

Testimony of  
Kim McClain

Before the Judiciary Committee  
Monday, March 25, 2013  
10:00 a.m.

**H.B. 6666 AN ACT ESTABLISHING TWO PILOT PROGRAMS FOR THE MEDIATION OF CONDOMINIUM-RELATED DISPUTES AND RELIEVING A COMMUNITY ASSOCIATION MANAGER OF ANY RESPONSIBILITY FOR CERTIFYING THAT A CONDOMINIUM UNIT OWNER IS COMPLIANT WITH A MUNICIPAL ORDINANCE REQUIRING THE INSTALLATION OF CARBON MONOXIDE DETECTORS AND SMOKE DETECTORS.**

Summary

H.B. 6666 proposes to create two pilot programs in two different sections of the Judicial system for the purposes of hearing condominium-related disputes. The bill also proposes to no longer require community association managers to be responsible for ensuring compliance with municipal ordinances regarding the installation of smoke and carbon monoxide detectors.

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 technical assistance 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 more than 5,000 common interest communities in Connecticut, and the hundreds of thousands of people who live in them.

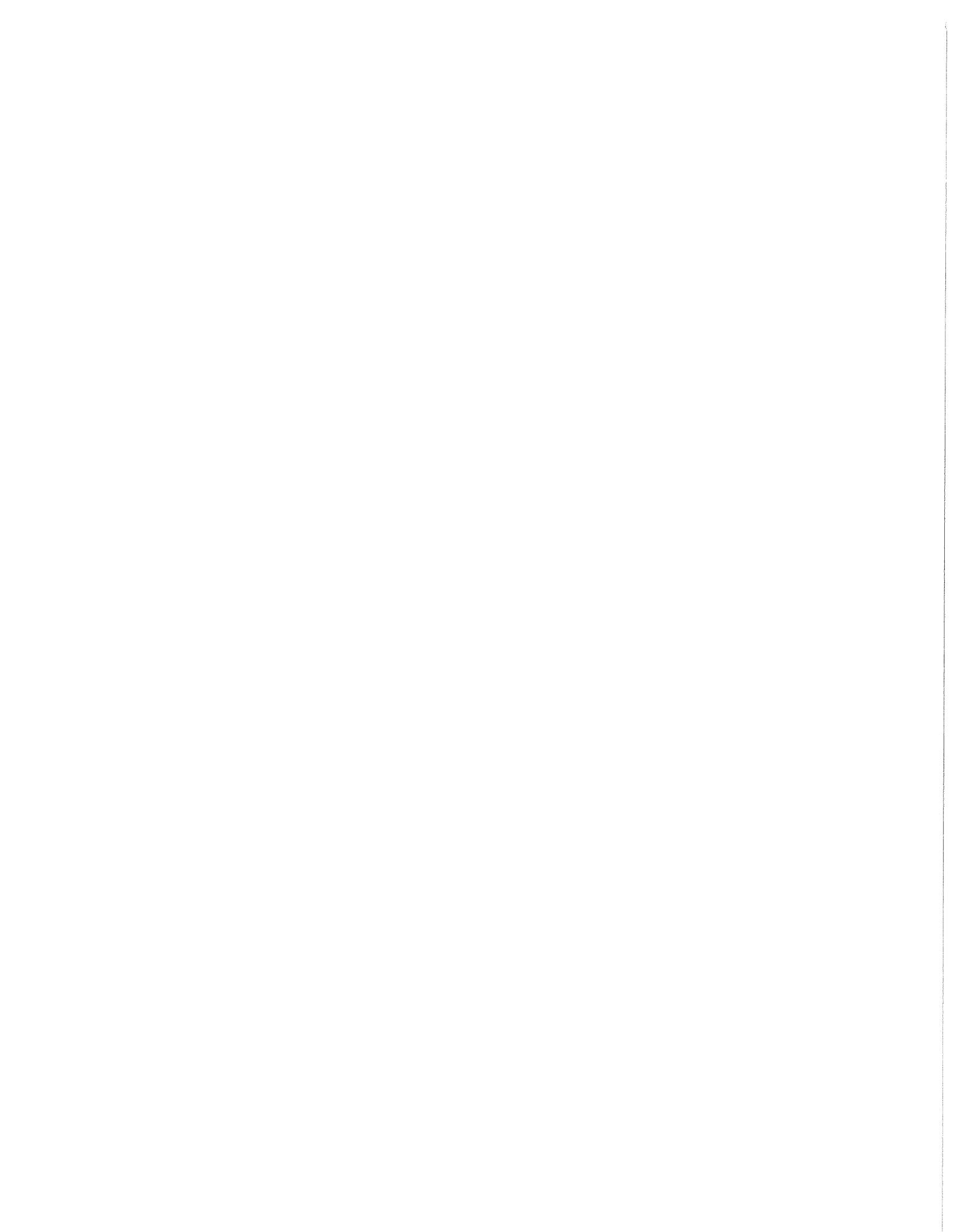
Background

CAI-CT works diligently to protect the rights and foster the responsibilities of all of our members. Through our programs, website and magazine, we foster *Best Practices* for associations throughout the State.

When Zogby International recently performed a survey on behalf of CAI, the results showed that overall unit owners are satisfied with their associations. Despite compelling stories, survey data does not support the assertion that homeowner problems with elected boards are widespread, in fact, more than 91% of residents surveyed report that their elected board represent the best interests of the community as a whole.

It is our experience that when issues causing conflict arise in common interest communities, in a majority of situations it is due to the lack of understanding about the rights and responsibilities of unit owners and their boards. For this reason, we have strongly supported a requirement for pre-sale disclosure statements which clearly articulate, in plain language, the requirements of living in a common interest community.

Unit owners have an obligation to read and understand the documents and rules that come with their purchase of a unit. We strongly believe that all potential purchasers should be able to know the answer to some very basic questions BEFORE they say yes to the community living lifestyle. We have posted a simple test



on our website to help guide the decision process.

Our state now has a law, Public Act 06-23 AN ACT CONCERNING TRAINING FOR MEMBERS OF ASSOCIATIONS OF COMMON INTEREST COMMUNITIES. CAI-CT offers a solid day-long program which covers the basics of association operations. It is open to board members, managers and unit owners. Since this law does not include any enforcement provisions, only small percentage of board members, managers and unit owners have availed themselves to this training. We are pleased to note that we are now actively working with staff from the Department of Consumer Protection to provide greater access to information that will serve to better inform unit owners and board members and encourage them to seek educational opportunities.

CAI-CT has been working with the leadership of the Connecticut Condo Owners Coalition (CCOC). We are pleased to note that we seem to have much in common. Our Education Program Committee has offered to work with them to develop educate programs targeted towards unit owners. We look forward to continuing our dialogue.

#### Analysis of Complaints Submitted to the Connecticut Attorney General

CAI-CT thoroughly reviewed the 206 written complaints received by former Attorney General Blumenthal between 2007 and 2010. It is significant to note that the totality of these complaints represents approximately one tenth of one percent of all the units in the entire state.

It took several weeks to pour through the 3,360 pages in the complaint files. We found the contents to be quite revealing. 105 of the complaints addressed financial concerns, e.g. accountability and access to financial records, disagreement with board financial decisions, and payment disputes. 63 complaints dealt with issues involving governance, and disagreements with board decisions. Thus, 168, or 81.5% concerned issues that are directly related to the transparency requirements of the revisions to CIOA. (Copies of our summary analysis are available.)

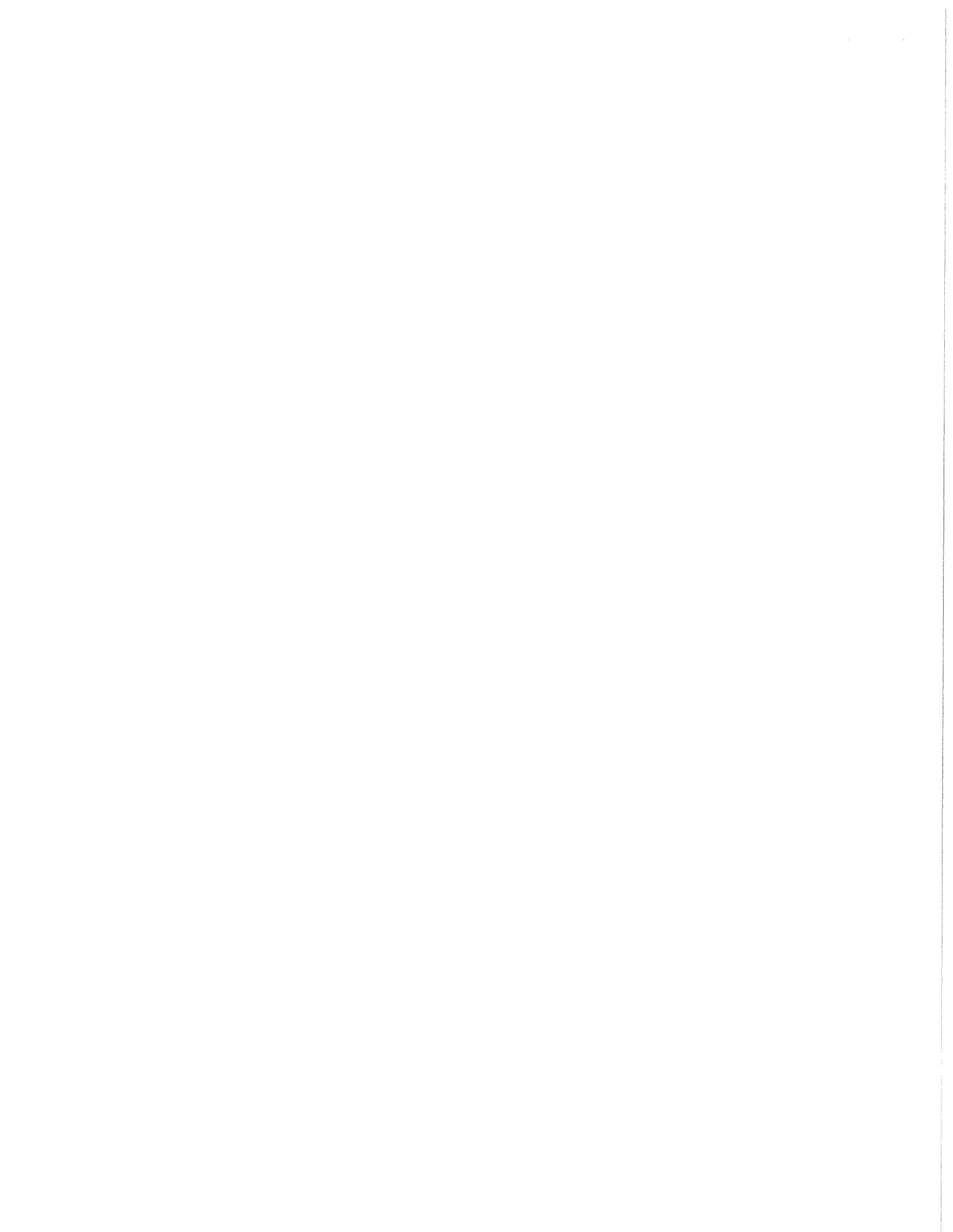
We believe that the recent revisions to CIOA have had a positive affect on the operations of community associations. Again, lack of education about the requirements provided for in the law seems to be the most dominant concern when problems do arise.

#### Statement

CAI-CT has a neutral position on all but the final provision of H.B. 6666.

While the notion of providing a form of Alternate Dispute Resolution (ADR) has been supported by CAI-CT, we have some significant concerns with many of the components of HB 6666. associations.

1. Training. All hearing officers, probate judges and staff involved in the processing of complaints for the Pilot Program MUST be trained about the many facets of common interest community law. As we all know, this area of the law has many intricate components. We believe that the program would run more efficiently if members of CAI-CT had the opportunity to provide training about CIOA and common interest communities in general. For example, in Montgomery County, Maryland, the panel which hears condo complaints is very experienced in condo law, etcetera, as they are condo board members, attorneys and property managers. It is also important to note that those who serve on the panel do so on a *pro bono* basis. Apparently, Montgomery County is now working to encourage a greater use of mediation instead of the complaint commission. (Please see attached.)



2. Fees. Requiring a \$250 fee to be paid to file a complaint makes sense. However, we feel strongly that unless the fee is **non-refundable** and **non-waiveable**, the State of Connecticut will bear the burden of funding a new program. If the party seeking to make the complaint has no financial investment in the complaint process, there would likely be no end to the number and types of complaints filed. The absolute requirement of the fee would provide a greater assurance that the complainant is serious about their dispute and it would help to support the costs of the State.

It is important to note that in order to provide reasonable due process for complaints, in most, if not all, situations the hearing officer or judge would need to have a clear understanding of the association's documents. This is a very time consuming process, as most associations' documents are completely unique. Thus, the \$250 fee would represent a small portion of the State's costs in processing the claim.

The elimination of the requirement for community association managers to be responsible for ensuring compliance with municipal ordinances regarding the installation of smoke and carbon monoxide detectors is the one provision of this bill with which we completely agree. The existence of this requirement has created a great deal of paperwork for fire chiefs and fire marshals, in addition to increasing the labor costs for community association managers.

### Summary

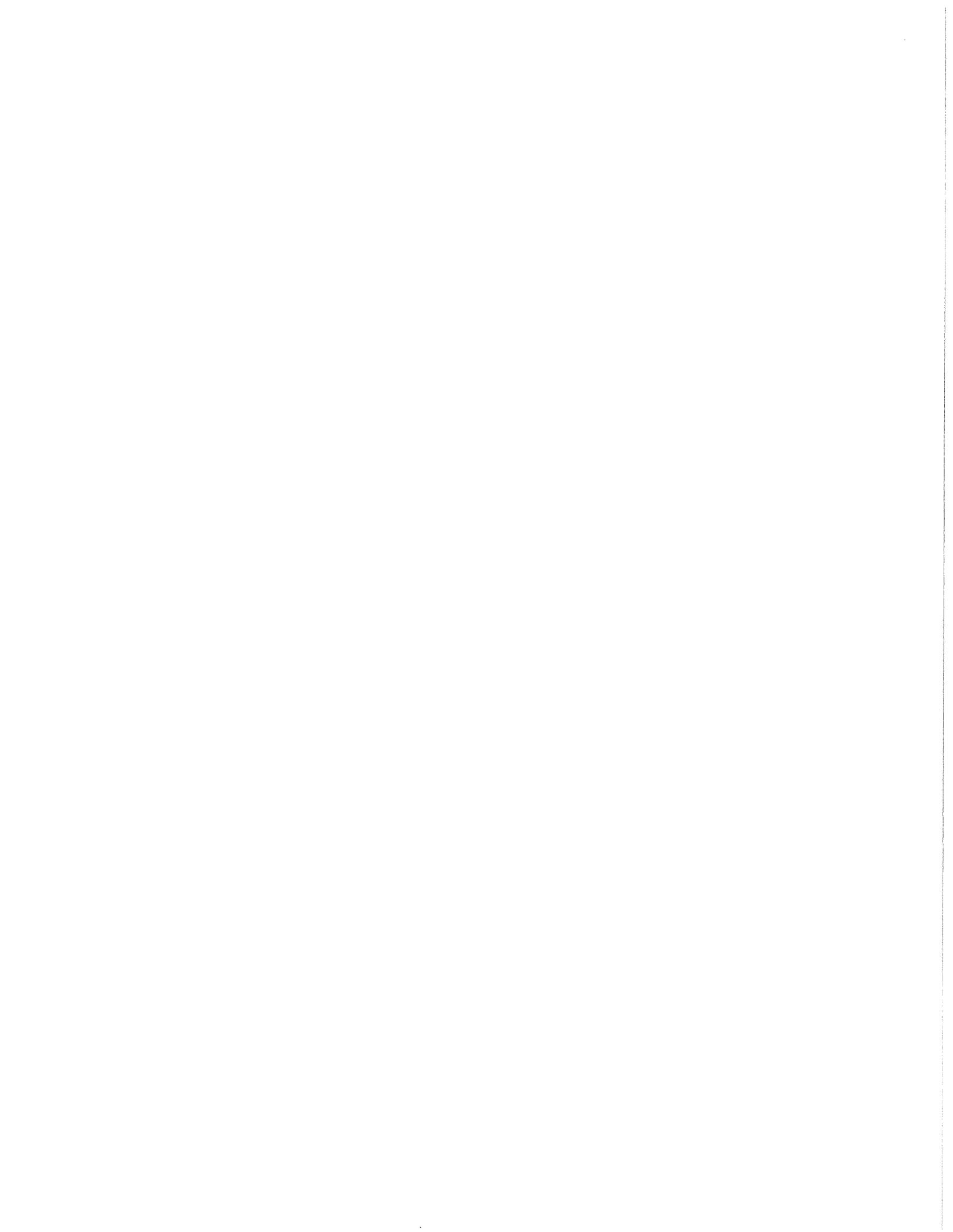
To the extent that problems arise within community associations, CAI believes they can be best addressed through comprehensive board member education, pre-sale disclosure requirements, and professional credentialing of managers. We wish to remind the Connecticut General Assembly that we are here as a resource and look forward to our efforts to work in concert with the Department of Consumer Protection to provide effective and meaningful methods for educating members of common interest communities before purchase and during their tenure as owners. Our common interest communities need more owners to be aware of their responsibilities to themselves and their communities, not an avenue to negate obligations and ignore the basic tenets of successful democracy and self-governance – be informed and get involved!

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: [caictkmclain@sbcglobal.net](mailto:caictkmclain@sbcglobal.net).

Thank you for your consideration.

Respectfully submitted,

Kim McClain



## Ch. 13 - CCOC AND THE MEDIATION PROCESS

The Commission's statutory mission is, among other things, to advise the County government on ways to "reduce the number and divisiveness of disputes" between common ownership communities governing bodies and their residents. As part of this, the Commission is to ascertain ways to "encourage informal resolution of disputes."

The legislation creates a dispute resolution process under which parties can voluntarily agree to mediate disputes that fall under the jurisdiction of the CCOC. However, if there is no agreement to mediate, or if mediation fails, the Commission is authorized to enter into a formal contested hearing similar to, but not identical with, a civil court proceeding. Such a hearing and its documented memorandum decision and order has the force of law and is recognized by appellate courts as binding and enforceable.

Since the CCOC was created there has been an increasing number of such formal proceedings, which has requires the investment of considerable time and effort on the part of Commission members and attorneys who volunteer to act as panel chairs. Recently, a question has been raised as to whether a more effective way of resolving disputes is possible, which can result in a more efficient use of the Commission and these attorneys, all of whom serve on a *pro bono* basis without pay.

This would be desirable also if such approach could lead to conciliation among the disputants, who must continue to live with one another in their associations, and free the Commission for other responsibilities.

The Montgomery County Attorney has recently advised that associations must be represented by attorneys in formal proceedings before the CCOC. This can pose a problem for smaller associations with limited budgets who may not be able to afford an attorney, and possibly result in a miscarriage of justice. Such results possibly may be obviated by the use of less formal procedures.

As a first step--an experimental one--the CCOC decided to encourage greater use of mediation. To this end, the County is negotiating a memorandum of understanding with the Conflict Resolution Center of Montgomery County, which has been funded in part by the Maryland Mediation and Conflict Resolution Office. This latter office was created to implement alternative dispute resolution techniques in the courts, and is championed by Judge Bell, Chief Judge of the Maryland Court of Appeals.

Rule 17 of the Maryland Rules of Court encourages Circuit Court use of mediation as well as other dispute settlement procedures short of formal trials. We also plan to explore the use of such other procedures in an effort to effect a more efficient and amicable settlement of disputes, and avoid the inevitable increase in hostility and costs characteristic of formal adjudication proceedings.

**Created:** Montgomery County Code, Section 10B-3 (Jan. 1991);  
Emergency Bill No. 8-95 (June 1995); Emergency Bill No. 11-96

**Purpose:** To advise the County Executive and the County Council on ways to handle common ownership of property in communities; promote public awareness of the rights and obligations of living in common ownership communities; eliminate disputes; and maintain property values and quality of life in community associations.

**Membership:** Fifteen members consisting of 8 residents of common ownership communities and 7 professionals associated with common ownership communities (attorneys, property managers, realtors, developers, etc.). Designees of the County Council, Planning Board, Dept. of Environmental Protection, Dept. of Housing and Community Affairs, Dept. of Permitting Services, Dept. of Transportation, and Office of Consumer Protection are ex-officio non-voting members of the Commission.

**Terms:** Three Years

**Meetings:** First Wednesday of each month. Monthly committee meetings and dispute hearing panels as scheduled. A current schedule is available upon request.

**Staff:** Office of Consumer Protection (240.777.3636)

**County Attorney's Office:** Walter Wilson, Associate County Attorney

**Resident Representatives:** Elizabeth Molloy (Chairperson), Allen Farrar, Janet Wilson, Ken Zajic, David Weinstein, Bruce Fonoroff, Elayne Kabakoff, James Coyle

**Professional Representatives:** Gwen Henderson (Vice chairperson), Mitchell Alkon, Ralph Caudle, Arthur Dubin, Helen Whelan, Richard Brandes, Thomas Stone

**Volunteer Hearing Panel:** Christopher Hitchens, John McCabe, Jr., Douglas Shontz, John Sample, Dinah Stevens, Julianne Dymowski, Corinne Rosen, Ursula Burgess, Greg Friedman, Charles F. Fleischer, Esq., Nicole Williams

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