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TESTIMONY OF SCOTT J. SANDLER, ESQ. CONCERNING BILLS RELATING TO THE OPERATIONS OF COMMUNITY ASSOCIATIONS

I. SUMMARY OF TESTIMONY:

During this legislative session, various elected officials have proposed several bills that, if passed, would impact the operations of community associations. This testimony focuses on the following bills:

A. Raised Bill No. 6620 proposes the following:

1. To establish an office of a condominium ombudsman to investigate and resolve complaints filed by unit owners against their associations or against the officers, directors or managers of their associations;

2. To more clearly require associations to obtain property insurance covering any units in the community that are either stacked one on top of another or attached side-by-side;

3. To clarify when the cost of repairing a unit which is not covered by the association's insurance by virtue of a deductible, may be assessed against the damaged unit;

4. To set a standard fee for supervising the examination of association records by a unit owner;

5. To set a standard fee for copying associations records at the request of a unit owner; and

6. To clearly distinguish between association rules and internal business operating procedures, which have differing approval requirements.

For the reasons set forth below, the Connecticut General Assembly should not adopt the portions of the bill relating to the establishment of an office of a condominium ombudsman. The General Assembly should adopt the remaining balance of the bill.

B. Raised Bill No. 1205 proposes to prevent an association from proceeding with the foreclosure of its lien for unpaid assessments, unless the outstanding balance due is at least equal to three months' worth of common charges, or equals at least $2,000.00.

For the reasons set forth below, the Connecticut General Assembly should not adopt this bill.

C. Raised Bill No. 1208 proposes to set new financial reporting requirements on associations and to limit the purposes for which associations may use funds held in reserve.

For the reasons set forth below, the Connecticut General Assembly should not adopt this bill.

D. Raised Bill No. 6613 proposes the following:

1. To eliminate the requirement that associations obtain property insurance that covers units in cases where the units are attached side-by-side; and

2. To eliminate the requirement that when the association must insure the unit, it must also insure all improvements and betterments within the unit.

For the reasons set forth below, the Connecticut General Assembly should not adopt this bill.

II. BIOGRAPHY OF SCOTT J. SANDLER:

Mr. Sandler is a graduate of the State University of New York at Albany (B.A., Economics, 1997) and Quinnipiac College School of Law (J.D., 2000). He was an Associate Editor of the Quinnipiac Law Review.

Mr. Sandler is a member of the American Bar Association, the Connecticut Bar Association and the Hartford County Bar Association. He is also a member of the Executive Committee of the Real Property Section of the Connecticut Bar Association.

Since 2001, Mr. Sandler has focused on representing condominium, community and homeowners associations.

Mr. Sandler is a past President of the Connecticut Chapter of the Community Associations Institute. He is presently the Chairman of the Chapter's Legislative Action Committee.

Mr. Sandler is a member of the law firm of Perlstein, Sandler & McCracken, LLC, in Farmington, Connecticut, which currently provides legal services to nearly 450 condominium and homeowner associations throughout the State.

III. ANALYSIS:

A. The General Assembly SHOULD NOT adopt the provisions of Raised Bill No. 6620 that propose the creation of an office of condominium ombudsman, but SHOULD adopt the remaining provisions of the bill.

1. The General Assembly SHOULD NOT adopt the provisions of Raised Bill No. 6620 that propose the creation of an office of condominium ombudsman because they are unnecessary, unfair and imbalanced, and will result in significant costs incurred by both unit owners living in common interest communities and the State of Connecticut.

Raised Bill No. 6620 seeks, in part, to create a mechanism of resolving disputes between unit owners and their associations without the need for litigation. While this stated purpose is certainly a laudable goal, the bill is necessary, unfair and imbalanced, and will cause both unit owners and the State of Connecticut to incur significant and unnecessary expenses.

a. An office of condominium ombudsman is unnecessary.

An ombudsman is unnecessary because unit owners can exert direct control over the democratically elected leadership of their association, and because the overwhelming majority of unit owners report that they are satisfied with the operation of their associations by the leadership.

i. Associations are democratic societies which are comprised of all of the unit owners in the community.

When reviewing issues concerning community associations, it is always necessary to keep in mind the unique characteristics of how associations operate.

An association is made up of all of the unit owners in the community. Under the Connecticut law, the unit owners elect the members of the association's board through a democratic process. The board members are then empowered to operate the community and conduct the affairs of the association.

Furthermore, the unit owners have the power to remove the members of the board if they are not meeting the needs or expectations of the association. Section 47-261d of the Connecticut General Statutes provides that unit owners may remove any member of the board by a majority vote the total number of votes cast. [Emphasis added]. Under this provision, it makes no difference how many owners live in the community. All that matters is how many votes are cast. Given this, even a small number of unit owners can exert control over the leadership of their associations.

In governing their communities, associations make decisions and take actions based on what they believe will serve the interests of the community as a whole. Unfortunately, there are times when not everyone will agree on what's best for the community. However, associations, like all other democratic societies, must bend to the will of the majority.

ii. An overwhelming majority of unit owners report that they are satisfied with their associations and their leadership.

According to national survey data, 99% of residents surveyed reported that their boards represent the best interests of the community as a whole. Furthermore, 86% stated that they would oppose any governmental intervention in the operation of their associations.

These numbers are reflected in the number of complaints that have been submitted to the office of the Connecticut Attorney General when compared to the number of people living in associations in our state.

According to the Attorney General's office, there are 250,000 families living in Connecticut associations, and the office received approximately 240 complaints. This means that

approximately .001% of all families living in associations felt it necessary to file a complaint.

Furthermore, this week's issue of the *Connecticut Law Tribune* reported that the Department of Consumer Protection received a total of 20 complaints from unit owners during the past year.

Given these numbers, well over 99% of the families living in Connecticut associations are satisfied with their elected leadership, and are not seeking any governmental intervention.

iii. The recent amendments to the Connecticut Common Interest Ownership Act address the issues raised in many of the complaints raised by unit owners.

Many of the complaints raised by unit owners focused on a lack of transparency on the part of the boards of associations.

However, on July 1, 2010, many wide-sweeping amendments to the Connecticut Common Interest Ownership Act became effective. Among these amendments are the following new requirements:

A. With limited exceptions, all meetings of the board must be open to unit owners;

B. Associations must give unit owners 10 days' advance notice of board meetings; and

C. At all meetings of the unit owners or the board, the owners must be afforded an opportunity to comment on any issue effecting the community.

The amendments to the Act also clarified the kinds of records that must be kept by the association, as well as the rights of owners to inspect those records.

b. The ombudsman proposal is unfair to associations.

The bill permits any unit owner who has a perceived claim against his or her association to file a complaint with the ombudsman. The cost of filing the complaint is $35.00.

The bill then requires an association against whom a complaint is filed to pay a fee of $35.00 to the ombudsman, regardless of whether the unit owner is likely to prevail on his or her claims. If the association does not pay the fee within 30 days of receiving notice of the complaint, then it must pay a fine in addition to the fee.

It is ridiculously unfair to require associations to pay a fee to defend themselves from claims. Even in the case of litigation, the defendant in a lawsuit is never required to pay to a fee to defend him or herself. The defendant may even proceed without an attorney if he or she wishes, avoiding the cost of legal fees. Furthermore, in the case of a criminal defendant who cannot afford an attorney, it is the government's responsibility to provide the defendant with an attorney.

Forcing a party to pay a fee to defend him or herself is a clear violation of public policy and runs contrary to the principles on which our legal system is founded.

c. The ombudsman proposal is imbalanced.

The bill permits unit owners to submit complaints against their associations or the officers, directors and managers of their associations to the ombudsman's office. However, if a unit owner is violating the governing documents of the community, the bill does not enable associations to submit a complaint against the owner.

If the purpose of the bill is really to provide an efficient and economical means of dispute resolution, then it should afford associations with the same benefits and protections as it does individual unit owners.

d. The ombudsman proposal will cause unit owners to incur significant and unnecessary expenses.

This bill is an invitation to any unit owner who disagrees with the decisions and actions of his or her association, to file a complaint with the ombudsman. It opens the proverbial floodgates, and does so at the expense of all of the unit owners in the community, in addition to the State of Connecticut.

Certainly litigation can be an expensive and time-consuming process. However, these costs serve to filter out claims that lack merit. Generally, people are not likely to proceed with litigation unless they have a reasonable expectation of obtaining a favorable outcome.

However, if the only expense to an owner is paying a fee of $35.00, the owner has virtually no reason not to file a complaint, regardless of whether the owner is likely to prevail on her or her claims. A particularly vindictive person will continuously file complaints, forcing the association to pay filing fees as required by the bill, just for the nuisance value.

Furthermore, it is unlikely that an association would attempt to respond to any complaint filed by a unit owner without the benefit of legal counsel.

The cost of paying filing fees to the ombudsman's office and retaining and consulting with legal counsel would be common expenses that must be shared by all of the unit owners in the community. Thus, by opening the floodgates, the association and all of the unit owners, will incur significant expenses responding to claims that lack any merit.

2. The General Assembly SHOULD adopt the remaining provisions of Raised Bill No. 6620.

The remaining provisions of Raised Bill No. 6620 seek to amend the Connecticut Common Interest Ownership Act to clarify some of the new requirements that became effective on July 1, 2010. These amendments are designed to eliminate certain questions regarding the application of the 2010 amendments, and to provide further protections for unit owners.

B. The General Assembly SHOULD NOT adopt Raised Bill No. 1205 because it will make it more difficult for associations to collect outstanding common charges from delinquent unit owners and may cause the other owners in the community to have to pay more than their fair share.

Raised Bill No. 1205 would prevent associations from bringing an action to foreclose their liens for unpaid common charges until the outstanding balance is a sum at least equal to three months' worth of common charges or at least $2,000.00. This bill will have a significantly detrimental impact on associations.

As this analysis continues below, please consider the following two basic facts:

1. Under Connecticut General Statutes Subsection 47-258(b), only a small portion of as association's lien for unpaid common charges enjoys priority over a first or second mortgage on the unit. Subsection 47-258(b) limits the priority to an amount equal to six months' worth of common charges. Any amount owed to the association in excess of this limited priority may become uncollectible.

2. Most Connecticut associations assess common charges that amount to no more than two or three hundred dollars per month. In many smaller communities, the monthly common charges are even less.

If a unit owner is not paying his or her common charges, it is frequently because he or she is suffering a financial hardship. As a result, the owner is most likely not paying his or her mortgage, too.

Over the past few years, new state and federal programs have been designed to assist homeowners in restructuring their mortgages. In many cases, these programs enable the homeowner to keep their homes. In other cases, however, these programs are able to do no more than delay the foreclosure process.

In the case of a non-contested foreclosure, there could be four to five months between when the complaint is first filed with the Superior Court and when the foreclosure is completed by way of a foreclosure sale. Of course, neither an association nor a mortgage company files the complaint the instant that the unit owner fails to submit a payment. Therefore, it is safe to assume that the owner's accounts are already delinquent by several months.

If Raised Bill No. 1205 is adopted, and given relatively small monthly assessments, the association would not be able proceed with a foreclosure to protect its interests until well after the outstanding balance has exceeded the limited amount entitled to priority over the mortgage. As a result, the association would be prevented from recovering the full balance due.

While the association's income may have decreased, its operating expenses would remain unchanged. Thus, the association would have no choice but to levy additional assessments from all of the other owners in the community in order to collect the difference.

This result is unfair to the other unit owners in the community, who would have to pay more than their fair share of the association's expenses.

C. The General Assembly SHOULD NOT adopt Raised Bill No. 1208 because it imposes undue and unnecessary burdens on associations.

Raised Bill No. 1208 seeks to impose new financial reporting requirements on associations, as follows:

1. Associations must maintain multiple bank accounts, each for a different purpose;

2. Associations must make financial reports and bank statements available to unit owners within 15 days of the end of each month via a website maintained by the association, and by mail if requested by an owner;

3. Funds held in reserve must be used only for purposes decided in advance, and not for any other purpose; and

4. Associations could not use funds held in reserve to fund any ongoing operating expense, unless these funds will be repaid within 90 days.

These requirements are unduly burdensome and are unnecessary.

Association leadership is typically comprised of unpaid volunteers who are graciously giving their time to serve the community. Many Connecticut associations operate without the benefit of professional management, often because the community does not wish to incur the expense of a manager. For similar reasons, many Connecticut associations do not maintain a website. The financial reporting requirements contained in this bill are extremely burdensome for unpaid volunteers to have to meet. This bill would set requirements that many associations cannot meet.

Furthermore, Section 47-260 of the Connecticut General Statutes already grants unit owners the right to inspect association records including, but not limited to, financial statements, tax returns, and other financial records. Any owner wishing to do so may review and copy these records at his or her request. Therefore, these reporting requirements are unnecessary.

Additionally, the proposed limitations on the use of reserve funds are unrealistic and impractical.

When an association creates a budget, it is based on a reasonable estimation of the anticipated expenses for the year. Obviously, there is no way that an association can be absolutely certain that it has fully accounted for every possible contingency.

This past winter is a perfect example of unanticipated expenses. First, we experienced record-breaking snowfall. For virtually every city, town, and association in the state, the cost of snow removal far exceeded the amounts set aside under their budgets. Second, associations incurred the unanticipated expense of raking the roofs of the condominium buildings to prevent collapse. Third, many associations are funding the cost of repairing damage cause by ice damming.

In order to pay for these unanticipated expenses, many associations had no choice but to use funds held in reserve.

Furthermore, because these expenses were so great, it could take far longer than 90 days for associations to reimburse its reserve accounts. If associations were legally required to reimburse their reserve accounts within 90 days, the only way they could do so would be by levying extremely large assessments against the unit owners.

This bill would lead to a surge in association foreclosures, as many owners simply could not afford to pay such an assessment.

D. The General Assembly SHOULD NOT adopt Raised Bill No. 6613 because it could leave associations and unit owners unable to repair or replace damaged or destroyed portions of the community.

Raised Bill No. 6613 seeks to eliminate the following requirements:

1. That associations obtain property insurance that covers units in cases where the units are attached side-by-side; and

2. That when the association must insure the unit, it must also insure all improvements and betterments within the unit.

These are important requirements and should not be eliminated.

First, when units are attached side-by-side, they are structurally dependent on one another. They share a roof. The exterior surface of the building encompasses each of them. If one unit is damaged by an event such as a fire, there can be a structural impact on the other units.

However, there is no law requiring individual owners to insure their units. If the owner of one attached unit fails to obtain insurance, he or she may not have the available funds to repair the unit if it sustained damage in an event. This could impair the structural integrity of the other attached units.

Connecticut law requires the association to insure all of the attached units in order to avoid this scenario from ever occurring.

Second, over time, many owners install improvements and betterments within their units. Additionally, in some cases, developers of new communities will offer upgrades to the purchasers of newly constructed units for an additional cost.

In the event of damage to or destruction of a unit, the improvements and betterments will most likely require replacement. If these improvements and betterments are not covered under the same policy as the unit, then the process of adjusting the loss becomes much more complicated. Furthermore, if the unit owner has not purchased adequate insurance, he or she may not have the funds available to replace the improvements and betterments.

If the association must insure the units, then Connecticut law also requires the association to insure the improvements and betterments in order to avoid this scenario from ever occurring.

If I can furnish the Committee with any further information or assistance, please do not hesitate to contact me.

Respectfully Submitted,

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