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TESTIMONY OF WILLIAM W. WARD, ESQ.
BEFORE THE JUDICIARY COMMITTEE
MARCH 25, 2011
11:00 A.M.
REGARDING RAISED BILL NO. 6620
AN ACT CONCERNING CONDOMINIUMS AND
COMMON INTEREST OWNERSHIP COMMUNITIES

I. SUMMARY OF TESTIMONY:

Raised Bill No. 6620

A. I oppose the provisions of Raised Bill No. 6620 (Sections 2, 3, and 4), which establishes the office of condominium ombudsman.

B. I oppose the provisions of Raised Bill No. 6620 (Section 7 - C.G.S. 47-261e(a)), which would allow a majority of the Unit Owners voting at a meeting to reject a budget adopted by the Board of Directors.

C. I support the provisions of Raised Bill No. 6620 (Section 13 - C.G.S. 47-261b), which defines internal business operating procedures that are not required to be adopted as rules.

D. I support the provisions of Raised Bill No. 6620 (Section 12 – C.G.S. 47-257(e)), which will allow assessments against a unit owner for common expenses caused by ordinary misconduct or negligence, rather than willful misconduct or gross negligence as currently provided.

E. I support the provisions of Raised Bill No. 6620 (Section 14 - C.G.S. 47-68a), which prohibits criminal prosecutions of members of the Board of Directors unless they are acting outside the scope of their authority.

F. I support the provisions of Raised Bill No. 6620 (Section 15 - C.G.S. 47-253(e)), which prohibits criminal prosecutions of members of the Board of Directors unless they are acting outside the scope of their authority.

II. BIOGRAPHY OF WILLIAM W. WARD:

William W. Ward is a graduate of Fairfield University (B.A. 1978 – magna cum laude) and the Columbus School of Law at The Catholic University (J.D. 1981), where he was a member of the Law Review. He clerked for the Honorable C. Murray Bernhardt in the United States Court of Claims (1981 – 1983). He was admitted to the bars of the State of Connecticut, State of Maryland, and District of Columbia and currently practices solely in Connecticut. He is a member of the Connecticut Bar Association, Fairfield County Bar Association, and the Federal Bar for the District Court for the State of Connecticut. He serves as a Special Master for the Connecticut Superior Court. His practice concentrates on common interest communities, common interest community developments, and civil litigation since 1984.

Mr. Ward has lectured on legal issues involving community associations for the Connecticut Bar Association, Fairfield County Bar Association, Community Association's Institute, and community associations. He has also published multiple articles concerning community association's legal issues for local and state publications.

Mr. Ward lived in a condominium for 10 years, served on its Board of Directors for 6 years, and has represented condominium associations, individual unit owners, and developers for twenty-seven years.

Mr. Ward is a principal in Ackerly & Ward in Stamford, Ct, which provides legal services to over 130 community associations.

BACKGROUND AND PERSPECTIVE

I am testifying today from a unique viewpoint. I lived in a 200 unit condominium for 10 years, was on the Board of Directors for 6 years, represent individual Unit Owners in disputes with Associations, I represent over 130 Community Associations, and I represent developers in developing a 53 Unit project and up to 600 Units in Moodus, Connecticut. Therefore, my opinion on the proposed legislation is based upon viewing the issues from all perspectives.

In my experience, as with any subset of the population, there are extremes. In my 27 years of dealing with Associations and Unit Owners there is a very small percentage of Unit Owners, who view their ownership of a Unit as having all of the rights that they would have if it were a single-family home, which creates tension between them and the Board. There are also some Boards, who do not enforce the documents, but make decisions based upon what they believe are reasonable. The vast majority, however, probably eighty-five to ninety percent (85-90%) of Unit Owners and Associations, operate within the prescriptions of the law and their rights and responsibilities under the condominium documents.

II. ANALYSIS:

A. Ombudsmen Program

The General Assembly SHOULD NOT adopt this proposed ombudsman program. I whole-heartedly support an alternative dispute resolution process to be utilized by Unit Owners and Condominium Associations equally and economically. This program does not accomplish either goal. Since 1991, Montgomery County, Maryland has run a successful program. The program covers 1,000 community associations with over 350,000 residents in Montgomery County. From 2001 to the present, the Commission held hearings and issued decisions on 125 complaints. Of those 125 complaints, associations filed 40 against owners and owners filed 85 against associations. www.montgomerycountymd.gov/ocptmpl.asp?url=/content/ocp/ccoc/ccoc_index.asp Connecticut does not need to spend $1 million or more on a program, which is only for unit owners.

The comprehensive amendments to the Common Interest Ownership Act (hereinafter "CIOA") (C.G.S 47-200 et. seq.) effective July 1, 2010 greatly strengthened Unit Owner's rights and created transparency in Association affairs. Those amendments have been in effect for less then a year and have already significantly reduced the types of disputes, which Unit Owners have complained about in the past.

I. C.G.S. 47-260 resolved disputes over access to and what records are available to Unit Owners.

II. All new rules must be reasonable and subject to notice and comment from Unit Owners. C.G.S. 47-261b.

III. A simple majority of owners attending an owner's meeting may remove officers or directors failing to perform their duties. C.G.S. 47-261d.

IV. All Board meetings are open to every Unit Owner, a notice and the agenda for the meetings are provided to Unit Owners at least five days before, all materials distributed to the Board for consideration at the meeting are now reasonably available to Unit Owners, and all Unit Owners are allowed to comment on any matter affecting the Association at the meeting. C.G.S. 47-250(b).

V. Unit Owners have the right to call a Special Meeting of owners if the Board fails to do so after receiving a petition signed by only 20% of the unit owners. C.G.S. 47-250(a).

VI. Special assessments in excess of 15% of the budget, individually or cumulatively for the year, must be ratified by all Unit Owners. C.G.S. 47-261e.

These provisions grant Unit Owners increased access to the records of the Association, create transparency in its operations, and not only allow Unit Owners to observe all Board meetings and deliberations, but to comment and provide input. My own experience is that the amendments already have significantly reduced the number of disputes between associations and owners due to the clarity of the 2010 amendments. Before enacting an expensive and one-sided ombudsmen program, I urge you to allow the implementation and utilization of the amendments to determine their long-term effectiveness.

B. Budget Rejection

I oppose the provisions of Raised Bill No. 6620 (Section 7 - C.G.S. 47-261e(a)), which would allow a majority of the Unit Owners voting at a meeting to reject a budget adopted by the Board of Directors.

As their duly elected representatives, the Board of Directors establishes the budget for the association, as does our legislature for the citizens of this state. The citizens of our state do not have the right to overturn your duly authorized budget, nor should a small group of unit owners be granted that right. Granting the power to reject the budget to a simple majority of the owners at the budget meeting would be devastating to the financial well being of associations. Individual Unit Owners, or a small group, who intend to be in the Association for a short period of time, or who are not directly affected by repairs included in the budget, will now have the power to reject a budget, which is in the long-term interests of the association.

For example, if the budget contains $100,000 for a project to repair leaking windows and a group of owners, whose windows do not leak band together, they could prevent the repairs from being made by voting down the budget. Therefore, this provision allows budgets to be rejected out of self-interest rather than what is in the best interest of the Association.

C. Defining Internal Business Operating Procedures

I support the provisions of Raised Bill No. 6620 (Section 13 - C.G.S. 47-261b), which defines internal business operating procedures that are not required to be adopted as rules.

In the 2010 amendments to CIOA, C.G.S. 47-261b expanded the definition of rules and specified the procedures for rulemaking. CG.S. 47-261b specifically exempts association's "internal business operating procedures". There is confusion as to whether certain policies are rules subject to C.G.S. 47-261b or exempt because they are internal business operating procedures. For example, it is unclear whether a collection policy, which imposes late fees on a Unit Owner, is a rule or an operating procedure. This amendment will clarify this issue.

D. Assessment of Common Expenses Against an Owner for Misconduct or Negligence.

I support the provisions of Raised Bill No. 6620 (Section 12 – C.G.S. 47-257(e)), which will allow assessments against a unit owner for common expenses caused by ordinary misconduct or negligence, rather than willful misconduct or gross negligence as currently provided.

Determining whether conduct is "willful" or "gross" is very subjective and, therefore, very difficult. There is no objective standard, which can be applied to determine when misconduct becomes willful or when negligence becomes gross. Therefore, this amendment would reduce potential litigation.

E. Prohibiting Criminal Prosecutions of Members of Condominium Board of Directors or Executive Boards of Common Interest Communities.

I strongly urge you to support passage of Section 14 - C.G.S. 47-68a (applicable to communities created before January 1, 1984) and Section 15 - C.G.S. 47-253(e), which would insulate Board Members from criminal liability, provided their actions are within the scope of their authority.

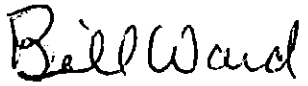
I have been practicing condominium law for 27 years. During that time I have never had a Board Member arrested solely because they were the President of a condominium association - until last year. I've represented several associations in criminal actions brought against condominium associations for housing code or fire code violations, but never against a Board member individually. In those cases the state monitors the progress made in correcting the violations and dismisses the charges upon verification from the appropriate inspector that the repairs are satisfactory.

It is already very difficult to find enough qualified Owners to undertake the responsibility of being a Board member. Allowing criminal prosecutions of Board Members will make it virtually impossible. As proposed, Board members would be insulated provided they are acting within the scope of their authority. Volunteers fulfilling their duties as Board members and dedicating their time to the operations of their community association should not have to worry about being charged criminally by the state.

Such an action sets a very dangerous precedent. It is very difficult to get Unit Owners to run for the Board. If they are exposed to criminal liability solely for their actions as Board Members within the scope of their authority it will have a devastating affect on who will run for the Board and how the Association's business is conducted. Therefore, I strongly urge you to support those provisions.

Thank you for the opportunity to testify concerning this bill. If you need additional information or assistance, which I am able to provide, please contact me.

Respectfully Submitted,



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