
Public Hearing

before

ASSEMBLY TASK FORCE TO STUDY HOMEOWNERS ASSOCIATIONS

*“Information for the study of homeowner associations
and common interest property ownership under New Jersey law”*

LOCATION: Middlesex County Fire Academy
Sayreville, New Jersey

DATE: April 1, 1997
7:00 p.m.

MEMBERS OF TASK FORCE PRESENT:

Assemblyman Christopher “Kip” Bateman, Chairman
Assemblyman Guy R. Gregg
Assemblyman John Wisniewski
Wendell A. Smith.
A. Christopher Florio
Phyllis A. Matthey
Stephen M. Dahl
Bruce Blumenthal
James H. Robinson
David Herzfeld

ALSO PRESENT:

Joyce W. Murray
*Office of Legislative Services
Aide, Assembly Task Force
to Study Homeowners Associations*



Hearing Recorded and Transcribed by
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TABLE OF CONTENTS

	<u>Page</u>
James E. Garner Representing Common-Interest Homeowners Coalition	4
Lois Pratt, Ph.D. Member Common-Interest Homeowners Coalition	6
Margaret Bar-Akiva Member Common-Interest Homeowners Coalition	10
Warren J. Rodgers Jr. Private Citizen	14
James Silkensen Representing New Jersey League of Community and Savings Bankers	15
Lucinda J. Choquette Private Citizen	16
Leo Yourish Private Citizen	19
Phyllis Spiegel Private Citizen	20
Maxine Bedrick Private Citizen	24
Derek S. Ware Private Citizen	27
David Powell Chairperson Board of Directors Beckett Association	27
Gregory Machyowsky	

TABLE OF CONTENTS (continued)

	<u>Page</u>
Private Citizen	32
APPENDIX:	
Proposal plus attachments submitted by Lois Pratt, Ph.D.	1x
Statement submitted by Margaret Bar-Akiva	19x
Newspaper articles plus attachments submitted by Gregory Machyowsky	22x
Letter addressed to Joyce W. Murray from Robert E. Carrigan	27x
ses: 1-51	

APPENDIX

ASSEMBLYMAN WISNIEWSKI: Is this amplified? (referring to podium)

If you'll take your seats, we'll get started.

ASSEMBLYMAN CHRISTOPHER "KIP" BATEMAN (Chairman):

You can't pick up? (speaking to Hearing Reporter) (negative response)

ASSEMBLYMAN WISNIEWSKI: No, not over here?

ASSEMBLYMAN BATEMAN: You know what, John, they deliberately turned that one off.

ASSEMBLYMAN WISNIEWSKI: They turned that one off, okay.

ASSEMBLYMAN BATEMAN: Because it's got all kinds of slide shows--

ASSEMBLYMAN WISNIEWSKI: Hi. My name is John Wisniewski. I'm an Assemblyman from the 19th Legislative District. I am a member of this Task Force, Chaired by Assemblyman Bateman, who is seated at the center of the dais. Assemblyman Bateman gave me the honor tonight of welcoming you to my hometown, the Borough of Sayreville, in which this Middlesex County Fire Academy is located.

I'd like to thank each and every one of you for taking the time to come out tonight to participate in a very important process, to help this Task Force better understand the concerns that many of you may have about the current system of regulating condominium and town home associations.

If any of you wish to speak, to have any comments officially made part of the record of this Task Force, we have forms that you should fill out

and they are located-- There is a list to sign up on at this woman's table right here to my left, to your right. (indicating)

The purpose of our meeting here tonight is to take testimony, to listen to what you have to tell us about home owners associations, about condominium associations. We want to hear from you about your own experiences. We want to hear your suggestions. We want to have your input.

With that being said, I'd like to have the members of the Task Force, starting at the far right, introduce themselves to the members of the audience.

MS. MATTHEY: My name is Phyllis Matthey. I live in a town house. I'm a property manager, and I'm the founder and President of CAPA, the Coalition of Associations for Political Action.

MR. BLUMENTHAL: My name is Bruce Blumenthal. I am the President of the Wood Duck Pond Neighborhood Association in Bedminster, New Jersey.

ASSEMBLYMAN BATEMAN: I'm Kip Bateman. I serve in the Assembly representing the 16th Legislative District which covers most of Somerset County and part of Morris County. I'm also the Chairman of the Task Force.

MR. SMITH: I'm Wendell Smith, attorney member of the Task Force, the general counsel for Community Associations Institute, its founding President, and represent both associations and developers.

MR. ROBINSON: My name is Jim Robinson. I am the Chairman of the Board of a town house association in this town -- in Sayreville. I am a member of the Board of Directors of CAPA. I was one of the people, along

with Assemblyman Wisniewski, who asked that this meeting be convened here, so I would like to thank Chairman Bateman for holding this meeting in this location.

MR. DAHL: I am Steve Dahl. I'm Vice President and Chief Legal Counsel with K. Hovnanian Companies. I'm also on the Board of Directors of CAI.

MR. FLORIO: My name is Chris Florio. I'm an attorney practicing in this area of law.

ASSEMBLYMAN WISNIEWSKI: Chairman Bateman.

ASSEMBLYMAN BATEMAN: Assemblyman, thank you very much, and let me thank you for all your efforts in arranging the location tonight and for advertising and sending out proper notices.

We are also fortunate tonight to have with us the Assistant Commissioner of DCA, Chuck Richman.

Chuck, why don't you wave? (Assistant Commissioner complies)
Thank you for coming.

This is a meeting the purpose of-- This is the fourth meeting we've held throughout New Jersey. One was down in Mercer County, Ocean County, Somerset County, and now here tonight in Middlesex County. The purpose is really to listen to you, any complaints, anything you may have to offer regarding the condominium associations and that type of ownership -- any problems you may have. This is not really a session for individual problems. We hope to gather this information, take it back, and, hopefully, craft some legislation that is going to address some of the problems.

This being our fourth hearing, we're starting to see a common theme throughout the hearings, and there are a number of problems I'm sure we'll hear tonight -- we've heard previously -- which is good. Also, if you don't like to testify, we'd be happy to accept a letter from you now or at a later date. My legislative assistant is here. I'll give you my card or our Assemblyman, John, he has his cards with him -- locally. We'd like to hear from you because we can't do our job properly unless we get the necessary information.

I have to thank the Task Force. They've given up a lot of their time to come out and listen to everyone, to get all the information necessary for us to go back into our work sessions and try to make the laws better to help you, the consumers.

So, again, I thank you for coming out. There has been list circulated to sign up. Let me get a copy of it. We'd like to keep it between three and five minutes. If you want to come back a second time, we're here until at least 9:00.

Thank you very much.

The first person is -- it looks like James Gardner. We're going to use this mike, right over there. (indicating)

J A M E S E. G A R N E R: (speaking from audience) This one here? (indicating) (affirmative response) Okay.

Thank you very much, Assemblyman Bateman. And everyone sticks a *D* in it. It's James Garner (indicating pronunciation) no *D*, but thank you very much.

Members of the Task Force, ladies, and gentlemen, my name is James Garner. I'm a resident of Twin Rivers in East Windsor. I'm here today

as a spokesman for the Common-Interest Homeowners Coalition, as well as a member of a home owners association.

The Common-Interest Homeowners Coalition was founded to express the concerns of all members of residential community associations, because many of these concerns are not being adequately addressed today. We already have members from home owners associations across the State.

The Common-Interest Homeowners Coalition is an independent voice for home owners to promote democratic governance in residential associations. Our members are owners of condominiums and other types of cooperative housing. Our goal is to express the concerns of such homeowners to legislators and government officials, industry practitioners, association boards, and the general public on matters directly related to residency in home owner associations.

The Common-Interest Homeowners Coalition will, on our own and with others, articulate principles of democratic association governance and develop procedures and practices to implement these principles. We will work to remove impediments to such practices and to establish legal and other mechanisms to ensure vigorous enforcement of these democratic procedures. Our objective is that each home owner have effective ways to participate within the association in matters affecting his or her health, safety, and general welfare.

As a Councilman in the Township of East Windsor, I am struck by the powers of home owners associations. Home owners associations have all the essential characteristics of government. They tax, they build public

works, they legislate, they grant variances to their legislation, and they prosecute violators of their laws.

Yet while they have the powers of government, home owners associations lack the corresponding restraints on that power and safeguards for individual rights that we wisely place on government. The cornerstones of our democracy -- the secret ballot, due process, open-competitive bidding, a meaningful sunshine law -- are substantially missing from the governance of home owners associations.

Two specific issues of immediate concern are open public meetings and the availability of an impartial alternative dispute resolution procedure. Fellow members of the Common-Interest Homeowners Coalition will speak on these issues: Lois Pratt on open public meetings, and Margaret Bar-Akiva on alternate dispute resolution.

Thank you very much for your kind attention to me tonight.

ASSEMBLYMAN BATEMAN: Thank you, Mr. Garner.

MR. GARNER: Thanks a lot. (applause)

ASSEMBLYMAN BATEMAN: Why don't we go right to Lois Pratt?

Lois.

LOIS PRATT, Ph.D.: Thank you for the Task Force being willing and patient in listening to us.

I am speaking on behalf of myself and my husband, Sam Pratt, who is not here because he had to attend his own Board meeting which he considers vital.

We are proposing that an open meeting law be enacted for condominiums and other residential associations that is modeled after the laws governing the meetings of public governing bodies. All states and the Federal government have open meeting laws. New Jersey's open public meeting provision for condominiums and other residential associations falls short of our public open meeting law.

Standards of transparent governance and intolerance of secret operations in residential community associations must not be less than those in public governing bodies. There is simply no justification for allowing boards to operate in secrecy from their own home owners. Yet the New Jersey condominium law permits boards to consider a wide and loosely defined range of issues in secret, to deliberate in closed working sessions, and to release no minutes of these sessions. These loopholes are easily used by boards to deliberate and implement much of the association's business in secret. And if the Uniform Common Interest Ownership Act would be enacted in New Jersey, as it has been in other states, it would do incalculable harm because that law has absolutely no provision for open meetings.

The laws for public governing bodies have evolved to meet rising professional standards and citizen's demands for transparent governance. Now, it is essential that the laws setting standards of governance for residential associations should similarly be brought into line with current standards. One step would be to use the public open meeting law as the model to bring governance procedures for residential associations in line with current standards of transparent governance.

I'm going to, in a truncated version, list a number of specific provisions that are based on the New Jersey public open meeting law, supplemented by public open meeting laws in a few other states, like Indiana, Illinois, Virginia, California, Florida.

One, the standards should be explicitly stated, as it is in the public open meeting law, that home owners have the right to transparent governance. In enacting New Jersey's public open meeting law in 1975, the Legislature declared that "the right of the public to be present at all meetings of public bodies and to witness in full detail all phases of the deliberation, policy formulations, and decision making of public bodies is vital to the enhancement and proper functioning of the democratic process; that secrecy in public affairs undermines the faith of the public in government and impairs the public effectiveness in fulfilling its role in a democratic society."

Two, public attendance: The law should ensure the right of all home owners to attend all meetings at which any business affecting them or the association is discussed or acted upon in any way. Closed working or executive sessions are not permitted.

Three, the only exceptions to open meetings are as follows: A board may limit participation in its meetings only in cases where the interest of the membership would be clearly endangered or the personal privacy or guaranteed rights of individuals would be in danger of unwarranted invasion and only on those specific matters that are expressly required or authorized in the law. If the matter does not fall within one of the specified exceptions, the discussion and voting on the matter must take place in open session regardless

of how sensitive or controversial the matter may be. No discussion may take place in closed session on other matters.

Four, whenever a board or committee seeks to meet in private on a matter that the law permits to be discussed in closed session, it must first pass a resolution by majority vote at a public meeting stating its intention to do so.

Five, home owners must receive timely notice, published in advance, of all meetings.

Six, an agenda must be provided to the members in advance of all meetings.

Seven, the board and committees are required to keep comprehensible minutes on the essentials of all meetings, including closed sessions. Minutes must be promptly released to the membership.

Eight, home owners have the right to speak in meetings and to audiotape or videotape the proceedings.

Nine -- and I'd like to underline this one -- enforcement: The Department of Community Affairs will have the power to enforce and ensure compliance with the provisions of the Act and with rules promulgated pursuant thereto. The law sets forth civil and criminal remedies for violation of the Act. The actions of a body that has acted in violation of the law may be invalidated. The enforcement duties of the DCA will be funded by an annual per-unit assessment to be paid by all residential associations as a common expense.

These provisions would simply offer home owners the right to the same standards of transparent governance that citizens have from public governing bodies. Surely, this is not unreasonable, and what an improvement

this would bring in the governance of associations and the well-being and satisfaction of home owners.

In addition to this proposal on open meetings, we're also submitting to the Task Force two other proposals which I will not discuss at this time. One is a code of conduct for board members, and the second is a bill of rights for home owners. The law now grants broad powers to boards and those powers need to have defined limits. On the other hand, the law defines extensive duties for home owners which need to be balanced by defining home owner rights.

Thank you very much for the opportunity to speak here.
(applause)

ASSEMBLYMAN BATEMAN: Dr. Pratt, thank you.

Margaret Bar-Akiva. (indicating pronunciation)

MARGARET BAR - AKIVA: Close enough.

Good evening and thank you for giving us this opportunity to voice our concerns.

My name is Margaret Bar-Akiva. I am a resident of Twin Rivers in East Windsor and a member of the Common-Interest Homeowners Coalition. I have also served on the Twin Rivers Board for the last three years and so have had the opportunity to view things from both sides of the fence.

It is an inescapable fact that disputes are inherent in community association living. It is also equally obvious that one of the reasons for these disputes is that issues pertaining to due process and individual rights have long been ignored in these communities.

To that end, the New Jersey Legislature passed a good law last year that required every association to provide a fair dispute resolution process. This was a significant step in promoting the rule of law in association governance. However, it has been estimated that the majority of associations are either not complying at all or are adopting unacceptable alternative dispute resolution procedures. Several loopholes or weaknesses in the law may account for this. Following is a brief outline of four of those deficiencies and some of our suggested amendments to this law:

One, because home owners are unaware of the existence of this law, they have not exerted pressure on their associations to develop dispute resolutions procedures. Our first recommendation, therefore, is that all associations be required to notify owners and residents semiannually of the following: *A*, what the association's approved dispute resolution procedures are and, *B*, the provisions of the law, including the right to have a dispute handled by an impartial mediator.

Two, boards do not feel compelled to comply with the law because no outside agency has held them accountable thus far. Now it is true that the Department of Community Affairs has the authority to enforce the dispute resolution procedure; however, it was not granted the power to impose penalties. Last year, the Legislature deemed it urgent to enact laws to allow associations to impose fines on home owners for rule violations. In a similar way, fines and penalties are called for when boards commit what are far more consequential infractions of New Jersey law. Our second recommendation, therefore, is that the DCA be specifically empowered to do the following: *A*, to impose penalties on associations for failure to comply with the law,

including but not limited to the power to fine and to remove board members from office; *B*, to refer associations with serious or repeated infractions to the Attorney General; *C*, to require any association charged with infraction of the law's provisions to publish and distribute to their home owner members a notice of the infraction and the penalty involved.

Number three, one of the reasons that the DCA has not undertaken systematic enforcement or initiative in developing mediation resources in order to facilitate compliance with the law is the lack of funds and resources at the DCA, so our third recommendation is that the educational and enforcement activities that the DCA is required to perform be funded by an annual assessment to be levied on residential community associations across the State, as is the practice now in Florida.

Last, but definitely not least, is the inadequacy of the boilerplate bylaw provision that the DCA currently sends to associations. This document is not only unnecessarily legalistic and complex, but certain aspects of it would actually violate the law. For instance, the document states that a dispute shall not include issues relating to the payment of nonpayment of regular or special common expense assessments, but New Jersey law does not exclude common expense assessment disputes.

Here's another real pitfall -- and I'm going to deviate slightly, because I need to bring in a case from our own community. In Twin Rivers, the board is now trying to pass a new governing document. That new document classifies all fines, regardless of which fines they are, as common expense assessments, so you see where the problem is going to be. If that document is adopted and you take that in conjunction with the DCA

guidelines, then the end result is going to be that no resident can bring any disputes regarding fines to any ADR Committee. Clearly, that's not the intent of the law.

The document also calls for the parties involved in the dispute to pay for the process, yet those who profess to be experts on this law have interpreted the phrase "the association shall provide" to mean that the association shall pay. It is apparent that the law requires a dispute resolution system, but the document asserts board authority rather than orienting on dispute resolution.

Furthermore, the system proposed in the DCA document focuses on establishing a rule enforcement system, and it assumes that the disputes to be settled are home owner violations of rules. It glosses over the types of disputes that home owners have with boards, such as allegations of improperly held elections, discrimination, and mismanagement.

Our final recommendation, then, is that the DCA form an advisory panel which will be entrusted with the task of developing a dispute resolution procedure that complies with the law, that can be easily and uniformly administered, and is fair to all. One thing is very clear and very important, that this agency must reach beyond the industry attorneys and other industry practitioners whose professional allegiance is to the association boards who hire them. The panel must seek advice from varied and impartial sources, such as Rutgers and Seton Hall, as well as knowledgeable home owners who may have valuable insight into association governance.

It is our hope that this Task Force will act expeditiously to bring improved justice to residential community associations.

Thank you for your time. (applause)

ASSEMBLYMAN BATEMAN: Thank you very much.

ASSEMBLYMAN WISNIEWSKI: Mr. Chairman.

ASSEMBLYMAN BATEMAN: Yes.

ASSEMBLYMAN WISNIEWSKI: I just wanted to recognize someone who joined us this evening, Middlesex County and Sayreville resident, Middlesex County Freeholder Alan Haag, who is in the back of the room there. (indicating) Freeholder Haag is on the Board of Freeholders who operate this facility that we're in tonight.

ASSEMBLYMAN BATEMAN: Thank you, Freeholder, for hosting us.

MR. SMITH: Margaret, are you going to provide us with a copy of your remarks?

MS. BAR-AKIVA: (speaking from audience) I beg your pardon?

MR. SMITH: Are you going to provide the Task Force with a copy of your remarks?

MS. BAR-AKIVA: I have two extra copies I could provide.

ASSEMBLYMAN BATEMAN: That would be helpful.

I would also like to recognize two more members of the Task Force. We have been joined by Assemblyman Guy Gregg and David Herzfeld.

Assemblyman, thank you for coming.

David, thanks for coming.

David or Guy, do you have any comments? (negative response)

Okay. Then, we'll get into the next speaker. Jay Rodgers.

WARREN J. RODGERS JR.: (speaking from audience) If I may, I would like to yield my time. Instead I would just like to listen because, if I said verbatim, I would just about mirror what they've said, and it would be a waste of time.

ASSEMBLYMAN BATEMAN: Okay. Thank you.

MR. RODGERS: And I'd like to get a copy of the gentleman's statement, if I may, and his business card.

ASSEMBLYMAN BATEMAN: I'm sure that could be arranged afterwards.

Next, is James Silkensen -- Jim.

JAMES SILKENSEN: Chairman Bateman, members of the Task Force, I'm Jim Silkensen with the New Jersey League of Community and Savings Bankers. We represent the State's savings banks and savings and loan associations.

I just have some brief comments. A year or so ago, a compromise was worked out with the condominium associations and the lending community on lien priority, giving condominium associations a six-month lien priority ahead of lenders. And in the Uniform Common Interest Ownership Act that is under consider in the Legislature, it would overturn that six-month period and give an unlimited lien priority, so one thing we would like to see is preservation of that compromise provision on six-month's lien priority.

I might just mention one other thing that some of our lenders are saying they're having problems with in lending on individual condominium associations, and I don't know that it lends itself to legislation, but I'll throw it out for the Task Force's consideration. That is, if you're lending on a lot of

units in a condominium association, you're going to have the master insurance policy and know all of the provisions and what it covers, but if you're just lending on one unit, a lot of lenders aren't sure it's worth digging through a mass of papers trying to figure out what that coverage is. Does it go just to the studs, and the inside walls are not covered? Does it-- There's a lot of variation in those master policies, and to the extent they vary, it makes it difficult to lend on those individual units.

Thank you.

ASSEMBLYMAN BATEMAN: Thank you, Jim.

Comments?

Phyllis.

MS. MATTHEY: Because I was so intimately involved in the negotiations that led to the lien priority, I would pose a question to your association. If the Uniform Common Interest Act would be passed in New Jersey and the six-month limitation put in for condos, would the bankers allow that to be expanded to home owner associations and not just condos that provide essential services? Because right now, because of Fannie Mae's resistance and the banker's reliance on Fannie Mae's requirements, they will not allow it to pass in New Jersey to include home owner associations. It's confined strictly to condos.

MR. SILKENSEN: Let me go back to my organization and check, and I'll let you know.

MS. MATTHEY: I'd be happy to try to work that out with you.

MR. SILKENSEN: Okay. Very good.

ASSEMBLYMAN BATEMAN: Thank you.

Our next speaker is Lucinda Choquette.

LUCINDA J. CHOQUETTE: Good evening.

My name is Lucinda Choquette. I live in Leisure Village East, which is an age-restricted condominium community in Lakewood, New Jersey. I've the opportunity to present testimony before your Task Force at a previous meeting and thank you for the opportunity to do so again.

Two recent events bring me here tonight to add additional information for you to consider. Approximately one month ago, with the help of the Department of Community Affairs, we were able to encourage our reluctant trustees that the condominium association was, in fact, required to provide an alternative dispute resolution procedure. However, the procedure they adopted required that if there is a dispute filed against the association, the first opportunity for resolution may be mediation. They further required that the condominium resident should share in the cost of the mediation with the association. In effect, although they are at least forced to the discussion table, they still can make such adventures very expensive for the resident, who only wants them to do things the right way in accordance with the laws and their governing documents.

A letter was sent reminding them that the condominium association is supposed to provide the opportunity to resolve the dispute even if it is against the association. They have not acknowledged receipt of the letter, and we are once again attempting to work through the Department of Community Affairs to rectify this situation.

This brings me to ask you to consider strengthening the alternative dispute resolution language to ensure that the procedure remains viable,

available, and affordable for residents seeking their association's compliance with the governing documents. It would be unconscionable to expect individual residents to bear the burden of even part of that cost. Compliance with governing documents is to the benefit of a community as a whole.

If forced to share in the cost, much of which would be determined by the association, residents in many communities would be forced to resign themselves to the abuse of their governing documents, and errant governing boards and managers would again feel free to violate governing documents at will. This is where we were before ADR legislation was enacted.

The second thing that brings me here tonight is the matter of property tax assessments. Our assessments for property taxes are essentially based on sales prices. Each of our condominium sales includes an inseparable share of the association's assets, both real and personal, including funds reserved for future major repairs and replacements. As communities age, if there has been proper planning, those reserved funds can be significant. The accumulation of these funds is essential to the vitality of our communities.

In our community, we are currently being taxed as individual home owners for our proportionate share of the value of the land owned by the association; although, it is also assessed and tax separately to the association. We are also being taxed for the personal property of the association, including such things as our maintenance vehicles, equipment, pool furniture, office equipment, and all moneys reserved for our future. These should not be included in the property tax we pay. We are told this is perfectly legal because they are included as part of the sales price. But something is really wrong here,

and it needs to be fixed before the current tax provisions discourage the accumulation of funds for future repairs and replacements.

Thank you very much.

MR. SMITH: May I ask a question? Are you a condominium or a home owners association?

MS. CHOQUETTE: We are a condominium. (applause)

MR. SMITH: Okay. Thank you.

ASSEMBLYMAN BATEMAN: Thank you.

Leo Yourish, is it?

LEO YOURISH: (speaking from audience) What is it?

ASSEMBLYMAN BATEMAN: Leo Yourish.

MR. YOURISH: I want to thank the Task Force. Thank you for having me.

I go over the horizontal property laws time and time again hoping I can learn something. I get frustrated. They're completely vague. They don't help little guys. They don't help us.

ASSEMBLYMAN BATEMAN: Sir, I'm sorry, for the record, would you just identify yourself and where you're from.

MR. YOURISH: Pardon me?

ASSEMBLYMAN BATEMAN: Would you just identify yourself and say where you're from?

MR. YOURISH: I can't hear you.

ASSEMBLYMAN BATEMAN: I'm sorry. Would you identify yourself, sir, just for the record?

MR. YOURISH: (witness walks away from microphone) I'm sorry.

My name is Leo Yourish. I live in North Plainfield, New Jersey.

ASSEMBLYMAN BATEMAN: Thank you.

MR. YOURISH: I'll start over again. I go over the horizontal property laws and I get frustrated. They're vague. I get very dissatisfied. As an individual home owner, they don't do the job for us, and that's why you're here today.

When I go over our bylaws, I have the same problem. They are extremely vague. They are completely vague. For example, in my condominium we have an open ballot election -- no sealed ballots -- run by both the kangaroo board and the site manager.

If you fellows had to go under an open-ballot election, what would really happen, and you don't live in Jersey City?

While they're very vague and everything like that, I noticed in our bylaws they have a slap law. If I want to sue them, I have to pay for their lawyer if I lose, and I'll lay you 10 to 1 I will never beat them in court.

So I come here for two reasons: Closed elections and the slap law. We have no where to go.

I thank you very much for what you people will do for us.
(applause)

ASSEMBLYMAN BATEMAN: Thank you.

Phyllis Spiegel.

P H Y L L I S S P I E G E L: (speaking from audience) Just in time.

ASSEMBLYMAN BATEMAN: Good timing.

MS. SPIEGEL: I'm here tonight because I read a newspaper article announcing the Task Force. I live in Plainsboro, and there are, probably, 10 home owners associations in Plainsboro. I think I'm the only person here, and I think that's very sad because people did not know that this meeting was being held or that there is a Task Force.

I wish that there had been more publicity because we have thousands of home owner association members and they all--

ASSEMBLYMAN BATEMAN: Let me just address that. We have advertised. As a matter of fact, we held one down in your area. The first hearing was down in Plainsboro.

MS. SPIEGEL: Well, I was not told that.

At any rate--

ASSEMBLYMAN BATEMAN: And there will be another one, so--

MS. SPIEGEL: Okay. I'm really--

The time has come to have this Task Force. I've been an owner-resident at Brittany Town Homes in Plainsboro since the community's inception in 1982. In addition, I am a half-owner of town homes in the Hampshire Development in Plainsboro and Society Hill, Cold Soil, in Lawrenceville.

I have seen numerous problems and abuses by boards in the time I've been involved with these associations and really believe that we do need clearer regulations to prevent these abuses. I'm going to cite several of these abuses that I have seen and some of the problems that I see in the associations.

On several occasions, the Brittany board has voted itself appreciation dinners. This year, when asked-- We had roof expenses. We had

assessments. We had six umbrellas at the swimming pool for 300 families. When asked how much this dinner would cost, one of the board members said, "About \$3000."

I circulated a letter to home owners -- and you all know that most home owners are pretty apathetic and pretty busy with lots of other things -- we did get, from 244 homes, 66 people incensed about this dinner. We don't really know what happened because it's very difficult to get to see the books which are supposed to be open. You have to go to the management office. You have to make an appointment. We don't get a copy of the budget.

They wound up telling us, when I asked at a meeting, that they spent "a few hundred dollars." They have no right to vote themselves these dinners. They can have pot lucks or pizza. They felt this was their duty. They also invited the attorney, who, by the way, comes to every meeting that we have -- which is monthly -- and is adding up his fees. I have said, "Why do we need this guy at every meeting?" And the board said, "Shut up, we need him."

Last year, it was public that he had \$20,000 in fees, that was after \$3000 in previous years. I said legal fees went from a few hundred dollars a year to \$20,000 when the board decided they needed them. I think the attorney is there to protect the board from the home owners.

Another thing that happened that really was sad, our community adjoins an apartment community, Deer Creek. Some of the Deer Creeks have been rented to lower-income families. Well, many of the Brittany people whose backyards were near Deer Creek -- and there was certainly a buffer of evergreens and lawn and there is a walkway that was designed very beautifully so that you could walk through all of Princeton Meadows, which this area is

called-- These people did not want those people coming into Brittany. Now, there are numerous entrances into Brittany. You can come in from the road. You can come in from the side. They wanted a fence.

I am one of the few people who attends meetings, and I fought this fence. I brought in Robert Frost's poetry -- talking about fences -- talked about brotherhood, and everything else. It didn't work. They wound end up spending \$10,000 on this fence, which they voted to spend \$5000 on.

What has happened since then is people want to get through -- they've blocked off a nice entry -- so they keep destroying this fence. And this year, we've spent \$3000 to repair the fence. Now, \$3000 is my dues for two years or 10 people's dues for one year. That is insane. They are throwing our money away, and there has to be some way to prevent this. The vandalism is high. Repairs costs-- The fence was not making this a private community by any means.

I invite you all to come and take a look at this monstrosity.

At Hampshire, which is the community where I am a partial owner of a unit, the association assumes responsibility for roof repairs and damage; however, the damage inside the home which came because of the faulty roof is not their responsibility. We had a roof leak and they repaired the roof, but I had to repair the paint inside.

Dispute resolution: It would just be too difficult to go through it. While boards can fine home owners, home owners cannot withhold their dues on matters of principle without late fees. One year, someone next door to me had a huge construction truck parked outside and the board would do nothing about it. It was his truck. He lived there. It was against the rules and nothing

happened, so I withheld my dues for several months, and I could not avoid paying the late fees. Now, there should be some way for the home owners to fine the board if the board can fine the home owners. (applause)

Many home owners are in arrears and there seems to be no way of collecting the money due to the association. The arrears, they told us about, last year were \$13,000 -- that's just one year. The cumulative amount must be tremendous. The rest of us suffer having to pay for what these deadbeats owe.

Required training for board members would be a plus. Perhaps the State could run a course on Saturdays or evenings. I say, required -- once you're in as an officer, you have to come to these courses or you will be removed.

There are other abuses, difficult to prove, such as a board member getting his roof fixed at a time when no one else did. Possible claims of preferential landscaping and repairs, it's very hard to keep track of these. I realize that the home owners elect these boards; however, apathy is a major problem in today's world, and it's difficult if not impossible to get people out to meetings and to want to be involved. One woman said to me -- when I told her about the dinner -- "I don't care what they spend it on. I have no time to fight this." And, unfortunately, we have a lot of that.

I have tried to enumerate some of the problems and issues, and I appreciate the privilege of being here. (applause)

ASSEMBLYMAN BATEMAN: Thank you very much.

Our next speaker is Maxine Bedrick.

MAXINE BEDRICK: This is my first time appearing before this Task Force. I hope it's not my last because I feel that it's a very important thing to have a Task Force like this.

I have a question which I was told to ask, because-- And if anybody is going to answer it, I don't know. My question is: Who or what -- what or who -- is the enforcing mechanism to ensure that the bylaws are adhered to? What recourse does a condominium owner have when the bylaws are not being adhered to, after all the prescribed guidelines have been followed? Requests in writing for 10 days, whatever, I have been ignored, then I was told that I could not, whatever--

I was told by the previous attorney we had -- we, the association, pay, we all pay -- that I had to hire an attorney to have this attorney answer my questions, or else I could have nothing in my condominium -- this is Claridge House II in Verona, New Jersey -- except a maintenance call. They have nothing. I pay my maintenance. I pay my taxes. I obey every rule, and yet this is allowed to happen. Our board -- the previous board and this board, also-- I just don't know what to do anymore because I've done everything I can.

ASSEMBLYMAN BATEMAN: Fortunately, we have a couple of attorneys as part of the Task Force.

Chris, Wendell, do you want to--

MR. SMITH: I represent her board.

ASSEMBLYMAN BATEMAN: Okay, you stay out of it.
(laughter)

MS. BEDRICK: Oh, yes. Yes. Yes, you do, Mr. Smith.

MR. FLORIO: And I want to represent her board.

MR. SMITH: No political (indiscernible).

ASSEMBLYMAN BATEMAN: Chris Florio, I know you do a lot of this type of work.

MR. FLORIO: Depending on the circumstances, it's going to be tough to answer, in 30 seconds for you, what the problems are. But there are certain obligations that any board has to you as a member. What we try to do with the folks who we represent is, we want to keep whatever conflicts we have as much as possible within the association, because when all is said and done, we're all neighbors. We're all going to go home. We're all going to see each other the next day.

If you've absolutely come up against a brick wall, although it may have been a little flip the way that they announced to you to get a lawyer, you may have no alternative but to seek legal recourse. It shouldn't happen that way. But, again, in 30 seconds, that's the best answer I can give you without knowing any facts.

ASSEMBLYMAN BATEMAN: I don't mean to put you on the spot, I just know you do a lot of work--

MR. FLORIO: Sure.

ASSEMBLYMAN BATEMAN: We thank you for that question, and we have a representative from DCA here. That's an issue that we'll take a look at later on when we're in our work session.

MR. SMITH: If you'll make it clear that I didn't make that comment.

ASSEMBLYMAN BATEMAN: Yes, absolutely.

MR. SMITH: Right, Maxine?

MS. BEDRICK: I beg your pardon?

MR. SMITH: I didn't make that comment.

MS. BEDRICK: No, not yet.

ASSEMBLYMAN BATEMAN: Thank you very much, Maxine.

Our next speaker is Derek Ware.

D E R E K S . W A R E: (speaking from audience) Mr. Chairman, I yield my time.

ASSEMBLYMAN BATEMAN: Thank you. No problem.

David Powell.

D A V I D P O W E L L: Thank you. My name is David Powell. I am a resident and current Chairperson of the Board of Directors of the Beckett Association, which is in Gloucester County.

This is my first attendance to the Task Force. I did not come here tonight with a prepared speech. These are my notes from tonight. (indicating)

I would like to ask the Task Force, if I could, a couple of questions and then, perhaps, make a few statements. Is that possible?

ASSEMBLYMAN BATEMAN: We'll try. Our mission, really, is to listen and take back the information. But if it's a question we can answer, we'll try.

MR. POWELL: Okay. Well, then maybe I'll put my questions in statement form, if that's acceptable.

ASSEMBLYMAN BATEMAN: I think that's better. Thank you.

MR. POWELL: My first concern is that opening speech that you, Chairperson, made was regarding condominium and town home associations. Does this Task Force--

ASSEMBLYMAN BATEMAN: Not inclusive, not inclusive.

MR. POWELL: --cover single-family homes, and if it does, I think that needs to be brought out more specifically. I wasn't sure, tonight, based on the opening, and I don't know that some of our residents would be, too, with regards to anything that goes into print having to do with this assembly tonight.

ASSEMBLYMAN BATEMAN: If it comes under a home owners association, then it will be covered under our mission.

MR. POWELL: Okay. Fine.

My next concern is-- The number of people who come here tonight, the individuals who speak here or any other Task Force, both in the past and in the present-- My experience, as a Board of Directors and a Chairperson of a home owners association for probably about nine to ten years, has been that the people who come out to public assemblies usually represent -- usually -- the minority, not necessarily the silent majority, and I have a concern for that. I want to make sure that the Task Force and the people who are sitting on this -- committee -- tonight understand that the people who come out to voice an opinion in a venue like this, quite often, have a specific individual axe to grind. I just want to make sure that I express that.

I'm not saying that they're not wrong or that they aren't incorrect, I'm just simply saying that you may be hearing from a minority, individual group of people and not necessarily the majority of the individuals who enjoy

living in the home owner, condominium, town home associations that they live in.

Earlier tonight, a speaker mentioned something about having an open meeting, everything to the public. She referred to a specific piece of a document or legislation, perhaps, that's been passed in other states. I think some concern needs to be imposed upon that if you're going to consider whatever that legislation is with regard to the home owner association and the protection of the residents and their rights and how that association is governed.

Specifically, if you have open -- and very, very open -- discussions relative to leases or contract discussions with regard to suppliers and vendors and those kinds of people, you're going to lose an awful lot of the negotiating power that the association would have with those kinds of people. I want to make sure you realize that. Grounds and maintenance, contractors, whatever it might be that might apply to that type of situation--

There was an another inference with regard to another piece of legislation, some things that might be going on about how procedural issues should be handled by a home owners association. I think the Task Force needs to keep in mind that many home owners associations are either sparsely funded or they're very thin economically. They may be governed by a total board of directors that is strictly volunteer, people like yourselves, who have other things to do during the working week, who do not have that much time to commit, and might even have an administrative office that consists of part-time people, not professional, certified managers -- property managers -- and

that sort of thing. I think the Task Force needs to keep that in mind with this legislation.

There are probably as many of those types of home owner, condominium-type associations as there are the huge ones that have the professional property managers, the certified people, perhaps a Chairperson who's paid on a part-time basis, things like that, so please keep that in mind.

There were comments regarding the ADR and the financial impact that might have on individuals. I implore the Task Force to also -- with regard to the size and the economic budget of home owner associations -- consider the economic impact regarding ADR to home owner associations. They budget every year, most of them probably just strive to break even each year with little going to reserves. This is something that could just as well go the other way, as opposed to the individual-- I'm not opposed to it. I think it's a great idea. It's a great option, but I just think the Task Force should be aware that there are two sides to the issue.

Obviously, I speak on behalf of a home owners association. I hope I'm not running over time here.

ASSEMBLYMAN BATEMAN: No.

MR. POWELL: I didn't time this thing.

I think that home owner associations enhance property values. There was a lady up here just a few minutes ago who mentioned where she resides, but she mentioned ownership and property in another home owner association and another home owner association-- I would say to you that if it was all that bad, why would she spend her money and put her investment money into home owner association properties if they were not protecting the

value of her assets, if they weren't, in effect, growing her asset value, and they were not giving the people who reside in the home owner associations a certain value, and hopefully -- usually -- ensure a certain quality of life? I mean, that is what home owner associations are all about.

I'm going to skip through some of my other notes and just simply say to you that I think there-- Of all the legislation that you're considering that has recently been interpreted and that is coming to the forefront -- that a number of associations are moving toward adopting -- I think if you're going to make a change and one that is significant--

I think, just like a person who buys a used car, there is a sticker on the window that says "no warranty." I cannot tell you, in the last nine years plus and even before that, the number of residents who have come before me, privately and publicly, and said, "I didn't know."

But you all know -- the attorneys do, all of you know -- that they signed a document that said there were deed restrictions and that there was a home owner association that they just bought into. There needs to be a major red flag that tell these people that they have just bought into a home owner association and, just like when I go to send my child to a private school, they have rules and those rules have to be abided by. If my child doesn't abide by those rules two years later, so that's it, the rules apply. I don't have any choice. That was the purpose and the reason-- That was the function of my sending my child to that private school, that's the rule.

If these people purchased their home, their town home, their condominium, their single-family home from a home owners association, it should be clearly stated and marked without any ambiguity with respect to

what it is they're buying. Then there is no argument to, what I'm hearing a lot tonight, the rules of which they bought into. I really do not think there's enough of that that are the face of what these people purchase today.

Thank you. (applause)

ASSEMBLYMAN BATEMAN: Mr. Powell, thank you.

Let me add a couple of comments to your testimony. First of all, be assured that we have heard from all sides of these issues, pro, con, horror stories, and, unfortunately -- and it sounds like you had a good experience -- everyone has not had the same experience and there have been problems.

There are several common themes, which I mentioned earlier, that are coming through. Individuals have had problems throughout the State. It's not always a good experience. We're not saying that people don't understand what they're buying into, but they also have rights under those associations. I think in some cases -- obviously, this is the mission of the Task Force, to take all this information back and digest it and hopefully come up with some recommendations for legislation -- it has not been a good experience and that's why we're trying to listen and make changes, so more people can have a good experiences that you cite.

So I thank you for your comments.

If you're interested -- anybody who is interested -- one of the hearings we had, I think, two months ago in Somerset County, there is a transcript available for individuals who would like to take a look at, and I think you would be interested in reading about a lot of the same experiences we've heard tonight from other individuals.

We're here to listen. We appreciate your comments, Mr. Powell.

We have one more speaker who signed up. It doesn't mean other people can't speak.

Gregory Machyowsky, is it? (indicating pronunciation) If I butchered your name, I'm sorry. As a matter of fact, I recognize you, we've seen you before.

GREGORY MACHYOWSKY: Are these microphones working, sir? I could hardly hear in the back.

ASSEMBLYMAN BATEMAN: I'm not sure they are. I think they're more for recording purposes than--

MR. MACHYOWSKY: Well, I'll speak loudly then.

ASSEMBLYMAN BATEMAN: Okay. Sir, just identify yourself for the public, please.

MR. MACHYOWSKY: Mr. Chairman, members of the Task Force, staff, and members of the public. My name is Gregory Machyowsky. I am a resident of a 545-unit condominium association located on a 55-acre site in Piscataway, New Jersey.

As the Chairman indicated, I appeared here before. Before I go ahead with the introduction I planned, I'd like to express some degree of personal umbrage at the last speaker's remarks. (applause) I don't say this to make an argument. I say this because for 10 years -- almost 10 years -- in my association -- and certainly since the opening of the meetings to the public by law in October 1991 -- I have pleaded as a retired legislative counsel who specialized in local government legislation and has a more-than-average interest in civic affairs in my career-- I pleaded that the association I bought into, which promised me a minidemocracy with fine bylaws, setting up a democratic,

fair process of government in which their elected representatives would conform to those provisions and carry out the building of a sense of community, as well as a preservation of property values -- I pleaded with my association to give me what I bought into. All I asked for them to do was to abide by the bylaws, carry out the letter if not the spirit.

I could go with a score of abuses or more of basic, fundamental rights accorded to me in the bylaws and under State law, as well as under the Federal and State Constitutions, that I feel were, in most cases, willfully violated with the knowledge, certainly, of the management company and, in almost every case, the acquiescence of the attorney or attorneys.

Now, that is what we are protesting. The Community Association Institute has an official policy statement -- the national organization -- in which it cites its residents' bill of rights. I won't read most of it, but the associations, it says -- local associations -- "Should provide basic rights of a constitutional nature to all members and residents but not impose the full panoply of governmental limitations on the process." That's fair enough, but basic rights means that if your bylaws call for an audit, you have an audit, not a review of finances not in accordance with accepted audit standards. If your bylaws call for open meetings, you have truly open meetings, not executive sessions in which policy is decided, held in the guise of open meetings.

I'm generalizing. I don't want to go into my list of abuses. If the Task Force finds it useful to have a detailed list, documented from my having attended almost all of the 60 meetings of my association -- roughly 60 meetings -- since October of 1991 and having taken voluminous notes at those meetings, as well as tape recording many of the meetings, I will document a

score of basic abuses. You've heard so many of them, and they are so similar to the situations I encountered that I'll only ask the gentleman who spoke earlier to recall what was said at the last public hearing -- which had many more people in attendance and perhaps he may have attended--

There was an outpouring of residents' complaints of alleged abuse of authority by association governing bodies covering such areas as unfair or sham elections; promotion of limited involvement of the residents rather than full participation; discouragement of freedom to speak and congregate on association issues; routine and regular violation of bylaw provisions; violation of open meeting requirements -- and I'll give you an example or two, since I didn't make that clear earlier; denial of access to financial and other association records, and other basic rule-of-law issues such as due process in fine- and rule-enforcement proceedings; and alleged board and attorney intimidation, through threats of legal action and otherwise, of residents criticizing board or management actions. This was the sum and substance of most of the complaints I heard at the last hearing, and they are the sum and substance of my 10-years experience of -- 5 years being able to attend meetings -- participation in my condo association.

So what I'm emphasizing is that whether or not it's a minority of people, the issue that the Task Force must deal with is not improved business management practices under the Common Interest Ownership Act or otherwise -- however meritorious these may be -- but the issue must be, as elected representatives of the State for the Legislature which created the powers of these condominium associations, to, in effect, protect the residents of the associations from arbitrary, abusive actions by their boards. This is the

primary concern of those who are residents and living in condominium associations who care at all, in my opinion.

There is a silent majority, perhaps, that doesn't, perhaps, recognize this as a minigovernment, who don't even maybe think or understand the concept, who say, "Well, it's like living in a private apartment complex, and we have to go along with the rules however arbitrary they may be," or whatever. But those of us -- especially those of us who entered into it because we thought this was a great opportunity to kind of revive local government at the grassroots level and build a sense of community and democracy which is sorely needed now in this country, we were disappointed to find that, indeed, the industry seems to be impatient with all the inefficiencies of the democratic process, and the boards and industry have all been too willing to try to tip things in the direction of a business/management organization and away from the direction of what's intended in the bylaws and, I believe, in the State law.

So that said, I just want to say whether it's a minority or not, this issue of constitutional basic rights -- which I sincerely believe have been infringed in my association and others that I know of -- has got to be addressed. Then you could say, "Well, it's a minority who are concerned about certain policy decisions and this and that." But I've suffered too much in my association, I have to be quite frank. I have stood there, been gagged -- verbally--

MR. YOURISH: (indiscernible; speaking from audience)

ASSEMBLYMAN BATEMAN: I'm sorry, sir, it's not a debate. He has the floor.

MR. MACHYOWSKY: I've been gagged verbally. I've been humiliated in terms of name calling. I've been the subject of election shenanigans, which obviously don't provide for a fair election, and a score of other abuses going, maybe not so much to me, but to the whole association government, and I will detail those, if you wish. I want to deal with the positive aspect tonight, if I can get to it. (laughter)

ASSEMBLYMAN BATEMAN: Please do, please do. (laughter)

MR. MACHYOWSKY: I will detail those, if you wish, based on my rather unusual experience, with my legal background, and having documented at every meeting for 60 meetings, except for when I was out of town, since October of 1991. I will detail it if the Task Force finds that useful.

I'm, as I indicated at the last meeting, a little bit reluctant to arouse the sensibilities of my own association, both friends and foes in my association, because after 10 years we've made some progress and we're doing better. There are still problems, but I don't want to enflame the old wounds, and they seem to be very sensitive to any criticism. You notice I haven't even named the association, and unless it's absolutely necessary, I'm not going to do it, and not every complaint I have in my retinue here is in my association, but I think it's a fair inference to think that most of them are.

Well, okay. The question is: What can be done? I made one suggestion at the last meeting -- the only one, basically -- and I'll get to that in a moment. But before we get to this question of curbing abuse of authority, which I think is the main question, let's deal with some substantive improvements in the law that I just want to suggest and get on the record. I'll be brief. I won't go into any great detail.

As you noticed, the resolution establishing this Task Force is quite broad in scope. It calls for the Task Force identifying any problems existing in the operation of home owners associations, with emphasis on their formation, bylaws, awarding of contracts, management companies, eligibility of board members, and elections. That's a fairly large scope.

As I indicated at the last meeting, I feel the bylaws generally provide for a fairly -- at least based on those I have read, mine and two or three others -- sound, democratic form of government. The problem is, the bylaws are being evaded, avoided, or ignored or actually distorted for a contrary result than intended in too many cases. That's the complaint.

So I don't have too many substantive additions to make to the law, but I'll name a few. With elections, there is a problem in secret ballots. Home owners are required in my association, and probably many others, to sign their ballots. This is, to me, basically violative of basic rights.

Robert Griffin, a condominium association attorney, wrote an excellent paper on elections and annual meetings in community associations, which was presented to the 1992 Community Associations Institute convention in Monmouth Beach. In part of that paper he says -- he gives you a few thoughts for statutory improvement, that's why I want to get it on the record -- "Most bylaw provisions are woefully inadequate in providing answers to issues which may arise in the course of an election. They do not even require secret ballots, even though this concept is so basic to democratic function that an election might easily be overturned by a court if this were not to occur. The governing documents of most associations are also inadequate in determining whether or not absentee ballots are permitted, whether write-ins

are permitted, whether nominations may be made from the floor, and what to do if an adequate number of candidates cannot be obtained.”

We have a particular system at my association of, indeed, using absentee ballots when only proxies are authorized in the bylaws. Now, you might argue it’s a proxy absentee ballot. You list the candidates and you check the ones you want, sign your name, and send it in. To me, that’s an absentee ballot, not a proxy. You might be able to get around it legally by saying, “I authorize the secretary to vote these names according to the way I’ve indicated them,” but I’m not sure whether the law or the bylaws really don’t have a purpose in mind in insisting that people be present at an annual meeting or give a proxy to somebody to attend for them, so that there can be the communication and exchange of ideas on issues, etc., etc. I think the law should spell out something more clearly as to what the proxy, that’s so common in most bylaw provisions, really means. Does it include the proxy absentee ballot?

The idea that ballots must be secret, I think, is fundamental. I think it-- One reason you cannot get a lot of people voting is I think they’re really reluctant to pick their candidates, especially when there is some contention, as there has been when I’ve been a candidate in my association.

Incidentally, that happened not this year but last year, and we got 80 votes into the election, and the board, with the attorney’s approval, canceled the election on the grounds the ballot was confusing. I had campaigned a little before the initial balloting started. Now, that’s my interpretation. The board is responsible for the ballot. It saw the ballot before it was used, but 80 votes into the election, they canceled the election. This is

an example of a kind of abuse that I think attorneys should prompt their boards against. So on that, I think you should consider features like that secret ballot provision, if nothing else.

Now, maybe something can be gotten into the law, through regulation or otherwise, requiring training programs for board members. I think the problem, to a large extent, is not just the -- what do you want to call it? -- ego or arrogance of boards, if there is that, it's the unsophisticated nature of many of the boards, and it's a sophisticated world now when you get into some of these areas of condominium government. Now that could be done through a regulation and a DCA program or utilizing the CAI requirements.

Let me tell you quickly what happened in our association, though. This was one of my main points of reform in our association. It's in our bylaws, one of those extra provisions. It's in the bylaws that were distributed to all buyers, including me. Every board member has to take two courses a year, paid for by the board, with the CAI or some other group, maybe two seminars, two nights, or even attend the CAI convention, that's the import of it. Two courses a year to stay on the board, if you don't do that, you're off the board.

Well, I was really going to-- This was going to be my open-and-shut case to make a full-scale revolution on our board a few years ago, because it was totally ignored as far as I know, even though I brought it up at a meeting. I received a dead silence from the board.

Sometime later, only about a year or so ago, I learned that the provision -- while it's in all the bylaws that were distributed and all my neighbors have it -- somehow is not in the bylaws that's filed with the county

clerk. Now, I'm suspicious of that, but I think it's likely that somehow in the process of incorporating this by the developer-- The developer may have had an initial series of bylaws and distributed them when he got to the initial buyers with his prospectus. Then when he got around to filing a few months later -- this was about 1986 -- he decided to take it out. Maybe the board consisting of developer representatives didn't like the idea of being potentially tied up with course requirements or something. I don't know.

The other possibility is something wrong was done. I'm going to try to check into it. I noticed in the record at the county clerk -- I went to look at it -- all the papers were out of place when I got to that particular provision. I brought this to the attention of the clerk. They put them back in place, despite my objections. But this is a good requirement -- a good requirement in our bylaws -- that has fallen out in a mysterious fashion.

Let me go on quickly to the awarding of contracts. Now, if there is any area -- and I can't even give too much of a specific suggestion on this -- that really needs to be looked at, it's the financial procedures of the board. When boards ignore their rules -- as has been ignored, at least until recently in my association -- of having a finance committee of citizens prepare a budget maybe based on what the management wants, probably-- You know, you get a proposed budget from the management. But when the finance committee, in effect, doesn't function or if it functions, it functions basically, simply to review the math on bills -- approved bills -- that's an abuse of authority.

The rules-- We have a finance committee that is supposed to set the budget, prepare the budget, give the citizens input. It has not been followed. Maybe it will be followed this year. It may have been followed in

part last year. Unfortunately, my finance committee meetings, despite protestations, are apparently neither announced nor open to members. I went twice some years back and was ordered to leave. I got on the finance committee at one point, and because I started insisting we actually prepare the budget instead of just reviewing bills, I was kicked off the committee as being uncooperative. I also refused to sign contracts that were approved in executive session.

Here's an example of the open meetings violation: Our board used to sit in executive session to consider all the contract proposals. They justified this on the grounds that contract negotiations are not within the open meetings law. Well, contract negotiations, to me, means the man you decided to pick as your contractor, after you reviewed all the bids and discussed it, is the man you negotiate the contract with. Oh, no, our board -- and I can prove this because I have a document -- going some years back, sat in -- as routine procedure for several years insisted on executive sessions for considering all contract proposals.

This whole area of financial overview is a big on -- \$300 million a year it's estimated that assessments come in, in New Jersey and are spent by the condo associations. That's big business. In my opinion -- I'm not alleging corruption, I want to make that clear because I don't have any evidence of it -- I think the system is wide open for corruption. Who's watching these condo boards?

There has been one or two cases in the paper. I have one or so here. (indicating) I'm not going to involve the situation in Monroe. I'll submit the article as an exhibit to the Task Force, where there was an

indictment for embezzlement-- My point is, that if a board is not operating according to its bylaws with proper checks and balances or, heaven forbid, fails even to get an audit, you're wide open for corruption.

In New York, as some of you know, I'm sure they had a big problem with this. *The New York Times* had an article about the problem of kickbacks in home owner associations. There was a big investigation that was launched in New York City. I'll submit this article for the record. (indicating) There were many, many more that followed up on it. This was an article in *The New York Times* Thursday, March 16, 1994. We certainly want to avoid a problem like that in New Jersey. I assume there is no such problem going on, but how would we really know?

So I'm suggesting there should be some kind of financial oversight by the State of the \$300 million that are being spent by condo associations or home owner associations, and I think there has to be oversight that the bylaws providing for proper adoption of your budget are followed.

I remember a ludicrous situation -- another example of abuse of authority -- where the board sat and deliberated a budget proposed by the management about two years ago. There was a lot of discussion. A lot of rather vague discussion. The budget was adopted as submitted.

The next meeting, I came back, the so-called adopted budget was substantially different. I got up on my feet and said, "This is not the budget you adopted." I didn't like some of the changes that were made. The president -- who should know better being a young attorney -- said to me, "You've got to understand that the budget is the final document of all the give and take at the meeting. It's kind of a broad-brush of everything that's said

and done at the meeting.” That was the gist of what he was telling me. Obviously, all those statements have to be incorporated in an amendment to the budget. There were none. So this really is either cynical ignorance or a feeling that maybe it’s not so important that we follow all these *P*’s and *Q*’s of the bylaws. I think it’s very important, and if they’re followed, you’re going to have a lot healthier community associations operating more as they were intended to operate.

Now, let me go quickly--

ASSEMBLYMAN BATEMAN: Yes, I’m going to ask you to wrap it up, sir.

MR. MACHYOWSKY: Yes, sir. Okay.

You might consider competitive bidding procedures for contracts, really. The enforcement of the open meeting law as far as contracts go-- Contracts should not be considered the bids in executive session, that’s clear.

Now, as to management companies, there have been proposals in the paper in the past of licensing these companies. I’m sure the Task Force is aware of those and should consider licensing property management companies. (applause)

Now, let me get to the main point again in wrapping it up. Enforcement. Enforcement is the main thing. One of the distinguished members of this Task Force, either at the 1995 hearing held in Plainsboro or at the 1996, November hearing held in Lakewood, put on the record the idea of an ombudsman to hear all these complaints. That was the distinguished condominium and community association attorney, Mr. Wendell K. Smith -- Wendell Smith, excuse me. I knew a Wendell K. who was a prominent

attorney in Alaska. Sorry. Mr. Wendell Smith at least broached this idea. I'm happy to hear that. That's a good start, because we don't have anybody we can go to except the courts right now to try to get some basic rule violations taken care of.

That may not be enough, but what held me back last time was the idea, where would you get money for anything else? You need beefed up enforcement, increased personnel. To do what? To start, by regulation, imposing penalties on the boards or individual board members who abuse their authority and perhaps figure a way how to get attorneys to not be so anxious to cooperate with whatever a board wants to do, but more to recognize what I think is the clear professional responsibility to be an officer of the court and do what the law says whether the board likes it or not and that, oftentimes, involves defending residents' rights.

So I would urge you to authorize, at least, regulations by the Department of Community Affairs to penalize the boards or board members and otherwise to place some sanctions or encouragements upon attorneys to adhere strictly and closely to the letter and spirit of their bylaws. So penalties have to be imposed by regulation.

Where are you going to get the money for all of this? CAI is trying to assess a dollar, I understand, of all units so they can have their political action committee continue lobbying the Legislature -- the New Jersey chapter. I think that proposal has been revived again after having failed in the past. I suggest a \$1 assessment of the 250,000 or 500,000 condominium units we have in the State to go to the Department of Community Affairs to help them beef up the protection of residents' rights. I think that might be a good source

of funding. I understand there is such a provision in another state -- in Florida. I haven't checked that out.

I want to endorse Dr. Pratt's arguments about open meetings. I'm having a problem now of what are so-called workshop sessions, which, in effect, are committee of the whole sessions that the board has discovered to do business in private. I think the committee meetings ought to be open as under the open meetings law of the State. The executive sessions have to be kept to what they're intended to be, narrow exceptions and not general policy discussion sessions.

If you could do those things, improve the enforcement and make some changes in the substantive law providing for financial oversight, for secret ballots in elections, and other improvements in elections, this Task Force would be doing a great deal.

My final point is this, this is not just a question of this alleged minority of residents being denied their rights. This is a question, it seems to me, of taking something that people get a negative feeling about when they come up against arbitrary, autocratic associations that make a mockery of the election laws, the records inspection rights, the open meeting laws. The residents turn off when they see that nowadays. People are not likely to challenge it. They turn off. They walk away. I think they're getting a very negative impression of government at all levels. Let's take that negative impression and make it a positive impression by showing we're going to get these condo associations to function as their bylaws intend them to function, and, really, we'll be doing a service for the whole cause of reviving democratic government in this country.

Thank you so much. (applause)

ASSEMBLYMAN BATEMAN: Thank you very much.

That concludes the list. Is there anyone else who would like to testify this evening?

Sir? You signed up earlier. Mister?

MR. RODGERS: (speaking from audience) I did sign up earlier, and I'm glad I yielded my time. (indiscernible)

Very briefly, at the risk of sounding like Rush Limbaugh, "Ditto."

I have had 21 years of experience with my association.

ASSEMBLYMAN GREGG: Sir, could you identify yourself?

MR. RODGERS: Oh, I'm sorry. My name is Jay Rodgers. My real name is Warren Rodgers. I'm living in Logan Township, a home owner, resident of the Beckett Development in Logan Township.

I am, I guess, part of that silent minority that, for whatever reason, keeps showing up at some meetings (laughter), but I will continue to because my biggest argument with them -- and I will be very brief if I can -- has been that, as you said earlier, they can fine me and in their bylaws there is nothing that says they can impose a fine. They can fine me, but I can't fine them.

In 1991, I went to court with them because I hadn't paid dues -- and I forget the young lady who said that-- I hadn't paid dues in eight years, because I saw back in 1976 they weren't going to do what they were supposed to do in terms of providing facilities in the community for the residents who paid for that. I took with me some pictures of their property that they maintain.

On that property was a five-foot, chain-link fence. No where in the Beckett Association Guidelines does it call for a five-foot, chain-link fence. Also, in their guidelines I am to maintain my property, but as I took a walk through a wooded section of our development, I saw three open manhole covers where kids play, which had, only up until about two years ago -- if maybe that -- were one or two of those manhole covers covered up. I think that happened because I'm also a member of my School Board in Logan Township. At one time, we owned that piece of land, offered to give it back to the association, and they refused because they said, "Insurance"-- But I kept saying, "Wait a minute. My dues have gone from \$60 a year to \$123 a year." I still don't see what I'm getting at \$123 that I didn't get at \$60.

I was cited, by the way. One of the things I was cited for was I left a box on my porch. No where in the Beckett Association Guidelines does it say you cannot have a box on your porch. What happened was, UPS delivered a box to my porch. Well, I didn't take it off the porch until a day or so later, for whatever reason. I got a letter.

There are people in our development who have been cited for parking their commercial or recreational vehicles in front of their homes. Well, under our PUD, plan unit development, and the Beckett Association, they're supposed to provide a place for you to park your commercial and recreational vehicles. Their argument with people has always been, "Well, when Beckett gets to be 3000 homes, then we'll do that." Well, my argument is, until you do that, don't cite me.

So we talk about abuse of power, we talk about elections, we talk about open public meetings. At the School Board level, if we did what they do,

I would be in jail. There is no doubt in my mind. (applause) The situation we have right now--

It's ironic. For those of you who were able to pick up the public hearings, Page 39x to Page 77x is all Beckett. Right now, our problem is this: Four years ago, the developer turned over control to the residents. That is being debated in terms of definition of control. Does it mean front office operations, which doesn't help me, or does it mean brand-new board, which helps me?

Four years ago -- and as far as I'm concerned, as a resident I should have been notified about that-- Sixty days after our development was 75 percent sold, accomplished, whatever you want to say, we were supposed to have control. We found this out because the only elected board member by the residents who is sitting on the board now, our board is trying to get rid of because he brought these issues up. If you look in that document, you will see editorials. You will see letters back and forth between attorneys, etc.

So, again, my experience has been 21 years. I knew what I was signing when I got there. What I didn't know was how they were going to act, and I think that's the problem people have. And a lot of residents who moved into our development-- They knew about an association. They knew there was one, but some of them did not receive the documents, because they used to be provided at the sales office and they weren't there.

People move in, they do something, they get cited-- I've had several people who moved in-- I've been to court with my association I think three times, and I am about to go again for nonpayment of dues. My problem is I have no recourse when a board that shouldn't be in office continues to be

in office, continues to conduct business. I have no recourse. I think that's one of the things you need to look at. I mean, to me, that's a major abuse of power. To know that the residents were supposed to get control in terms of electing the board members versus a developer-appointed board member and having it come out through disputes with a new board member. Now, granted, the gentleman is a little rough, but he got the point across.

So I want to say thank you to the Task Force. I did not drive from exit 2 of the Turnpike for nothing. I really wanted to come tonight and listen. I am happy that there are others out there-- I'm sorry we go through the same type of difficulties, but-- I think this Task Force has a major job.

The issue on basic rights, it's like I've been to his meeting.
(indicating) Okay?

So, again, thank you very much. My ride up here tonight was worthwhile, and hopefully, we'll be in touch, those of you I've exchanged business cards with. Maybe we can work together and correct this thing.

Thank you. (applause)

ASSEMBLYMAN BATEMAN: Mr. Rodgers, thank you.

Let me also indicate that with us tonight, also, is Joyce Murray.

Joyce, why don't you wave? (Ms. Murray complies)

She's our aide. She also works for the Office of Legislative Services. She has indicated to me that if you want to obtain copies of transcripts from the prior hearings there is a number you can call. It's 800-792-8630.

Again, I thank the public for coming out this evening. I think it was very useful. We'll take that information back with us.

UNIDENTIFIED SPEAKERS FROM AUDIENCE: Please repeat that number.

ASSEMBLYMAN BATEMAN: Yes. 1-800-792-8630.

Thank you all.

I'd just like to talk to the Task Force before they leave to talk about our time frame.

Thank you all very much.

Again, Freeholder, Assemblyman, thank you for hosting us.

ASSEMBLYMAN WISNIEWSKI: Thank you, Assemblyman.

(HEARING CONCLUDED)