

TESTIMONY IN SUPPORT OF HB 5125

AN ACT CONCERNING THE PROVISION OF IMMUNITY FROM CIVIL LIABILITY FOR ENTITIES THAT HAVE OPERATED PURSUANT TO HEALTH AND SAFETY GUIDELINES DURING THE COVID-19 PANDEMIC

Judiciary Committee

March 26, 2021

CAI-CT

On behalf of the Connecticut Chapter of the Community Associations Institute, I am submitting comments regarding our support of HB 5125.

CAI-CT is part of a National Organization with over 40,000 members and growing stronger. Our mission is to support best practices in association operations throughout our state. We do this by providing robust education programs and valuable resources to enable our members to have the necessary skills to effectively operate their associations.

There are currently over 5,000 common interest communities in Connecticut with approximately 950,000 residents. These remarks are intended to articulate the impact this bill will have on these communities and the owners who have invested in them.

Summary

Throughout the pandemic, most common interest communities with amenities such as pools and clubhouses have been very disciplined about managing the risk regarding the opening of these facilities. Very few have chosen to open their facilities since any potential COVID related claims, even if they are proven to be invalid, would require a legal defense for which no insurance coverage is available.

Issues

Although keeping pools closed has been an inconvenience for owners, community association boards have a duty to act in the best interests of the association as a whole. This duty includes protecting the assets of the association.

Although the board can require owners to comply with the regulations of the health department and recommendations of the State, ensuring compliance presents a number of challenges. Further, in the event a person contracts Covid-19 while using the amenities and files suit against the association, it is unlikely the association's insurance policy would provide coverage for such a suit. Due to the lack of insurance coverage, the emergence of new strains of Covid-19, and the recent rise in new cases, it would be difficult for a Board of Directors to decide to open the amenities, including pools, at this time.

Some insurance policies have virus exclusions and will not provide coverage (All but guaranteed for policies entered into after July 1, 2020). Other insurance policies do not have specific virus exclusions but language in the policies may nonetheless exclude coverage. In

the event a loss is excluded, the association's financial exposure could be massive and potentially crippling. If the association does not have insurance coverage, the association would bear the expenses of litigation which could include engaging an attorney to defend the case, expert fees, and other costs of litigation. In the event of a monetary settlement or a judgment against the association, the association would also be required to use the association funds to comply with the payment requirements.

While passage of this bill would offer some protection to community associations it is nevertheless imperative the utmost of precaution is taken. Opening a pool and other amenities is not a simple task. Every community is different, and each board must make the decision to open based on whether it has the resources to comply with guidelines from the Centers for Disease Control and Prevention, state mandates, and local health orders.

Given the severity of Covid-19, the ease at which it spreads, and the current trend upwards in new cases and hospitalizations, it is essential that community associations proceed with extreme caution.

It is also important to note that although gyms, restaurants, and many other businesses have remained open, it is important to understand the distinction between a business and an association. Businesses that are open are mainly "for profit" entities. Further, the owners of those businesses make decisions that typically only effect themselves. Meaning, if they open and they are sued, nobody else is financially liable except those that made the decision to open. In a community association, all homeowners would be financially liable. It is virtually impossible for a board to protect the association while taking on the inherent risks associated with opening the amenities.

In the event you may require additional information, please do not hesitate to contact me. Thank you.

Respectfully submitted,

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