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Re: TESTIMONY IN OPPOSITION TO SB No. 730
An Act Prohibiting Homeowner or Condominium Associations From Interfering
With or Preventing Installation of Solar Photovoltaic Systems

My name is Charles Ryan. I am an attorney with an office in Watertown, CT. I have been practicing law since 2010 and my practice focuses mainly on representing Common Interest Communities throughout Connecticut.

It is my understanding that this proposed Bill may have resulted, in part, from a legal opinion that I wrote at the request of a Common Interest Community client. I prepared a legal opinion in 2014 which stated that a Common Interest Community may prevent the installation of solar panels on the roof of a Unit. The Community in question was unlike most communities. This Community consists of free standing Units and the boundaries of the Units are the lot lines. The result is that the entire residential structure is not a common element but instead a part of the Unit. My legal opinion stated that the Board of Directors could prohibit the installation of solar panels because the Association's original Documents provided that "A Unit Owner may not change the appearance of the residence or the Common Elements without the written permission of the Executive Board." It was my opinion that solar panels would change the appearance of the residence.

Notwithstanding, my legal opinion went a step further and cautioned the Association that in order to prohibit solar panels the Board must carefully follow the Common Interest Ownership Act. Specifically, C.G.S. § 47-261b(c), provides that in order to enforce the above provision of its Declaration the Board of Directors must first adopt general aesthetic standards which would apply to all Unit Owners. In doing so the Association must adopt procedures for enforcement of the aesthetic standards, including a reasonable time within which the Association must act after an application is submitted and the consequences of the Association's failure to act.

It is important to fully review and understand the practical aspects of community living and Connecticut's Common Interest Ownership Act. To begin, upon making an informed decision to purchase a residence in a Common Interest Community a person agrees to live by the Documents of the Association. Additionally, he or she has an understanding that all other Unit Owners must too conform to the Documents. For example, although I cannot paint my front door

bright pink or park my junk cars on my front lawn neither can my neighbor. This mutual understanding is the cornerstone of community association living.

Next, Connecticut Common Interest Communities abide by a democratic society in which the Unit Owners elect the Board Members and the Board Members serve at the will of the Unit Owners. The Legislature has provided a cost effective and simple solution for Unit Owners to remove Board Members that they are unhappy with. The Unit Owners may remove any or all persons from the Board of Directors, with or without cause, by a simple majority vote of those Unit Owners present, in person or by proxy, at a meeting of the Unit Owners. The only requirements are that 1) a quorum of Unit Owners be present; 2) the removal vote be on the agenda; and 3) the Board Member(s) be given an opportunity to address the Association before the removal vote is taken. The Common Interest Ownership Act even provides a procedure for Unit Owners to call a meeting for the purpose of removing the Board should the Board fail to call the meeting.

Therefore, if the Unit Owners are unhappy with a Board's prohibition on solar panels the Unit Owners may ask the Board to re-evaluate its position or the Unit Owners may petition a meeting of the Unit Owners for the purpose of removing the Board of Directors. Once removed, the Unit Owners would elect new members to the Board of Directors that would better serve the interests of the Community.

The point I am making is that safeguards already exist to protect Unit Owners. The Board of Directors is charged with looking out for the best interests of the Community. Likewise, the CT Legislature is charged with looking out for the best interest of the citizens of Connecticut; and in this case the citizens of Connecticut that reside in Common Interest Communities. It is unfair to trump the rights of those that don't want solar panels for those that do. Instead, the Common Interest Ownership Act should be allowed to run its course in its intended manner. If Unit Owners want solar panels and the Board denies their wishes, the Unit Owners have the right to remove the Board and replace it with people that better understand the wishes of the Community. In other words, I believe that the democratic process should be respected.

Other practical considerations include the following:

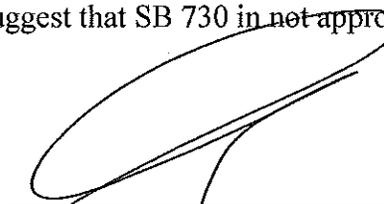
1. Roof warranties. The installation of solar panels will void both the contractor's warranty for workmanship and labor as well as the manufacturer's warranty with regard to the roofing material. Even if the installation of the solar panel does not harm the roof, any warranty claims will be faced with a contractor or manufacturer defense claiming the solar panels caused the damage. Even if untrue this is an additional issue that must be litigated at the expense of the Unit Owners.
2. If a new roof or even repairs to an existing roof were needed, the solar panels would need to be removed. It is unfair for the Unit Owners to pick up this additional expense and the owner of the panels would be responsible for the additional costs. If the Owner of the solar panels does not have the financial ability to remove solar panels the Association would have to cover the cost and assess it back to the Unit Owner. If it remained unpaid the Association may begin foreclosure procedures. However, even if the Association does foreclose, it is very likely that the Unit Owner will have a mortgage and the Association will only be able to recover its priority lien. The remaining debt would be a

common expense for which all Unit Owners would be responsible. Such a risk is completely acceptable if the Board knowingly approves solar panels. However, if the Board does not have the ability to restrict solar panels it wouldn't be able to protect the Unit Owners. For Example, assume the Board had done a reserve study and the study provided that roofs need to be replaced in one year. Current law would allow the Board to either 1) deny the installation of the solar panels until after the roof was replaced; or 2) require a deposit to cover the additional costs of removing and reinstalling the solar panels during the roofing process. The proposed legislation would eliminate this ability and thus jeopardize the financial integrity of the Association.

3. The integrity of a roof is the most significant physical concern of a Common Interest Community. A roof that fails will cost the Unit Owners thousands of dollars not only in insurance deductibles (which are ever increasing including the invention of the "per unit" deductible instead of a "per occurrence" deductible) but also due to increased insurance premiums. Any action that may jeopardize the integrity of a roof should always be subject to strict supervision of the Association.
4. It is very common for a Common Interest Community to contain stacked units where one Unit occupies the first floor of a building and another Unit sits atop of the first floor Unit. Many Associations have three (3) or more stories with individual units on each floor. These Units share a single roof. It is impossible to allow each Unit to install solar panels on the roof.
5. In most Common Interest Communities the roofs are Common Elements. Allowing a Unit Owner to install solar panels will convert a Common Element to a Limited Common Element. C.G.S. § 47-227(e) specifically states that "a common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with subdivision (7) of subsection (a) of section 47-224. The allocations shall be made by amendments to the declaration." Therefore, in order to create a limited common element the Common Interest Ownership Act requires the Declaration be amended. C.G.S. § 47-236 governs amendments to the Declaration. Specifically, C.G.S. § 47-236 provides that the Declaration may be amended by an approval vote of 67% of the Unit Owners, unless the declaration specifies a different percentage but in no event may it be less than 50% of all Unit Owners. The proposed legislation will contradict the Common Interest Ownership Act and more importantly will take away the rights of the Unit Owners. Specifically, it would allow a Unit Owner to convert a Common Element to a Limited Common Element without an amendment to the Declaration voted on and approved by not less than a majority of all Unit Owners in the Community.

In closing, I have no objection to solar panels. In fact it is quite the opposite. However, Community living is just that – it's a community. The Unit Owners of each community should have the ability to decide whether or not solar panels are proper in their Community. For the reasons stated herein I respectfully suggest that SB 730 is not appropriate for Common Interest Communities.

Respectfully submitted,



Charles A. Ryan, Esq.