

# C&S COMMON SENSE

CONDO AND HOA NEWS FROM SANDLER & HANSEN, 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.

## ANNUAL BUDGETS AND SPECIAL ASSESSMENTS: THE POWER OF REJECTION

*Every year, the association must adopt an annual budget. From time to time, the association may need to adopt a special assessment. The procedures for adopting the budget and certain assessments provide for a balance of power between the board and the individual unit owners.*

### The Annual Budget

The procedures for adopting an annual budget are set out in Subsection 47-261e(a)(1) of the Connecticut Common Interest Ownership Act. Subsection 47-261e(a)(2) of the Act sets out an alternative process, but this alternative applies to only one community in Connecticut. All other Connecticut communities must follow the procedures set out in Subsection 47-261e(a)(1).

Under Subsection 47-261e(a)(1) of the Act, the association adopts the budget as follows:

1. The board of the association adopts a proposed annual budget.
2. Within 30 days of adopting the proposed budget, the board must send a summary of the budget to all unit owners. The summary must include a statement of the amount of any reserves provided for under the proposed budget, and how those reserves were calculated.
3. When the board provides the summary, it must also give the owners notice of either a meeting or a vote by ballot without a meeting to approve the proposed budget.
4. The budget is deemed approved unless it is rejected by owners having a majority of the total voting power in the association at the meeting or in the vote by ballot without a meeting.

Under this process, the owners can reject, i.e.: veto, the proposed budget. The rejection or veto requires the vote of owners having a majority of the total voting power in the association. If the budget is not rejected, then it is automatically approved.

The statute permits the declaration of the community to require a higher voting requirement to reject the budget, but not a lower requirement. Thus, the declaration could require the vote of owners having 75% of the total voting power to reject the budget. The declaration cannot permit rejection by owners having anything less than a majority of the total voting power.

### Rejection: It's Not Me; It's Definitely You

In embracing the budget rejection process, the Act acknowledges several real-world factors that impact association governance:

- The association is governed by a board, the members of which have been elected by the unit owners. Presumably, the unit owners elected those board members because the owners trust their judgment and have faith in their leadership abilities.
- Often, unit owners choose not to participate in association business. Unit owners often purchase units in a common interest community so that they don't have to worry about the daily details of operating and governing the community.
- Unit owners will participate when they are upset. If owners are angry or concerned about an issue impacting the community, they are much more likely to participate in association business.
- Anytime an association considers increasing charges, some owners will object. The board is usually in the best position to determine the financial needs of the community. Its decisions should not be easily overturned by a small but vocal minority of the owners in the community.
- If a majority of the owners in the community object to the board's proposed budget, then the board has misread the priorities of its constituents. The board must then consider alternatives that are more appealing to the community at large.

### Rejection vs. Approval: All or Nothing

The Act empowers the owners to reject the entire budget. The Act does not empower the owners to reject just a portion of the budget. Thus, the owners may not review the budget and exercise a line-item veto. The proposed budget is either approved or rejected as a whole.

### The Voting Process

The association must conduct either a meeting of the owners to approve the budget, or a vote by ballot without a meeting.

Voting at a Meeting. At any meeting of the owners, the first issue is establishing whether enough owners are present to constitute a quorum. In some associations, the presence of any owners will constitute a quorum. Other associations, however, require some minimum number of owners to be present, in person or by proxy, in order to establish a quorum.

If a quorum is not present at the meeting, then the association cannot proceed with the meeting. Under the Act, the budget is then automatically approved because it was not rejected at the meeting.

If a quorum is present, then the chair must ask the owners whether anyone wishes to make a motion to reject the budget.

- If no motion is made, then the budget is automatically approved.
- If the motion is made but not seconded, then the motion fails and the budget is automatically approved.

If there is a motion and a second, then the owners may discuss whether to reject the budget. After that discussion, the owners will conduct a vote. Rejection of the budget requires the vote of owners having a majority of the total voting power in the association. For example:

- Assume that the community consist of 100 units, each with one equal vote.
- Rejection of the budget requires the affirmative vote of the owners of at least 51 units.
- If less than 51 unit owners are participating in the vote, in person or by proxy, the vote fails and the budget is approved.
- If 60 owners participate in the vote, and 49 owners vote to reject the budget, the vote fails and the budget is approved. It does not matter that a majority of the votes cast were in favor of rejection.

Voting by Ballot Without a Meeting. Conducting a vote by ballot without a meeting may be more convenient for owners. The vote can be conducted using mail-in ballots or, for a more sophisticated or tech-savvy community, using electronic ballots.

A vote by ballot without a meeting also eliminates the use of parliamentary procedures. There is no need to have a motion with a second. Instead, the question is set in advance: "Shall the proposed annual budget be approved or rejected?"

A vote without a meeting must still honor the association's quorum requirements. If not enough votes are cast to establish a quorum, then the vote fails and the budget is automatically approved.

If enough votes are cast to satisfy the quorum requirements, then the ballots are tallied. Just like a vote at a meeting, rejection requires the vote of a majority of the total voting power in the association. Otherwise, the budget is approved.

**The Act empowers the owners to reject the entire budget. The Act does not empower the owners to reject just a portion of the budget.**

## Rejection of Special Assessments

Under Subsection 47-261e(b)(1) of the Act, the unit owners may reject certain special assessments. Subsection 47-261e(b)(2) of the Act contains an alternative method for rejecting special assessment. This alternative, however, applies to only one community in Connecticut. All other Connecticut communities are governed by the procedures set out in Subsection 47-261e(b)(1).

Subsection 47-261e(b)(1) allows the board of the association, in any calendar year, to levy special assessments of up to 15% of the association's current operating budget, without unit owner approval. Once the total amount of special

assessments levied in a given year exceed 15% of the budget, any additional assessment, regardless of size, is subject to rejection by the owners. For example:

- Assume the association has an annual budget of \$100,000.
- In February, the association must levy a special assessment in the amount of \$10,000 to cover additional, unforeseen snow removal costs. Because this assessment is equal to only 10% of the operating budget, the board may approve it without any vote of the unit owners.
- In September, the association must levy a special assessment in the amount of \$8,000 to cover the costs of cleaning up after a severe storm. The January and September assessments, combined, equal 18% of the operating budget. The association must therefore call a meeting of the owners, or conduct a vote by ballot without a meeting, to approve the assessment.

**Just like the annual budget, the assessment is approved unless rejected by unit owners having a majority of the total voting power in the association.**

Just like the annual budget, the assessment is approved unless rejected by unit owners having a majority of the total voting power in the association.

These procedures grant the board the flexibility to make financial decisions for the association, while also giving the unit owners protection against a board that has largely misread their priorities and expectations?

## **TRUST BUT VERIFY: CONFIRMING PROFESSIONAL LICENSES**

*Connecticut consumer protection statutes require certain professionals, including home improvement contractors, plumbers, landscapers providing certain services, elevator mechanics, and even community association managers, to meet and maintain certain licensing requirements. Before hiring these professionals, the association should verify that they are currently licensed.*

### **Verifying a License**

Anyone with internet access can verify a license using the website maintained by the Department of Consumer Protection (“DCP”).

1. Navigate to the DCP’s eLicense website: <https://www.elicense.ct.gov/>.
2. In the upper righthand corner of the screen, click on the drop-down arrow next to “ONLINE SERVICES”.
3. Under the column titled “License Lookup & Download”, click on the link “Lookup a License”.
4. A box titled “Search Criteria” will appear. You can search for a license by license type, license number, business name, or the name of the individual. In most cases, we recommend performing separate searches for the name of the individual and for the name of the business.

## Why Verify?

Licensing requirements are imposed in order to protect the consumer. They are designed to ensure that the people holding themselves out as professionals are qualified to perform the services for which they are hired.

Additionally, licensed home improvement contractors are required to contribute to the Home Improvement Guaranty Fund. The fund is designed to provide additional protections to the customer, as follows:

- A customer sues a licensed contractor for nonperformance and is awarded a monetary judgment by the court.
- The contractor either disappears or doesn't have the money to pay the judgment.
- The customer can make a claim under the Home Improvement Guaranty Fund.
- The fund will reimburse the customer up to \$15,000 towards the judgment.

If, however, the contractor was not licensed, then the customer cannot make a claim under the fund.

Additional information regarding the Home Improvement Guaranty Fund can be found at <https://portal.ct.gov/DCP/Common-Elements/Consumer-Facts-and-Contacts/Home-Improvement-Guaranty-Fund>.

Please contact our office if you would like assistance in verifying the licenses of the professionals your association may wish to hire.

**Licensing requirements are imposed in order to protect the consumer. They are designed to ensure that the people holding themselves out as professionals are qualified to perform the services for which they are hired.**

## ACTIVE ADULT COMMUNITIES: SAFEGUARDING THE PROTECTED STATUS

*Active adult communities, which prohibit children from living in the community, are a perfectly legal form of age discrimination. That is, so long as the community maintains its protected status.*

### Federal Fair Housing Laws Generally Prohibit Discrimination Against Families with Children

Housing providers, including community associations, are generally prohibited from taking actions that discriminate against children. This includes an outright ban on children residing in the community. However, it also includes adopting rules or regulations that directly impact, or have a disparate impact, on the activities of children. For example:

- The association may not adopt a rule that prohibits children from leaving their toys on the common elements.
  - o The association may prohibit residents from keeping and storing personal property on the common elements.
- The association may not adopt a rule that requires infants to wear waterproof diapers while in the community pool.
  - o The association may require incontinent persons to wear waterproof diapers while in the pool.

Rules that target children leave the association vulnerable to a claim of discrimination.

## The Exception for Age Restricted Communities

Under the federal Housing for Older Persons Act (“HOPA”), it is perfectly legal to discriminate against children, so long as the community meets certain requirements:

- At least 80% of the units in the community must be occupied by at least one person who is 55 years of age or older.
  - o This restriction regulates occupancy, not ownership. The age of the unit owner makes no difference. The focus is on whether someone who is at least 55 is residing in the unit.
  - o The governing documents may require a higher percentage than 80%. In fact, the documents of many age-restricted communities require that all of the units must be occupied by at least one person who is 55 or older.
- The community is operated and marketed as an age-restricted community.
  - o The community signage should state that it is an active adult or age-restricted community.
  - o The association should talk to local real estate agents to make sure that their listings state that the community is age-restricted.
- Upon the sale or transfer of a unit, the association should require the new owners or occupants to provide verification that at least one resident is 55 or older. Acceptable forms of verification include:
  - o A driver’s license.
  - o A passport.
  - o A birth certificate.
  - o Military identification.
  - o An immigration card.
  - o Another form of identification issued by a state or federal authority.
  - o An affidavit or signed statement.
  - o Personal knowledge.

**The age of the unit owner makes no difference. The focus is on whether someone who is at least 55 is residing in the unit.**

- The association must conduct a census of the community at least once every two years, confirming that at least 80% of the units are occupied by at least one person who is 55 or older.

So long as the association complies with these requirements, it will maintain its protected status, thus allowing it to legally prohibit children from residing in the community.

## The Other 20%

As stated above, HOPA requires that at least 80% of the units must be occupied by at least one person who is 55 or older.

Question: What about the other 20%? Can those units be occupied by anyone, regardless of age?

Answer: No.

First, the prohibition on children applies throughout the entire community, not just on 80% of the units.

Second, as stated above, the declaration may require that all units be occupied by a resident who is 55 or older.

Third, the remaining 20% is a cushion or buffer. It is not a license to sell some units for permanent occupancy by younger people. Instead, it allows the association to deal with the following kinds of situations, where one spouse or partner is over age 55 but the other is not:

- The older spouse or partner moves into a long-term care facility. The younger spouse or partner may continue to reside in the unit.
- The older spouse or partner passes away. The younger spouse or partner may continue to reside in the unit.
- The spouses or partners separate or divorce. The younger of the two may continue to reside in the unit.

Please contact our office if your association has questions about maintaining its protected status as an age-restricted community.

**The association must conduct a census of the community at least once every two years, confirming that at least 80% of the units are occupied by at least one person who is 55 or older.**

## HOW TO 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	<a href="mailto:ssandler@sandlercondolaw.com">ssandler@sandlercondolaw.com</a>
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