

# C&S COMMON SENSE

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

## A NEWSLETTER FROM



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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 legal counsel before taking action.

## REASONABLE ACCOMMODATIONS: MANDATORY EXCEPTIONS UNDER FEDERAL FAIR HOUSING LAWS

*Associations have the authority to adopt rules and regulations governing the activities of people in the community. Nonetheless, federal fair housing laws require associations to make “reasonable accommodations” for residents that suffer from a disability. What is a reasonable accommodation?*

### Fair Housing vs. ADA

When people think of laws addressing disabilities, they often refer to the Americans with Disabilities Act (“ADA”). The ADA contains many requirements that must be met to accommodate disabled people.

However, these requirements apply only to places that are open to the general public. They do not typically apply to condos and other common interest communities. The ADA would only apply to these communities if they allowed members of the general public, not just residents of the community, to use their facilities. If the association sells clubhouse memberships to the general public, then the ADA applies to the community. If the use of the clubhouse is limited to residents and their guests, then the ADA does not apply.

Instead, condos and other common interest communities are governed by federal fair housing laws. These laws were drafted to regulate “housing providers,” which are typically landlords leasing residential property to tenants. Associations, however, are also treated as housing providers under these laws.

The ADA and fair housing laws vary greatly. In some ways, these variations benefit associations. In others, well, not so much . . .

- The ADA, in part, regulates the construction of buildings. Its requirements are designed to accommodate people with mobility issues, such as those who need wheelchairs. If the ADA applied to associations, many communities would be required to undertake very expensive modifications to their buildings.

- Under fair housing laws, associations must allow disabled residents to make certain modifications on an as-needed basis. They are not required to retrofit every building in the community.
- The ADA contains very specific definitions of “service animals.” Only specially trained dogs and miniature horses may qualify as service animals.
- Fair housing laws do not set any such standards for what may qualify as a “support animal.” There is no specificity as to species, and no special training is required. A support animal can be any kind of animal, so long as its presence helps the owner deal with his or her disability.

## Reasonable Accommodation = Mandatory Exception

Fair housing laws require associations to make reasonable accommodations for disabled residents. A reasonable accommodation is a mandatory exception to the association’s rules and regulations.

For example, many associations prohibit dogs, or certain breeds of dogs. Many associations have rules that set a maximum size of permissible dogs. If, however, a support dog happens to be larger in size than the maximum allowed under the association’s rules, or is one of the prohibited breeds, the need for the dog trumps the association’s rules. The association must grant an exception and permit the dog, even though the dog would not otherwise be permitted in the community.

The association may have a rule that prohibits pets from entering the clubhouse or pool area. Again, this rule would give way to a pet that is required to accommodate a disability.

Reasonable accommodations are not limited to just pets. For example, if an owner has mobility issues, the association must allow that owner to park his or her car in the parking space closest to his or her unit, even if that space is ordinarily reserved for visitors.

**Fair housing laws do not set any such standards for what may qualify as a “support animal.”**

## Reasonable Accommodation ≠ Blank Checks

While some exceptions must be granted, associations can still enforce reasonable rules and regulations.

The association may have to allow a resident to keep her extraordinarily large emotional support Great Dane. Nonetheless, the association may:

- Require the resident to keep her dog on a leash when on the common elements.
- Require the resident to pick up after the dog.
- Require the resident to remove the dog, if it exhibits aggressive behavior.

Associations must respond swiftly but thoughtfully to a resident’s request for a reasonable accommodation. Slow or inappropriate responses can easily lead to ugly and costly claims of discrimination. For this reason, the association should immediately consult with its legal counsel any time it receives a request for an accommodation.

## TIRED OF TOLERATING TROUBLESOME TENANTS?

*Many associations have had to deal with difficult tenants. Tenants may be less sensitive to issues impacting the community. They may disregard the rules and regulations. Addressing this behavior can be challenging for the association.*

### Eviction is an Option

The Connecticut Common Interest Ownership Act empowers associations to evict tenants who fail to abide by the governing documents, just as if the association is the landlord. While not an action to be taken lightly, this ability gives the association significant leverage for dealing with problematic tenants.

### Include the Tenant in the Enforcement Process

Unit owners are responsible for the actions of their tenants. If the tenant violates the governing documents, or causes damage to the community, the owner is responsible.

That said, associations should include tenants in their enforcement actions. When deciding to reside in the community, the tenant inherently agrees to abide by the governing documents. If the tenant violates the documents, the association may fine both the unit owner and the tenant. If the tenant continues to violate the documents, the association can evict the tenant. However, the association must give both the tenant and the owner notice of the violation and an opportunity to be heard (“Notice and Hearing”) before levying fines or proceeding with an eviction action.

**If the tenant violates the documents, the association may fine both the unit owner and the tenant.**

### Notice and Hearing

Notice and Hearing is always required before the association can levy fines for violations of the governing documents. It is also required before an association can seek to evict a troublesome tenant.

**The Notice.** The association must send the notice to the owner and to the tenant at least 10 business days before the hearing. The notice should contain the following:

- A description of the violation.
- The date, time, and location of the hearing.
- A list of the actions that the association may take after the hearing.

The association must send the notice to the owner and to the tenant by both certified and first-class mail.

**The Hearing.** The hearing is the owner and tenant's opportunity to explain their side of the issue.

The hearing must take place at either a regular or a special board meeting. The hearing should take place during the open portion of the meeting, not in executive session, for the following reasons:

- Most violations take place in the open, so there should be no expectation of privacy.
- The association has broad flexibility to determine whether and how to proceed with enforcement action. Not all situations are equal. The board may choose to proceed with enforcement action in one case but not another. If the hearing is conducted in executive session, the community at large may not understand the board's rationale. This may cause some owners to question the board's sense of fairness.

**The hearing should take place during the open portion of the meeting, not in executive session.**

**The Result.** The association must inform the owner and the tenant of its decision within 30 days after the hearing. The notice of the decision must be sent to the owner and the tenant by both certified and first-class mail, just like the notice of the hearing.

## Mandatory Lease Addendums

To reduce the likelihood that a tenant will violate the governing documents, some associations have amended their governing documents to require owners to include a mandatory addendum in their lease agreements. This addendum may require the following:

- That either the owner or tenants provide the association with the tenants' names, work addresses, telephone numbers, and motor vehicle information;
- That the owner provide the tenants with a copy of the governing documents;
- That the tenants agree to be bound by the governing documents;
- That the tenants understand that the association has all of the same enforcement powers against them as it has against the owner, including the power to levy fines after Notice and Hearing;
- That if the tenants violate any of the provisions of the governing documents, the association has the power to bring a summary process action against them;
- That the tenants and the owner will be jointly and severally liable to the association for any assessment against the Unit, including, but not limited to, fines, attorney's fees and costs, charges resulting from misconduct, and any other sums resulting from the occupancy of the unit or by their conduct or the conduct of the members of their household or their guests;
- That the association shall not be liable to either the owner or the tenants for any action it takes in good faith to enforce the governing documents.

The governing documents must expressly empower the association to require this addendum. Therefore, your association may need to amend its documents if it wishes to require owners to include the addendum in their leases.

Please contact us if you need assistance in addressing issues caused by problematic tenants, or to discuss an amendment to the documents to require the addendum.

## BANKRUPTCY: THE AUTOMATIC STAY, DISCHARGE, AND ITS IMPACT ON UNPAID COMMON CHARGES

*Bankruptcy can delay, but not avoid, the collection of unpaid common charges. The keys are to monitor bankruptcy actions closely and, when necessary, to act swiftly.*

### Types of Bankruptcy Cases

Bankruptcy laws are in place to help people deal with overwhelming debt. A person who files for bankruptcy is referred to as the “debtor.” The debtor typically files a petition with the bankruptcy court to initiate the action.

When a natural person (as opposed to a business entity) files for bankruptcy, he or she typically files either a Chapter 7 or a Chapter 13 action. The term “Chapter” is a reference to the applicable chapter of the federal statutes governing bankruptcy laws.

**Chapter 7.** Debtors file a Chapter 7 action when they cannot repay their debts, even over an extended period of time. The debtor is asking the court to order the discharge of those debts. A discharge is a release of the personal obligation to pay the debt. If the debtor qualifies for a discharge, the court will usually grant the discharge within a few months after the debtor filed his or her petition.

**Chapter 13.** Debtors file a Chapter 13 action when they can repay their debts over an extended period of time.

Under a Chapter 13 action, the debts are divided into two categories:

- **Prepetition Debt.** This includes all amounts owed as of the day on which the debtor filed the bankruptcy action.
- **Post-Petition Debt.** This includes all new amounts that become due and payable after the debtor filed the bankruptcy action.

The court will require the debtor to propose a repayment plan to pay off the prepetition debt. Courts allow these plans to last for as long as five years.

Additionally, the debtor must pay post-petition debts on time, as they accrue.

### The Automatic Stay

The filing of a bankruptcy action results in an automatic stay of any enforcement action by a creditor against the debtor. No creditor may begin or continue with any enforcement action without first obtaining the court’s approval.

If a unit owner files for bankruptcy, the automatic stay prohibits the association from doing any of the following:

- Sending demand letters to the owner.
- Initiating, or threatening to initiate, any legal action, including a foreclosure action.
- Continuing any legal action that was pending at the time that the owner filed for bankruptcy.
- Suspending the rights and privileges of the owner, including the right to use common element recreational facilities.

## Obtaining Relief from the Automatic Stay

The association must obtain the bankruptcy court's approval before it can proceed with collection efforts. To obtain this approval, the association, through its legal counsel, files a motion for relief from stay.

**Chapter 7.** As stated above, a Chapter 7 action usually is resolved in a matter of months. If the owner continues paying the common charges, it may not make sense to incur the attorneys' fees and costs required to obtain relief from stay. If, however, the owner is not paying the common charges, then the association should seek relief.

**A discharge does not impact the ability of the association, or the mortgage holder, to enforce the lien.**

The bankruptcy courts typically grant relief in cases where the owner has little or no equity in the unit. There is no equity when the total amount of liens on the unit, including the common charges and any mortgages, exceed the value of the unit.

**Chapter 13.** In a Chapter 13 action, there are two situations where an association should request relief from the automatic stay:

- The owner fails to pay the post-petition common charges and assessments on time.
- The owner has failed to propose to the court a payment plan that includes the total balance of prepetition common charges.

## Impact of a Discharge

When the bankruptcy court grants a discharge, the debtor is no longer personally obligated for the debt. The impact of the discharge varies, depending on whether the debt is secured by collateral.

**Unsecured Debts.** Unsecured debt is a debt that is not secured by some form of collateral. For example, credit card debts are unsecured. If the debtor receives a discharge, he or she is no longer obligated to pay the unsecured debt.

**Secured Debts.** Associations liens, like mortgages, are secured by liens on the unit. A discharge does not impact the ability of the association, or the mortgage holder, to enforce the lien.

The discharge does relieve the owner of any liability for shortfalls, following the enforcement of the lien. For example, if the outstanding balance of the mortgage is \$100,000, but the foreclosure sale only nets \$85,000, the discharge prevents the mortgage holder from collecting the remaining \$15,000 from the debtor.

Thus, the association may still foreclose its lien on the unit to collect the unpaid common charges. If the owner wishes to keep the unit, he or she must pay the outstanding common charges in full, despite the discharge.

The filing of a bankruptcy petition may delay the collection of unpaid common charges. Nevertheless, if the owner intends to keep the unit, he or she must eventually pay those charges in full.

## NEWS ABOUT OUR PEOPLE

**Sandler, Hansen & Alexander, LLC** will be an exhibitor at the CAI-CT Annual Expo, which takes place on Saturday, March 16, 2019, at the Aqua Turf in Plantsville, Connecticut. We can be found at booth #60.

**Scott J. Sandler** attended the CAI National Law Seminar this past January, where he gave a presentation on modern technology and its impact on association operations and governance.

**Christopher E. Hansen** was a featured speaker at the CAI-CT Condo, Inc. seminar, which took place on February 2, 2019. At the upcoming CAI-CT Annual Expo, Chris will serve on a panel of attorneys addressing association governance issues.

**Karen Wojnarowski** has joined our firm as a paralegal. Karen received her BA in History from Eastern Connecticut State University. Karen has nearly 20 years' experience as a paralegal, focusing primarily on collection and foreclosure work.

## NEW CLIENTS

We are often asked whether we are accepting new clients. We are, and we are always happy to meet with the boards of associations to discuss the legal services that we are available to provide.

## 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:

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