



Your Other Partner

Public Hearing on Senate Bill 802
Senate Urban Affairs and Housing Committee

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Good morning. My name is Erik Hume, and I am the Vice Chair of the Real Property, Probate and Trust Law Section of the Pennsylvania Bar Association. The Real Property, Probate and Trust Law Section represents over 1,700 Pennsylvania attorneys whose practices encompass real estate law and trusts and estates. As Vice Chair, I am responsible for the real property division of the Section. I am currently engaged in the private practice of law in Harrisburg with the law firm of Saxton & Stump, LLC, where I chair the firm's Real Estate Law Practice Group. In my practice, I represent clients in the acquisition and development of real estate. A significant portion of my practice is devoted to the creation and administration of condominiums and planned communities. Beginning with the 2020 supplement, I am the author of *Pennsylvania Community Association Law and Practice*, the leading legal treatise on common interest ownership community law in Pennsylvania.

I appreciate the opportunity to appear before you this morning to present comments on Senate Bill 802, legislation that would begin to address the long-standing dearth of information about common interest ownership communities in Pennsylvania.

Common Interest Ownership Communities in Pennsylvania

Common interest ownership communities ("CIOCs"), primarily consisting of condominiums and planned communities, are forms of property ownership. Condominiums have existed in Pennsylvania since the Unit Property Act of 1963 was enacted. Informal home owners associations have existed even longer than condominiums, and Planned Communities were added as a recognized form of property ownership in 1997.

Generally, in a CIOC the property owners own their individual home (called a "unit"), and collectively own other portions of the community, called common elements. In some instances, it is the structure of the building where the units are located that is collectively owned. In others, such as a planned community consisting of single family homes, the common elements can consist of amenities, open space, storm water management facilities, streets and, in some instances, may include the local water and sanitary sewer system.

CIOCs are managed and governed by associations, with membership consisting of the property owners. While created by recorded property restrictions, Pennsylvania law ensures that CIOCs must follow certain guidelines for elections, records and association powers. Under recently approved legislation, the Bureau of Consumer Protection has an oversight role for certain due process issues affecting CIOC associations. Due to their responsibility for facilities that traditionally were provided by the municipality, in some instances CIOCs operate as quasi-governmental entities.

Like local governmental entities in Pennsylvania, there is a wide variety in the size, services and management of CIOCs. Some CIOCs consist of projects of less than ten units with minimal facilities, and are self-managed. Others have thousands of units with multiple levels of governance implemented by professional management. While Pennsylvania law provides basic

guidelines for the operation of CIOCs, there is no “one size fits all” model for Pennsylvania CIOCs.

The Joint State Government Commission Report

Despite the significant role CIOCs play in the lives of Pennsylvanians, very little data has been collected on the number, size, location, facilities managed or services provided by CIOCs. Sixty-five of Pennsylvania’s sixty-seven counties do not collect data concerning CIOCs. There is no understanding of the number of homes in CIOCs, the miles of roadway owned by CIOCs, the stormwater facilities owned or maintained by associations or other services the communities provide. Furthermore, there is no way to even know who to contact at an HOA in the event of an emergency

Recognizing this issue, the Pennsylvania House of Representatives charged the Joint State Government Commission to study the impacts of CIOCs on state and local government, to gather information about CIOCs and to make recommendations. The JSGC report was issued in December of 2011.

The results of the JSGC report were eye-opening. Despite the growing prevalence of CIOCs in Pennsylvania, there is no central repository, public or private, of data concerning CIOCs in Pennsylvania. Furthermore, the report highlighted that firm data about CIOCs is almost nonexistent at both the county and municipal level. The report also noted, however, that it is estimated that 80 percent of new housing starts since 2000 are built as CIOCs. In other words, a significant portion of residential infrastructure constructed since 2000 is privately owned and managed, yet there is no collective data on the type or condition of this infrastructure or who is managing it.

Based on its findings, the JSGC made the following policy recommendations:

1. Encourage CIOCs and local governments to look for areas of consolidation and cooperation of services to find cost savings for both entities.
2. Encourage local municipalities to provide assistance to HOAs that request help on projects that could impact people outside of the CIOC, including dam repair, upkeep of publicly accessible green space and recreation amenities required by local ordinance, sanitary sewer or drinking water projects and stormwater infrastructure.
3. Require municipalities to accept dedication of all roads that are built to PennDOT specifications, as adopted by the municipalities or under PennDOT Publication 72M, “Standards for Roadway Construction.”
4. Encourage the use of maintenance-free stormwater retention features to lessen the burdens on CIOCs. Developers should work cooperatively with municipalities

on maintenance and design, including swales, permeable cover, riparian buffers and water gardens as identified in industry Best Management Practices.

5. Encourage municipal planners to require cooperative development of sewer and water projects to tie into or improve existing public infrastructure as defined by the Pennsylvania Municipalities Planning Code (MPC) and included in comprehensive plans.

6. Prohibit stormwater retention infrastructure from being assigned to an individual lot within the CIOC and require HOA ownership and maintenance.

7. County planning officers in the Commonwealth are required by Section 207 of the MPC to submit an annual report. The MPC should be amended to require County Planning Commissions to track certain information on CIOCs, including their names, physical locations, land area, lot size and number of units, presence of a mixed use development, infrastructure including sanitary sewer, water and stormwater systems, dedication of roadways including roads built to specifications, common infrastructure and recreation facilities, and articles of incorporation or other non-profit organization registration information filed with the Department of State.

8. Require municipalities that provide trash, recycling, bulk item collection and yard waste services to offer those services to all residents within municipalities, whether in an HOA or not, but allow CIOCs to opt out and provide their own services.

9. Municipal, county and state emergency management coordinators should include CIOCs in all municipal disaster planning, preparation and clean-up.

10. Require the information supplied by HOAs at the resale of a home, within a condominium or planned community, be provided by a unit owner or declarant, when applicable.

11. Support the passage and implementation of House Bill 1941, Printer's No. 2663 of 2011, sponsored by Representative Mario Scavello, which creates the Dam Project Assistance Act. The Dam Project's bond fund would open \$225 million for the removal, restoration and repair of state-owned dams and \$275 million for private dams. The owners of private dams would need to apply as co-applicants with local governments. Priorities would be given to high-hazard dams, with immediate safety issues and those necessary for drinking water systems. This bill would help address one specific area of CIOC infrastructure that would affect those outside the CIOC in the event of a failure.

Senate Bill 802

Of the JSGC's recommendations, it is the seventh recommendation that is key to implementation of the other recommendations. SB 802 fulfills that recommendation. It would require that county planning agencies collect information about existing CIOCs and submit it as part of their annual reports. Furthermore, SB 802 addresses the administrative burden moving forward by requiring that information about CIOCs be provided to the planning agency upon creation of the community, by the developer.

The Position of the Pennsylvania Bar Association.

The Pennsylvania Bar Association represents the interests of 25,000 attorneys in Pennsylvania. The lawyers in the PBA represent clients at levels of government in Pennsylvania, as well as parties at all levels of interest in CIOCs.

In 2013, the Real Property, Probate and Trust Law Section of the PBA considered the JSGC report and prior versions of SB 802. The RPPT Section unanimously recommended that amendments to the MPC be adopted as per SB 802 to "afford the legislature the facts necessary to review, and, if appropriate, act on issues regarding CIOCs." This report was subsequently submitted to the entire House of Delegates of the PBA, which overwhelmingly adopted the recommendation.

It is the PBA's position that the information regarding CIOCs needs to be collected to address both current needs as well as permit policymakers to implement better policies. As noted in the JSGC report, there are significant questions surrounding CIOCs, particularly with regards to duplication of services, funding for infrastructure and double taxation. One cannot address these issues until the state ascertains the number of community associations in Pennsylvania, their locations and the services they provide. The need for this information is non-partisan and will address an important need.

A review of the JSGC report makes clear the dearth of information on CIOCs, as well as the importance of gathering that information. Having information about CIOCs will better inform the legislature on policy decisions governing CIOCs as well as infrastructure needs in the Commonwealth. It will help ensure that resources such as storm water management facilities, ponds and dams are properly maintained and supervised. Furthermore, it will help emergency responders identify possible points of contact in the event of an emergency.

We recommend the approval of SB 802.