

**Newtown Woods Homeowners Association, Inc.**  
**Newtown, CT 06470**

March 19, 2021

*Via Electronic Mail*

Joint Committee on Judiciary  
Legislative Office Building, Room 2500  
Hartford, CT 06106

Attn: Co-Chairs, Hon. Steven Stafstrom, Representative and  
Hon. Gary Winfield, Senator.

***Re: Written Testimony In Support of H.B. No. 5125 (COMM): An Act Concerning  
Immunity From Civil Liability for Entities that Have Operated Pursuant to Health and  
Safety Guidelines During the CoVid-19 Pandemic.***

Dear Mr. Chairman,

I write on behalf of the Executive Board (the “Board”) of an association of condominium homeowners in Newtown, Connecticut; the Newtown Woods Homeowners Association, Inc. (the “Association”) We are a 55+ community consisting of 178 single family units and we operate in accordance with the Connecticut Common Interest Ownership Act, CGS Sec. 47-200 et seq. Our units are both Townhomes as well as apartment style units within mid-rise buildings. Our Board consists of 5 uncompensated members elected from within the community. Our annual budget, which is funded by member “common charges” is approximately \$1,000,000 virtually all of which is expended on non-discretionary expenditures such as general maintenance our buildings and grounds and insurance.

Our experience coping with the challenges of the CoVid-19 pandemic compels us to support and encourage legislation that would protect associations, like ours, who were forced to implement unpopular restrictions intended to protect our residents. We believe our good faith actions in accordance with governmental health mandates support legislation that would grant tort immunity to our Association and our Board members.

As a 55+ community, many of our Association members are in a high risk CoVid demographic. When the pandemic arrived in mid-March 2020 our Board immediately closed our community clubhouse and exercise facility. We suspended all Association-related social and business gatherings. We increased our cleaning protocols in our common element. We imposed restrictions on vendors doing business in our common areas, and we mandated masking and social distance requirements on our residents and guests. We did not open our community swimming pool in 2020 and we prohibited members from using the pool area for gathering or socializing. We closed our outdoor grilling areas and did not place Association owned outdoor furniture in the common areas. As such, many of the amenities which our residents customarily enjoy were not available. Our decisions to close these amenities were made in the

best interest of our Association. We intend to maintain the status quo until government regulations allow us more flexibility.

As is noted, our primary reason for closing our facilities during the pandemic was the safety of our residents. But other factors contributed to our decisions. Among them, potential tort liability. Shortly after we closed our facilities, our insurer advised that neither our Association's general liability nor our directors and owners liability policies cover the Association or our Board members individually for Covid-19 related liability. In point of fact, our policies (and all liability policies covering Associations and businesses similar to ours, contain an exclusion for casualties caused by viruses like CoVid-19. Our Association, and our Board therefore, is without insurance coverage if a resident or visitor claims they were exposed to CoVid-19 while on our premises.

When we learned about the exclusions within our policies, we researched the availability of coverage from different companies. We looked into "riders" that would protect us from liability. We were surprised to learn that there are no riders or policies available at any price. Our insurance agent advised us that no companies in the United States are offering such policies or riders because the risk is deemed to be too high. Other HOAs in our area have received similar guidance. In an effort to find an answer we contacted the Connecticut Common Interest Ownership Association - of which our Association is a member. The Association confirmed that no company offers policies covering CoVid-19 liability at any price.

We are aware that the likelihood of a finding of liability against an Association like ours, or our Board members is remote. Causation would be difficult to establish. But the mere filing of such a claim creates risk to our assets as the expense of even a successful defense would be costly - attorney and expert witness fees, and the associated expenses of litigation would mount quickly. Moreover, the risk of individual liability and/or of substantial defense costs causes many experienced and qualified potential Board members to forego Board service. Given the current state of CoVid-19 many good people refuse to serve.

The potential for litigation arising from CoVid-19 exposure is not fanciful. Connecticut personal injury law firms have, since the pandemic began, advertised their intention to pursue employers, hospitals, and others for CoVid-19 exposure. While we respect the right of legitimate tortfeasors to pursue culpable organizations for willful misconduct or gross negligence, we believe the legislature should consider a form of immunity for Associations, like ours, that have acted in good faith and in accordance with government guidelines to protect our members.

By way of additional comment, we note that our Association members have, since last spring, been asked to open our Clubhouse, exercise area, and our swimming pool upon the execution of a liability waiver by potential users. Our Board considered such waivers early on in the pandemic and discussed the issue with our lawyer. What we learned is that the viability of such waivers in this State, especially in the context of recreational activities is, at best, unsettled. At least one Connecticut Court has held that such liability waivers and releases in a recreational setting violate public policy. Given the state of the law in this area, we decided against waiver as a solution to our dilemma.. Legislation clarifying this issue would likely go a long way to protecting associations like ours. We hope you'll consider this issue as you consider pandemic-related immunity for organizations.

We are available to answer any questions you may have.

Very truly yours,

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