

# 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.

## CAN YOU SPOT THE VIOLATION?

Not all violations are obvious, and some things that appear to be violations actually are not. Before taking action, make sure a violation exists.

The following examples take place at Summer Lovin' Estates. There are two types of homes in Summer Lovin' Estates:

- **Detached Homes.** These are single-family detached homes built on lots. The owner of a detached home owns the land on which the home is constructed.
- **Attached Townhouses.** The unit boundaries of the townhouses are the inner walls, floors, and ceilings. The land around the townhouses is a common element.

**Example #1:** Danny and Sandy own a detached home in Summer Lovin' Estates. Danny coaches the Rydell High School baseball and basketball teams. Sandy is a hypnotherapist that helps people quit smoking. Their son, Sonny, suffers from epilepsy and, due to his medical condition, high anxiety. Danny and Sandy purchased two alpacas named Llama Llama and Ding Dong. Llama Llama is trained to detect when Sonny is about to have a seizure. Ding Dong provides Sonny with emotional support to help deal with his anxiety. Sandy uses the wool from the alpacas to knit sweaters, which she sells at the local farmers' market

**Where is the Violation?** The governing documents of Summer Lovin' Estates permit owners to have ordinary household pets for non-commercial purposes. Let's break it down:

- **Is keeping the alpacas in the home a violation?** Maybe, maybe not. Under federal law, a service animal is specifically trained to provide a particular service to the owner. However, only dogs are recognized as service animals. Alpacas are not. Thus, Llama Llama is not a service animal. On the other hand, emotional support

animals require no special training. Furthermore, they are not limited to just dogs. Any animal that is ordinarily kept in a household may serve as a support animal. Therefore, keeping Ding Dong may not be a violation unless a court determines that alpacas are not household pets. That decision, by the way, is far from guaranteed. There have been cases where the courts found chickens and pygmy goats to be household pets.

**Any animal that is a household pet may serve as a support animal.**

- Sandy selling the sweaters she knits from the alpaca wool may also be a violation because she is using the alpacas to engage in commercial activities.

Example #2: Frenchie is Sandy's best friend and lives in the detached home next door. Frenchie uses her spare bedroom as a hairstyling salon. She also has a cottage bakery license, and she bakes cookies and cupcakes that she sells at the farmers' market, next to Sandy's sweater booth.

Where is the Violation? The only potential violation would be if Frenchie's salon customers do not reside within Summer Lovin' Estates. Home-based business pursuits are typically permitted, so long as they do not require visitors from outside of the community and they do not require unreasonable levels of mail or trash.

Example #3: Kenickie and Rizzo live in a townhouse across the street from Frenchie. Kenickie has an old Ford T-bird parked on their limited common element driveway that he's constantly working on. He's replaced the boosters, struts, and shocks, but the four-on-the-floor transmission is shot. Rizzo operates a food truck selling gourmet hot dogs. She calls it "Bite the Wienie with Relish," and has the name painted on both sides of the truck. During the evening, Rizzo parks her food truck next to the jalopy. She uses magnetic panels to cover up the signage.

Where is the Violation? Most associations have rules against parking inoperable vehicles within the property. They also typically prohibit residents from working on their vehicles while on the property. Therefore, Kenickie's T-bird is a problem. Most associations also prohibit parking vehicles that have signage advertising a business. Rizzo, however, is covering her signage. Therefore, her food truck is not a violation unless the governing documents specifically prohibit it

**Most governing documents prohibit nuisances and obnoxious behavior that interferes with an owner's right to peacefully enjoy their homes.**

Example #4: Leo and Cha Cha live in the townhouse attached to Kenickie and Rizzo's townhouse. The close proximity has been difficult over the years. Back in high school, Leo and Kenickie got into a fight while at the prom and they have disliked each other ever since. Leo is a heavy smoker, despite several offers by Sandy to help him quit. Additionally, Cha Cha likes to play her music at such a volume that Kenickie and Rizzo can hear it through the wall separating the two townhouses. Kenickie and Rizzo have complained to the association several times about the smoking and the music.

Where is the Violation? Most governing documents prohibit nuisances and obnoxious behavior that interferes with an owner's right to peacefully enjoy their homes. The smoke and the loud music may certainly fall within the definition of nuisance and obnoxious behavior.

## WHAT CAN WE DO TO THEM?

This question comes up quite often. A violation (possibly real, possibly perceived) is committed and some members of the board or others in the community expect the association take action. But what action should we take? Is the community prepared to devote time and money to proceeding with legal action? Is any action truly warranted?

Let's take another look at our examples and the association's options for responding to the violations.

Example #1: While the presence of at least one, if not both alpacas is a violation, the association should look at the whole picture in deciding how to respond. Such factors may include:

- The animals are present due to the medical needs of a disabled child.
- Sandy and Danny own the land on which their home is constructed. The land is not common element for everyone's use and enjoyment.

If Sandy and Danny take care of the alpacas and clean up after them, the association can accommodate their son's disability with little, if any, impact on the community. Thus, this may be a violation that does not warrant any further action by the association.

Example #2: The issue is whether Frenchie has customers who do not reside in the community. First, can the association prove it? Will any of the neighbors be willing to confirm whether they have seen strangers coming in and out of Frenchie's home? And can we prove that they were paying customers, not just friends? Furthermore, does the violation justify the time and expense of taking further legal action?

Example #3: Kenickie's T-bird, being inoperable, probably loud, and unsightly, detracts from the rest of the neighborhood. It goes against the association's desire to maintain an attractive community. If the association decides enforcement action is necessary, then it should proceed as follows:

- Send a warning letter to Kenickie and Rizzo.
- If the violation persists, schedule a hearing before the board. The association must send the notice to Kenickie and Rizzo via first-class mail at least 10 business days prior to the hearing. The notice may also be sent via certified mail and/or email.
- At the hearing, the board gives Kenickie and Rizzo an opportunity to tell their side of things. They may disagree that a violation has occurred. They may request an exception to the association's regulations. They may ask for time to find a new location for the vehicle. Or, they may not show up at all.
- The association has 30 days from the date of the hearing to inform Kenickie and Rizzo of the board's decision. It must send written notice of the decision to Kenickie and Rizzo via first-class mail. It may also send the notice via certified mail and/or email.

- If the board chooses to levy a fine, it may levy a single fine after the hearing and then daily fines for each day that the violation persists thereafter.
- If Kenickie and Rizzo ignore the association's demands and fail to pay the fines, then the association should consult with legal counsel regarding further action it may take. Such action may include foreclosing the association's lien on the home for unpaid fines and seeking a court order for the removal of the T-bird.

Example #4: Leo and Cha Cha are violating the governing documents of the association. But do their violations require action on the part of the association? No. Individual homeowners have their rights and their own ability to seek legal redress for a violation that constitutes a nuisance or otherwise impacts their peaceful enjoyment of their homes. They do not need the association to step in and resolve what amounts to a dispute between neighbors. The association is neither Principal McGee, Coach Calhoun, nor Supernanny. These violations do not impact the community at large. As such, the association should consider whether it should devote community resources to resolving them.

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## MEETINGS, MINUTES, & MORE

### I. Meetings.

#### A. Unit Owner Meetings.

1. Associations typically conduct one annual meeting per year to elect directors and to approve the operating budget. However, budget approval may take place at a separate meeting of the unit owners.
2. Special meetings called and conducted as needed or requested.
  - a. The meeting may be called by either the board president or a majority of the board. Also, a special meeting may be requested by unit owners having at least 20% of the total voting power.
    - (1) If requested by the owners, then the association has 15 days to schedule and give notice of the meeting. Otherwise, any owner on the request may do so.
  - b. Only items listed in the notice may be considered at the meeting..
3. The president chairs the meeting.
4. All unit owners have a right to make appropriate motions, participate in the debate, and cast a vote. "Appropriate" means an action item that legally requires a vote of the unit owners, rather than a vote of the board.

B. Board Meetings.

1. Connecticut law requires a minimum of two board meetings per year.
2. If the board meets pursuant to a published schedule, no further notice of the meeting is required. The agenda must be available to the unit owners, on request, at least two days before the meeting.
3. If there is no published schedule, or a meeting is conducted outside of the published schedule, then the association must provide at least five days' notice of the meeting to all owners.
4. Unit owners may attend and observe. However, owners who are not board members have no right to make motions, participate in the debate, or cast a vote.
5. If the meeting is conducted remotely, owners must receive instructions for joining the meeting.
6. A portion of the meeting must be set aside for an open forum.
7. Executive session may only be used for limited purposes:
  - a. Consulting with the association's attorney.
  - b. Discussing pending or potential litigation, administrative actions, etc.
  - c. Discussing labor or personnel issues
  - d. Discussing contracts and other agreements currently being negotiated on behalf of the association
  - e. Discussing issues that should remain private, such as the nature of a resident's disability for which that resident has requested an accommodation.
8. No votes may be conducted while in executive session.
9. Board packages, except for executive session material, must be available to owners on request.

**If the board meets pursuant to a published schedule, no further notice of the meeting is required. The agenda must be available to the unit owners, on request, at least two days before the meeting.**

**Executive session may only be used for limited purposes**

II. Meeting Minutes. Minutes are a record of actions taken, not a transcript nor summary of what everyone said.

A. Unit Owner Meetings. The minutes should include the following:

1. A sign-in sheet to satisfy roll call.
2. The date and time that the meeting was called to order.
3. The precise language of each motion made and by whom.
4. Whether each motion received a second and by whom.
5. The outcome of the vote.
6. Time at which the meeting was adjourned.

B. Board Meetings. The minutes should include the following:

1. The date and time that the meeting was called to order.
2. A list of the board members in attendance.
3. The precise language of each motion made and by whom.
4. Whether each motion received a second and by whom.
5. How each member of the board voted, unless the vote was unanimous or the motion passed without objection.
6. The time at which the meeting was adjourned.

III. Parliamentary Procedure.

A. Connecticut law requires the use of the current edition of *Robert's Rules of Order Newly Revised* unless:

1. The declaration, bylaws, or some other law provides for an alternate set of rules; or
2. Two-thirds of the owners in attendance vote to suspend the use of *Robert's*.

- B. For smaller groups (12 and under), *Robert's* allows for less formal procedures. For example, if the topic of discussion is a proposed contract, the president may ask the other board members, "Is there is any objection to the approval of the contract?" If no one has an objection, then the president may state, "Hearing none, the contract is deemed approved." The minutes would then state that the contract was approved without objection.

For smaller groups (12 and under), *Robert's* allows for less formal procedures

#### IV. Committees.

- A. If a committee is delegated any decision-making authority by the board, then it must conduct meetings and keep minutes in the same manner as the board.
- B. If a committee is charged with reviewing an issue and making recommendations, but has no authority to make any decisions, then it does not have to abide by the same formalities as the board.

#### V. Board Decisions Outside of Meetings.

- A. The board may make decisions outside of formal meetings.
- B. The decision requires the written consent of at least 2/3 of the board members.
1. Emails are considered writings.
  2. So are text messages if they can be printed out on paper.
- C. If the board makes a decision outside of a meeting, then the association must give "prompt" notice of the decision to all unit owners.
- D. Social gatherings are not meetings. However, Connecticut law prohibits the board from using social gatherings to avoid the open meeting requirements.

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## NEWS ABOUT OUR PEOPLE

Sandler & Hansen, LLC will be an exhibitor at the CAI-CT Annual Expo, which takes place on Saturday, March 15, 2025, at the Aqua Turf in Plantsville, Connecticut. We can be found at booth #59.

Scott J. Sandler continues to chair the committee responsible for planning the CAI-CT Legal & Legislative Symposium. Scott was a featured speaker at the Symposium, which took place on October 24, 2024. On January 25, 2025, Scott gave a presentation on conducting meetings and taking minutes for CAI-CT's Condo Inc. program. At the upcoming Annual Expo, Scott will participate in a panel discussion on legal and insurance issues impacting community associations. Scott continues to serve as a member of the CAI Government & Public Affairs Committee and he is the chair of the Connecticut Legislative Action Committee.

Scott and Rebecca Sandler attended the CAI National Law Conference in San Antonio in January 2025. The law conference, which is held over several days, is the only national event that is designed to provide ongoing legal education for attorneys who are specifically focused on the representation of community associations.

Christopher E. Hansen was a featured speaker at the CAI-CT Legal & Legislative Symposium which took place on October 24, 2024. Chris continues to chair the CAI-CT Summer Sizzler social event. This event takes place every August, immediately following a board member and manager education session. For the past several years, the event takes place at Amarante's Sea Cliff in East Haven, overlooking Long Island Sound.

Scott and Rebecca Sandler and Bev LaBombard attended the CAI-CT Fall Fun and Vendor Fair at the Hops on the Hill Brewery in South Glastonbury this past September. Scott participated in a panel discussion regarding rising insurance costs and maintenance and reserve issues.

## 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:

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