

State of New Hampshire: Frequently Asked Questions  
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January 1, 2011

## **GENERAL**

1. What state statutes apply to Common Interest Communities in your state?
  - New Hampshire Revised Statutes Annotated Chapter 356-B, The New Hampshire Condominium Act.
2. Are Common Interest Communities required to incorporate? Can they be incorporated? Advantages/Disadvantages?
  - No, there is no requirement to incorporate, but an association may incorporate if it so chooses.
3. Is there a state agency which has authority to regulate and oversee the affairs of Common Interest Communities? What is the scope of its power and authority?
  - The provisions of Chapter 356-B shall be administered and enforced by the consumer protection and antitrust bureau of the Department of Justice.
4. On the state level, what are the annual reporting requirements of a Common Interest Community, if any, and to whom?
  - There are no specific provisions contained in Chapter 356-B.

## **MEMBERSHIP MEETINGS**

5. Is an Annual Meeting of members required?
  - Pursuant to Chapter 356 B:37, meetings of the unit owners' association shall be held in accordance with the provisions contained in the condominium instruments at least once each year.
6. How are Special Meetings of the Members called?
  - There are no specific provisions relative to this contained in Chapter 356-B.
7. What are the notice requirements for Membership Meetings?
  - Pursuant to Chapter 356 B:37, a Board member shall, at least 21 days in advance of any annual meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of the time, place and purpose(s) of such meeting. Notice shall be sent by mail.
8. What are Quorum Requirements for Membership Meetings?
  - Pursuant to Chapter 356 B:38(I), "Unless the condominium instruments otherwise provide, a quorum shall be deemed to be present throughout any meeting of the unit owners' association until adjourned if persons entitled to cast more than 33 1/3 percent of the votes are present at the beginning of such meeting. The bylaws may provide for a larger percentage, or for a smaller percentage not less than 25 percent."
9. Can Members use Proxies? Absentee ballots? Mail ballots?

- Pursuant to Chapter 356 B:39(IV)(a), “The votes appertaining to any unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the unit owner...”
10. Can Members Raise Concerns or Issues at a Membership Meeting?
- There are no specific provisions relative to this contained in Chapter 356-B. Typically, such a provision might be found in the By-Laws or Rules/Regulations of the association, otherwise, such a decision to allow members to speak is left to the discretion of the Board.
11. Can Non-Members attend Membership Meetings? (Attorneys of Members? Guests of Members? Local or National Media representatives?)
- The decision to allow non-members to attend an association meeting, regardless of whether it's an attorney, tenant, or guest, is left up to the discretion of the Board.

## BOARD MEETINGS

12. Are Boards of Directors required to hold Regular Board Meetings?
- Chapter 356-B does not contain any specific provisions relative to the frequency of Board meetings. However, such a requirement is often found in the condominium instruments, usually in the By-Laws.
13. How are Special Meetings of the Board called?
- There are no specific provisions contained in Chapter 356-B.
14. What are the Notice requirements for Board meetings? Are Members required to be notified as well?
- There are no specific provisions contained in Chapter 356-B.
15. What constitutes a quorum for Board Meetings?
- Pursuant to Chapter 356 B:38(ii), “Unless the condominium instruments specify a larger majority, a quorum shall be deemed to be present throughout any meeting of the board of directors if persons entitled to cast ½ of the votes in that body are present at the beginning of such meeting.”
16. Can Board Members use Proxies?
- There are no specific provisions contained in Chapter 356-B.
17. Which meetings of the Board of Directors are open to all homeowners?
- There are no specific provisions contained in Chapter 356-B. The decision to have an open meeting is left up to the discretion of the Board
18. Does a Member have the right to address the Board of Directors during the meeting?
- There are no specific provisions contained in Chapter 356-B. The decision to allow members to address the Board is left up to the discretion of the Board.
19. Can the Board of Directors meet in Closed or Executive Session? If so, for what purposes?
- There are no specific provisions contained in Chapter 356-B.

20. Are minutes or Board meetings required? When can members see the minutes of such meetings?
  - There are no specific provisions contained in Chapter 356-B.
21. Does a member have a right to audio- or video-records meetings of the Board? Under what circumstances or conditions?
  - The right of a member to record a Board meeting is left up to the discretion of the board.
22. Can non-members attend Meetings?
  - The right of non-members to attend Board meetings is left up to the discretion of the Board.

## **ADMINISTRATION**

23. Does a Member have a right to review books and records of the association?

Yes. There are a couple of references contained in Chapter 356-B that provide unit owners with the right to inspect various documents.

  - a. If so, what books and records can be reviewed?
    - Unit owners may inspect a copy of the list, and accompanying affidavit, of the unit owners notified of a regular or special association meeting. Unit owners may also inspect the proxies used for voting.
  - b. Can the Member obtain copies of the books and records requested?
    - There are no specific provisions contained in Chapter 356-B.
  - c. Does a Member have to pay for copies of the books and records?
    - There are no specific provisions contained in Chapter 356-B.
  - d. Are there books and records which the Association can withhold or otherwise prevent a Member from reviewing?
    - There are no specific provisions contained in Chapter 356-B, but it is reasonable to assume that any records which might be considered confidential, such as personnel files of employees, or records related to litigation may be withheld.
24. What are the reserve requirements in the state? Are reserve studies mandated? What reporting requirements does the Association have with respect to the status of the reserves, the reserve accounts or the funding of the reserves?
  - There are no specific provisions contained in Chapter 356-B.
25. What are the resale disclosure requirements?
  - Pursuant to Chapter 356-B:58, in the event of any resale of a condominium unit, the prospective unit owner shall have the right to obtain from the association the following: a statement of any capital expenditures and major maintenance expenditures anticipated by the association within the current or succeeding 2 years; a statement of the status and amount of any reserve for the major maintenance or replacement fund and any portion of such fund earmarked for any specified project by the Board; a copy of the income statement and balance sheet of the association of the last fiscal year; a statement of the status of any pending suits or judgments in which the association is a defendant; a statement setting forth what insurance coverage is provided; and a statement that any

improvements or alterations made to the unit, or limited common areas, by the prior unit owner are not known to be in violation of the condominium instruments.

- The Board shall provide the foregoing information upon written request by any prospective unit owner within 10 days of the receipt of such request.
26. Does the Membership by vote or the Board of Directors establish the Assessment?
- While there are no specific provisions contained in Chapter 356-B relative to the establish of the assessment, almost all association documents grant this power to the Board.
27. Is a budget required?
- There are no specific provisions contained in Chapter 356-B.
28. Is an annual audit required?
- There are no specific provisions contained in Chapter 356-B.
29. Does the state regulate the collection of assessments?
- a. What happens if a member is delinquent in the payment assessments?
    - See answer to question 37 below.
  - b. How can an association increase annual assessments?
    - See answer to question 26.
  - c. Under what circumstances can an association levy special assessments?
    - There are no specific provisions contained in Chapter 356-B. The Board may vote to levy a special or supplemental assessment to cover unforeseen costs/expenses.
  - d. Are there provisions related to additional assessments or adjustments in the budget or assessment level in the event of a deficit?
    - The Board may vote to levy a special or supplemental assessment to cover unforeseen costs/expenses.
30. What authority does the association have to access a Unit or Lot? Under what circumstances?
- There are no specific provisions contained in Chapter 356-B.
31. Does the Association have the authority to adopt rules and regulations? By law or by statute?
- Yes. The Board may adopt rules and regulations pertaining to the use of the condominium. It should be noted, that some association documents require the vote of unit owners, but most grant the authority to the Board.
32. Does the Association have the authority to assess charges or fines for violations by Members? Does the association have the right to suspend the right of use of the common elements or common areas in the event of a violation? To suspend the right of a member to vote or otherwise participate in the Association in the event of a violation?
- The Board may adopt reasonable rules and regulations relative to assessing fines for violations and misconduct by unit owners.
  - Pursuant to Chapter 356 B:46(IX), the association may, after 30 days written notice to the unit owner and the first mortgagee of nonpayment of assessments, terminate the

- unit's common privileges and cease supplying the delinquent unit with any and all services normally supplied or paid for by the association.
33. Is there a requirement to have an internal administrative Complaint or Dispute Process? Is it mandatory and/or a prerequisite to other legal action?
- There are no requirements for an internal dispute process.
34. Does any applicable statute provide for the removal of a Board Member, several Board members of the entire Board? Under what conditions? Who decides upon their successors and when?
- Chapter 356-B does not contain any provisions relative to the removal of a Board member. Such a provision is often times contained in the by-laws of the association.
35. Can an association be placed into receivership by a Court under state law?
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36. Does state statute provide for condemnation of common property?
- Chapter 356-B:6 contains the relevant provisions: "If any portion of the common area is taken by eminent domain, the award therefor shall be allocated to the unit owners in proportion to their respective undivided interests in the common area..."
- UNIT/LOT OWNER ISSUES**
37. What action(s) can an association take in the event of non-payment of association assessments? Is foreclosure an option? Under what circumstances? (Please address judicial and non-judicial foreclosure.)
- Pursuant to Chapter 356 B:46, the unit owners association shall have a lien on every unit for unpaid assessments levied against the unit. Said lien, once perfected, shall be prior to all other liens and encumbrances except real estate tax liens, liens/encumbrances recorded prior to the recordation of the declaration, and sums unpaid on any first mortgages. All memoranda of liens shall be recorded in the registry of deeds.
  - The association, in order to perfect the lien, shall file, before the expiration of 6 months from the time such assessment became due and payable in the registry of deeds, a memorandum stating the names of the unit owner(s), and the amount of unpaid assessment.
  - The judgment in an action to collect delinquency assessments shall include the attorneys' fees/costs, and interest.
  - Pursuant to Chapter 356 B:46(IX), the association may, after 30 days written notice to the unit owner and the first mortgagee of nonpayment of assessments, terminate the unit's common privileges and cease supplying the delinquent unit with any and all services normally supplied or paid for by the association.
  - Pursuant to Chapter 356 B:46-a, the association may collect from any tenant renting the unit any rent due to the unit owner. The association must give notice to the owner of its intent to collection rent.
38. Are there state laws that regulate whether a member can be assessed a charge or otherwise fined by my association for violations? What violations trigger this authority? What procedures must be followed?
- Pursuant to Chapter 356-B:15, lack of compliance with the statute and/or the condominium instruments can result in a legal action for damages or injunctive relief or for any other remedy available.

- a. What actions can the association take to collect these charges or fines;
  - b. Can my association foreclosure on my property for non-payment of these charges or fines?
39. What, if any, other internal administrative enforcement options can the association take in the event of a violation of the state statute, association's governing documents, or the rules and regulations of the association?
  - Pursuant to Chapter 356-B:15, lack of compliance with the statute and/or the condominium instruments can result in a legal action for damages or injunctive relief or for any other remedy available.
40. Does any applicable statute regulation the flying of the American Flag?
  - There are no New Hampshire laws specifically pertaining to the flying of the American flag.
41. Does any applicable statute regulate solar panels? Clotheslines?
42. What are the rules regarding placement of satellite dishes or antennas on my property? (Link to the OTARD Fact Sheet.)
43. What dispute resolution options do I have if I have a problem with the board?
  - Chapter 356-B does not contain any mandatory provisions relative to the resolution of disputes with the Board
44. What is the state law regarding recalling board members?
  - Chapter 356-B does not contain any provisions relative to the removal of a Board member. Such a provision is often times contained in the by-laws of the association.

## AMENDMENT OF DOCUMENTS

45. Does state statute provide for the amendment of the association's documents?  
Yes. Pursuant to Chapter 356-B:34, the condominium instruments shall be amended only by agreement of unit owners of unit to which 2/3 of the votes in the unit owners' association appertain, or such larger majority as the condominium instruments may specify.
  - a. What percentage of the owners must approve?
  - b. Is percentage based on those voting or totality of the number of owners?
    - Each condominium has its own procedure for amending
  - c. Is the vote taken at a meeting or is it required to be by written consent?
    - Each condominium has its own procedure for amending
  - d. Is mortgagee approval required? Is there a statutory process for obtaining mortgagee approval or providing for a presumptive mortgagee approval?
    - See the condominium instruments for relevant provisions.

## USE OF TECHNOLOGY

46. Other than a written document or by voting at a meeting, can an association use the most advanced technology, including e-mail or the internet to:

- As noted above, the only relevant provision in Chapter 356-B regarding sending notice to unit owner is contained in Chapter 356 B:37; which provides that a Board member shall, at least 21 days in advance of any annual meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of the time, place and purpose(s) of such meeting. Notice shall be sent by mail.
  - a. Provide notice to members of any meeting?
  - b. Obtain votes of the members?
  - c. Obtain the consents, acknowledgements or ratifications of members?;
  - d. Obtain the electronic signatures of members?