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TESTIMONY OF SCOTT J. SANDLER, ESQ. REGARDING SENATE BILL NO. 129 AN ACT ESTABLISHING AN OFFICE OF CONDOMINIUM OMBUDSMAN AND REVISING CERTAIN COMMON INTEREST COMMUNITY REQUIREMENTS

I. SUMMARY OF TESTIMONY:

Senate Bill No. 129 proposes to establish an office of a condominium ombudsman to investigate and resolve complaints filed by unit owners against their associations or against the officers, directors or managers of their associations.

For the reasons set forth below, the Connecticut General Assembly should not adopt this bill.

II. BIOGRAPHY OF SCOTT J. SANDLER:

Mr. Sandler is a graduate of the State University of New York at Albany (B.A., Economics, 1997) and Quinnipiac College School of Law (J.D., 2000). He was an Associate Editor of the Quinnipiac Law Review. He is a member of the American Bar Association, the Connecticut Bar Association and the Hartford County Bar Association. Since 2001, Mr. Sandler has focused on representing condominium, community and homeowners associations.

Mr. Sandler is a past President of the Connecticut Chapter of the Community Associations Institute. He is presently the Chairman of the Chapter's Legislative Action Committee.

Mr. Sandler is a member of the law firm of Perlstein, Sandler & McCracken, LLC, in Farmington, Connecticut, which currently provides legal services to nearly 400 condominium and homeowner associations throughout the State.

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III. ANALYSIS:

The General Assembly SHOULD NOT adopt Senate Bill No. 129 because its provisions are unfair and imbalanced, and will result in unnecessary costs incurred by both unit owners living in common interest communities and the State of Connecticut.

Senate Bill No. 129 seeks to create a mechanism of resolving disputes between unit owners and their associations without the need for litigation. While this is certainly a laudable goal, the bill as drafted is unfair and imbalanced, and will cause both unit owners and the State of Connecticut to incur significant and unnecessary expenses.

A. Associations are democratic societies which are comprised of all of the unit owners in the community.

When reviewing issues concerning community associations, it is always necessary to keep in mind the unique characteristics of how associations operate.

An association are made up of all of the unit owners in the community. Under the Connecticut Common Interest Ownership Act, Connecticut General Statutes Section 47-200 *et seq.*, the unit owners elect the members of the association's board through a democratic process. The board members are then empowered to operate the community and conduct the affairs of the association.

Furthermore, the Act empowers the unit owners to remove the members of the board if they are not meeting the needs or expectations of the association. Given this, the unit owners are in full control of their associations.

In governing their communities, associations make decisions and take actions based on what they believe will serve the interests of the community as a whole.

B. Senate Bill No. 129 is unfair to associations.

The bill permits any unit owner who has a perceived claim against his or her association to file a complaint with the ombudsman. The cost of filing the complaint is \$35.00.

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The bill then requires an association against whom a complaint is filed to pay a fee of \$35.00 to the ombudsman, regardless of whether the unit owner is likely to prevail on his or her claims. If the association does not pay the fee within 30 days of receiving notice of the complaint, then it must pay a fine in addition to the fee.

It is ridiculously unfair to require associations to pay a fee to defend themselves from claims. Even in the case of litigation, the defendant in a lawsuit is never required to pay to a fee to defend him or herself. The defendant may even proceed without an attorney if he or she wishes, avoiding the cost of legal fees. Furthermore, in the case of a criminal defendant who cannot afford an attorney, it is the government's responsibility to provide the defendant with an attorney.

Forcing a party to pay a fee to defend him or herself is a clear violation of public policy and runs contrary to the principles on which our legal system is founded.

C. Senate Bill No. 129 is imbalanced.

The bill permits unit owners to submit complaints against their associations or the officers, directors and managers of their associations to the ombudsman's office. However, if a unit owner is violating the governing documents of the community, the bill does not enable associations to submit a complaint against the owner.

If the purpose of the bill is really to provide an efficient and economical means of dispute resolution, then it should afford associations with the same benefits and protections as it does individual unit owners.

D. Senate Bill No. 129 will cause unit owners to incur significant and unnecessary expenses.

This bill is an invitation to any unit owner who disagrees with the decisions and actions of his or her association, to file a complaint with the ombudsman. It opens the proverbial floodgates, and does so at the expense of all of the unit owners in the community, in addition to the State of Connecticut.

Certainly litigation can be an expensive and time-consuming process. However, these costs serve to filter out claims that lack merit. Generally, people are not likely to proceed with litigation unless they have a reasonable expectation of obtaining a favorable outcome.

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However, if the only expense to an owner is paying a fee of \$35.00, the owner has virtually no reason not to file a complaint, regardless of whether the owner is likely to prevail on her or her claims. A particularly vindictive person will continuously file complaints, forcing the association to pay filing fees as required by the bill, just for the nuisance value.

Furthermore, It is unlikely that an association would attempt to respond to any complaint filed by a unit owner without the benefit of legal counsel.

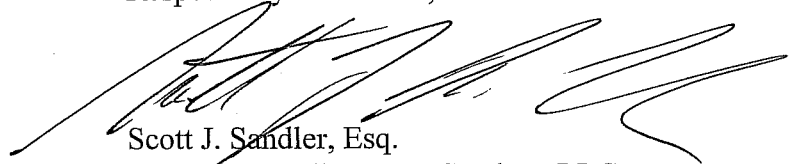
The cost of paying filing fees to the ombudsman's office and retaining and consulting with legal counsel would be common expenses that must be shared by all of the unit owners in the community. Thus, by opening the floodgates, the association and all of the unit owners, will incur significant expenses responding to claims that lack any merit.

- E. Senate Bill No. 129 will cause the State of Connecticut to incur significant and unnecessary expenses.

The ombudsman's office will be virtually buried in complaints filed by unit owners, most of which will lack any merit. The office, which is funded by the State of Connecticut, will require significant amounts of funding and resources in order to process and address these complaints. In light of the current economic climate, the State of Connecticut simply cannot afford to fund the ombudsman's office.

If I can furnish the Committee with any further information or assistance, please do not hesitate to contact me.

Respectfully Submitted,



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