

## **TESTIMONY IN SUPPORT OF SENATE BILL 802: Community Associations Data Transparency Act**

Hearing before Senate Urban Affairs and Housing Committee

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Submitted by: Carl N. Weiner, Esquire

Hamburg, Rubin, Mullin, Maxwell & Lupin  
375 Morris Road; P.O. Box 1479  
Lansdale, PA 19446-0773

Stefan Richter, Esquire  
Clemons Richter & Reiss, P.C.  
2003 South Easton Road, Suite 300  
Doylestown, PA 18901

Honorable Members of the Pennsylvania State Senate:

An estimated 2.8 million Pennsylvania residents, comprising nearly one-fourth of the State's population, live in approximately 10,000 to 12,000 common ownership interest communities ("CIOCs"), including condominium associations, cooperative associations and planned communities (homeowner associations) throughout Pennsylvania. These numbers are approximate because despite the widespread impact of association living in Pennsylvania, there is a distinct lack of data to identify the location, scope and responsibilities of associations throughout Pennsylvania. This deficit in information was recognized in the December 2011 report of Joint State Government Commission which was prepared in accordance with House Resolution 350 of 2009. The Joint Commission concluded then that no government agency, either municipal or state, keeps an account of how many Pennsylvania residents live in common ownership interest communities, that there is no means of locating associations and no agency that collects comprehensive data on associations, all factors which render it impossible to identify the status of infrastructure in associations. Based on that finding, the Joint State Government Commission recommended that county planning officers in the Commonwealth be required to track certain information on associations, including names, physical locations, number of units and infrastructure.

I have practiced real estate law, with strong emphasis on association law, in the Commonwealth of Pennsylvania for over 30 years. I have participated in creating over 200 such CIOCs. These associations have largely come into being as municipal government has increasingly delegated traditionally municipal services to private associations. Such services include, but are not limited to, road maintenance, snow plowing, trash collection and sewer and water infrastructure maintenance. Further, as stormwater regulations have become an increasingly critical issue in Pennsylvania, associations have been established in order to have a viable entity maintaining stormwater basins and other facilities in perpetuity. Despite the ever-growing reliance upon privately run associations to manage historically municipal services, I have witnessed firsthand the disconnect between municipal and county agencies and the private associations that have been established within their respective jurisdictions. Although private roads and private sewer and water systems are part of overall municipal and county systems, municipal governments

and county agencies have no means of tracking the associations which maintain these critical elements of infrastructure.

Maintaining data to identify associations, as recommended by the Joint State Government Commission, is not a difficult task. As an attorney for real estate developers, I am well aware that under the provisions of the Pennsylvania Municipalities Planning Code. 53 P.S. § 10101, when plans are submitted for review to a municipality, the plans must also be submitted to the county planning commission. The developer, in addition to fees paid to a municipality for submission of plans, pays a separate fee to the county. The form that the developer submits to the county with a proposed development plan can easily adapted to require the developer to submit basic information about whether an association is proposed for the development, the proposed name of the association, what infrastructure will be maintained by the association and what services will be provided. This would be in addition to the information that the county already receives including the name of the development, the physical location, land area, lot sizes, the number of units as well as proposed sanitary and sewer service and proposed ownership of roads.

All open space in an association is, in accordance with the specific statutory requirements of the Uniform Condominium Act, Uniform Cooperative Act and Uniform Planned Community Act, assessed at zero value and such parcels are not separately taxed. The zero assessment of open space parcels is based on the concept that the value of these open space parcels is incorporated into the assessed values of individual homes. In 2017, the Community Associations Institute presented a program to the Montgomery County Planning Commission regarding the basics of planned community and condominium forms of ownership. Prior to the commencement of that presentation, I asked the Executive Director of the Montgomery County Planning Commission whether it would be possible to come up with a list of associations in Montgomery County based on the data which the County Planning Commission currently has. The Executive Director talked to one of the staff members of the Montgomery County Planning Commission and by the end of our presentation, one hour later, I was presented with a list of associations in Montgomery County that were identified through ownership of zero assessed open space parcels. The prompt preparation of that list by one staffer provided a clear indication that the county could easily collate information regarding associations based on existing data as well as data to be fed to the planning commission through the modification of the existing plan submission system.

Information pertaining to the identity, size and location of community and condominium associations is vital not merely for regulatory and infrastructure purposes at a state and local level. Pennsylvania's version of Megan's Law (SORNA) imposes upon a municipality's "chief law enforcement officer", the obligation to notify a community that a sexually violent predator is living among them. These notices must include:

- (i) The name of the convicted sexually violent predator.
- (ii) The address or addresses at which the sexually violent predator has a residence. If, however, the sexually violent predator has a residence as defined in paragraph (2) of the definition of "residence" in section 9799.53 (relating to definitions), the notice shall be limited to that provided for under section 9799.56(a)(2)(i)(C) (relating to registration procedures and applicability).

- (iii) The offense for which the sexually violent predator was convicted, sentenced by a court, adjudicated delinquent or court martialed.
- (iv) A statement that the individual has been determined by court order to be a sexually violent predator, which determination has or has not been terminated as of a date certain.
- (v) A photograph of the sexually violent predator, if available.

Notification must be provided to “neighbors” of the sexually violent predator, which expressly includes a “unit owners’ association and residents of the common interest community”. Absent a database containing even basic information on community associations, law enforcement must speculate on the extent to which notice must be required. Not all communities display identifying signage; law enforcement cannot rely on construction or appearance to determine if a development is a “common interest community”. Proper notice, and hence compliance with Pennsylvania’s Megan’s Law by local police, may thus be substantially hindered or prevented unless adequate information is made available.

In consideration of concerns raised by CCAP in prior discussions relating the proposed legislation, Senate Bill 802 has been crafted to limit the scope of information which is required to identify associations. The proposed legislation is intended to assist in shining a light on the hidden existence of CIOCs throughout the Commonwealth of Pennsylvania. The critical information provided in the proposed bill, will allow government agencies at all levels to identify the entities responsible for maintaining important infrastructure such as water facilities, sewer facilities, roads and stormwater facilities as well as ensure compliance with Megan’s Law. The public health, safety and welfare of millions of Pennsylvania residents is dependent upon the ongoing maintenance of these critical facilities while responsibility for these facilities can and will continue to be delegated by government agencies to private CIOCs. Government agencies at all levels should have the ability to identify the associations which ultimately bear the responsibility for the health, safety and welfare of all Pennsylvanians.