

# CONNECTICUT GENERAL ASSEMBLY

Monday, March 24, 2014

TESTIMONY OF Kim K. V. McClain  
TO JUDICIARY COMMITTEE  
ON PROPOSED RAISED BILL 5590, "AN ACT ESTABLISHING A PILOT MEDIATION  
PROGRAM FOR COMMUNITY ASSOCIATION DISPUTES."

I currently serve as the Executive Director of the Connecticut Chapter of the Community Associations Institute (CAI-CT). The Community Associations Institute (CAI), is a national member supported, not-for-profit educational and resource organization dedicated to fostering vibrant, competent, harmonious community associations for the 1 in 6 Americans who live in common interest communities.

CAI's mission is to inspire professionalism, effective leadership and responsible citizenship—ideals reflected in communities that are preferred places to call home. CAI believes homeowner and condominium associations should strive to exceed the expectations of their residents. We work toward this goal by:

- Advancing excellence through seminars, workshops, conferences and education programs, most of which lead to professional designations for community managers and other industry professionals.
- Publishing the largest collection of resources available on community association management and governance, including website content, books, guides, *Common Ground* magazine and specialized newsletters.
- Advocating on behalf of community association and industry professionals before legislatures, regulatory bodies and the courts.
- Conducting research and serving as an international clearinghouse for information, innovations and best practices in community association governance and management.

## **Board Members and Other Homeowner Leaders**

CAI helps association board members and other homeowner leaders achieve the results, respect and recognition they deserve.

- Board members are responsible for meeting budgets, as well as meeting the expectations of their neighbors.
- They're expected to solve problems, resolve conflict, preserve the character of their communities and protect property values.
- Board service is a serious and demanding responsibility—and sometimes a thankless job—but it also can be very rewarding. CAI helps these volunteer leaders succeed by saving them time, money and unnecessary aggravation.

I am submitting testimony to present my insights about 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.

## **CAI-CT supports RB 5590.**

### Background

CAI-CT works diligently to protect the rights and foster the active engagement of all of our members in the governance of their community associations. Through our programs, website and magazine, we support *best practices* for associations throughout the State.

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. Indeed, CAI-CT has been working cooperatively with the Connecticut Department of Consumer Protection (DCP) to enhance their website which now includes information about "what to know before you buy." We intend to continue our efforts with DCP to promote greater understanding of the many dynamics of condominium ownership.

It is important to note that our state laws include 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.

### **Community Association Conflict in Perspective**

Utopia doesn't exist in any segment of society—in our schools, social organizations, athletic venues, workplaces or even our places of worship. More than 60 million Americans live in condominium and homeowners associations. Some conflict is inevitable. Disagreement and disputes are inevitable whenever and wherever people live side by side in a community, regardless of the nature of governance.

We hear about conflict not because it is the norm, but because conflict makes news. We hear about the plane that crashes, not the millions of flights that arrive safely. Independent national surveys of community association residents confirm that the vast majority of association residents are happy with their associations. We'd like to see that go even higher.

Some association boards do make mistakes, and there are homeowners who think established rules don't apply to them. Communication is essential. Issues should be identified before they become conflicts. Board members and homeowners must be receptive to the open exchange of information and viewpoints.

While residents should comply with the governing documents of a community association, we urge all parties to be reasonable, flexible and, when possible, open to compromise.

Association boards represent the interests of all homeowners. Board members are homeowners themselves—elected by their neighbors—and they have a legal and ethical obligation to act in the best interest of the community as a whole.

Community association rules are created to preserve the nature of the community, protect property values and meet the established expectations of residents. These rules would cease to exist if the vast majority of residents did not want them. While some rules may at times seem arbitrary or unnecessary, it is necessary to ask: What if every resident did the same thing?

It's important to remember that association residents have a contractual obligation to adhere to association rules and pay their fair share for services and amenities provided to residents by the association.

Rules should evolve as communities evolve. A restriction that made perfect sense 20 years ago may not be appropriate today. We encourage community association boards to conduct periodic reviews of their governing documents, and to involve the entire community in these reviews.

The greatest challenge is balancing the preferences of individual homeowners with the best interests of the community as a whole. Managing this critical and delicate balance is the essence of effective community leadership.

### **Community Association Issues**

**Education** and **communication** are two critical elements of successful homeowner-community association relations. Education involves making every effort to convey timely, understandable information about codes, policies and procedures to all homeowners and non-owner residents. Communication, both to and from leaders, is the best way to identify and resolve issues before they become open conflicts.

One of the biggest challenges is balancing the preferences of the individual homeowner and the best interests of the community as a whole. It can be a delicate balance. It's often the essence of effective community leadership.

### Statement

#### **CAI-CT supports RB 5590.**

CAI-CT acknowledges that although many community association boards and unit owners do avail themselves to educational opportunities and/or seek to promote best practices in their communities, there are also many associations whereby things do not run as smoothly as they could. Conflict does arise.

The notion of providing a form of Alternate Dispute Resolution (ADR) has been supported by CAI-CT for some time. The proposed Special Masters Pilot Program offers a very well-conceived process for handling a variety of conflicts emanating from within an association.

I also wish to point out that as Connecticut lead the way in the Nation when we were the first to adopt the revisions to UCIOA, we now have another opportunity to demonstrate leadership with this program. With your support, if we succeed in passing this bill, Connecticut will once again be looked to as a model for a more fiscally sensible method of Alternate Dispute Resolution. Several states have had very expensive and unsuccessful experiences with ombudsman programs. We believe that the Special Masters Program will provide a better model.

We also look forward to the opportunity to study the data which will be collected when complaints are submitted for a hearing. The data will serve to inform us about the types of issues our communities face and will help to guide the education programs we present.

CAI-CT supports this bill as we believe that it would create an opportunity to resolve differences between individual members of a community and between a member of a community and their association. Although the vast majority of differences are able to be resolved through open dialog, through mechanisms in place in the current laws and through provisions in associations' governing documents, there are some matters that need the assistance of an impartial mediator. By ensuring that the mediator is knowledgeable in the governing documents of common interest communities and the common interest ownership act, there will be a greater opportunity for success and consistency.

The requirement for each part to pay a fee to participate helps ensure that each party will be committed to the process and will have tried to exhaust other means of resolving the issue before entering the mediation program. The fee and the volunteer service of the attorneys designated as special masters reduce the fiscal impact on the State in administering the program. By initiating the process as a pilot program, an evaluation can be made at the conclusion as to the program's effectiveness and to objectively consider steps that can be taken to refine and improve the program.

CAI-CT requests that the General Assembly consider revisions to the bill which address the following concerns:

- The program should also apply to interpretations regarding the declaration of a community. Section 1, (b) of the bill references disputes concerning the interpretation of the bylaws, rules or regulations but excludes this important governing document which carries the greatest authority and many times is a subject of a dispute.
- The program should include not just attorneys experienced in condominium law

but also other forms of common interest community associations not limited to cooperatives, Homeowners Associations (HOAs) and planned unit developments (PUDs).

- The 2009 revisions to the Common Interest Ownership Act established procedures for how a board should make a decision. The time allotted for a board to decide if it wishes the Special Masters mediation program should be extended to 60 days. Since many boards do not meet on a monthly basis, additional time would give them ample opportunity properly consider and decide whether to participate.
- Mediator Qualifications - We are pleased to know that the list of qualifications for serving as a *pro bono* mediator reflect similar requirements for those attorneys attaining the honor of being named to the College of Community Association Attorneys. As we all know, this

area of the law has many intricate components. It is essential that in order for this program to be successful, mediators must be very experienced in this area of the law.

- Fees. Requiring a \$50 fee to be paid to initially file a complaint makes sense. However, we feel strongly that the fee should be **non-refundable** and **non-waive able**. 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. We also agree that once the mediation process is agreed to by both parties a \$250 **non-refundable** and **non-waive able** fee is to be paid to the court.

## Conclusion

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 continuing 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.

For the reasons stated above, and in consideration of our recommendations for revision, we are in support of RB 5590.

We would welcome the opportunity to further discuss with you this issue, or any other issues 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

