

# C&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.

## COMMON MYTHS AND MISCONCEPTIONS

*Over the many years that we have been representing associations and working with board members and managers, we often find ourselves having to correct, over and over again, the same myths and misconceptions regarding association operations and governance.*

### **Community associations are a maintenance-free lifestyle.**

No. Community associations are social societies where unit owners agree to share in many costs of maintenance, repairs, insurance, and other such expenses. They are also small, democratic communities that self-govern through democratic elections. Both the associations and the unit owners have rights and obligations.

### **Unit owners are responsible for all portions of the community that service only their units.**

Wrong. Typically speaking, unit owners are responsible for the maintenance, repair, and replacement of their units, the boundaries of which are defined in the association's governing documents. The association is generally responsible for the maintenance, repair, and replacement of the common elements, which are defined as everything in the community that is not part of a unit.

Some common elements, which service one or more but less than all units, may be assigned to the units they serve as limited common elements. Because limited common elements are common elements, the association is responsible for them by default.

The governing documents may shift the responsibility for a limited common element to the unit owner, but that requires a specific provision in the documents.

**Because limited common elements are common elements, the association is responsible for them by default.**

Absent a specific provision, the association remains responsible for the limited common elements.

**The association is responsible for any damage to a unit that originates from an outside source.**

Not necessarily. By default, unit owners are responsible for the maintenance, repair, or replacement of their units. The association is not strictly liable for any damage caused by an outside source. The association is only responsible or liable for repairs to a unit under the following circumstances;

- The governing documents require the association to maintain, repair, or replace a portion of a unit.
- In many communities, the association's master insurance policy covers the units as well as the common elements. In those communities, when there is a loss that is covered by insurance (ignoring the application of a deductible), the association is required to repair or restore the unit.
- If the association was negligent in fulfilling its duty to maintain the common elements, and the damage to the unit was a foreseeable result of that negligence, then the association may be liable for the damage.

**If a unit owner fails to cast a vote, the association can count it as a "yes" vote.**

Almost never. There are different standards for voting, depending on the proposed action:

- Majority of the votes cast. Unless a different standard is required by law or the governing documents, proposed actions may be approved by a majority of the votes cast by the unit owners. For example, the approval of a motion to remove a member of the board requires a majority of the votes cast by the unit owners, assuming the quorum requirements are met.
- Majority or supermajority of the total voting power. Certain actions require the approval of owners having a set percentage of the total voting power in the association. In these cases, it is not enough to just count the number of votes cast in favor or against the proposed action. We must measure the votes cast in favor of the action against the total number of votes in the whole association. Failing to cast a vote is akin to casting a "no" vote. For example, approving a loan secured by an assignment of the association's future income requires the vote of unit owners having a majority of the total voting power in the association. Approving most kinds of amendments to a declaration requires the vote of owners having 67% of the total voting power, though certain amendments require an even greater percentage of approvals
- Approved unless rejected. This is likely the source of the confusion. Under Connecticut law, a proposed annual budget, and certain special assessments, are deemed approved unless rejected by owners having a majority of the total voting power in the association. The failure of a unit owner to cast a vote is akin to voting in favor of approving the budget or assessment.

**Unit owners only elect officers if specifically empowered to do so by the association's bylaws.**

**The unit owners elect the board president.**

Rarely. The bylaws of most associations require the unit owners to elect the directors, who are the members of the board. The directors then appoint the officers, typically the president, vice president, secretary, and treasurer. The bylaws often state that only the president and vice president must be directors. Thus, non-board members may serve as the treasurer and the secretary. Unit owners only elect officers if specifically empowered to do so by the association's bylaws.

**The president of the association is in a position of power and authority.**

No. The president has no authority to act unilaterally on behalf of the association. The president serves at the will of the board and may only act as directed by the board. The president may chair meetings, but he or she cannot refuse to entertain any proper motion. The president has no authority to issue executive orders. The president cannot unilaterally grant association approval of modification requests submitted by unit owners, or proposed contracts with vendors. The president can sign a contract only once the board has approved it and directed the president to execute it.

**The association will protect me from my neighbor's nuisances.**

Only to a limited extent. The association has very little ability to require neighbors to be civil and respectful. Similarly, the association has very little ability to require neighbors to be tolerant of each other.

The association can conduct hearings and it may levy fines. But when those actions are not sufficient to convince a bad actor to change his or her behavior, the only available remedy is legal action which will be expensive and time consuming. Most associations conclude that expending already limited community funds to resolve a private dispute between neighbors is not justified.

Furthermore, any aggrieved unit owner has the ability to enforce his or her own rights against their neighbor at their own expense. They do not need, nor is it reasonable to expect, the association to fight on their behalf.

Notwithstanding the above, if a resident is being harassed in a discriminatory fashion by another resident, the association is obligated to at least attempt to resolve the dispute.

**Amending the governing documents to make unit owners responsible for doors and windows will save us money.**

Not true. Many associations will amend the governing documents to shift maintenance and repair responsibilities to the individual unit owners to keep the common charges lower and to avoid long-term capital repairs and replacements. But these projects do not disappear. Either unit owners pay for them through common charges or they pay directly to the contractor they hire to do the work. In either case, unit owners pay for these projects. Additionally, the cost of the work could be higher on a per-unit basis when individual unit owners are contracting on their own behalf. Due to economies of scale, a large window replacement project undertaken by the association may cost less on a per-unit basis.

**The association must obtain three competitive bids for any large project.**

Not a bad idea, but not a requirement. No one wants to over-pay for a project; everyone wants to save some money. However, the goal should not be to hire the cheapest contractor. The goal should be to hire a contractor who does quality work for a fair price. If the association has experience working with a particular contractor who has performed well in the past, and the price seems fair, there is nothing wrong with choosing to forgo the bidding process and to hire that contractor again.

**My common charges pay your legal fees.**

True, but when we represent the association, we do not represent the individual unit owners. We also do not represent the board members or the management company. We represent the corporate entity that is the association. We take our direction from its duly elected board, acting as a group. Individual unit owners are not entitled to contact our office to seek legal advice.

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We speak with individual owners only when authorized to do so by the board.

**Have the attorney send a cease-and-desist letter.**

This is often not very helpful. We like to think that people have enough appreciation and respect for what we do that they take our letters seriously. Nevertheless, our letterhead is just as flushable as any other piece of paper. A letter from a lawyer might give someone pause, or it might enrage them further. Additionally, we do not make threats unless the client is prepared to back them up. Otherwise, our letters would never be taken seriously.

As the late Matt Perlstein used to say, most communities base one-third of their operations on the law and their governing documents, one-third on myth and folklore, and one-third on what Aunt Edna's association in Boca Raton did last year.

## RESPONSIBILITY FOR REPAIRS: ASSOCIATION OR UNIT OWNER?

*The following is the analysis we conduct to determine who is responsible for repairing portions of the common interest community. For the purpose of this article, we must ask whether the repair is due to a "casualty loss," which is a loss that would be covered by insurance ignoring the application of a deductible. In other words, would property insurance cover the repair if the deductible was \$0.00, or if the repair costs exceeded the applicable deductible? If so, then it is a casualty loss.*

### Is the damage a casualty loss?

If Yes. The association repairs damaged or destroyed units and common elements. Any costs not covered by insurance are a common expense.

- Was the damage caused by an owner's gross negligence, willful misconduct, or failure to abide by a maintenance standard promulgated by the association?
  - o If Yes. The association may, after Notice & Hearing, assess the uninsured portion of the loss solely against that owner's unit as a common expense.
  - o If No. The governing documents of the community may require the deductible to be assessed against all units, or prorated among damaged units and the common elements, if any. Otherwise, it may be a general common expense shared by all unit owners.

**The governing documents of the community may require the deductible to be assessed against all units, or prorated among damaged units and the common elements, if any.**

### What if the repairs are not due to a casualty loss?

- Was the damage caused by an owner's gross negligence, willful misconduct, or failure to abide by a maintenance standard promulgated by the association?
  - o If Yes. The association may, after Notice & Hearing, assess the cost of repairs solely against that owner's unit as a common expense.
  - o If No.
    - Repairs to Common Elements. The association is responsible for repairs to common elements by default.

- Repairs to Units. The unit owner is responsible for repairs to units by default.
- Repairs to Limited Common Elements. As stated above, the association is responsible for repairs to common elements by default. This includes limited common elements. However, the declaration may specifically require unit owners to maintain, repair, and replace limited common elements.

### **But it wasn't my fault! I did nothing wrong!**

This argument works both ways. Sometimes the source of damage to a unit originates from a common element. Sometimes the source of damage to either units or common elements originates in a unit. In these cases, we must ask whether the association or a unit owner was negligent. Did they know or should have known about the issue ahead of time? Did they fail to address the issue? Was the result foreseeable? Did the unit owner fail to abide by a maintenance standard? If not, then the default responsibilities discussed above will apply.

## **DON'T RELY ON A.I.**

*There is a common phrase among computer programmers: garbage in, garbage out. An A.I. search typically cannot tell the difference between garbage and good source material.*

Lately we have been seeing many more emails from clients where they include an A.I.-generated search result in connection with a legal question. These search results are often unreliable and include false information.

When a user asks an A.I. platform a question, that platform then scours the internet for any available information regarding the issue. However, the platform cannot determine whether information that has been posted online is true and accurate. All it knows is that someone said something, not whether something is correct.

We have seen search results that claim that Connecticut law requires associations to maintain minimum reserve funds. We have seen results claiming that associations must update their reserve studies every five years. Neither of these are true.

An A.I. search may be a good place to begin researching an issue, but it is crucial to double check the source material to determine its accuracy. No A.I. platform can replace a professional degree and years of on-the-job training and experience.

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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 21, 2026, at the Aqua Turf in Plantsville, Connecticut. We can be found at booth #59.

**Scott J. Sandler** was a featured speaker at the CAI-CT Legal & Legislative Symposium, which took place on October 30, 2025. At the upcoming Annual Expo, Scott will participate in the Lunch with the Experts program. Scott continues to serve as a member of the CAI Government & Public Affairs Committee.

**Scott and Rebecca Sandler** attended the CAI National Law Conference in San Diego in January 2026. 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** 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 has taken place at Amarante's Sea Cliff in East Haven, overlooking Long Island Sound. Chris will be participating in legal panel discussion at the upcoming Annual Expo.

**Bev LaBombard** continues to serve on the planning committee for the CAI-CT Fall Fun and Vendor Fair, which takes place in September of each year at the Hops on the Hill Brewery in South Glastonbury.

## 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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