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TESTIMONY OF WILLIAM W. WARD, ESQ. BEFORE THE JUDICIARY COMMITTEE MARCH 25, 2013

REGARDING RAISED BILL NO. 6662 AN ACT CONCERNING THE RECOUPMENT OF MONEYS OWED TO UNIT OWNERS' ASSOCIATION DUE TO NONPAYMENT OF ASSESSMENTS

I. SUMMARY OF TESTIMONY:

Raised Bill No. 6662

- A. I support the provisions of Raised Bill No. 1145 (Section 1 – Subsection (b) of section 47-258), which seeks to extend the priority lien given to common interest unit owners' associations from six to twelve months and provides greater statutory protections to unit owners' associations seeking reimbursement for unpaid assessments incurred during the pendency of a foreclosure action.
- B. I also submit a proposed modification to C.G.S. Section 47-258(b) to ensure that unit owners' associations are not limited to only one six month priority lien.

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. He is currently a member of the Board of Directors for the Connecticut Chapter of the Community

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Association Institute. His practice concentrates on common interest communities, common interest community developments, and civil litigation.

Mr. Ward has lectured on legal issues involving community associations for the Connecticut Bar Association, Fairfield County Bar Association, Community Association's Institute, Connecticut Housing Finance Authority, 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-nine years. Mr. Ward is a principal in Ackerly & Ward in Stamford, Ct, which provides legal services to over 150 community associations.

BACKGROUND AND PERSPECTIVE

I am testifying today from a unique viewpoint. I lived in a 200-unit condominium for 10 years and was on the Board of Directors for 6 years. I represent individual Unit Owners in disputes with Associations, over 150 Community Associations, and developers in developing a 53 Unit project in Stamford and up to 600 Units in Moodus. 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 29 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. Therefore, my opinion is that changes, which create more duties and responsibilities for the volunteers on the Board of Directors are unnecessarily burdensome and will result in qualified owners refusing to sit on the Board of Directors and needless disputes with unit owners.

II. ANALYSIS:

A. Extending the Six Month Priority Lien to Twelve Months

I support the testimony submitted by other proponents of the extension – specifically Karl Kuegler, Jr. of Imagineers. During the last foreclosure crisis in the late 1990's, a foreclosure action lasted only 4 – 6 months. This allowed associations to receive all, or most, of the common charges owed. Therefore, a six-month priority lien was a reasonable amount. Today, however, foreclosures continue for 12 months and often longer. Since associations cannot statutorily commence a foreclosure until a unit owner is delinquent in an amount equal to two months of common charges, the need for increasing the priority lien is self-evident since the association continues to bear the costs of insuring and maintaining the property, management fees, landscaping, snow removal, utilities, etc., but are now limited to recovering only six months of those charges.

In addition, often associations impose assessments while a foreclosure is pending. Due to the length of foreclosure actions, those assessments are not recovered in the current six-month priority lien. Therefore, the extension to twelve months and allowing recoupment of assessments incurred during the pendency of the foreclosure action should be adopted.

B. Amending C.G.S. Section 47-258(b) to Ensure the Repeated Applicability of the Six or Twelve-Month Priority Lien Until a New Owner Obtains Title to the Property.

Currently several banks are arguing that they only have to pay one six month priority lien as long as their mortgage foreclosure does not proceed to judgment and title pass to a new owner. The net effect is that currently the bank pays the association its six-month priority and then fails to pursue its foreclosure to judgment to ensure it does not obtain title and have to pay common charges as the new owner. The net effect is that other owners, current in their common charges, are forced to cover the expenses of the delinquent owner as a result of the bank failing to proceed to judgment in its foreclosure actions.

Since 1984 the remedy for associations was to commence its own foreclosure and/or repeated foreclosures if the bank did not proceed to judgment in its foreclosure action. The current practice of several banks, however, render that approach fruitless since the association will not recover any of its delinquent common charges or the costs and fees incurred in foreclosing.

Therefore, I respectfully submit that C.G.S. Section 47-258(b) be amended to include the following language: "For the purposes of this section, priority liens shall mean all six month lien periods established in accordance with this section, and shall not be limited to one six month lien period, whether or not the lien periods are successive."

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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