Testimony of
Kim McClain

Before the Judiciary Committee
Friday, March 25, 2011
11:00 a.m.

H.B. 6662 AN ACT CONCERNING THE RECOUPMENT OF MONEYS OWED TO A UNIT OWNERS' ASSOCIATION DUE TO NONPAYMENT OF ASSESSMENTS

Summary

H.B. 6662 proposes to extend to 12 months the current six month priority lien.

Kim McClain

I currently serve as the Executive of the Connecticut Chapter of the Community Associations Institute (CAI-CT). CAI-CT is the educational and resource entity for community associations and their service providers in Connecticut. We are one of 60 chapters of a National organization. Through this alliance we are able to provide up-to-the-minute information on the issues and trends affecting associations, programs to enable community association managers to obtain professional credentials for licensure and access to hundreds of publications which provide tools to assist association members in their operations.

I am submitting comments, to present my insights into how the proposed bill will affect the m ore than 5,000 common interest communities in Connecticut, and the hundreds of thousands of people who live in them.

Background

For many years, Connecticut has lead the way for other states in the protection of community associations. The six month priority lien has been one example. Up until recently, the practice for banks has been to continue to pay the monthly common charges for the units undergoing the mortgage foreclosure process. This has clearly made sense since these payments have helped to protect the bank's property and also met the commitment to pay its fair share of fees required of all the other unit owners in any given development.

Unfortunately, recent actions of some larger banks have been to undermine what we believe should be clarified as an "evergreen" priority lien. Some banks are contending that as long as its foreclosure process is ongoing, a bank needs to pay an association the priority lien only once, after which the association loses all priority over the mortgage for as long as the mortgage foreclosure continues. If this contention is accepted, a bank can pay an association an amount equal to the six month priority lien and then force the all the other unit owners to in essence subsidize the banks, as the association must continue to pay for insurance on the unit, maintain and repair the building containing the unit and otherwise preserve the value of the unit as collateral for the bank's mortgage. There are a growing number of cases where the bank has taken years to complete the foreclosure. This places and extraordinary unfair burden on all the other unit owners to "cover" the bank's monthly fees for what can be a very protracted length of time.

There is great potential for devastation of the financial condition of associations if common fee assessments are not paid for a extended periods of time. It is important to note, that in Connecticut, the majority of community associations are small - sometimes only 4-6 units. In these types of small associations, the association could easily lose 1/6 of its income - thus transferring the burden for maintaining and repairing the building to the 5 other owners, requiring an increase in their monthly assessment of 20%.

At least one Superior Court decision has accepted this contention, and it is being repeated in a number of other cases before the Superior Court. The problem is very real and is continuing to worsen. The statute needs to be clarified.

The addition of language which calls for the six month priority lien to be "evergreen" is essential to the short and long term health of community associations in our state. As such, the banks would be required to honor the six month priority lien for each action. Like all other unit owners, the banks would be obligated to pay the common charges to ensure that the association's financial security is not put into jeopardy.

HB 6662 as it is currently written, falls short of achieving the objective that the priority of the lien be "evergreen."

The General Assembly can easily remedy this situation by adopting appropriate language in subsection (b) of Section 47-258. Unfortunately, the language in the raised bill does not does not accomplish the most important intent of the original creation of the priority lien - to protect the financial health of community associations.

We would be happy to further discuss with you this issue, or any others affecting common interest communities in Connecticut. Please do not hesitate to contact us with any questions or concerns. I can be reached at 860-633-5692 or email: caictkmcclain@sbcglobal.net.

Thank you for your consideration.

Respectfully submitted,

Kim McClain