SOUTH MILL VILLAGE ASSOCIATION, INC.

SOUTH GLASTONBURY, CT.

March 24, 2011

Senator Eric Coleman
Coleman@senatedems.ct.gov
Representative Gerald Fox
Gerald.Fox@cga.ct.gov
Co-Chairs, Judiciary Committee
Connecticut General Assembly

RE: Raised Bill No. 6620, AN ACT CONCERNING CONDOMINIUMS AND COMMON INTEREST OWNERSHIP COMMUNITIES

Dear Senator Coleman and Representative Fox:

I reside in South Mill Village, a common interest community, and serve on its Board. I write in opposition to the above referenced bill.

This letter makes two general observations about the appropriateness of this legislation at this time. First, major revisions to the Common Interest Ownership Act, including broad FOIA-like requirements for transparency of governance, took effect less than a year ago. Inasmuch as transparency issues were at the heart of the majority of so-called complaints concerning condominium governance, it would seem to be premature to attempt to tinker more with this process. Second, the bill contains a number of ad hoc amendments which are not derived from the model act. Since Connecticut is a national leader in the drafting and adopting of this model, it would seem imprudent to engraft amendments whose purpose and effect on this model legislation would at best be problematic.

More generally, this bill is troubling from a public policy perspective for the following reasons:

- Condominiums and common interest ownership properties are established under state statute with the premise that owners surrender certain property interests to a form of self governance through elected representative boards. The proposed bill undermines

this concept of shared governance by providing for an outside agency's jurisdiction over a dispute between a unit owner and the governing body.

- There is no comparable outside oversight for other governance entities such as towns, cities and boroughs. As do citizens of municipalities, condominium owners have the right to replace board members through the ballot box.
- There is no comparable oversight for any other private associations.
- At a time when the State finds it difficult to support its current services, taking on additional functions is not fiscally sound.
- The bill imposes costs in terms of new fees. More significantly, the bill would effectively require a representative board to conduct business with an attorney at its side because a third party would be authorized to substitute its judgment for that of the board's as to the meaning of the association's own declarations and bylaws, with the threat of financial and/or criminal sanctions.
- The majority of Connecticut's condominiums are small and the number of volunteers for boards and committees limited. The effect of this legislation will be to discourage such volunteer participation.
- The simple reality is that if this were a bill to permit the Commissioner of Consumer Protection to review the business decisions of a municipality or a private corporation, it would not have been drafted much less considered.

Connecticut's common interest communities are relatively small and rely on volunteers to serve on boards and committees. Our experience is that it is already difficult to enlist such volunteers. In addition, we are currently trying to adjust to the comprehensive revisions of the common interest ownership act (CIOA) which took effect on July 1, 2010. This adjustment is both time-consuming and expensive in that an association would be foolhardy to undertake the process of reconciling its documents with new mandates without assistance of legal counsel. The proposed bill's empowerment of a single individual to sidetrack this process is beyond comprehension.

We have noted that the proposed bill is contrary to public policy and significantly impairs the governance model provided under CIOA. It is also flawed in the following respects:

- It empowers the Commissioner of Consumer Protection to act ex parte (without the knowledge or participation of an association) to determine the sufficiency of a complaint. While there is subsequent notice to the association of the Commissioner's determination, there is no provision for the participation by the Association in the initial determination or the investigation.
- While the bill purports to limit the complaining party to bringing an allegation of a violation of a statute or condominium documents that relate to budget, meetings and

access to documents, the jurisdiction of the Commissioner is not so limited; the Commissioner may conduct an investigation and make findings regarding "any matter" relating to the enabling statutes and the condominium documents. Moreover, the bill does not specify the standards or process whereby the Commissioner will exercise this unfettered power.

- Worse, the Commissioner is empowered to direct individual board members to pay "restitution" (without defined standards and also without limitation) and to pay a fine of up to $200.00 without any provisions for notice to the individuals and or their participation in the process. This is an extraordinary affront to the basic principles of due process and is unprecedented in any other statutory scheme of which we are aware.
- While there is provision for notice and hearing in accordance with the UAPA, Boards and individual Board members are noticed of such hearing after the Commissioner has completed his investigation. Thereafter, the Board, and possibly individual Board members, are compelled to defend themselves against the Commissioner's charges in a quasi-judicial proceeding in which the Commissioner is represented by the Attorney General. Consider the legal costs of such a defense
- One does not know what the insurance companies will do with this exposure, but it is reasonably certain that associations will experience significant increases in insurance rates.
- Considering the legal process to which Boards and individual may be subjected, Boards would be well advised to employ counsel and enlist a professional mediator in order to make a record of the rationale for its decisions and its efforts to resolve any dispute as a part of the required informal process.

In sum, we maintain that the proposed bill is profoundly flawed. Its predictable result will be significant increased costs of doing business. Tragically, it will also result in the resignation of board members because of the personal financial exposure but also due to erosion of the concept of shared governance as a result of empowering a third party, the Commissioner of Consumer Protection, to intrude on the self-governance process and second-guess the good faith decisions of the volunteer elected boards of condominium associations.

For these reasons, I urge that the General Assembly not take further action on this bill.

Sincerely,

Jackson W. Foley, Jr.

Jackson W Foley, Jr.
Vice President