACT

All too often, people approach contracts from two different extremes. Either they don't pay enough time and attention to drafting a thorough contract, or they want a bulletproof document that no party can ever breach. The facts are that well drafted contracts are invaluable, but no piece of paper is ever bulletproof.

The Importance of the Contract

A thorough, detailed contract is a necessity. It defines the expectations of the parties.

The contract should include the following terms and provisions:

- A detailed description of the work that the contractor will perform, and the products or services that the contractor will provide.
- A timeline for how and when the contractor will perform and complete the work.
- A description of any consequences that may be imposed on the contractor for failing to abide by the timeline or any other provisions of the contract, including the reimbursement of any attorneys' fees and court costs incurred by the association in the enforcement of the contract.
- A description of what insurance coverages the contractor must obtain and maintain during the course of the project.
- A description of the warranty given by the contractor, covering the work performed.
- A description of whether disputes between the contractor and the association will be resolved outside of litigation, such as through a mediation or alternative dispute resolution service.
- Depending on the scope and type of work that the contractor will perform, other terms and conditions may also be necessary.

A thorough, detailed contract is a necessity.

Often times, the drafting and discussion of the proposed contract requires the parties to address items that they hadn't previously realized were issues in need of consideration. In other words, the discussion and negotiation process may reveal issues that no one thought about originally. Identifying these issues, and addressing them during the discussion and drafting process, is certainly preferable to tripping over them after the work has commenced.

If, unfortunately, a dispute between the parties arises, then the contract will serve as guidance for resolving the dispute. If the terms of the contract are clear and complete, then resolving the dispute becomes that much easier.

The Limitations of the Contract

As thoughtful and thorough as a contract may be, it is still just paper. Even the best contract cannot prevent a determined party from breaching it. Ultimately, the enforcement of the contract is up to the parties and their willingness to proceed with legal action. Thus, the contract is only as good and as effective as the parties who enter into it.

With very limited exceptions, there is no government entity that will step in and force a party to comply with a contract. The Connecticut Department of Consumer Protection has limited authority to investigate certain kinds of claims against contractors working within regulated industries. However, the Department will only act if the contractor committed a violation of its regulations. A simple refusal by the contractor to fully perform under the contract is not likely to result in any action by the Department.

Therefore, it is up to the parties to proceed with legal action if the contract is breached. This can be a long and expensive process. However, the time and expense provide incentive to both sides to negotiate a satisfactory solution. If, in the end, a trial or hearing is required, the contract will be a key piece of evidence concerning what the parties expected out of the transaction.

Ultimately, the enforcement of the contract is up to the parties and their willingness to proceed with legal action.

Please contact our office if your association would like us to review any of its contracts with vendors, or if you would like our assistance in drafting an appropriate contract for a particular project.

STAGGERED TERMS, IN SIMPLE TERMS

There are a number of potential benefits to electing board members to staggered terms. Unfortunately, the process and requirements for creating staggered terms can be very confusing.

What are Staggered Terms?

Staggered terms for board members are multi-year terms under which the terms of individual directors expire on a rotating basis. At each annual meeting, the owners conduct elections only for those directors whose terms are expiring. The terms of other board members have not yet expired, and those board members will remain on the board.

What are the Benefits of Staggered Terms?

Staggered terms allow for more seasoned and experienced board members to work with the newer board members. Information and experiences can be shared and passed on, rather than lost in the transition from one group of board members to another.

By default, the terms of all board members expire annually. This means that the association must elect a new, full board every year at the annual meeting.

By serving on the board, the board members gain invaluable knowledge and experience. They have spent the past year or more learning about association governance and developing experience concerning how best to serve the community. If the directors' terms last for only one year, and they choose not to serve another term or are not reelected, that knowledge and experience is lost.

How are Staggered Terms Set?

Statutory Authority. Most Connecticut associations are incorporated as nonstock corporations. As such, they are governed by the Connecticut Revised Nonstock Corporation Act ("Nonstock Act").

Under Section 33-1086 of the Nonstock Act, a nonstock corporation may stagger the terms of directors, only to the extent provided for in its bylaws or certificate of incorporation. If staggered terms are permitted under the bylaws or certificate of incorporation, then the Nonstock Act requires the corporation to place directors of approximately equal number into groups, and to elect each group as follows:

- The first group is elected for a one-year term.
- The second group is elected for a two-year term.
- The third group is elected for a three-year term.
- And so on...

The Nonstock Act provides for no more than five groups of directors. At each successive annual meeting, the successors to the directors whose terms are expiring are elected for a term of two, three, four, or five years, as the case may be.

Documentary Authority. The bylaws of most Connecticut communities permit the owners to elect board members for staggered terms.

The typical provision states that at least one-third of the members of the board must expire annually. This limitation (which is very common, though not required by law), limits the extent to which the association can create groups as provided for under the Nonstock Act. For example:

- **Three Member Board.** The association can create three groups of directors. Each group consists of one director.
 - Director #1 is elected for a term of one year.
 - Director #2 is elected for a term of two years.
 - Director #3 is elected for a term of three years.
 - All successors are elected for a term of three years.

Staggered terms allow for more seasoned and experienced board members to work with the newer board members.

- **Five Member Board.** The association can create two groups of directors. One group consists of three members, and one group consists of two members.
 - The directors in one group are elected for a term of one year.
 - The directors in the other group are elected for a term of two years.
 - All successors are elected for a term of two years.

- **Seven Member Board.** The association can create two groups of directors. One group consists of four members, and one group consists of three members.
 - The directors in one group are elected for a term of one year.
 - The directors in the other group are elected for a term of two years.
 - All successors are elected for a term of two years.

- **Nine Member Board.** The association can create three groups of directors. Each group consists of three members.
 - The directors in group #1 are elected for a term of one year.
 - The directors in group #2 are elected for a term of two years.
 - The directors in group #3 are elected for a term of three years.
 - All successors are elected for a term of three years.

Who Decides on Whether to Set Staggered Terms?

Under Subsection 47-245(b) of the Connecticut Common Interest Ownership Act, the board of the association cannot set the terms of the directors. This power is reserved to the unit owners.

Therefore, the owners present at the annual meeting, in person or by proxy, may vote on whether to elect the board members for staggered terms. The vote requires the approval of a majority of the total number of votes cast, assuming that a quorum is present.

Please contact us if your association would like assistance in setting staggered terms for directors at the next annual meeting.

WHAT THE F&@% IS A LIMITED COMMON ELEMENT?

Limited common elements are one of the most often confused components of condominium living. What are they? Who owns them? Who maintains them?

Limited Common Elements ARE Common Elements

Forgive me if this sounds obvious, but limited common elements are, in fact, common elements. More specifically, they are a special subset of common elements. Nonetheless, they are often treated no differently from other common elements.

Units and Common Elements

Condominiums and other common interest communities are generally comprised of two types of property: units and common elements.

Units: The units are the individually owned portions of the property. In a residential community, the units are the residences in which people live.

The boundaries of the units may differ substantially from one community to the next. Often, the unit boundaries are the surfaces of the interior walls of the residences. In some communities, the unit boundaries are the exterior surfaces of the residence, such as the siding and roofing shingles. In other communities, the unit boundary is the boundary of the parcel of land, or lot, on which the residence is constructed.

With limited exceptions, whatever land and/or building components fall within the unit boundary is part of the unit. That is what the unit owner actually owns. And, for the most part, that is what the owner is responsible for maintaining, repairing, and replacing.

Common Elements: Simply put, the common elements are all portions of the community other than the units. With limited exceptions, all of the land and/or building components that fall outside of the unit boundaries, are common elements.

Limited Common Elements

As stated above, limited common elements are a special subset of common elements. A limited common element is a common element that is assigned to one or more units for their sole and exclusive use.

As a general rule, all residents of the community may use common elements. That's what common means: shared.

However, only the residents of the units to which a limited common element is assigned, may use that limited common element. The use is limited to just those units.

A limited common element is a common element that is assigned to one or more units for their sole and exclusive use.

411 on LCEs: FAQs

How are limited common elements assigned to units? Limited common elements are described in and assigned by the declaration of the community.

What portions of the community are typically limited common elements? This can vary widely from one community to the next. In a conventional condominium or a planned community, the limited common elements often, though not always, include the following:

- Exterior doors and windows.
- Decks, stoops, patios, and balconies.
- Walkways.
- Driveways, carports, and/or detached garages.
- Basements or basement storage areas.
- Chutes, flues, pipes, and ducts located outside the unit, but serving that unit exclusively.
- Telephone, television, and electrical receptacles and switches.
- HVAC components located outside the unit, but serving that unit exclusively.
- Yard areas.

If a limited common element is assigned to my unit, do I own it? No. In a condominium, all common elements, including limited common elements, are jointly owned by all owners. In a planned community, all common elements are owned by the association. If a limited common element is assigned to your unit, you have the sole and exclusive right to use it. No other resident may use it, unless it is also assigned to their unit.

If a limited common element is assigned to my unit, am I responsible for its maintenance, repair, and replacement? Maybe, maybe not. Generally, the association is responsible for the maintenance, repair, and replacement of the common elements. The governing documents of the association may require owners to maintain, repair, or replace limited common elements assigned to their units. If, however, there is nothing in the governing documents that requires the owner to perform this work, then the association remains responsible for it.

Can the association assess the cost of maintaining, repairing, or replacing my limited common element against my unit? Maybe, maybe not. Generally, common expenses associated with the maintenance, repair, and replacement of the common elements are shared by all unit owners. The governing documents may require the association to assess the expense of maintaining, repairing, or replacing limited common elements solely against the units to which they are assigned. If, however, there is nothing in the governing documents that requires this, then all unit owners must share in the cost.

These issues, like many others in condominium and other common interest communities, depend mainly on what the governing documents say. A careful review and analysis of the documents is therefore critical when determining the relative responsibilities of the unit owners and the association.

The governing documents of the association may require owners to maintain, repair, or replace limited common elements assigned to their units.

NEWS ABOUT OUR PEOPLE

Sandler, Hansen & Alexander, LLC is offering a seminar for our clients on Saturday, September 22, 2018. Scott Sandler, Christopher Hansen, and Michael Alexander will each give presentations on topics of interest and importance to our association clients. Guest speakers Richard Bouvier, of the Bouvier Insurance Agency, Dove A.E. Burns, a partner at the law firm of Obermayer Rebmann Maxwell & Hippel, LLP, and Kim McClain, Executive Director of the Connecticut Chapter of the Community Associations Institute, will also be participating in the presentation. The seminar will be held at the Red Lion Hotel, 100 Berlin Road, Nutmeg Room, Cromwell. Please contact us if you would like to receive more information or are interested in attending this event.

Sandler, Hansen & Alexander, LLC is co-sponsoring Barktober Fest, an event on Thursday, October 11, 2018, to benefit the Connecticut Humane Society and the many pets under its care. The event will take place from 5:00 pm until 8:00 pm, at Stubborn Beauty Brewing Company, 180 Johnson Street, Middletown. The event will include craft beer, food, and music. Please contact us if you would like to receive more information or are interested in attending this event.

Scott J. Sandler will be attending the CAI National Law Seminar in January, 2019. At the seminar, Scott will give a presentation on generational differences in the practice of law, including a discussion on the evolution of technology and communications.

Christopher E. Hansen will be a featured speaker at CAI-CT's Condo, Inc. program, taking place on February 2, 2019, at Belfour Property Restoration in Wallingford. Chris will be discussing various legal issues that associations and their boards must face. To register for this program, please contact CAI-CT at (860) 633-5692 or visit its website at www.caict.org.

CONTACT US

If you should call our office and the automated answering system answers, you may use the following extensions to reach us if we are in the office or to leave a message in our individual voice mailboxes. You may also contact us at the following e-mail addresses:

Scott J. Sandler:	Extension 101	ssandler@shacondo.legal
Christopher E. Hansen:	Extension 102	chansen@shacondo.legal
Michael S. Alexander:	Extension 103	malexander@shacondo.legal
Bev LaBombard:	Extension 100	blabombard@shacondo.legal
Laura McLaughlin:	Extension 105	lmclaughlin@shacondo.legal