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# *Committee Meeting*

of

## ASSEMBLY LOCAL GOVERNMENT AND HOUSING COMMITTEE

### ASSEMBLY HOUSING SUBCOMMITTEE

ASSEMBLY BILL Nos. 1395, 2545, 2864, 2865, 2866, 2867 and 2868

*(The "Uniform Common Interest Ownership Act" and bills  
to consolidate all of the laws applicable to all types of homeowner's associations)*

### ASSEMBLY JOINT RESOLUTION No. 68

*(Memorializes Congress to urge Fannie Mae to modify certain lending guidelines)*

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**LOCATION:** Committee Room 16  
State House Annex  
Trenton, New Jersey

**DATE:** April 20, 1999  
10:00 a.m.

**MEMBERS OF SUBCOMMITTEE PRESENT:**

Assemblyman John V. Kelly, Chairman  
Assemblyman Peter J. Biondi  
Assemblyman Steve Corodemus

**ALSO PRESENT:**

Joyce W. Murray  
*Office of Legislative Services  
Committee Aide*



*Meeting Recorded and Transcribed by*  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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**ASSEMBLYMAN JOHN V. KELLY (Chairman):** Good morning.

Apparently, Assemblyman Green is not going to show, and I'm not going to wait for him. I want to move this along very quickly.

I don't know if you're familiar with me. I used to be the Chairman of Housing. In my Housing Committees, I permitted you to testify, but you weren't allowed to repeat anything. In other words, if somebody testified, you're not going to repeat the same thing. Does that makes sense what I'm saying? I just won't allow it. Okay.

With that, we're going to start with which bill?

Assembly Bill No. 2545.

MS. MURRAY (Committee Aide): Assembly Bill No. 2545 removes occupancy as a condition of exemption from the definition of multiple dwelling. This would affect condominiums that are configured with -- that currently fall under the definition of a multiple dwelling under the Hotel-Motel Dwelling law and permit them with the proper leave to figure fire walls--

ASSEMBLYMAN KELLY: Can you hear her? (negative response from audience)

Use mine then. (referring to PA microphone)

MS. MURRAY: All right.

This bill would remove a condition that all units and certain condominiums be occupied by their owners in order not to fall under the definition of a multiple dwelling in the Hotel-Motel Dwelling law. The Legislature recently amended that law concerning exemptions for its semidetached condominiums with a certain configuration of fire walls. They increased the number of units from two to four units, which were exempt

under the definition. This bill would affect that definition by removing a clause that required that the building be occupied by the owners and would make that occupation not a requirement of the definition.

ASSEMBLYMAN KELLY: Anybody opposed at all to this legislation? No? Good. (laughter)

We're going to recommend that it be approved by the Committee. Okay, next bill.

MS. MURRAY: We need to--

ASSEMBLYMAN KELLY: We need to what?

MS. MURRAY: We're waiting on the substitute.

Perhaps we should take the smaller bills, which is the--

ASSEMBLYMAN KELLY: The bidding bill.

MS. MURRAY: Okay.

ASSEMBLYMAN KELLY: Assembly Bill No. 2866. Is that it?

MS. MURRAY: Okay.

Assembly Bill No. 2866 is part of a package of bills dealing with uniform--

UNIDENTIFIED SPEAKER FROM AUDIENCE: Assembly Bill No. 2865?

MS. MURRAY: I'm sorry. No, Assembly Bill No. 2866, which is one of the bills of the package of bills regarding condominium and common interest property associations. Assembly Bill No. 2866 would direct the DCA Commissioner to establish certain guidelines for unit-owner associations in conjunction with this package of legislation dealing with the Uniform Common Interest Ownership Act.

ASSEMBLYMAN KELLY: Well, don't we have some proposed amendments? I don't see any.

Well, here's one that says favored and opposed, how do you do that?

MS. MURRAY: Leonard Barber.

ASSEMBLYMAN KELLY: Leonard Barber. Where's Leonard Barber?

You're opposed to Assembly Bill No. 2866?

**LEONARD BARBER:** (speaking from audience) Yes.

ASSEMBLYMAN KELLY: Why? Come up and give-- You have to come up here. You can't talk from there. You have to come up here. (witness complies)

MR. BARBER: Okay. It's due to the fact that the current provisions are -- I feel are way too--

ASSEMBLYMAN KELLY: Push your red light. Push that. (indicating PA microphone button) Is the red light on?

MR. BARBER: Yes, it is.

ASSEMBLYMAN KELLY: Go ahead.

MR. BARBER: Okay. I'm opposed to the bill because I believe it's too onerous in terms of the bidding of the \$1000.

ASSEMBLYMAN KELLY: You what?

MS. MURRAY: The bidding guidelines. He thinks the thousand is too-

ASSEMBLYMAN KELLY: Too what?

MR. BARBER: Too onerous.

ASSEMBLYMAN KELLY: Too onerous.

MR. BARBER: That's correct.

ASSEMBLYMAN KELLY: You have some amendments?

ASSEMBLYMAN BIONDI: Yes.

I agree with you; \$1000, I think, is too low a threshold. I'm willing to listen. Is it 3000, 4000, 5000? What is the line before we require bidding to take place? We're certainly looking to protect the rights and privileges of the unit owners, but I agree that \$1000 is too low. I would suggest 5000 before a bid is required. By bidding, I'm referring to sealed envelopes coming in. All three, four, five, or eight or ten bids being opened at the same time at the specified place so that no one is reading anyone else's mail, and I think that will then accomplish what the bill is designed to do. But I would offer the amendment of \$5000 before bid is required and also allow for exemptions for emergency services, roofers, electricians, plumbers, and that effect.

ASSEMBLYMAN KELLY: Any objections to this proposed amendment?

**J. DAVID RAMSEY, ESQ.:** Chairman Kelly, my name is David Ramsey. I'm here on behalf of the Community Associations Institute.

We have no objections to those particular alternatives. We do have a number of other concerns as well with respect to that bill. We do believe that that bill which came about as a result of the Task Force hearings does go well beyond what the testimony was at the Task Force hearings. We support what Assemblyman Biondi just indicated. We are in favor of limiting it in that regard. We would see this bill as breaking down in two areas: one, where there are conflicts of interests between board members, developers, or property managers and the vendor, and those cases where there is not. And we

can see a more strict requirement where there is a conflict and a less strict requirement where there is not a conflict.

The one that Assemblyman Biondi just indicated would be for the less strict requirement, that where there is no conflict between anybody and the vendor. With the more strict one, we can pretty much live with what's in the current bill. We would also point out, however, that there are not even exceptions in this bill as there is in the public bidding law. For instance, if you're a municipal government, there are all sorts of exceptions for professional services, insurance contracts, things of that nature. Those exceptions don't exist in that bill, and we would urge that those be put in.

We would also point out that with community associations quality is often the issue that is the highest issue that they deal with. Price is important, but it's somewhat secondary, and I'll give you an example. If they're bidding for landscape services, you may get a very low bid, but the consistency, the quality, etc., is just not going to be what a higher bidder would provide. We have no problems with sealed bids, opening them all at one time, having the right to negotiate those prices, but we want to leave some freedom for the association to choose which of the bidders it thinks will best serve its needs. And if those additional changes could be accommodated, we would then support that.

ASSEMBLYMAN BIONDI: If I may, I believe -- as soon as I get my mike on I'll believe-- I'm on. I believe by the landscaping you would control that by the specifications that you require in your bid process, what you expect to be done. If the low bidder or the bidder who receives the award is not complying with the specifications of that bid, you have every right to dismiss and go to another bidder.

Also, I would like to say, especially with the landscaping, the painter, the roofing contracts, you're bidding this year, you award the contract for the landscaping. Let's say it's arbitrarily \$60,000. It's awarded. I don't see -- this is just my opinion now, folks -- a need to rebid that landscaping job the following year if the price does not increase greater than the CPI because everyone out there, all the competition, knows what the winning bid was. Someone can come in now, maybe with a cash flow problem, cut it by \$200 or \$300 and be awarded the bid and may not provide the same quality of service. So, if the bid remains the same or does not exceed the CPI, I don't believe it should be required to be rebid the following year.

MR. RAMSEY: And we certainly endorse that. We think continuity has a real benefit in being able to keep the same contract and, as long as the price does not go up by an extraordinary amount, that the association should be able to just keep the same contractor in place. There's a benefit to that.

ASSEMBLYMAN KELLY: Anyone else want to testify on this legislation? (affirmative response from audience)

Excuse me, sir, but you have to come up to the microphone because they're transcribing it.

Did you fill out one of these? (referring to witness sign-in sheets)

**FLOYD FREEMAN:** I beg your pardon?

ASSEMBLYMAN KELLY: Did you fill out one of these?

MR. FREEMAN: Yes. No, I didn't fill one out, but we called up yesterday to schedule it.

ASSEMBLYMAN KELLY: Oh, that's why I'm not aware of that. Okay.

Are you in favor of the bill or against the bill?

MR. FREEMAN: I'd like to explain myself on it. I tell you the reason why I like to-- I'm concerned about whether the bill is going to be nullified by the UCIOA bill. If one is passed, it will nullify-- Let me get my paper.

First of all, I want to thank you for allowing me to come here and make my statement, Chairman Kelly, and Assemblyman Biondi.

What I'm concerned about is the A-2865 bill. If it's passed, it will nullify--

ASSEMBLYMAN BIONDI: We're not on that bill.

MR. FREEMAN: I know you're not, but they're directly connected. Is that so?

ASSEMBLYMAN BIONDI: Well, similar.

MR. FREEMAN: If A-2865 is passed, A-2866 is not passed, we would be greatly disturbed because A-2866, in effect, gives us what we're looking for.

ASSEMBLYMAN KELLY: We're going to merge these bills eventually into one bill.

MR. FREEMAN: Well, what I'd like to tell you--

ASSEMBLYMAN KELLY: There's no duplicate bidding in both bills. Go ahead.

MR. FREEMAN: --is we're not satisfied with that portion of the conflict of interest in the A-2865. That's what I'm here to tell you. In my statement, I have an excellent model there for regulating conflicts of interest transactions that already exist in New Jersey law and applies to municipal officials. It would also benefit associations and homeowners if the applicable

provisions of that law, Title 40A:9-22.5-15, were adopted for association boards and managers. I have included in my written statement the provisions of that law that would be applied to residential associations with great benefit to association homeowners.

The New Jersey Law Revision Commission has also presented, in its new version of the New Jersey Common Interest Projects Acts, provisions on conflicts of interest that were modeled closely on the Assembly Task Force recommendations, unlike that of A-2865, UCIOA, has done. The Law Revision Commission specifically aimed to model a conflict of interest provision on those that apply to local government officials. I am submitting to you, which I have already done, a written statement for your consideration, the conflict of interest provisions, Sections 302 from the Revision Commission's proposed act.

Requiring contract bidding, closely related to curbing conflicts of interest, is the requirement that boards and managers seek three legitimate, good faith bids for association contracts. Assembly Bill No. 2866 does take a valuable step toward requiring sound and ethical practices regarding the use of unit owners' funds in regards to bidding.

Now, as I stated before, the thing that we're concerned about is, if A-2865 goes through, what is it going to do to A-2866, which we feel is a big step toward helping us to control that what we're interested in?

ASSEMBLYMAN KELLY: That will be merged, believe me when I tell you. It will be merged into the other bill. We'll control it.

MR. FREEMAN: We'll control it?

ASSEMBLYMAN KELLY: Yes, we will.

MR. FREEMAN: Thank you very much. (applause)

ASSEMBLYMAN KELLY: Now, now, now, now. Don't do that, please. (laughter)

Do you have the proposed amendments?

MS. MURRAY: (indiscernible)

ASSEMBLYMAN BIONDI: Five thousand minimum before bidding is required, exception for emergency service, i.e., roofing, electrician, plumber. The request is for -- we'll call it EUS that we do in government, extra unspecified services, legal fees, because you really can't shop for that.

UNIDENTIFIED SPEAKER FROM AUDIENCE: We can't hear you back here.

ASSEMBLYMAN BIONDI: I'm sorry. I said the exceptions are under \$5000 is not required to bid. An association certainly can still require a bid if you want, but it wouldn't be mandatory; be an exception for emergency services, an electrician, a plumber, a roofer, something like that; exception for EUS services, attorneys, engineers, something like that. That is something that is very difficult to shop, and it's an exception in the local bidding laws as well, so I don't feel you should be any different than that requirement.

If the following year's bid or quote -- excuse me, let's call it a quote because there's a difference. If the following year's quote does not exceed the CPI, then you do not have to bid the entire process again. If the bid for landscaping this year was \$60,000 and next year it's \$60,200, you certainly have the right to retain that same landscaper that's providing that service. If he's going to exceed the CPI, then you're statutorily required to go through the bidding process once again. And that's all I have right here. They're my ideas. Let's hear it. Are you for? Against?

ASSEMBLYMAN KELLY: Phyllis Matthey, you have some comments. Come on up.

**P H Y L L I S A. M A T T H E Y:** Just on the contract period. Phyllis Matthey, representing CAPA and a member of the Task Force. On the contract period, many associations, once they've found the contractor they're happy with, enter into a multiyear contract at sometimes the same price, no increase. Forget CPI, just because a contractor wants to know they have another year on the site would--

ASSEMBLYMAN KELLY: This doesn't restrict that.

MS. MATTHEY: No, I understand it doesn't restrict it.

ASSEMBLYMAN KELLY: Okay.

MS. MATTHEY: But would you have to then go to him-- Would it preclude you from entering into a two-year contract?

ASSEMBLYMAN KELLY: There's nothing-- This legislation precludes a two-year contract.

ASSEMBLYMAN BIONDI: No. It would be the way you bid it. If you choose to bid it for a two- or three-year contract, you're still under the guidelines here.

MS. MATTHEY: Then could we respectfully change the use of the word one-year to contract period, and that would cover that problem so that it wouldn't be misinterpreted by homeowners coming up with questions. Sometimes they're not as happy with the contractor as the board, who've been through many, have. Where it had said 5000 for one year, perhaps if we said for the contract period.

ASSEMBLYMAN KELLY: You're talking about the amendment?

MS. MATTHEY: Yes. In the amendment.

ASSEMBLYMAN KELLY: That's easy. We can accomplish that.

MS. MATTHEY: So I suggest that. Then I'm happy with it.

Thank you.

ASSEMBLYMAN KELLY: Anyone else want to testify for or against this legislation? (no response)

What do you have? Go ahead, read that right in.

MS. MURRAY: Okay. We have further details on the proposed amendments by Assemblyman Biondi to A-2866. When the stated amount payable by an association in connection with services is going to exceed 5000 in the contract period, that's the bidding requirement for that. But when there's a conflict of interest, the stated amount payable for their quotes required may not exceed 2500, or there will be quotes required.

ASSEMBLYMAN KELLY: Does that make sense? You happy with that? (no response)

UNIDENTIFIED SPEAKER FROM AUDIENCE: Don't know what to say, we can't hear you.

ASSEMBLYMAN KELLY: I said, are you satisfied with the legislation that we just proposed? She said that if there's a conflict of interest, then \$2500 is the minimum. Does that make sense?

Speak your mind, sir.

ASSEMBLYMAN BIONDI: I can't get my mike on.

ASSEMBLYMAN KELLY: Wait until I turn mine off.

ASSEMBLYMAN BIONDI: There you go.

What we're saying, if it's \$5000, project requires bidding, but if there's some type of a conflict of interest, i.e., one of the board members or management firm's brother-in-law is also going to bid on the job, then that

\$5000 drops down to \$2500 trying to eliminate the nepotism, the collusion, etc., etc. Isn't that the intent of this bill? Conflict of interest, it goes down to 2500. Without a conflict of interest, the bidding process takes place at 5000.

ASSEMBLYMAN KELLY: Mr. Pesce.

**MICHAEL PESCE:** Thank you, Chairman Kelly.

I'm Mike Pesce on behalf of the Community Associations Institute. I just want to make sure that I understand the revision that's been suggested with regard to \$5000 for the contract period rather than per year.

ASSEMBLYMAN KELLY: Right.

MR. PESCE: I think that ends up creating a problem.

ASSEMBLYMAN KELLY: What's the problem?

MR. PESCE: We enter into a three-year contract. The concept of 5000 was in a year, so I don't think we now want to make it 1700 a year, which is the effect of--

ASSEMBLYMAN KELLY: No, it was 5000 a year.

MR. PESCE: Per year?

ASSEMBLYMAN KELLY: Per year.

ASSEMBLYMAN BIONDI: Per year.

MR. PESCE: Okay.

ASSEMBLYMAN KELLY: But you can have multiyear contract.

MR. PESCE: But you can have a multiyear contract--

ASSEMBLYMAN KELLY: Sure.

MR. PESCE: --which makes perfect sense.

ASSEMBLYMAN BIONDI: It behooves you to have the multiple-year contract to get that fixed rate.

MR. PESCE: Agreed. Okay.

Thank you.

ASSEMBLYMAN KELLY: Any other--

Sir, what's your name?

**GARY HAMMOND:** My name is Gary Hammond. I'm the General Manager at Rossmour.

One quick question, Mr. Kelly. I was wondering if you would contemplate a possibility of not a fixed dollar amount for the exceptions, but a percentage of the budget of the association. For example, we have 2200 homes, 3500 people, a \$4,500,000 annual budget. We don't get toilet paper for \$5000. So what has been proposed as an amendment by Assemblyman Biondi is definitely an improvement, and we could live with that, but I was wondering if you would contemplate, rather than fixed dollar limits, a percentage of budget so that would accommodate the much, much larger associations. There are a few of us. It's a different world.

Thank you.

ASSEMBLYMAN KELLY: You make sense. Now, what figure are we going to use for you?

MR. HAMMOND: More than the toilet paper budget.

ASSEMBLYMAN KELLY: Why don't I do this, between now and the next meeting, come up with some figure for you? I can see your point.

MR. HAMMOND: Maybe a percentage or something like that.

ASSEMBLYMAN KELLY: We can discuss this forever here, but we will come up with an appropriate amendment for this. Does that make sense what I'm saying? Otherwise, we'd be talking all day.

**RONALD PEARL:** Mr. Chairman. My name is Ronald Pearl, on behalf of the Community Associations Institute. We just had a caucus of the

managers who believe that the greater of 5000 or 5 percent would be an appropriate figure.

ASSEMBLYMAN KELLY: Okay. We'll take that into consideration.

MR. PEARL: Thank you.

**EMILIA A. BIZZOCO:** Emilia Bizzoco. I would just like to ask about conflict of interest. How about the board member who is in conflict abstains from the bidding process, no matter what the price is, can that be put into the law? That the board member who is--

ASSEMBLYMAN KELLY: Red light, push your button. (referring to PA microphone)

MS. BIZZOCO: Red light. Hello.

Emilia Bizzoco. I just wanted to know about conflict of interest as far as the board member who is in conflict of interest. Can it not be abstained from the voting process on the bid and have that put in the law? And then the dollar amount would not matter.

ASSEMBLYMAN KELLY: You're the legal beaver.

ASSEMBLYMAN BIONDI: I don't have a problem with it. I think if not legally, at least morally--

MS. BIZZOCO: Yes.

ASSEMBLYMAN BIONDI: --you should not be voting if you have a direct conflict of interest with someone that's bidding.

MS. BIZZOCO: I think it might be that if the board is going to ratify a contract where there is a conflict of interest, I don't think if the board member had the conflict that their vote counts as far as-- But if you allow it

to be in there, that there's a dollar amount, and if he has a conflict of interest, he will find a way of making use of that and being part of the bidding process.

MR. RAMSEY: May I point and clarify--

ASSEMBLYMAN KELLY: Come on and sit down.

MR. RAMSEY: May I point out that in the basic UCIOA bill--

ASSEMBLYMAN KELLY: Hit your red light, so they can hear you. (referring to PA microphone)

MS. MURRAY: Everything is being transcribed, so if you could state your name each time you speak, that would help.

MR. RAMSEY: Thank you.

David Ramsey again.

In both A-2865 and in the A-1395 substitute, there is a provision that is a carryover from the Nonprofit Corporations Act that states that "if a board member has a conflict, the conflict (a) must be disclosed; (b) two ways the contract can be adopted: the rest of the board has to approve it unanimously or a majority of the members of the community association have to approve it." One or the other, so those are the additional requirements that applies if a board member has a conflict.

ASSEMBLYMAN KELLY: Does that make sense?

MS. BIZZOCO: Yes. It makes sense, as long as he abstains from being part of the bidding process.

ASSEMBLYMAN KELLY: Anyone else? No. Good. We're going to move this legislation. It's moved.

See, we can't vote to send it to the House because we can't. It has to go to the full Committee. We're just moving it to the full Committee recommending that they follow what we just have done.

A-2868, read it. I'll read it. It clarifies the eligibility of communities for reimbursement under Condo Services law; requires the DCA commissioner to track compliance by municipalities.

Who opposes this?

Come on up, state your name and who you represent, and why do you oppose?

**CHRISTOPHER J. CAREW:** Mr. Chairman, my name is Chris Carew. I'm with the New Jersey State League of Municipalities. We oppose the bill because you are expanding the eligibility for municipal reimbursement under the Condo Services Act.

ASSEMBLYMAN KELLY: I want to ask you one thing.

MR. CAREW: Yes.

ASSEMBLYMAN KELLY: You're saying you do not want to cover the snow removal? Is that what you're telling me?

MR. CAREW: We're saying that we don't want to increase the types of private residential communities that are presently eligible under the law, which is what this bill -- is one of the things that this bill does.

ASSEMBLYMAN KELLY: All right. Continue with your--

MR. CAREW: Yes. The reason being it's an increased cost and it's an unfunded mandate in the provision that gives, really, regulatory control to the DCA to make sure that there's compliance with the law. We understand the need to ensure compliance under the current law when it's not occurring. If a condo association has a complaint that the municipality is not complying, we understand that. However, what you're doing with the way this bill is drafted for those new private residential communities that would be eligible for reimbursement, not only are you telling municipalities you have an additional

obligation, we're not giving you any money to fund it, but you're giving the Department the ability in ensuring the compliance with this expanded responsibility to withhold State aid. So these municipalities are not only being hit with an unfunded State mandate, but they're told, if you don't comply, we're going to withhold your State aid.

ASSEMBLYMAN KELLY: Let's reduce it to common sense. Let's presume a one-family house goes up. You're going to say, you have to remove the snow from the front of that one-family house because it's a new residence that's just been built. Is that what you're telling me?

MR. CAREW: Well--

ASSEMBLYMAN KELLY: Well, yes, that's what you're saying.

MR. CAREW: That one-family house would ordinarily receive the services. Our reading of this bill is that it has to do with the expansion of the definition under the Condo Services Act for those units that ordinarily wouldn't have it. A single-unit house would ordinarily get those services.

MS. MURRAY: Chris, are you saying that under the definition that exists now that some municipalities have not provided services for communities because they determine that a homeowners association executive board that's still controlled by a developer is not a qualified community, and therefore, this is an expansion?

MR. CAREW: Yes. What we're saying, Joyce, is that to whatever extent you are-- This bill is being considered subsequent to the enactment of the constitutional amendment requiring State pay for State mandate. So to whatever extent that municipality does not have an obligation to provide these services, that you are adding that into the lot now. We're saying, if you're

going to do that, you have to provide the funding to the municipality to provide those services.

MS. MURRAY: The definition that's being changed here is to clarify the original intent of the original act, the Condominium Services Act, wherein a unit-owner association includes a developer as an unit owner. He's the first unit owner basically. So we have a difference of opinion as to the intent of the original legislation.

MR. CAREW: Joyce, all I can say is that our read of the legislation is that you very simply were expanding the eligibility. We saw it as additional responsibility, increased costs. We haven't determined, and we're not sure if you have either or the sponsors, what this is going to mean in terms of -- how many new homes are going to be entitled to these services that aren't now that the municipality is going to have to provide these services. Our read of the bill is that you're expanding eligibility for people who don't get the services right now.

ASSEMBLYMAN KELLY: Well, I want you to give me an example of what condos are not getting those services right now.

MR. CAREW: Well, I can't give that example, Mr. Chairman.

ASSEMBLYMAN KELLY: Well, then I'm not going to listen to the argument. If you're not giving me an example, I don't want to hear it.

MR. CAREW: Well, this isn't our bill. We don't know exactly what this means. Who's going to be eligible for this now?

ASSEMBLYMAN KELLY: Well, you got to give me an example of what it does or what it might do. So I don't want to listen to you.

MR. CAREW: Mr. Chairman, if I may--

ASSEMBLYMAN KELLY: You may.

MR. CAREW: --and I'll finish. If it's clarified who exactly is going to get this service that doesn't get it right now -- we'd like to know that.

ASSEMBLYMAN KELLY: Well, I just asked you who doesn't get it now. You don't know.

MR. CAREW: It's not our bill. We didn't-- We just looked at this and reacted to it.

ASSEMBLYMAN KELLY: What's the bill got-- You should know what you're doing. The League of Municipalities doesn't know what towns are not covering this? Who are they? Where are they?

MR. CAREW: Mr. Chairman, I said at the outset--

ASSEMBLYMAN KELLY: Well, they'd be in violation of the statute, I think, so I'm not going to worry about this.

MR. CAREW: Mr. Chairman, I said at the outset of my testimony that we're not opposed to dealing with the municipalities that aren't in compliance with the present law. We are not clear to what extent this expands municipal eligibility. Until-- Whatever extent it does, we believe there should be funding for it.

ASSEMBLYMAN KELLY: We've listened to your testimony. We're still moving the bill.

MR. CAREW: Thank you.

ASSEMBLYMAN KELLY: Anybody else? (no response)

Let's do Bateman's memorializes Congress to urge Fannie Mae to modify certain lending guidelines, AJR-68.

Anybody want to comment on that, object to it, support it?

UNIDENTIFIED SPEAKER FROM AUDIENCE: We can't hear you.

ASSEMBLYMAN KELLY: You can't hear me. I have a big mouth. What do you mean you can't hear me? (laughter)

Okay. I'll read it louder. Assembly Joint Resolution No. 68 memorializes Congress to urge Fannie Mae to modify certain lending guidelines.

UNIDENTIFIED SPEAKER FROM AUDIENCE: No objection. (laughter)

ASSEMBLYMAN KELLY: Thank you.

Anyone else? (no response)

All right. Let's move that, AJR-68.

Assembly Bill No. 2867 establishes a certification of property managers of common interest communities.

Phyllis Matthey, you want to discuss that? Come right up.

MS. MATTHEY: Yes, thank you.

Phyllis Matthey, President of CAPA, a 90,000-unit lobbying group for people who live in planned communities and a member of the Task Force. The discussion regarding manager certification at the Task Force meetings that I recall expected that this certification division would fall under the auspices of the real estate department. After consultation with my colleagues -- I am also a property manager and was the property manager member of the Task Force -- we have agreed in principle that it really should fall under the Division of Law and Public Safety, Department of Consumer Affairs, as other boards such as the real estate appraisers, planners, engineers, architects are regulated. I feel it really belongs in that area rather than under the Department of Community Affairs.

Be happy to take questions.

ASSEMBLYMAN KELLY: I have no question.

Mr. Connolly, come on up here.

Do you represent the DCA?

**WILLIAM M. CONNOLLY:** Yes, I do.

ASSEMBLYMAN KELLY: What do you have to say about this proposal -- her recommendation?

MR. CONNOLLY: We support the bill as submitted.

ASSEMBLYMAN KELLY: Oh, okay.

MR. CONNOLLY: The package of bills gives the Department any number of responsibilities to ensure that associations are managed in certain ways. And it wouldn't surprise me that the managers would rather have the licensing authority somewhere else because the licensing authority, obviously, is our single, most powerful tool to ensure compliance with the variety of obligations that these statutes impose. We very much support it for that reason.

ASSEMBLYMAN KELLY: No comments. If you want to talk, you have to come up here and state who you are.

MS. MATTHEY: If I may?

ASSEMBLYMAN KELLY: Who may? You may.

MS. MATTHEY: One of the reasons that this suggestion came up was because the Department of Community Affairs already licenses construction officials, builders--

ASSEMBLYMAN KELLY: Excuse me, put your light on.  
(referring to PA microphone)

MS. MATTHEY: Oh, I'm sorry. Didn't the last person leave it on?

The Department of Community Affairs already licenses construction officials, or oversees them, builders, subcontractors, and home inspectors. Managers are frequently at odds with the Department of Community Affairs fighting on behalf of homeowners going through transitions or in disputes with local zoning and building officials. Because of that, I feel that the Department of Community Affairs may have a conflict of interest in this area, and I feel it gives them too much authority. It's one thing to regulate homeowners associations. It's another thing to regulate a group of professionals like property managers. I see no reason why architects and engineers and planners and others can have the Department of Consumer Affairs oversight appraisals, and so forth, and managers have to under the Department of Community Affairs--

ASSEMBLYMAN KELLY: Most of the people you just mentioned--

Excuse me.

MS. MATTHEY: Sure.

ASSEMBLYMAN KELLY: Most of the people you just mentioned have licenses. This is not a license. This is just a certification. There's a big difference between the two.

MS. MATTHEY: I appreciate that--

ASSEMBLYMAN KELLY: Okay.

MS. MATTHEY: --but I respectfully--

MS. MURRAY: Hit your light again. (referring to PA microphone)

ASSEMBLYMAN KELLY: Hit your light again.

MS. MATTHEY: Oh, it just goes off.

ASSEMBLYMAN KELLY: When I hit mine, yours goes off because you don't want to hear my big mouth.

MS. MATTHEY: I appreciate that. And many of the people who practice property management have licenses, too. I happen to also be a licensed real estate broker, but I do feel strongly that this is not the place for this, and that the Consumer Affairs Department could handle it very well.

Thank you.

ASSEMBLYMAN KELLY: Thank you.

ASSEMBLYMAN BIONDI: But your real estate license has nothing to do with your management organization, so I mean having a license there--

MS. MATTHEY: Well, there's some overlap, not in--

ASSEMBLYMAN BIONDI: I'm sorry I couldn't hear you. I was speaking.

MS. MATTHEY: I'm sorry.

ASSEMBLYMAN BIONDI: Go ahead.

MS. MATTHEY: There is some overlap in some areas as far as the fiduciary and the training that you get as a real estate broker. But I do feel very strongly about this, and I hope that you will consider the arguments.

Thank you.

ASSEMBLYMAN KELLY: It may be considered in the higher court, which is the complete Committee, but right now we're going to recommend moving it as it is.

Okay, where are we now? No other comments on that, I guess. No comment? No other comments on that? (affirmative response from audience)

You come on up.

MR. PEARL: Ronald Pearl again for the Community Associations Institute. We support the certification program and, in fact, originally supported the Department of Community Affairs as the home for it; however, there is good reason to put it in Law and Public Safety with the other groups. Phyllis Matthey mentioned that the DCA and managers currently come into conflict, but more importantly, the DCA licenses the construction officials, the electrical inspectors, and so on, because it's within their area of expertise. They are the code enforcement people in this state.

The Department of Consumer Affairs in Law and Public Safety is really the entity within State government that governs architects, engineers, and you correctly pointed out that they are licensed individuals. Nevertheless, they are the supervisory agencies of professional conduct. I understand, and the Community Associations Institute understands, that in many issues there is a butting of heads between property managers on behalf of their clients and the Department of Community Affairs in the substantive issues and understand why they would feel more comfortable with the same agency that supervises architects and beauticians and morticians and all the other professions.

ASSEMBLYMAN KELLY: Thank you.

Any other comments?

Come on up, state your name and who you are -- and who you represent rather.

**W A Y N E K A S B A R:** My name is Wayne Kasbar. I represent the northern New Jersey Chapter of the Institute of Real Estate Management, and

we are basically opposed to the bill as it is presently formatted for the following reasons.

First, let me tell you a little about the Institute. We are a professional management organization. We have been around since 1935 and, in fact, Chapter No. 1, the chapter I belong to, out of 100 chapters throughout the nation, was the founding chapter. We have a high professional code of ethics, as well as a rigorous education program. And at the end of meeting all those inexperienced requirements, at which you're awarded the certified property management designation, the CPM designation, if you pass those, it's a minimum of five years experience to get that designation.

Our basic opposition to the bill is that while all of the other managers-- We don't necessarily agree that property management should be segmented; that is, office building managers, mall managers, subsidized housing, apartment managers are pretty much all operating under the discipline of property management. The certified property manager is, we feel, by the extent of his training and whatever, capable and professionally capable of managing any type of property. All of the other aspects of property management fall under the Real Estate Commission Licensing Act. That's no reason to think, in our opinion at least, that any property manager wouldn't fall under the Licensing Act.

However, unfortunately, we realize that there is an unregulated segment of the industry out there and that there's a tremendous groundswell to have them regulated. And our position would be that if, in fact, regulation is required by the State or certification that the Institute of Real Estate Management which has been in this business for over 60 years be consulted in setting up the requirements and the professional standards. We don't think

that the Community Association Institute, although it's a reputable organization, should be the only organization that sets the standards.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Amen.

MR. KASBAR: We think that our organization, as I said started in New Jersey, has by far the highest educational and professional standards of any property management organization, and we think we could bring a lot to the legislation. We would also respectfully request that any consideration be given if the regulation is passed that our designated members, who are considered certified property managers, as well as accredited residential managers, be considered qualified to have the certification automatically because of the education and training they have had.

So in summary, I would like to say that we're basically opposed to the legislation because it singles out a certain segment of the management community for certification where no other segment is. We see no reason why they shouldn't be under the Real Estate Commission Law as licensed real estate people. And if, in fact, there is going to be a certification, the Institute of Real Estate Management would like to play a significant role in setting the standards and the regulations and not having a one-organization entity, that is the CAI.

ASSEMBLYMAN KELLY: Assemblyman Corodemus.

ASSEMBLYMAN CORODEMUS: I think if we follow along your reasoning, prior to my alma mater -- would like to say Seton Hall Law School would be the only law school that can graduate students that can sit for the State Bar, or Cornell Medical School would be the only school that could graduate doctors that could become doctors in the State of New Jersey. I know

you probably have the best of intentions, but I think it would give your organization a monopoly, which we don't choose to do in the state.

MR. KASBAR: I'm not suggesting that. I'm suggesting just the opposite, I think. I think the CAI is looking to create a monopoly, and we're looking to participate in it. We think we have broad experience.

ASSEMBLYMAN CORODEMUS: The bill doesn't say that.

MR. KASBAR: I could be wrong, and I apologize for being a latecomer to this, but I thought that the CAI standards were going to be used to set the certification and the CAI group was going to do that.

MR. RAMSEY: No.

MR. KASBAR: Well, if that's not the case, then--

ASSEMBLYMAN KELLY: Well, maybe we should change the--  
Is there some mention here of CAI standards?

MR. RAMSEY: No. There's no mention of CAI standards. There's mention of NBC cam standards.

ASSEMBLYMAN KELLY: What is NBC CAM standards?

MR. RAMSEY: They're a totally separate, independent organization. You do not have to be a member of CAI in order to comply at all. You do not. You do not have to take any CAI courses. There are courses that CAI offers that meets the educational requirements under the NBC CAM standards, but you do not have to be a member of CAI. You do not have to take specific CAI courses.

ASSEMBLYMAN KELLY: You have to take an exam?

MR. RAMSEY: You do have to take an exam, and there's an exam set forth both for general knowledge about the business of community

association management and a separate exam about the State laws in the particular jurisdiction that you are managing.

ASSEMBLYMAN KELLY: Assemblyman Corodemus.

ASSEMBLYMAN CORODEMUS: I'm not all familiar with the NBC CAM, but what little I know I understand that this is not an organization unique to New Jersey, that, in fact, it's throughout the country.

MR. RAMSEY: It's national.

ASSEMBLYMAN CORODEMUS: And it has some national standards, but it becomes state specific when it licenses within a particular state.

MR. RAMSEY: There are two parts. That's exactly correct.

ASSEMBLYMAN CORODEMUS: So the curriculum, the testing, might resemble something like California or Illinois or Texas with the exception that anybody who goes through the course and is tested and passes the test would have specific knowledge about New Jersey law.

MR. RAMSEY: That is correct, Assemblyman.

ASSEMBLYMAN CORODEMUS: Thank you.

ASSEMBLYMAN KELLY: Mr. Connolly, who do you think should set up these standards? What standard should we use?

You better come up. They can hear me because I have a loud mouth, but you've got to get up here. (witness complies)

MR. CONNOLLY: There obviously is more than one national organization that promulgates very good property manager training and certification programs. IREM is one of them, and we certainly wouldn't object to the idea of incorporating some reference to both in the bill since following up on your analogy about a particular law school.

MR. RAMSEY: I think there's some confusion here. There's a difference between educational standards, which can be offered by IREM, CAI, or any other organization under the NBC CAM standards.

ASSEMBLYMAN BIONDI: Excuse me--

ASSEMBLYMAN KELLY: You're going to have to sit down at the mike.

ASSEMBLYMAN BIONDI: --you'll have to speak into the microphone, Dave.

MR. RAMSEY: I'm sorry.

I believe there maybe some confusion here. Under the NBC CAM standards, IREM courses can meet the requirements, CAI courses can meet the requirements, and there may be other organizations who have courses that meet the requirements. As far as I know, IREM does not have standards for manager certification. NBC CAM does, and that's what outlines the educational requirements, and so on, and that's why we directed that NBC CAM-- We requested that NBC CAM be used, but it doesn't prevent IREM courses from being used as the base-level educational experience.

ASSEMBLYMAN KELLY: I think what I'm going to do is let the Commissioner take a good look at this and come up with a recommendation. What do you think of that?

MR. KASBAR: If I could just add, I represent the North Jersey Chapter of IREM, and there's a South Jersey Chapter as well, who hasn't taken a position on this. In June, to be specific June 11, we are meeting with our national group in Chicago to have a discussion on this very issue. And we would like at that time, if we could, perhaps submit a written position paper to the Commission as to what our exact feelings are.

ASSEMBLYMAN KELLY: No problem. No problem.

MR. KASBAR: All right. Thank you very much.

ASSEMBLYMAN KELLY: Anyone else on this piece of legislation? (affirmative response from audience)

State your name and come right up. You both want to come on up? Come on up. Are you both for or against or what are you doing? All right, never mind, go ahead.

MR. HAMMOND: My name is Gary Hammond. I'm the General Manager of Rossmour. I'm speaking only for myself. I'd just like to add one comment that I hope the Subcommittee will keep in mind. I'm relatively new to the profession of association management. I'd like to distinguish between property management and association management.

As a quick aside, my own career-- I've held elective office. I've run a \$35 million corporation, had my own business, have a MBA from Harvard and a BSE from Princeton. This is my fourth lifetime. I have the fervor of a new convert.

A property manager running the bricks and mortar of a factory where people work is not the same as a community manager who is taking a broad look at running an association where people live, and it's their home. It's different. Please keep that in mind.

Thank you.

ASSEMBLYMAN KELLY: And that's why this is all being taped. Not one word will be missed, okay.

Go ahead.

MR. FREEMAN: Chairman Kelly, I haven't got a vested interest here. I just worked in a line of building and grounds management all my life,

and I've been licensed by municipalities. It's been traditional for government agencies to license people who operate elevators or maintain elevators or refrigeration equipment, boilers, etc., and so on, and so forth. I see no difference in this. I think the government should take its rightful place and certify all license, whatever is required -- what you people think is right. And that being said, I think that's the way we should go. We should ignore the vested interest here in this room, which I'm sure you will do.

ASSEMBLYMAN KELLY: You can best assure I will. You bet I will. Okay. (applause)

No. No. No.

Where are we? The main event has arrived.

We now have a committee substitute -- two committee substitutes. I don't know if you know, a committee substitute is where you take a couple of bills and combine them. That's what this is supposed to be.

She's going to explain it because I'm not.

MS. MURRAY: Okay. Well, this committee substitute is a little different since we're not really moving the bills today. There are two proposed substitutes, one being sponsored by Assemblyman Corodemus. Both of these substitutes differ from the bills that are introduced. Mainly they are substitutes for A-2865, the New Jersey Uniform Common Interest Ownership Act. I will attempt to list the salient points of each and how they differ from A-2865 and how they differ from each other. The main difference in the Assembly committee substitute, which is numbered Assembly No. 1395 first and A-2865 second, is that this substitute contains an alternate section for Section 413, which is the alternative dispute resolution procedure that should be followed by common interest ownership community associations.

This procedure would be limited to an alternative dispute resolution process at the association level and would obviate the need for Assembly Bill No. 2864, which was a bill in this package, that had created a commission on dispute resolution. And there are several other changes that are not in contention, some clarification language, mainly dealing with open meetings that differ from A-2865 in this first committee substitute, which is Assembly No. 1395 and A-2865.

The other substitute is proposed by Assemblyman Kelly. It has a different alternate dispute resolution procedure, also, but the main difference here is that it would maintain a separate ADR procedure from the association that would be available for a unit owner to petition. Rather than petitioning a commission, however, it would -- the Office of the Ombudsman within the Department of Community Affairs has been enlarged, and the functions for alternative dispute resolution have been shifted to that office. That office would be required to be separate and apart from any other division within the Department, and it would function as a facilitator for alternative dispute resolution, as a function for a resource and training center, for information for board members, unit owners, and even property managers.

This other substitute, which is numbered Assembly Committee Substitute No. 2865 and A-1395 second, would also change the funding mechanism or the registration of associations to pay for the increased oversight functions that all of the bills have included for the Department of Community Affairs and also for the alternative dispute resolution of currently A-2865 requires a registration fee per association. This substitute would require instead a per unit charge of approximately 35 cents a month, or \$4.20 per year, per unit.

In addition, there are some changes in the second substitute in access to records. The types of records that are required to be shown to unit owners have been broadened to include all records, including financial, that are not deemed confidential. The time frame for furnishing the records in this second substitute has been lengthened from seven days to a reasonable time if the request involves records going back more than one year or a voluminous records.

And there is a change in the language of the Open Meetings section proposed by this second substitute, whereby, associations would still be permitted to have working sessions. However, there would be a requirement that no preliminary or straw votes be taken and that a board member articulate his or her reasoning in the Open Meeting when they do vote.

There has been a provision added for requiring forfeiting of voting rights by a developer if he rents out units rather than selling them.

And there is a provision concerning voting rights for mixed-use plan developments, where there are apartments and condominiums, limiting the number of votes that a landlord or owner of an apartment building can have relative to the rest of the association.

That's pretty much a synopsis of the differences of the two proposals.

ASSEMBLYMAN KELLY: Assemblyman Corodemus, you have the floor.

ASSEMBLYMAN CORODEMUS: Thank you, Chairman Kelly and the Subcommittee, for hearing this bill today. I think I should preface my comments by saying I'll have to reserve comment on the committee substitute

second because I'm looking at it for the first time. I might have to review it and submit additional comments at a later date before the "full Committee" convenes.

But just to give you and the Subcommittee and the congregation here some perspective, I got involved with this bill four years ago. And I sponsored a bill that moved along the lines that the nation was moving on to provide a uniform rules and regulations for common owners and their common owner's interests in those developments. And I sponsored this bill-- And subsequent to me sponsoring the bill, a task force was convened where Assemblyman Bateman met with other members, and they did a good job, and they took a lot of testimony, and I respect the work that they did. I permitted my bill to stay in the process as new bills were developed out of this task force, and some of them we've already heard today, and I'm in agreement with. And we've come pretty much all the way down the line in agreement with one exception that I had previously noted, and perhaps, as Ms. Murray just enumerated some new ones, I'll have to look at that as well.

But the focal point seems to be on, how do unit owners resolve disputes? And in my legislative districts when I go out to talk to my senior groups, I go out to talk to my taxpayer groups, they tell me, "Please, get government out of our life as much as possible. We don't want to pay more property taxes. We don't want to fund any more bureaucracies. We just assume resolve things here in our backyard." And that's why I sponsored my version of how disputes should be resolved.

So I can give you a good idea, Mr. Chairman, of how I propose disputes be resolved. There would be basically three steps. The first step would be a mediation, in that a mediator would be selected by perhaps the

board and a unit owner that are in dispute about something and attempt to resolve those differences in an informal process. If that result fails, and they couldn't come to an agreement, then that mediator would switch hats and become an arbitrator. And that arbitrator would listen to their case on both sides and act somewhat like a judge and say, "Well, if you can't agree, this is what my decision will be." And if that fails, if they couldn't agree at that point, we would leave the courthouse doors open to them to go to regular court of law to resolve their disputes.

My original objection to the bill that Assemblyman Bateman introduced, particularly A-2864, would have created a new bureaucracy in State government where you'd provide hearing officers to go there, pay a fee and such, and after being a legislator for eight years, that's the last thing I want to do. Although it sounds great to have an impartial jury there of people, as this bill describes, it just quite doesn't work out that way. The more that State government gets out of these types of services, the better off, I think, my constituents and taxpayers would be, and perhaps you would agree with, if we would give this an opportunity to play out.

Now, I've been down here long enough to realize that when we make laws, it's not like when God gave the tablets to Moses, that they were indelibly ingrained from there on. We pass the law. We keep our eye on it. We monitor it. If it works, we keep it. If it doesn't work, we tune it up or scrap it all together down the line. I would respectfully like to try this system, Mr. Chairman, as this is proposed in my committee's substitute to have that three-step process and give that a chance.

(people speaking from audience)

ASSEMBLYMAN KELLY: Hey, control yourself.

ASSEMBLYMAN CORODEMUS: I, a few years ago, wanted to resolve a problem that was in an environmental business environment where I thought we needed some people to go on a day-by-day operation to take care of it, and I sponsored legislation that would create a new little department. Well, this new little department has now become an empire that has gone from a small budget to a very large budget. Every year, it doesn't go up with the cost of living. It grows geometrically, and you the taxpayers are paying for it. Once you start these monsters, you can't stop them. So I'd like to consider that and-- Other than that, those are the-- We're in agreement with everything else. I'm not quite sure about the difference in the records provisions that you enumerated because I, too, provide for fair access to records in my bill as well.

ASSEMBLYMAN KELLY: Lois Pratt. State who you represent, and I think you're opposed. I'm not sure. You have both, in favor and opposed. That's interesting.

ASSEMBLYMAN BIONDI: Feels strongly both ways.

ASSEMBLYMAN KELLY: You're in favor and opposed at the same time? Go ahead.

**LOIS PRATT:** On?

ASSEMBLYMAN KELLY: Hit it now, you're on. (referring to PA microphone)

MS. PRATT: I am now on the--

ASSEMBLYMAN BIONDI: Push your button. (referring to PA microphone)

ASSEMBLYMAN KELLY: Push your button, please. (referring to PA microphone)

MS. PRATT: Thank you.

I'm sure glad I came. Things are changing fast. The dispute resolution procedures in A-2865 are fundamentally flawed. They are so convoluted and even contradictory that it would kill ADR. It would be an impossibility to get any or to do it, and any prudent homeowner could not get involved in anything so complex. Any dispute between an association and a homeowner is inherently one of unequal resources and power, and the essence of a dispute resolution procedure has got to be to make a level playing field. The provisions in the UCIOA, 2865, not only don't help to level the playing field, but they tip it more in the direction of providing more opportunity and more authority for boards to enforce the covenant through a simple hearing process perhaps done by the managing agent.

I had and many people had great hopes when the ADR law was passed in 1996 in the condominium law. And at that time, the Legislature sought to seek balance. We're giving them the power to fine, adding to board authority, and they balanced it by giving them the requirement to provide ADR. This law which I thought was terrific, and I testified in favor of it, has been ignored almost universally. I have seen well over 100 procedures prepared by associations -- those that have even bothered to prepare them -- and I have not seen a single one that is in compliance with fairness and impartially and the rules that the professions follow in this field.

So some of the specific provisions that I think need to be included are: dispute resolvers must be impartial, have no stake in the dispute, the board managing agent, association attorney, and employees may not serve as dispute resolvers and may not choose the mediator or arbitrator. (applause)

Secondly, the parties to any dispute must agree on a dispute resolver, and if they cannot agree, then there has to be some mechanism by which an impartial outside professional would make the choice on their behalf. Now, we bring in this morning the issue the Office of Ombudsman which takes a long step to solving this problem because it becomes-- The Office becomes the resource that certifies mediators and arbitrators, forms a list, and makes it available when associations or unit owners appeal to the Ombudsman, and that would go a long way to solving the problem of an impartial selection of who shall be the mediator or arbitrator.

Third, association disputes that are eligible for ADR must be broadly construed. Assembly Bill No. 2865 puts all kinds of restrictions on what-- If you're going to have dispute resolution on behalf of associations so that they can become harmonious communities, then you want to broadly construe what the issues are that are troubling them should be eligible for mediation or other dispute resolution.

Four -- I think I'm up to four -- the law must provide equivalent protections and procedures to unit owners who have disputes with boards over alleged violations by the board, as are provided to boards alleging violations by unit owners. The current provisions in A-2865 are way out of kilter. Unit owners have to answer letters within 10 days of mailing. The board doesn't even have to answer such a request, and these things must be corrected, given particularly the fact that the board has got the unit owners' money behind them and the managing agent and other resources.

When a unit owner or a resident is alleged to have violated rules or covenants, he ought to be given the opportunity to correct the violation. The law must provide for mediation directly. The hearing process is not

dispute resolution. It's not a way to provide impartial justice, and I noticed that Assemblyman Kelly's revision provides that you begin with mediation, as does Assemblyman Corodemus's proposal. The hearing process puts the unit owner at a distinct disadvantage. He or she gets the letter, and it is then up to him to bear the burden of understanding what his rights are under the system. It has got to be made more equivalent. The hearing process is often just a letter from the managing agent, "I give you 10 days to respond," and if you don't know how to respond, that's your problem. After that, a fine is imposed or other penalty and--

The hearing process is not the equivalent of ADR, if I may finally say it in brief terms. The direct referral to mediation is essential to assure the association will-- Excuse me, let me step back one phrase. When the association is alleged by a unit owner to have committed a violation of the governing documents or its rules, then it must be that you have mediation in order that you get the board to correct the violation rather than dragging it out. And to be personal, I have seen an association member crying over the phone to me over a seven-year delay in the hearing process before his leak in the roof of his building in a common element could be repaired. Seven years these guys couldn't sell their apartment.

I certainly do think that an Ombudsman Office is not intrusive governmental interference. Any governing body expects -- ought to expect in America that there be some oversight, and this is a function the government could provide constructively, an Ombudsman Office that is involved in providing services to facilitate mediation and including mediation and arbitration.

If I can slip just one step further and say that this does have to be funded without question, and I strongly endorse this proposal that there be a per unit annual charge on associations to pay for the educational, the ADR, the registration, and other services that the Department, the Commissioner of Community Affairs, and the Department will have to provide. And these also include the disclosure booklet as part of the legislation that would provide disclosure to all unit owners who already own as well as to buyers. I think that funding for this system is essential if it is going to work, and I do not think that that is government interference. These boards have authority like many governments, and oversight is essential.

And thank you. I really appreciate the opportunity. I'm glad that I have heard the new presentations this morning that are most gratifying. Thank you, sirs. (applause)

ASSEMBLYMAN KELLY: You know, I'm going to call the State Police here in a minute. (laughter) No, I'm only teasing.

Anyone else want to comment?

Come on up, sir. You like to come up here, don't you?

MR. CONNOLLY: I do, Assemblyman.

ASSEMBLYMAN KELLY: Before you-- Sit down. Before you address us, though, Assemblyman Corodemus would like to say a few words.

ASSEMBLYMAN CORODEMUS: If I can, through the Chair, ask Ms. Murray something about the cost because this Ombudsman issue is a very interesting one, and I wanted to know what the projected cost would be for the operation of this, as opposed to the projected revenue from the-- It's not all the ownership fees or percent-- Could you tell what the -- how this works out because I haven't had a chance to look at the new substitute yet?

MS. MURRAY: Well, okay.

Do you want me to delineate between the two substitutes, the registration fees, or just want to know what the new-- Currently, A-2865 contains a \$60 per association registration fee, and that fee has been -- the same amount is in your committee substitute. The other proposal would change that funding from a per association charge to a per unit charge of 35 cents a month, or \$4.20 per year per unit, rather than a flat registration fee per association. Now, this proposal does come from the Common-Interest Homeowners Coalition who indicated that they believe that that's a more fair and proportional way to represent the impact of the services that will be provided to unit owners. There's approximately 400,000 unit owners statewide. There's approximately 8000 associations, but it -- between 8000 and 10,000. It's a rough estimate because we don't know how many exactly, precisely are going to fall under the bill. Some will be exempted. Some very small associations will be exempted. But in general, around \$4 a year seems to be a rational goal to try to reach to fund the type of oversight that's going to be necessary, the type of personnel that will be required to staff the Ombudsman's Office, and also the increased oversight by the Department of Community Affairs as far as enforcing the statutes and the regulations that will be promulgated.

The state of Florida has a very similar method of-- In fact, it's \$4 a year also per unit in Florida for the oversight that they have over their condominium association boards. And, in fact, in Florida, they have an entire division devoted to that task. Basically, the charge per unit is seen as a more fair system of funding this because it's related to the impact per unit that -- of the unit owners that will have to be getting services under the bill.

ASSEMBLYMAN CORODEMUS: Just so I understand, that's a new \$1.6 million bureaucracy?

MS. MURRAY: Well, there would be funding-- In your proposal, would be a different amount, but there would be funding.

ASSEMBLYMAN CORODEMUS: A third of it.

ASSEMBLYMAN BIONDI: What amount is needed?

ASSEMBLYMAN KELLY: Mr. Connolly, you're a bureaucrat -- been around a while. Come on, can you enlighten us on this particular piece of legislation as to what you think it might cost?

ASSEMBLYMAN BIONDI: Yes. If we're going to set an amount, whether it be 45 cents or \$60, we need to know our cost before set an amount. I think we have a cart before the horse here.

MS. MURRAY: Well, there was some funding.

ASSEMBLYMAN KELLY: Mr. Connolly, you have the floor.

MR. CONNOLLY: I would certainly agree with that.

ASSEMBLYMAN KELLY: Hit your button. (referring to PA microphone)

MR. CONNOLLY: All right. You keep doing that to me. (referring to PA microphone)

I would certainly agree with that. Our main concern is what we're going to have to do be adequately funded. We think it's more likely that it is going to be adequately funded if it is spread more broadly so that's why we tend to lean toward the suggestion that Assemblyman Kelly made, but I was surprised by the amount. I don't think this requires \$4 a unit to do a proper job of it.

ASSEMBLYMAN KELLY: Less?

MR. CONNOLLY: I haven't had a chance to--

ASSEMBLYMAN KELLY: Hold it. I just want to--

You want to make it less? Now you got the floor.

MR. CONNOLLY: In the spirit of smaller government, absolutely.

ASSEMBLYMAN KELLY: Okay.

MR. CONNOLLY: When I joined the State government 26 years ago, I thought having lots of employees was really neat. Now I know it isn't. They don't come alone. They bring their problems, and to try to solve these problems without the growth of a large bureaucracy is something we very much support. Managing all those people becomes its own problem if you have too many people. I think we can do a good job. We're the people that listen to the complaints day after day and really aren't able to do anything about it, so we're very much supportive of this package of bills, but we think we can do a good, solid professional job with not that much money. And we'd be happy to work with the Committee to try to fine tune it, but we do prefer something that's a little more broad based, so the burden is evenly spread over all homeowners.

ASSEMBLYMAN KELLY: Thank you, Mr. Connolly.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Mr. Chairman.

ASSEMBLYMAN KELLY: Hold it.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Point of clarification.

ASSEMBLYMAN KELLY: You have to come up here. First of all, this individual is here ahead of you, okay. So you can come up after they finish. Is that being fair?

UNIDENTIFIED SPEAKER FROM AUDIENCE: I only want to know what we're discussing.

ASSEMBLYMAN KELLY: We're discussing right now the funding.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Of any bill?

ASSEMBLYMAN KELLY: Of my bill, the \$4 bill. (laughter)

You have the floor, one of you.

MR. RAMSEY: Thank you, Mr. Chairman.

As I said before, my name is David Ramsey, and I am here on behalf of the Community Associations Institute. I do have comments about the bills that the ADR is part of, and I'd like to make some general comments about the bills and then some specific comments about the ADR proposal.

To my right, by the way--

ASSEMBLYMAN KELLY: Wait a minute. I want to do this by the numbers. We were just discussing fee. You think it should be by association or it should be by individual?

Now you go.

MR. RAMSEY: Thank you.

On the fee issue alone, I don't think the fee is necessary at all. The \$60 registration fee, by the way, in Assemblyman Corodemus's bill has nothing to do with ADR. So let's make that clear. The Corodemus alternative is a zero cost for ADR. If you want me to comment on ADR specifically, I can do that, but I do have some general comments--

ASSEMBLYMAN KELLY: Okay, go with your general comments.

MR. RAMSEY: --about the bill.

Thank you.

By the way, I do want to introduce, to my right, Michael Pesce, who is the current President of CAI and is a property manager in the state as well.

These bills that you have before you today, both A-1395, A-2865, whatever iteration we're talking about, are bills that represent the Uniform Common Interest Ownership Act, commonly known as UCIOA. This hearing represents the culmination of five years of work to bring this important legislation before the New Jersey Legislature.

I'd like to mention for a minute who CAI is. CAI is a 25-year-old national, nonprofit corporation with 17,000 members representing all-- (interrupted by noise from audience)

ASSEMBLYMAN KELLY: Quiet, please. You know what you do, you foul up the recording. So, please, don't do that.

MR. RAMSEY: Seventeen thousand-member organization representing all 50 states, a number of foreign countries. More than half of CAI's membership consists of community associations and those that serve the community association industry and homeowners as well. Until recently, CAI's mission was pretty much geared to educating its members with respect to the common form of ownership that members dealt with on an everyday basis. And that was mostly in connection with budgeting, property maintenance, and rules enforcement. In the last three years, CAI's focus has changed. Its mission is now to foster vibrant, responsive, competent community associations, promoting harmony, community, and responsible leadership with the emphasis being on the word community.

The New Jersey Chapter, whom I'm representing today, is the second-largest chapter in the country. We have more than 1300 members and

over 650 community associations, or members. It's our belief that the adoption of UCIOA will, in fact, foster responsive, competent community associations and will promote harmony and responsible leadership.

A minute on UCIOA itself. UCIOA is first and foremost a uniform law. One of the expressed goals of uniform laws is to provide a reasonably consistent body of law so that as the judiciary in individual states interprets various provisions in that law, each state who has adopted it will obtain the benefit of that judicial interpretation and, hopefully, get rid of repeat litigation on the same points in state after state after state. That's one of the main goals of UCIOA. The Uniform Law Commissioners adopted UCIOA in 1982. The advisors to the Law Commissioners -- and I think it's important to know the broad-based support. The advisors to the Law Commissioner included representatives of the American Bar Association, the United States Department of Housing and Urban Development, the National Association of Home Builders, the Veterans Administration, the Urban Land Institute, the Federal National Mortgage Association, the Mortgage Bankers Association of America, the American Land Development Association, CAI, and others.

ASSEMBLYMAN KELLY: Hold it. We know you're-- We don't need all those qualifications. Let's discuss the legislation, okay?

MR. RAMSEY: Okay.

I make that point, Mr. Chairman, simply, though you know, that the number of organizations involved at the national level were extremely broad based when this began. This is not an industry bill by any means.

When we at CAI began the process five years ago of bringing UCIOA to New Jersey, we recognized a number of things. First of all, New

Jersey had no bill dealing with any types of associations other than condominiums. That was number one. Number two, we had a good disclosure law already in effect. Three, that we would have quite a few of other interest groups who would be interested. I do want you to know that we sat with those other interest groups. We traded drafts back and forth, and as far as we know, the bankers, the builders, the lawyers, all of whom we dealt with were pretty much on line with this bill. We also met with DCA. We met with DCA several different days. We exchanged comments with DCA, and we made numerous comments. While DCA never voiced its absolute support for the bill, we did have an indication from DCA that they have received our comments and that they indicated no objections to the changes we had made on their behalf.

After Assemblyman Corodemus and Assemblyman Cohen had introduced UCIOA in a prior session, we learned that an Assembly Task Force, chaired by Assemblyman Bateman, was formed to study community associations. We delayed further efforts to obtain the passage of UCIOA while the Task Force had time to complete its mission and publish its recommendations. Assemblyman Bateman has worked diligently to incorporate many of the recommendations of his Task Force into UCIOA. We thank him for all his efforts, insights, and the time he willingly devoted to the exchange of ideas that resulted in A-2865, which is now in front of you. We believe that the overwhelming majority of those changes, as mentioned by Assemblyman Corodemus earlier, have strengthened the bill. And we have responded to many of the homeowner concerns that were voiced at the Task Force hearings. We do, however, have just a few reservations that I will come to.

Although UCIOA is a comprehensive bill containing over 80 letter-sized pages of text, I would like to mention just a few of the major benefits that are in UCIOA. It contains numerous fault provisions that fill gaps in poorly drafted documents and results in certain essential provisions that are included in all association documents. It contains exclusive provisions defining the responsibilities of associations and homeowners for the maintenance, repair, and replacement of common elements and the maintenance and repair of units. It requires the issuance of resale certificates that include vital information concerning the rules, liabilities, and finances of an association so that buyers of resale units obtain the same benefit of disclosure as do buyers of new units.

It sets forth and outlines the transition, the transfer of control from the developer to the unit owners so that we don't have to wait for 75 percent of the units to be conveyed. And it establishes new rights of participation by individual owners that have never existed before including the right of every homeowner to get up at the beginning of the meeting and have an opportunity to voice their opinion on any matter of concern and a separate right to voice their opinion with respect to the adoption of rules or the adoption of a new budget.

Now, alternative dispute resolution, getting to the heart of the matter. CAI is committed to the concept of alternative dispute resolution, let there be no doubt about that, but to be successful, ADR has to be efficient, easy to understand, and result in some measure of finality. There's a distinct difference between Assemblyman Corodemus's approach and Assemblyman Bateman's approach. We respectfully suggest that there are a number of

problems with the Bateman approach, some of which are also repeated in the second alternative that we heard about this morning.

First, it's highly doubtful that there could be a sufficient number of qualified, dedicated volunteers, which is what the Bateman alternative proposes. While the disputes are for the most part minor in community association life, they do require a willingness to devote substantial time to understanding voluminous community association documents and to spending the time to help resolve the dispute. Secondly, the Bateman approach does not guarantee a resolution. Mediation is great. We support mediation. The problem with mediation is at the end of the day, if you have people who are emotionally invested in a dispute, even a good mediator may have a very difficult time getting them to a result.

Assemblyman Corodemus's approach deals with that issue. Assemblyman Corodemus's alternative requires an association to offer the disputants a list of qualified mediators with a brief background for each one. It allows the homeowner to choose the mediator based upon their background. Except for a modest contribution of \$50, which is waiveable if there's a hardship, the association pays the entire cost of the mediator. The fact that the mediator will be paid more likely assures that the necessary time and attention will be devoted to the matter. Assemblyman Corodemus's alternative also provides that if mediation is unsuccessful, the mediator will then act as an arbitrator and will issue a decision regarding the dispute. The arbitrator's award becomes binding if neither party contests it by filing suit within 45 days.

Assemblyman Corodemus's version is still subject to oversight by the DCA. In other words, if the association does not do what is required by Assemblyman Corodemus's version, the Commissioner of DCA still has the

right to mandate that the mediation takes place, and if there's a flagrant violation, the DCA could remove board members from serving on that board. So there's no question that under Assemblyman Corodemus's version there is DCA oversight.

A couple of comments about the second version, a second substitute, and Mrs. Pratt's comments. I represent over 100 associations. Mr. Pesce manages many associations. If you took the average association and the number of disputes it has per year that are subject to ADR, they wouldn't come anywhere close to costing the association \$4 per unit, per year, not even close. If you take some associations with multiple thousands of unit owners, as we've heard testify here today, and I know there's quite a few of them, you could be talking about fees per year under this proposal running from \$4 to \$20,000 for the association. Most of those associations have disputes that might be a couple a year. For them to spend \$4 to \$20,000 for a bureaucracy to administer this is we think just ridiculous. And we can tell you that if the homeowners who live in our associations knew that that was the proposal that would be considered, this room wouldn't even come close to holding the number of people who would object to that proposal.

ASSEMBLYMAN KELLY: I want to interrupt you for one minute.

Mr. Connolly, how many complaints have you had on ADR in a year?

MR. CONNOLLY: I couldn't tell you a number, but I can you that when I joined the Department, the most common source of mail that we got of complaint was landlord-tenant matters, and you know how many tenants there are in this state. That is no longer true. We get more mail by

homeowners who are having a problem getting quick access to some sort of dispute resolution than we do from tenants about their landlords.

ASSEMBLYMAN KELLY: Okay.

Continue. Go ahead.

MR. RAMSEY: We agree. The current law is inadequate. There's no question about that. We agree on that. We agree that--

ASSEMBLYMAN KELLY: What's the matter?

MR. RAMSEY: Not turning red. (referring to PA microphone)  
There it goes.

ASSEMBLYMAN KELLY: I'm playing with this button up here.  
That's my fault.

MR. RAMSEY: We have quite a few areas where we agree with Mrs. Pratt. We agree that the current law, while it was a good idea when it started, doesn't go far enough. We absolutely agree with that. We agree that the hearing process that Mrs. Pratt spoke about is not ADR.

Assemblyman Corodemus's bill doesn't say it's ADR. In fact, Assemblyman Corodemus's bill says that the hearing process, which is due process, would satisfy ADR only if all parties agree to it. So it doesn't force anybody to accept the hearing process as ADR. And, in fact, the hearing process that Mrs. Pratt complained about serves a very valuable goal. It filters out those disputes that shouldn't be disputes. I can tell you as an attorney representing homeowners associations the number of times that disputes get to a hearing process and are dropped because nobody is willing to testify about the dispute or because it is determined that there's no violation of the governing documents gets rid of a lot of disputes. It cuts down the number of

times that you actually even have to get to ADR because it is found that the person is not in violation of the rules or regulations at all.

So as a screening process, we think the hearing process still serves a very useful goal. Once we get beyond that screening process, we agree there should be mediation. We're willing to pay for it. We as associations are willing to pay the cost. What we're not willing to do is pay for a bureaucracy, and in fact, the alternative proposal has an enormous amount of money in it for the bureaucracy. On average, the typical association might have two or three disputes that would actually get to mediation in a given a year that require mediation. To pay \$4 per unit, per year to pay for that is just beyond reasonable, and we object to that. We urge--

ASSEMBLYMAN KELLY: I want to interrupt you. We already decided it's not going to be \$4. That's already decided, okay?

MR. RAMSEY: Okay. Well, without knowing what it is, it's hard to respond to that, but I will tell you this. As has been alluded to before, whatever the number starts at I've never seen it go down in a State bureaucracy. It always goes up. And we're suggesting to you that if we can start with Assemblyman Corodemus's proposal -- if that doesn't work, fine, but that proposal has a lot of merit, and we really urge this Subcommittee to consider that alternative, which doesn't require the creation of any further State bureaucracy at all.

Let me just close my comments by indicating that the package of bills that constitutes New Jersey UCIOA will bring about a much needed reform of the existing body of law. The package strikes a very fine balance between many competing interests that are impacted by UCIOA. I'd also like to indicate to you some interesting results of a Gallup poll that was just

completed, and the information is just coming out about life in community associations.

ASSEMBLYMAN KELLY: Before you go any further, was it a Gallup poll that discussed New Jersey or some other--

MR. RAMSEY: It's a national poll. It's a national poll.

ASSEMBLYMAN KELLY: All right, we'll listen to it.

MR. RAMSEY: I think it brings about some interesting information. When asked whether they were satisfied with life in community associations, 74 percent of the residents reported they were either extremely or very satisfied; 2 percent said they were very unsatisfied. The satisfaction index was compared to homeowners not living in community associations. It was slightly higher in community associations than not, but interestingly, 2 percent not living in community associations were still very dissatisfied with life outside of community associations.

I make that point because I want to emphasize that UCIOA, and particularly Assemblyman Corodemus's approach, tries to get the 24 percent who weren't the very unsatisfied to join the satisfied, extremely satisfied, or very satisfied. To give in to the 2 percent, however, who are very unsatisfied, requires us to give up just too much. And I don't think that legislation should be based upon the 2 percent who are very unsatisfied.

ASSEMBLYMAN KELLY: To your comment, I'm only really interested in New Jersey. I really don't care about the other 49 states. I'm only interested in the individuals in New Jersey.

(noise from audience)

Please, don't do that because you foul up this recording over here. Please, don't do that.

MR. RAMSEY: I can tell you to that comment, Chairman, that the regional breakdown was even almost throughout the country. There was no distinct differences in New Jersey sampling than there was in any other sampling. It's very similar throughout the country.

We ask the Subcommittee to report favorably on UCIOA and to the full Committee, and we ask that Assemblyman Corodemus's bill be the one that be reported.

Thank you.

ASSEMBLYMAN CORODEMUS: Mr. Chairman, through the Chair, while we have Mr. Ramsey there at the witness table.

Mr. Ramsey, you already went through it, but I'll ask you to repeat yourself if you have to. Could you just track the processing of dispute between my bill and the Bateman bill? And if you can, this most recent bill. I haven't had a chance to go through it. You might have had the benefit of a few minutes to look at it.

MR. RAMSEY: I had a couple quick minutes to look at it. Let me indicate what your bill, Assemblyman Corodemus, would do. It indicates that whenever there's a dispute, the association must -- even if the dispute is one where the unit owners are alleging that the association did something wrong, that the association must first offer mediation. It sends out a letter to the homeowner, and that letter says to the homeowner, "Here's a list of three mediators. Here's their background, and what we want to know is, if you want mediation, please pick one of the three and return it within 10 days with a check for \$50 being your nominal contribution to that cost." If the person does that, returns the form, the association hires the mediator that was selected, and the mediation is conducted.

Now, mediation is a nonjudgmental process. So if at the end of the day there's no resolution by agreement between the parties, what then happens is the mediator becomes an arbitrator, and the arbitrator issues a decision saying this is my opinion about what I think the resolution should be. If neither of the parties files a suit within 45 days after that issuance of that decision, it becomes binding, so there's finality and there's a decision made. That's the end of it. The association picks up the entire additional cost of the mediator other than the \$50 that I mentioned.

Under the Bateman proposal, there's a panel of volunteers--

ASSEMBLYMAN CORODEMUS: If I may, just stop you.

MR. RAMSEY: Sure.

ASSEMBLYMAN CORODEMUS: I'm asking you -- it's my bill, but the reason why they had the \$50-- Why the \$50?

MR. RAMSEY: Because what we have found in some situations is people file repetitive requests for mediation on the smallest issue, "I didn't like the fact that you didn't cut my lawn the right way this week, so I'd like mediation on that." It tries to stop that by at least investing the person in a slight financial contribution to the overall process, so we're not talking about whether the tulips came up this week in the bed. And we get requests for mediation on issues like that, and we're trying to avoid the nonsensical type of things. If they want to pay \$50 for the tulips not coming in, we'll have the mediation, but they've got to at least pay something.

And, by the way, it does say that if there's a hardship, if the person really can't afford it, the \$50 will be waived.

ASSEMBLYMAN KELLY: I want to ask you a question. What does it cost for a-- A mediator is there all day. What does he charge?

MR. RAMSEY: Well, these kinds of disputes don't take all day.

ASSEMBLYMAN KELLY: Well, whatever.

MR. RAMSEY: I've used professional mediators for an association dispute. Typical cost is about \$500, typical cost.

ASSEMBLYMAN KELLY: Hold it now. The individual paid \$50?

MR. RAMSEY: Right.

ASSEMBLYMAN KELLY: You're going to pay \$450?

MR. RAMSEY: Correct.

ASSEMBLYMAN KELLY: But that's going to be distributed amongst the members themselves, is it not?

MR. RAMSEY: Everybody in the association.

ASSEMBLYMAN KELLY: Okay.

MR. RAMSEY: Correct.

ASSEMBLYMAN KELLY: So we're back where we started. Okay. Everybody pays.

MR. RAMSEY: That's correct. That's correct.

In the Bateman version, there is, presumably, a panel of volunteers who come together to do this, and they provide for mediation. Where? How exactly it happens? The Bateman version isn't very explicit, and we're not sure how that really all comes about, but we do know that it's purely mediation. We do know that often at the end of the day with mediation there's no result. People are very emotionally invested in this, and to go through that process and to come to that end result is very unsatisfying.

I also point out to you that if you have no obligation to contribute anything as a homeowner, you end up with multitudes of request for

mediation. Board members have to participate. These people are volunteers. There's only so much time they can spend in doing this.

ASSEMBLYMAN CORODEMUS: Where does it go after the mediation?

MR. RAMSEY: It's over, and then the parties can litigate with each other, or if they can't afford to litigate, they're stuck with the dispute ongoing. They're stuck with the dispute ending up in no resolution whatsoever.

**WILLIAM HIGGINS:** No justice.

ASSEMBLYMAN KELLY: Now, hold it. Wait a minute.

I want to hear from you, sir. What's your name?

MR. HIGGINS: My name is William Higgins. I'm one of the proud CIHC members, and I'd like to make a few comments because my comments won't be as eloquent as Lois Pratt's, but I'll be more blunt and to the point because I don't have a prepared speech.

I think the three steps that Assemblyman Corodemus outlined -- I don't think they might work because you're talking about mediation, okay. Mediation isn't binding, so then you go to arbitration. And where were you getting the mediators from? How much training do they have? How much background do they have?

ASSEMBLYMAN CORODEMUS: It's in my bill.

MR. HIGGINS: What's that?

ASSEMBLYMAN CORODEMUS: It's in the bill.

MR. HIGGINS: It's in the bill how much they get. And then arbitrators, how much background do the arbitrators-- And then if no satisfaction, then you have litigation. This is where it all winds up. A lot of

these people will die waiting for this just like Lois Pratt said, seven years to fix a leak. I've seen stuff going on where people have died in vain waiting. They've gone through mediation. They've gone through arbitration. Then they want to go to litigation, but sometimes they can afford it and sometimes they can't, so it dies. So you have no justice. Nothing was resolved.

And Ms. Joyce Murray, she makes a comment about the things they have in Florida in this field. Well, I'm a little familiar with some of the things they have in Florida, and things got out of hand so bad in Florida with some of these boards that they had to pass statutes, laws. There was a statute passed, 718, that controlled condominiums. Then there was a statute, 719, that brought co-ops under control. But this still wasn't the way to resolve it because out of this there came mediation, arbitration, litigation. This is no good. We have to have a department where when you bring your problems to this department, this department will resolve them. They will be the final and binding department, just like compulsory binding arbitration.

You bring it to them when you have a complaint about -- a restaurant. The inspectors go out and they look the restaurant over. If there's a restaurant (*sic*), they fine them. And that's what we have to have here in ADR where if the guilty parties are responsible, they have to be fined and reined in. We have terrible things going on in New Jersey with some of these board members. Some of these board members get elected -- it's an ego trip for them. They don't know anything about how to resolve problems or fair dealings. They're out of control. Right now, in our community, we have to go to court the second time -- the second time. Dig into our own pockets the first time. Now we're going to have some -- little more money, we won't have to dig into our own pockets.

But this has to be resolved in New Jersey. You people who are elected for the people and by the people, you've got to help them out. And I ask you and I urge you, please, do some kind of real law making where it will give the power to the ADR to rein these people in that are out of control.

I thank you. (applause)

ASSEMBLYMAN KELLY: Please, don't do that.

You have the floor.

ASSEMBLYMAN CORODEMUS: I want to thank you for your comments because you brought up a lot of good points. On days when we're not having committees here, this is my committee room, and I chair the Environment Committee. And just last week there was a gentleman sitting right in your chair who was complaining about-- You talk about things dying a slow death. Well, there are more permits dying a slow death in State government and applications than you can believe.

The gentleman who sat in your seat was complaining that he had an application in for nine years to be heard before a board, and believe me, that's why I don't want State government involved to resolve this. The questions you raised are very important. Who are these people? Who are these three people that the association management offers to the homeowner who has a grievance? Who are the arbitrators? What rules are they bound by? These are all in my bill. Mr. Ramsey could tell you exactly who they are, but believe me, I'm not trying to give you a bum steer--

MR. HIGGINS: Yes.

ASSEMBLYMAN CORODEMUS: --by keeping you out of the State bureaucracy. It is no panacea. If you think you're going to get a quick response -- this is why Assemblyman Kelly and Assemblyman Biondi and I

work in day in and day out to try and privatize things as much as possible, get them out of State bureaucracy. Some things State government do are very good, and you can't replace it because there is no private industry.

MR. HIGGINS: Why did you make a comment to me-- Why do you talk about privatizing when you are yourself not a subject of privatizing? You're something of the government. What's wrong with what you people are trying to resolve here? You talk about privatizing-- Give it to the CAI? No.

ASSEMBLYMAN CORODEMUS: No.

MR. HIGGINS: We ask you, we implore you, to resolve this. Forget mediation, arbitration, litigation. We want ADR up there to resolve these and hand down the fines.

Thank you.

ASSEMBLYMAN CORODEMUS: I agree with you.

ASSEMBLYMAN KELLY: Mr. Pesce.

MR. PESCE: Thank you, Chairman Kelly.

I just have a couple quick points. First of all, my office manages 80 community associations. And to be honest with you, it's relatively offensive to sit here and listen to an entire industry and form of housing painted as mean spirited, inappropriate, trampling upon people's rights. The fact of the matter is, it ain't happening. It's happening in a very few number of communities-- (interrupted by noise from audience)

ASSEMBLYMAN KELLY: Please.

MR. PESCE: It's happening in a very few number of communities, and certainly we ought to attack that problem, but we ought to understand how small it is. And we ought to be careful that we not kill a fly with a sledgehammer here. Of the 80 associations that I manage, I recently

met with my managers regarding rules enforcement. How do we do it? How is it going? And I was startled to find that of those 80 associations, 12 of them have even issued a violation notice for a rules violation in the last three years. And of those 12, obviously, much less had a contest about it because the fact of the matter is, most people who violate rules do so out of ignorance, not out of a malevolent intention, and when they're told they're doing something wrong, they fix it. So the fact of the matter is, we ought to set up a process that makes those few number of communities that indeed have real problems pay for it. But we ought not set up a process that makes the overwhelming number of communities that have no problem pay for somebody else's.

Thank you.

MR. RAMSEY: I do want to point out one thing because, Chairman Kelly, you turned to Mr. Connolly before with respect to the supposedly record number of complaints. One of the reasons that there have been a record number of complaints is there is a person in the DCA who has held himself out to be the ombudsman on behalf of the community associations, has encouraged people to call him about disputes, and then has sent out letters on DCA letterhead encouraging that. That's why the DCA has received an incredible number of complaints.

ASSEMBLYMAN KELLY: I don't want to hear that, please. You're attacking-- I don't have the information. I don't like an attack. I've not attacked you. I don't think you should attack the DCA.

MR. RAMSEY: But that information is being used as to why we need a State process, Chairman.

ASSEMBLYMAN KELLY: I don't want to hear it. Okay.

Now, you want to say something?

**JERRY CHANON:** Yes, sir. Jerry Chanon.

ASSEMBLYMAN KELLY: Push your button, sir. (referring to PA microphone) You're on.

MR. CHANON: Good. Jerry Chanon--

ASSEMBLYMAN KELLY: I'm going to interrupt you. Are you going to say the same thing I already heard?

MR. CHANON: No.

ASSEMBLYMAN KELLY: Okay.

MR. CHANON: I'm here to address A-2865 from a slightly different point of view.

ASSEMBLYMAN KELLY: Okay.

MR. CHANON: I represent the Homestead at Mansfield Civic Association, as well as the Common-Interest Homeowners Coalition, which we are members of, and I welcome the opportunity to speak before you. I've become a little bit impatient, but then I'd lay that down to my age.

ASSEMBLYMAN KELLY: How old are you?

MR. CHANON: I've heard this kind of stuff before, and I wanted to just give you a little preface to my comments by telling you about our little personal horror story which refutes a little bit of what these two gentlemen sitting beside me have said.

We had a recent transition. The transition process I'm sure you're familiar with, where the homeowners association takes over running the business of the community from the builder. And during that transition process, the homeowners association maintains strict secrecy. We knew nothing about what was going on. The trustees didn't tell us anything, and they didn't tell the delegates much. The people on the Transition Committee

-- a lot of them quit because they didn't have too much information either. Now, like I said, during the entire course of this transition, there was no information forthcoming. Lots of rumors but no word as to what was being dealt with even from members of the Transition Committee themselves.

In order to justify the secrecy, their attorney sent them a letter saying that it's perfectly legitimate to keep things confidential. Confidential for who? The builder? He's part of the board. He knows all about it. From the homeowners? Of course, but why? Ask yourself. After the agreement was signed and we managed to obtain a copy surreptitiously from a delegate who had not been cowed into going along with the secrecy, then we knew that the homeowners had been had. The entire process was a charade, and we estimate that we've been taken to the cleaners for somewhere between \$200,000 and \$500,000.

Our original claim we were told and it was estimated to be \$850,000. We were never told if that figure included deck and footing repairs amounting to \$150,000, little sundry items, sprinkler repairs amounting to \$125,000, or crumbling creosoted log retaining walls. What to figure in connection with that is -- we don't know. So we estimate, and it's an estimate that the figures should have been something like 1.1 million. Okay.

ASSEMBLYMAN KELLY: I don't want to interfere with you, but what does that got to do with this piece of legislation we're discussing right now?

MR. CHANON: I'll tell you in a moment. I'll get to it.

ASSEMBLYMAN KELLY: Well, you better get to it.

MR. CHANON: What it has to do with is openness. If we don't know-- The point is that's the very point I'm making. If we knew something

about this, we could have offered suggestions. We weren't told, and we weren't asked. We were ignored. And the point is that as matters stand, this UCIOA has to be strengthened because hundreds of thousands of unsuspecting homeowners, despite what I've heard here, will constantly be subjected to assaults on and curtailment of basic civil liberties guaranteed each of us by our own Constitution of these United States if something isn't done about this law. Therefore, I wish to speak about the need for open, transparent governance in our associations. The laws of New Jersey honor and enforce citizen's rights to know and to have access to records of their governing bodies. How about the right of homeowners? Shouldn't we have equal access to the records of our own associations?

ASSEMBLYMAN KELLY: I'm not disagreeing with you, but we're discussing legislation. This legislation has full disclosure. Are you aware of that?

MR. CHANON: Yes.

ASSEMBLYMAN KELLY: Okay, now why are you beating a dead horse or doing that?

MR. CHANON: Well, because of what happened to us and what we hear -- even though this legislation--

ASSEMBLYMAN KELLY: But that has nothing to do with this legislation -- what happened to you.

MR. CHANON: Now, let's go on for a moment.

ASSEMBLYMAN BIONDI: The legislation is looking to correct and prevent what happened to you.

MR. CHANON: Well, hopefully.

The New Jersey Law Commissioners recently presented to the New Jersey Common-Interest Projects Act in which the Commission worked to implement the recommendations of the Assembly Task Force to Study Homeowners Associations. Their provisions on homeowners' access to their association records come much closer to the Task Force recommendation than does UCIOA. That's to the point, is it not? Some provisions in the Law Revision Commission's proposals that are great improvements over the provisions on access to records in UCIOA, A-2865, are: First and most important, homeowners must be allowed to inspect association records at reasonable times. It is essential that the law be worded that records must be available and "at reasonable times" rather than UCIOA's wording "made reasonably available" because UCIOA's wording allows boards to place a multitude of restraints on access to records, as we well know. And records must be available in a place convenient to the unit owner. This protects unit owners from being required to travel to a distance management or attorney's office. It details the financial record that must be kept and made available to unit owners.

For example, an annual audit that includes operating and reserve accounts; records of all warnings and sanctions imposed by the Department of Community Affairs on the board of its officers for violations of statute or regulatory law; disclosure of conflict of interest by boards, management companies, and service providers -- very necessary as in our situation -- fees for providing copies of records to homeowners must be actual cost, not exorbitant; and -- I'm almost done -- the Department of Community Affairs has the power to order compliance with the unit owner's request, but does the DCA -- is it

adequately manned and financed in order to meet the challenge of properly investigating violations and enforcing the law? That's the question.

I want to say in defense of the gentleman at the DCA, he's a fine gentleman, but where's the budget? How many people does he have to help him? We've called this gentleman enumerable times, and his hands are kind of tied, so I'd just like to repeat this last sentence as did the colleagues on the side here and as a word of caution. As matters stand, unless UCIOA law is strengthened, hundreds of thousands of unsuspecting New Jersey homeowners will be constantly subjected to assaults on and curtailment of basic civil liberties guaranteed each of us by our Constitution of these United States.

And I thank you for listening.

ASSEMBLYMAN KELLY: Okay.

John Cannel, where are you?

**JOHN CANNEL:** Mr. Chairman--

MS. MURRAY: I have copies available of your draft, do you want those placed on the table?

MR. CANNEL: They are free for distribution. They are on the Internet. All of our staff documents are, but I would like to describe what that document is so that it is clear that it is not a commission draft at this point.

First let me identify myself. My name is John Cannel. I'm the Executive Director of the New Jersey Law Revision Commission. We began a study of UCIOA a number of years ago. We've taken too long, and it's partly my fault, and the problems I won't bore you with. But one of the things that delayed us was the more the Commission studied UCIOA, the more they hated it. The problem with it is not what it attempts to do or its basic structure. It's incredibly badly drafted. It makes complications where they

don't exist. There is no section or subsection that can be read by an ordinary human being and understood. It creates categories it doesn't use. It divides up the world into little pieces and doesn't deal with the distinctions. It uses impossible language. It has incredible cross references. So in despair, our Commission after looking at on a couple of occasions said, "Use UCIOA if you want, but go back and write something from whole cloth," which is what we did.

Now, there are other more direct and important problems with UCIOA. UCIOA is a national document. It's not focused on New Jersey problems. New Jersey has a rather mature common-interest community. We've got a lot of them around. We got a lot of people. Problems have developed. Many of those problems have been dealt with in New Jersey law already. It was necessary to import those into the UCIOA structure because my Commission's view is, if the Legislature made a policy decision last year, it's not for us to second-guess it. You may second-guess it if you will. It's your decision, but it's not for us.

So we imported in a lot of New Jersey provisions and, in many cases, then used the UCIOA structure with New Jersey language. The UCIOA provisions that we kept, we heavily rewrote to translate them into English. In some cases in doing so, we found some weirdness that needed to be corrected. That is, because of the nature of its drafting, it's inaccessible and you can miss problems. In reading UCIOA, sort of your eyes glaze over, and you think that, "Well, this deals with things pretty much the way New Jersey law does," or "This deals with things in a relatively fair way." But once you've read it four or five times, you begin to unearth more and more problems.

In this first draft, which is as yet only a staff draft, it hasn't been reviewed by the Commission -- we have unearthed some of these problems. With six or eight more readings, we'll find some more. A couple of them I want to share with you only because they surprised us, and there are problems with enacting any bill based on an unaltered UCIOA. Some of the stuff you've dealt with. That is, UCIOA had an applicability provision in it which was self-destructive. It would have applied only to that which was built tomorrow, not which exists already, which would have made it useless. Well, we got rid of that, and your bill follows that, and I'm pleased at that.

There's another one we found which is our 314, UCIOA 3-115, which has a provision that says that if there's a problem with what is called a limited-common element-- That is, it's something which is a common element but serves not all of the units, but some of the units. Let's say there's a cement walk that leads up to four units and cracks develop in that cement walk. Under UCIOA, it is for the board and the community to repair it, but then they send the bill to the four unit owners whose units it serves. No one does that now. No one is that foolish. It's the worst of all worlds. I don't know whether UCIOA knew it was doing that or not, but it did, and I don't believe that any of the associations here would support such a rule.

My difficulty is that UCIOA, being such a complicated thing, is going to take a little time to go through it in a good deal of detail and really shape it up. UCIOA is a good place to begin, but I will not bore you with the history of how uniform laws are prepared. That would take an afternoon and is good fun, but isn't beyond the scope of this. It's a good starting place, and it has brought in a lot of things that we wouldn't have been able to think of and brought in a lot of solutions to problems, important and narrow. But in

some cases also again, staff draft, rough draft, first thing -- some of the things that have been billed as things that we would have liked we don't. We dealt with the responsibilities, for instance, of the board members in various situations in a slightly different way from UCIOA. Since the board is an unincorporated association, we gave them the responsibilities of the board members as an ongoing part of the association. Why reinvent the wheel? We have a rule in New Jersey.

UCIOA put in a new provision on that subject which is a business judgment rule, which is not really applicable in the overwhelming majority of the things that are done and can cause problems. Now, why did they import that rule? Probably because they're writing for 50 states and not every state has the same background. What I am asking for which I do not expect to be given is time, but if we're not going to have time, it will need to be -- in lieu of time, we need effort. We need to be able-- If you want a completed draft in two weeks, we're going to have to devote a lot of time to going over these things line by line and provision by provision in these next two weeks. If on the other hand, you've got two months. It's easier. Two years is too much time. And that's what I am asking for is the ability to go through -- the hard provisions that you've spent most of your time on legitimately here like ADR and things like that.

While we have taken a position, and some people have spoken in favor of our position, and I think some would speak against it, those were an attempt to embody the Task Force Report in the best way we can, and we hope we did it well. We imported in things from other areas of law. For instance, in open public meetings, we borrowed from the municipal law, and in disclosure, we went to the same place. ADR we did some work of our own. I

don't know if any of this is perfect. The important thing is that in these areas you people are in a far better position than we are to determine what the policies should be. But when it comes down to the technical provisions where I don't think anyone has a policy problem one way or another, I do think that it is necessary to go through them carefully. You can't let UCIOA do your thinking for you. All I can tell you is that we did that for a while, and as we learned more about what was implied in that decision, we became more and more unhappy that we had made it in the first place.

ASSEMBLYMAN KELLY: Thank you.

We're going to take a 10-minute break, unless you have a comment.

ASSEMBLYMAN CORODEMUS: Just one quick comment before we lose the train of thought on this. I respect Mr. Cannel, and I've worked with him and continue to support and sponsor bills that the Law Revision Commission promotes. But I have to say that my opinion of taking too long is five years.

MR. CANNEL: Oh, it is absolutely true that we took too long on this whole process.

ASSEMBLYMAN CORODEMUS: It's not like we're rushing to judgment here today. In fact, Chairman Arnone, who chairs the larger Committee that this is a subcommittee of, saw fit that we give this bill time. But somewhere, there must be finality. I mean, I can take my best bill that I have framed on the wall in my office and rewrite it probably at least once a day to make it better, and you know that. So we'll look at your comments--

MR. CANNEL: I agree and--

ASSEMBLYMAN CORODEMUS: Maybe we can--

MR. CANNEL: --what I'm asking for is two weeks or two months and not two years.

ASSEMBLYMAN CORODEMUS: We'll look at your comments, and to the extent that they support what this hearing testimony supports, we're not going to substitute what Assemblyman Bateman took testimony on in his entire Task Force for months and incorporated into a report and bills. That would do violence to the whole process. If we can make some marginal changes to help understandability of the bill, we'll do that. I'm not even a member of this Subcommittee, just a sponsor. I'm not going to extend this bill for another two years.

MR. CANNEL: As I said, I thought two years was certainly too much time. What I said was two weeks or two months.

ASSEMBLYMAN KELLY: It will be finished before June, that's for sure. This bill and all the other associated bills. Okay?

MR. CANNEL: Thank you.

ASSEMBLYMAN KELLY: With that, we're taking a 10-minute break because nature is calling, and I want to get out of here. (laughter)

**(RECESS)**

**AFTER RECESS:**

ASSEMBLYMAN KELLY: Tom Cariota.

**THOMAS CARIOTA:** Yes. Good afternoon.

My name is Tom Cariota from Lakewood, New Jersey. I don't represent any organization. I'm just a concerned citizen, a concerned resident of a retirement village.

To the question of whether I'm for or against Assembly Bill No. 2865, I'd like to point out that that is a 91-page document with 94 sections. And there is one particular section that I'd like to speak about. And although I believe the legislation proposed in this bill, A-2865, is on the right track and much of the legislation is fundamental to this type of housing, as a homeowner in a retirement association, I do not have very much confidence in the bill -- will provide me with the benefits of association governance that I expected based on the January 8 Assembly Task Force.

Now the one area that I'm particularly concerned about is access to association records, and I hope you'll give me a little leeway here, Chairman Kelly. The association I live in has a \$4.4 million budget. We the homeowners pay for everything that goes on in that association by paying our maintenance fees. And I believe that anything the association does with our money should be open to inspection. We should be able to know how much money is spent and what it's spent for. Throughout the Task Force public hearings, a common complaint was denial of access to records. And yet, out of 94 sections in this Assembly Bill No. 2865, only 1 section is devoted to association records. And that bill requires that only two years, plus the current year, be made available to homeowners. This is totally inadequate.

For example, a schedule in our association to replace roofs was a five-year program. Should a homeowner be denied access to records because the records are over two years old? It's the old story, follow the money. The importance of access to public records is recognized by State legislators. The

Senate has under consideration Senate Bill No. 1130 that requires all forms of public records be available for copying. Should associations be treated any differently? Even in this bill, A-2865, the point is made on Page 91 that associations are quasi governmental. And if that's true, why shouldn't we be included in this bill?

Additionally, why leave such major issues as availability and cost to interpretation? The bill addresses the issues by using these words, "shall be made reasonably available" and "shall make a copy for the unit owner at a reasonable cost." Why can't we come up with a consensus and replace these words with something more realistic?

ASSEMBLYMAN BIONDI: I have a suggestion.

In summary, the statutes must be made more specific and require a broader disclosure of information and should be routinely be made available to homeowners.

ASSEMBLYMAN KELLY: Have you seen my bill?

MR. CARIOTA: No.

ASSEMBLYMAN KELLY: Well, my bill does say that. You're going to get access.

MR. CARIOTA: For more than two years?

ASSEMBLYMAN KELLY: Yes. You have to give them more time to get it though.

MR. CARIOTA: That's reasonable. Do you have a time limit? I mean, can we go back five years, six years? In this particular case, a five-year budget--

ASSEMBLYMAN KELLY: Answer it.

MS. MURRAY: Actually, both bills provide-- Assemblyman Corodemus's substitute and the other substitute-- I'm trying to find the records. I think it's 318.

MR. CARIOTA: It is. It is 318 in the original bill. I don't have the supplement. And it specifically says two years.

MS. MURRAY: Well, there's two requirements in that section. One requirement is how long an association is required to maintain records. The other thing that you were referring is that the length of time that they're required to maintain them limits, per request, for how far they can go back. But they may maintain them for longer periods of time according to standard business practices. That's just--

MR. CARIOTA: Yes, but--

MS. MURRAY: --a minimum time period that they're referring to.

MR. CARIOTA: Ms. Murray, it did say that they would be available for two years and the current year, and that's very clear. Two years plus the current fiscal year, and that's in the original A-2865.

MS. MURRAY: Okay. There is language that says, "All financial and other records that an association is required to maintain for the current fiscal year and the two immediately prior fiscal years shall be made reasonably available."

MR. CARIOTA: I find that pretty clear.

MS. MURRAY: So you think that's--

MR. CARIOTA: It should be broadened, but Chairman Kelly said that then you can--

MS. MURRAY: In Chairman Kelly's bill, I think it's a little different.

ASSEMBLYMAN KELLY: I'll make it five years. It doesn't matter. I can make it any years you want.

MR. CARIOTA: Oh, well, it does matter because two years just isn't enough.

ASSEMBLYMAN KELLY: I think the question is--

MR. CARIOTA: In that example I gave of a four- or five-year budget to do roofs and now you want to take a look at it, they can come back, and they will -- some trustees will come back and say, "Well, you can only look at the last two years," and that's not right.

And then we talk about reasonable cost--

ASSEMBLYMAN KELLY: I don't disagree with you.

MS. MURRAY: Well, you also have the time-- He mentioned the time period is seven days. That would have to be extended if you were--

MR. CARIOTA: That's okay. That's okay.

MS. MURRAY: --for the longest records that--

MR. CARIOTA: When you are examining documents, I mean, a week, a month, that's reasonable. I have no problem with that. I do have a problem if they want to charge \$1 a copy, though, because the word reasonable is in there. In the State's statute that's coming up, this Senate Bill No. 1130, my problem with that particular bill is not the intent of the bill, but they limit-- The first 10 pages will cost you 75 cents a page. Well, if you're not an attorney or an organization or -- it's hard for an individual to pay that kind of money if you have 30, 40 pages. So the second point is the cost, the cost factor.

ASSEMBLYMAN KELLY: Well, we'll look into that.

ASSEMBLYMAN BIONDI: What do you mean municipalities charge for copying records?

MS. MATTHEY: (speaking from audience) Seventy-five cents in South Brunswick.

ASSEMBLYMAN BIONDI: Seventy-five cents--

MS. MATTHEY: For the first 10 pages in South Brunswick.

ASSEMBLYMAN KELLY: And what's after that?

MS. MATTHEY: I'm not sure. I think 50 cents. It's the time to pull the records, too.

MR. CARIOTA: Well, of course, Staples only charges 5 cents, and they're a profit-making corporation listed on the stock exchange.

ASSEMBLYMAN BIONDI: But with the municipal government, I'll continue, you have a municipal employee being payed by tax dollars to pull those records; whereas, an association does fit into that category. But if you put a specific amount in the bill, as time goes on, you're going to have to amend that amount. If you put in there 30 cents a page, 10 years from now you might have to amend it to go to 50 cents. So how could you define reasonably? That's the question.

ASSEMBLYMAN CORODEMUS: That's the problem. The problem is that -- there are no magic words that we can use to try and eliminate unreasonableness. If you have a manager who is unreasonable, doesn't want to give you any documents, then no matter what we put in the law, it's going to be very difficult. If someone else comes into his office and says, "I want to see all your correspondence for the last three years," what are you supposed to do? Back up the truck to the front office there and bring in

file cabinets? You can't do that either. So we're trying to cover the middle ground.

MR. CARIOTA: But why can't you do that?

ASSEMBLYMAN CORODEMUS: I find it pretty hard to-- It's like passing a law, "We shall not commit murder." I mean, we can enforce the law, but it still happens. And we're trying to get reasonable disclosure as best we can, and if you have suggested language, we can take it.

MR. CARIOTA: You see, I feel that you're not going to get a big demand for five, ten years worth of records. Yes, some villages will have the cantankerous people, an arbitrary person, but normally, people are looking for a specific item. And I don't see that it's being a problem providing the records. I know I read one of the objections was that "well, we had people coming down asking for five years of records, and we don't have the room to store them and to produce them." And I think that's an excuse, and I think it's a poor excuse. I'm an old share-in-a-relations consultant, and the big thing with us was disclosure, full disclosure. If it takes a little while, it takes a month to provide it, that's perfectly all right.

Thank you.

ASSEMBLYMAN KELLY: Thank you.

Is anybody from the CAI here? They left.

I want to ask you a question.

MR. RAMSEY: Yes.

ASSEMBLYMAN KELLY: Do you charge your members \$1 for something, to belong to some legislative--

MR. RAMSEY: I'm sorry, Mr. Chairman.

ASSEMBLYMAN KELLY: Do you charge \$1 to your membership, each member, for some sort of legislative dues?

MR. RAMSEY: There's a voluntary-- If the members want to contribute to the legislative action, there's a voluntary contribution.

ASSEMBLYMAN KELLY: No. No. No. Membership for legislative oversight, whatever the hell you want to call it.

MR. RAMSEY: Yes, there's a voluntary contribution.

ASSEMBLYMAN KELLY: How much is it? A dollar?

MR. RAMSEY: Fifteen dollars. As an association--

ASSEMBLYMAN KELLY: Fifteen dollars per association or member?

MR. RAMSEY: Association.

MS. MATTHEY: Association.

ASSEMBLYMAN KELLY: Just the association. Members don't pay. Well, \$15, that's peanuts. Okay. You answered my question.

Now, Ms. Matthey, get up -- come on up here. I want to hear you again.

MS. MATTHEY: Okay. Again, as a member of the Task Force, much discussion about access to records, about procedures for due process. Of the versions that I've seen briefly -- and I apologize to Mr. Corodemus. I just got your updated bill this weekend, and I read it very carefully, and it's better than the original A-2865. I don't have a lot of problems with it, but the version that I saw briefly this morning that Mr. Kelly has proposed as another substitute does take care of most of my concerns, and I commend you for coming up with that.

ASSEMBLYMAN KELLY: That doesn't mean it's going to be adopted. It means we're going to wake up and do something.

MS. MATTHEY: No, I understand, but I would like to express a couple thoughts. Although some in the crowd think of me as a manager, I formed an association of homeowners to lobby for the double taxation bill, which you well remember, Assemblyman Kelly, and the fire retardant plywood and lien priority. I am also a resident of a planned community, a town house community. I've been on my board. I've been a Realtor. I like to think of myself as a consumer advocate for people who live in units and not representing managers per se or any of the professionals who deal with homeowners associations.

And one of the things that struck me in all the versions of the bill was that a builder has two years from when he stops trying to sell units that he can remain in control, and that troubles me. During that two-year period, he's no longer selling. All the warranties are running out. The frustrated homeowners are trying to do a little planting. They change the grading a little bit by adding a little mulch. Those are all kinds of problems that are now obscured when you try to resolve things like serious grading problems, leaking basements, construction deficiencies, and I can tell you, two years when you're not even trying to sell the units, there's no reason for him to remain in control.

In that same vein, there's a section in 303 of the original bill where it says the builder will have three years to turn over plans, specifications for any major remodeling or construction project. Three years? It should be 30 days. If that association has a fire or a problem, they need access to those records. There's also nothing in any of the bills that talk about warranties. Every homeowners association at transition -- early transition when the plans

are turned over and should be as built, as well as proposed, and the correct plans, the ones that were eventually approved-- Because we play a game for a year with every builder, "Oh, they're not the right landscaping plans. These are the right landscaping plans." Now we need the warranties for each individual unit because we're supposed to be able to file a claim on the common element. Without that information, we spend years trying to gather it.

The only other thing I would like to suggest is on the association records. I am in a small property management company. We have nine associations. We very honestly do not have the room to keep records more than the current fiscal year, and downstairs underneath the stairs in our building, we have maybe one other year. After that, we farm out the records wherever we can find storage. So if somebody requests something, I need time to get the records to me and then dig them out. I also have to stop what I'm doing. I take care of five associations, none of whom really have a place to store them. They range from 70 units to 290 units to 300 units without a clubhouse, and we don't have a place to keep all these records. So we need to be reasonable, but there's my time to locate the records and make the copies. Now, they can make the copies, but I have to supervise to make sure that I get everything back. So it is a management time constraint, and I do just ask that you be reasonable and that the homeowners requesting these things be reasonable.

Most of us who live in planned communities are not unhappy. Yes, we have had problems, but if everybody is reasonable and you don't try to drive the manager or the board crazy, we will work with you and give you what you want. Just give us the opportunity to do it.

Lastly, on the due process alternative dispute resolution, we have to have a reasonable way, not these cumbersome things that everybody has come up with, to enforce the little Petula violations: the dog waste, the dog barking, the dog unleashed, the parking in your neighbor's space. Time and time again, you warn people. If we have to have mediation every time we try to get a homeowner to comply with rules that they've already agreed to and are aware of and have been warned before, we will not be able to function, and instead of having a place of harmony to live, it will be chaos. Associations are charged with enforcing rules. It's not a one-way street. We need to be able to do it. Don't make it so cumbersome that we can't help the 90 percent of the homeowners who expect us to enforce the rules. It's like you're giving everything now to the criminal. He has all the rights, and the victim be damned. Please don't do that to the vast majority of homeowners who abide by the rules.

Thank you.

ASSEMBLYMAN BIONDI: I have a question, if I may.

You were stating the volume of records. Are you not using a computer and keeping records on a disk?

MS. MATTHEY: Financial records are kept on disk, but not certainly all correspondence and things like that. I mean, it's not all scanned into a computer and copies of contracts and things like that. We have the specs on computer, perhaps, but not the actual documents. All the bids that come in on various contracts, they're all-- Somebody can come in to me and say, "Well, I want to see the landscaping bids that you received for the last five years," and we might have gone to bid three times in that period. I'd have to dig for these things. It takes time.

ASSEMBLYMAN KELLY: Okay. Thank you.

MS. MATTHEY: And time is all we have.

ASSEMBLYMAN BIONDI: I appreciate that. The other thing as far as violation on the standing rules and regulations--

MS. MATTHEY: The little day-to-day stuff.

ASSEMBLYMAN BIONDI: Yes. Why in your rules and bylaws can't you just put in a penalty as well? An unleashed dog, a second offense is \$25. I'm just arbitrarily throwing a number out. Why can't you set the penalty right in your rules that your homeowners have agreed to when they purchase that they will comply with those rules? I think the problem comes in, in my opinion, is when the association or the management firm changes or adds a new rule. I think that's where the problem comes in. I think you could certainly invoke the penalty right in your rules and regulations.

MS. MATTHEY: I agree with you when there is a new rule or a rule that hasn't been adequately -- the homeowners haven't been informed, but the basic day-to-day stuff that's in your rules: hanging towels out on your balcony every day. It drives the owner next door crazy, and if you have to go through a mediation because the owner says, "Well, I don't know where to put my towel when I come back from the pool." I mean, you have to be reasonable. If I have to do 10 mediations a year in an association at the cost estimated by CAI at \$500 and somebody's paying \$50, that's \$4500 in my budget that I can't use for something else. I can paint a building with that.

So, please, I ask you, remember that taxpayers don't want to be burdened. And homeowners associations, while they have to be fair and reasonable, also don't want to have a huge burden put on us or our managers because they have to pay the managers. Managers will have to increase their

fees and their costs if we have to have more personnel to drop everything and pull records to meet a 14-day request or be penalized by the Department of Community Affairs.

ASSEMBLYMAN KELLY: Mr. Rubin.

MS. MATTHEY: Thank you.

ASSEMBLYMAN KELLY: You wanted to address us?

MS. BIZZOCO: I thought we were going to get back into the fee thing. I was allowed to rebut what Mr. Ramsey had said.

ASSEMBLYMAN KELLY: Push your red button. (referring to PA microphone)

MS. BIZZOCO: I'm sorry. I thought we were going to get back into the cost of enforcement that Mr. Ramsey was saying that he was against payment, and I thought we--

ASSEMBLYMAN KELLY: Well, I listened to it very attentively, but that doesn't mean I'm going to pay much attention to it.

MS. BIZZOCO: Oh, okay. I thought I was not allowed to rebut that.

ASSEMBLYMAN KELLY: Okay.

MS. BIZZOCO: That's why I thought you were coming back to that. I'm sorry.

ASSEMBLYMAN KELLY: Well, you can rebut it. Go ahead, rebut it.

MS. BIZZOCO: Okay. My name is Emilia A. Bizzoco, and I live in Cambridge Manor Condominiums up here as a homeowner, as well as a member of CIHC.

On January 16, I spoke to the Assembly Task Force regarding problems in my community, which basically was that I had to get -- a group of us had to employ of lawyer to help get enforcement of our bylaws. Our board was abusing their power. Now, myself as a homeowner would not have any problem paying whether it was \$4, \$3, \$1 towards somebody to enforce these rules and regulations -- these laws. If they're not enforceable, they're not going to be worth anything. So I fully agree with some kind of fee whether it goes to the DCA or whatever, even if it's privatized, to help support the enforcement of the rules or the laws that are being passed.

ASSEMBLYMAN KELLY: Thank you.

MS. BIZZOCO: Thank you.

ASSEMBLYMAN KELLY: Mr. Rubin.

**LEONARD RUBIN:** Thank you very much, Chairman Kelly.

I just want to take a piece of personal privilege to make a comment about the Chairman. I want to thank him for the work that he did years ago on the Kelly bill for reimbursement to homeowner associations for municipal services. We worked on that for a long time in Lawrenceville, and we benefited by the input that you put in, and we want to thank you for it. I think everybody in homeowner associations have benefited from that effort. It took a long time and went to the Supreme Court. The League of Municipalities didn't like it very much.

ASSEMBLYMAN KELLY: It's obvious I didn't like him either when he came here -- checked into my legislation. (laughter)

MR. RUBIN: And that was one for the homeowners.  
Thank you.

One more comment. A reference was made to an unnamed employee at DCA, which I found to be certainly out of line, certainly not fitting for a member of CAI to make, and I would hope that they in the confines of their organization will certainly make reference to that comment and not do that same thing again ever in a public forum as it was done today.

In the legislation, there is reference made to using the business judgment rule in terms of homeowner associations. I find that difficult because I don't consider the homeowner association a business. Yes, it deals in finances. It deals with what might be called profits. We call them surpluses, but we look to make those as little as possible. By the business judgment rule apparently has been taken by the courts and has not been helpful to the homeowner associations when issues come before the courts where the business judgment rule is substituted for another approach that might be somewhat more democratic to homeowner associations and unit owners.

ASSEMBLYMAN KELLY: What do you recommend?

MR. RUBIN: Well, certainly the business judgment rule should be deleted as a consideration so that the courts don't use it that way because I think the courts are relying on the legislation proposed by legislators. And so I can only recommend to you that you at least remove that approach that the courts use, so they may have to find something else.

No reference has been made today to the idea of assessments. Now, throughout the bill assessments are identified.

Now, Chairman Kelly, you, I presume, own a home, and I own a home. I pay a monthly fee to my association, and you pay taxes to your home in Nutley or to the Nutley Township. If we don't pay these fees, I believe that Nutley and my homeowners association has a right to place a lien on my

property because I'm not assuming my rightful share of communal costs. However, if you happen to walk your dog on a prohibitive area, you may be given a summons for which you may have to appear in court and defend your position. In my case, if I walked the dog in the wrong place, a fine could be placed against me, and a fine is considered as an assessment which can, therefore, be used to place a lien on my home. Now, I think that's rather powerful ammunition for a homeowners association to have the right to place a lien on my home because of what my dog did with my concurrence.

And so I think the use of including fines, interest payments, other items of finance as assessments, I think, should be looked at very carefully because it's a very powerful instrument. And someone going to sell a home with a lien against it because a dog may have been trespassing, I think, is incorrect.

ASSEMBLYMAN KELLY: I think my bill takes the assessment out.

MR. RUBIN: I hope--

ASSEMBLYMAN KELLY: The fine. The fine. The assessment for a fine is removed.

MR. RUBIN: Well, it takes the fine away and--

ASSEMBLYMAN KELLY: Takes the assessment away.

MR. RUBIN: --defines assessment in some other way. How does it define assessment?

ASSEMBLYMAN BIONDI: Then how do they collect the fine? I mean, in municipal court, they'll suspend your driver's license until you pay it, as a minimum.

MR. RUBIN: Assemblyman Biondi, the point I make is that having been issued a summons for a dog trespass, an individual has the right to go to court and be heard.

ASSEMBLYMAN BIONDI: And then fined.

MR. RUBIN: Possibly. The fine may also be removed, and the inspector may be criticized. But I'm saying, there is a right to be heard in one case and a powerful instrument of a lien being placed in another. These are not equitable.

ASSEMBLYMAN BIONDI: But when you buy or purchase a condominium or town house, you agree to a set of rules.

MR. RUBIN: I understand what--

ASSEMBLYMAN BIONDI: And it's a little bit different living where we have a neighbor right next to us. We're not an acre away. So all of your actions really infringe your neighbors, but yet you agree to this set of rules prior to moving in, and now you want to arbitrarily just disregard the rule of when we're talking about a dog walking.

MR. RUBIN: Two observations, sir.

ASSEMBLYMAN BIONDI: Go ahead.

MR. RUBIN: In the first case, I don't know how many people really read public offering statements. I don't know.

ASSEMBLYMAN BIONDI: Buyer beware.

MR. RUBIN: I rather suspect that the vast majority of people do not read it. In terms of agreeing to rules, the concept of a level playing field, I think, comes into play. And the punishment for not paying one's fair share in terms of costs of running a homeowners association, in my opinion, cannot be equated with the silly things that people do get fined for. I believe that

finances should be respected, but that they should be dealt with in a different way than paying one's monthly assessment or one's taxes in one's private home.

MS. MURRAY: Mr. Rubin, have you-- I just wanted to point out to you in Assemblyman Kelly's substitute the fine is not an assessment, but the association would still be permitted to file a lien once they've -- if a unit owner petitions for ADR. They would be permitted to file the lien if the unit owner does not petition for ADR immediately, but if the unit owner does petition for ADR under the substitute proposed by Assemblyman Kelly, they could, once the ADR process has taken the place of the court review, then they would be permitted to file their lien.

MR. RUBIN: Ms. Murray, I hear what you're saying. I'm not as astute as you are in the law. I have to do this reading very carefully.

MS. MURRAY: To read, yes.

MR. RUBIN: All I'm saying is that the use of an assessment as an overall term for the filing of liens is unfair and a separation should be made between one's fair share of costs, which is what taxes in the private home or monthly assessments are, and violations.

ASSEMBLYMAN KELLY: Thank you.

MR. RUBIN: And I think a very distinct separation should be made in that, in my opinion.

ASSEMBLYMAN KELLY: Thank you. That's not a problem. That's recorded.

MR. RUBIN: I think I've talked enough. Thank you very much.

ASSEMBLYMAN KELLY: Thank you.

Who might this be?

**JOHN LEARY:** My name is John Leary. I'm the President of the Rossmour Community Association. We are a well-established, 30-year-old community. We have complied with the Department of Community Affairs ADR practices since 1996. We've had our mediators trained. They've been reviewed and approved by DCA. In the last three years with over 3500 residents, we've had six disputes, and we've settled them amicably, and I want that as a data point in your consideration of what's the appropriate level of funding required. And I prefer to settle things at the lowest level possible, and I commend Assemblyman Corodemus.

Thank you very much.

ASSEMBLYMAN KELLY: Mr. Maxwell.

**WILLIAM MAXWELL:** Yes. My name is William Maxwell. I'd like to thank you for giving me the opportunity to state my opinions on this legislation before the Subcommittee. I'm coming to you as a former board association president, also an executive board member in two large associations in this state, and because of that, I have a perspective on the operations of community associations that I'd like to portray to you.

First of all, with regard to-- I have three points I want to make which I think could serve as recommendations for A-2865. First of all, reemphasize the point about full disclosure of financial records in which I understand Mr. Kelly has offered. As an executive member on a committee which I served on, I couldn't even get the financial records of a committee that I was a board member of. It was handled by the property manager. So as far as that's concerned, no way of tracking where the money was going, so I'd urge you to pay particular attention to that aspect of full disclosure. And to emphasize that when you draft the text, it should include one of the most

important aspects of financial disclosure which I think yields the most important information, that is the monthly bank statements. Outside of the yearly statements and financial statements, this gives an indication of monthly tracking of expenses, and it's a key indication of if money is being wasted you can track it through there.

In my experience, you can track if an association is paying twice for the same work, if money is going to parties who are not authorized to get money, if it's somebody's second cousin, if you're overpaying. So when you draft that legislation, I emphasize allow easy access to monthly bank statements. My experience is communities could save themselves at least 20 percent of their money if they could track those type of expenses on a daily basis. So full disclosure of financial statements.

The second point I want to make is -- to just flat out be blunt -- end the gravy trains that are occurring in condominium associations across the state. Two ways of doing that, one, is the bidding process. It's been my experience as a board president that bids going to the property manager have a high risk of being intercepted and manipulated. It can be done in many ways. You can think you're taking the lowest bid when, in fact, after they've gotten their favorable party into the board and gotten them voted on, all of a sudden the specs change. All of a sudden the--

ASSEMBLYMAN KELLY: I just want to interrupt. When you have collusion, we can write all the legislation we want. We're never going to change collusion no matter what we do.

MR. MAXWELL: But the suggestion is, is that the bids go directly to the board members. It just supersedes the middleman.

ASSEMBLYMAN KELLY: Okay.

MR. MAXWELL: And another thing which needs to be audited is the way elections are done. Oftentimes when people want to serve on boards is because, for better or for worse, they have a grievance that they want to see taken care of that's not being addressed, and oftentimes it has to do with the management company. And if they're giving the management company a lot of flack and they want to be on the board, if all the votes are going through the property association manager, I know of instances where the elections have been tainted, and that person isn't allowed to serve, and so their voice isn't being heard. And who do you have left on the board are people who are favorable -- who are amenable to the input of the management company and the attorneys. And sadly enough, this happens quite a bit.

I had the opportunity to speak before Mr. Bateman's Task Force years ago when they were drafting the input to this, soliciting input for that, and the day after I testified I got a call from a person who used to work in the business, and he says what I talked about goes on in 80 percent of the associations in some way, shape, or form. We're talking about management companies being the gatekeeper, and there's a price to pay for getting your business into an association. Those costs are, of course, passed on to the homeowners.

ASSEMBLYMAN BIONDI: Bill?

MR. MAXWELL: Yes.

ASSEMBLYMAN BIONDI: Could you share with me, how does the general election take place? Are they mailed in to the management firm, or are they mailed to the association?

MR. MAXWELL: Right. They're mailed into the management firm to be caretakers to be counted. In two specific instances, I know in one

election that all the ballots were opened beforehand. And the point is, even if you see an infraction, what are you supposed to do? Are you supposed to take them to court and spend your hard-earned money over a volunteer job? They know no one is going to take it that far.

ASSEMBLYMAN BIONDI: What about language that said none of the votes can be opened until the board meeting or the association public meeting or something like that?

MR. MAXWELL: But sometimes--

ASSEMBLYMAN BIONDI: If you're thinking that they are being opened, then--

MR. MAXWELL: There are.

ASSEMBLYMAN BIONDI: --some aren't being counted.

MR. MAXWELL: But I have a recommendation--

ASSEMBLYMAN BIONDI: Oh, go ahead.

MR. MAXWELL: --in the fact that the collection of votes are not handled by an interested party in any way of the association. They be handled by maybe a notary public or some official from the town. They be collected there.

And the third thing has to deal with one of the sections--

ASSEMBLYMAN BIONDI: But still--

Excuse me, Bill.

MR. MAXWELL: Yes, sir.

ASSEMBLYMAN BIONDI: Still you think it's a good idea not to have any ballots opened prior to the public meeting.

MR. MAXWELL: Absolutely. Absolutely. That's the way it should be. Right.

ASSEMBLYMAN KELLY: He wants the town to collect it?

ASSEMBLYMAN BIONDI: Well, he's suggesting a township official or notary public.

MR. MAXWELL: Somebody not involved with the association at all to be the collector of the votes.

ASSEMBLYMAN BIONDI: Association or the management firm or what do you--

MR. MAXWELL: None. Neither of those.

ASSEMBLYMAN BIONDI: Neither of those.

MR. MAXWELL: No. Somebody outside of that.

ASSEMBLYMAN KELLY: What do you think about proxy votes? Should they be allowed or not allowed?

UNIDENTIFIED SPEAKER FROM AUDIENCE: No.

ASSEMBLYMAN KELLY: I'm asking him, please. (laughter)

MR. MAXWELL: Yes. I think proxy votes should be allowed, sure.

ASSEMBLYMAN KELLY: They should be?

MR. MAXWELL: Yes.

ASSEMBLYMAN KELLY: Sometimes I think they shouldn't be. Go ahead.

MR. MAXWELL: And the third thing -- the third topic I want to touch upon is in A-2865. There's a section of that where the district -- the Department of Community Affairs has the right to remove board members for repeated violations of some sort. First of all, I'm unclear as to who is going to make these claims against them -- if it's going to be the homeowners or if it's going to be the people who are, like, the hired help who have a vested interest

in removing a troublesome board member. I would prefer that the Department of Community Affairs--

ASSEMBLYMAN KELLY: It's only the--

MR. MAXWELL: Excuse me.

ASSEMBLYMAN KELLY: Go ahead.

MS. MURRAY: Under all the substitutes and all the legislation, the power of the Commissioner to remove a board member is limited to complaints based on statutory or regulatory violations, not anything else.

MR. MAXWELL: Grievances, petty grievances.

MS. MURRAY: It's limited to the Commissioner's review of statutory and regulatory violations.

MR. MAXWELL: Okay. Well, I think there should also be certainly some balance in the fact that the Department of Community Affairs can serve a service to board members by addressing complaints that board members have with their management companies. Because I know from personal experience, there were times when I would have an agenda that would be changed. There would be some--

Oh, here's a good one. The checks that I wanted to have signed-- I wouldn't sign because I thought we were being overbilled. They would get another board member to sign it, so the person could get their money, and here I was the president of the association. There's no recourse in this legislation for instances such as that. I think the Department of Community Affairs would be well-served to protect the board members and protect the homeowners to that type of scrutiny. Because in the natural course of events, when people or condominium association homeowners go on to serve on the board, they're usually making their first step in the public service, they're

relatively inexperienced, and they have to rely all too often on input from the professional hired help. They are easy pickings for their inexperience to be exploited.

So I think these type of transgressions have to be monitored across the state because a lot of money does go through the condominium associations in a wasteful manner. And most people will never see it because they don't know that what they're actually paying for their maintenance fee could possibly be a lot lower and still get the same amount of services and accountability.

ASSEMBLYMAN BIONDI: Do you think the bidding process will serve well to eliminate a lot of instances like you just mentioned?

MR. MAXWELL: Well, what I'm talking about goes -- is outside the bidding process once they're employed. You can have cases of management or attorneys working -- taking courses of action which are unauthorized by the board, haven't been voted on, and--

ASSEMBLYMAN BIONDI: How does that occur?

MR. MAXWELL: It's simple.

ASSEMBLYMAN BIONDI: I mean, forgive my being so naive, but how does that occur? Does the association have to authorize management companies to assign an attorney to work on a specific issue? Or does a management company decide--

MR. MAXWELL: Well, what they--

ASSEMBLYMAN BIONDI: And anyone out there who would like to inform me--

MR. MAXWELL: Sure. I'll tell you how it works. I'll tell you. As president, when I would say, "Do such and such a thing," they will not

execute that directive. Instead, say that they are working on behalf of the association, that they are not there to serve the president of the association. So in that effect they'll say, "You're not representing the association. We decided on this course of action because we feel what you were doing wasn't for the association." So they have a rationale for that.

ASSEMBLYMAN BIONDI: Well, let me ask this. Were you requesting something being done as the president of the board with the board acquiescence, or were you doing it as an individual but as president?

MR. MAXWELL: I'm thinking--

ASSEMBLYMAN BIONDI: Because I would think, as in local government, a mayor is mayor, but it's a whole committee. At one vote, I would think you would need the association to formulate that opinion and say, "Yes, we want to go forward," and then you as the representative--

MR. MAXWELL: I'm talking about something which is a day-to-day activity which is probably outside of the -- which has to be addressed quickly and involved in day-to-day management which is outside the realm of a monthly meeting of a board. I mean, there's supposed to be a close relationship, communication lines between a board president and a property manager and an attorney, so they can execute what needs to be done in the association. And oftentimes, there are cases where that -- certainly in my experience where that didn't happen.

ASSEMBLYMAN CORODEMUS: I have a question. Was it your recommendation about the bidding go to the board members?

MR. MAXWELL: Directly. Absolutely.

ASSEMBLYMAN CORODEMUS: Now, how do you ensure synchronization of that so that, let's say, we're all board members here and we

all get duplicate copies of bids, and my buddy is the-- My Uncle Joe is the landscaper, and I say, "Hey, guess what?" I say, "The bid that came in was 5000, bid less when you get the bids." How do you synchronize that because I've worked-- I've been a town councilman. It's hard enough to get town councilpeople to have quorums to have meetings. Now, you're volunteers here in an association. How do you ensure-- I know your intent is to provide integrity in the process--

MR. MAXWELL: Right. Right.

ASSEMBLYMAN CORODEMUS: --but I don't know if that's it.

MR. MAXWELL: You don't know if that would work?

ASSEMBLYMAN CORODEMUS: No. I'm not sure it would.

ASSEMBLYMAN BIONDI: Unless I'm mistaken, I thought bids would have to be open just like the municipal government. All the bids would be opened at the same time at a public meeting--

ASSEMBLYMAN CORODEMUS: At one place, with everybody there.

ASSEMBLYMAN BIONDI: I'm sorry.

ASSEMBLYMAN CORODEMUS: In one place with everybody there.

ASSEMBLYMAN BIONDI: In one place, an advertised public meeting, if that's a requirement, and 10:00 in the morning, all bids received, no bids after three times, I believe in municipal government, "Any more bids? Any more bids? Any more bids?" After that, no bids can be accepted, and then they are all opened at the same time, and then nobody's reading anyone's mail. No pun intended, but that's the intent of the legislation.

MR. MAXWELL: Sure. That's absolutely to make sure that problem that you're alluding to doesn't happen.

My key point is to make sure that outsiders aren't running the business of an association, and there's a lot of money in these associations that pass through. Most people who live in a condominium association for one or two or three years in a transient nature, that would really have the sense of community and roots to really take an interest in it. A lot of these things can go-- A lot of these transgressions and overpayments and wasteful spendings can go on without scrutiny. I just want to make sure that we really tighten that up to make sure that doesn't happen.

ASSEMBLYMAN KELLY: Thank you.

MR. MAXWELL: All right. Thank you.

ASSEMBLYMAN KELLY: Well, I think we've exhausted the testimony.

What do you want to say? Come on up.

ASSEMBLYMAN BIONDI: I just want to say, while you're coming up, I think this clearly indicates that the committee system works. We're sitting here and none of us -- I'll speak for myself. I'm certainly not an expert on all issues. I am an expert on certain issues. So to make the process work, we gather the information in, sift through it, and then try and make the best possible legislation we can. So I do thank all of you for coming in and giving input, whether we agree or disagree, but at least we can massage it and come up with something that benefits the majority.

**SID ANGRIST:** The name is Sid Angrist. I'm from Cliffside Park. I am presently Vice-President of the our condominium association. For five

years, I was one of the 2 percent of discontents. This year I became Vice-President.

ASSEMBLYMAN BIONDI: That's how most of us got elected, too. (laughter)

MR. ANGRIST: Well, I got elected. This is the sixth year, but I got elevated in position. For five years, I was vehemently against the board, which when our president retired had been in office for 17 years. Now, as a nonpaying job, this is wonderful dedication, but that's not my argument.

My argument has been with the ADR. I applied twice for ADR having been a malcontent on the board. The first time I requested two issues be heard. The board that heard my complaints advised me they were only empowered to listen to one complaint. I could not question them as to their conflicts of interest, their experience, or how they were chosen. I was given a fine. I paid it and went my way.

I got into another altercation with the board and again was issued a fine warning, which comes with the advice that I'm entitled to ADR. This time I advised the board I would be represented by attorney. Of course, I never received an acknowledgment. I never was granted the hearing. I was given the fine. I had an attorney file a show-cause order. The court rescinded the fine and ordered it refunded.

I am one of the discontents, the 2 percent, I said before. I am a certified mediator for the Superior Court of Bergen County, their vicinage. The A-2864 envisions after two years, as far as the copy I have, to seek to have their voluntary mediators combine with the Superior Courts, Supreme Courts members. Now--

ASSEMBLYMAN KELLY: We're not going with that version.

MR. ANGRIST: Pardon.

ASSEMBLYMAN KELLY: We're not going with that version.

MR. ANGRIST: All right. I'm not saying you are, but I wanted to get to at that point was the argument of the availability of volunteers. We had, as far as I know, three classes serving two-year terms, and they had no problems filling those classes of volunteers. So that argument that there is nobody available to serve on a voluntary basis did not appear to exist in Bergen County.

I have a lot of other arguments. I hear about election procedures. If I can get, as far as I am concerned, the Department of Community Affairs empowered to promulgate rules supplied with the funds to oversee and enforce rules, there are a lot of things I am unhappy with, but I would leave to them that right. But again, I will also add my two cents in that I believe that the funding for all these packages of bills must be sufficient. I am told that it is going to create another bureaucracy. Believe me, what it has cost me for legal fees, as an individual, I wish to hell I was paying \$5 a year.

ASSEMBLYMAN KELLY: Thank you.

Well, I think we have all we're going to take.

UNIDENTIFIED SPEAKER FROM AUDIENCE: I'll be real brief. I know my stomach is grumbling, too. (laughter)

ASSEMBLYMAN KELLY: I'm getting severe pains. (laughter)

UNIDENTIFIED SPEAKER FROM AUDIENCE: I feel your pain.

ASSEMBLYMAN KELLY: It's not grumbling.

**FRAN MCGOVERN, ESQ.:** Just real brief. My name is Fran McGovern. I'm an attorney. I do some community association law throughout the state. I have six or seven real quick, real technical points.

First of all, I'd like to thank everyone for the work they've done in UCIOA. We support it as a concept. One thing I want to point out is success or liability in the Act when one developer takes over from another developer. The Act provides that the declarant, the subsequent declarant, shall not be liable for misrepresentations. I think what that should say is that subsequent declarant should be liable for misrepresentations and maybe in an affirmative defense -- and maybe in an affirmative that he reasonably believed that it was honest. But the way it's written right now, it says, "The subsequent developer shall not be liable." I'm concerned that a subsequent developer would just be not as diligent in redoing the documents and making sure that those representations were clear and honest. From a consumer standpoint, I just think that's dangerous.

The second one is with respect to the express warranties that these developers put out on these bills. There's a provision that says, "These express warranties made by the seller to purchase a unit, if relied upon by the buyer, shall be created as follows." I don't think it's fair to consumers that the consumer must prove that that express warranty was relied upon. If a developer gives you a warranty and says, "Hey, it's going to be right," you shouldn't have to prove that "hey, I read this POS" -- which nobody reads. I mean, it's two inches thick. "I read it, and I noted the fact that there was going to be a hot water heater, and so forth." It should not be -- require a showing of reliance.

Number 3--

Sorry, I'm moving right along.

ASSEMBLYMAN KELLY: No. We got it. We're marking time with you.

MR. McGOVERN: Okay.

Number 3. It's confusing to me with respect to the statute of limitations and warranties. If you look at the actual provision itself, the statute of limitations for -- is told with respect to control. Okay. But with respect to warranties, it's not clear that the expiration of warranties is told while the developer controls the board. And there's a provision in there that even if the developer is in control, a subcommittee of homeowners can be formed to basically sign off on these warranty claims. And I don't think that's correct. I think these warranties should be enforced by a homeowner-controlled board, not a committee that is formed during developer control. I think that's a dangerous thing because the homeowners are going to want to come back once they own their units and own the common elements and say, "Hey, we need these things fixed pursuant to the warranties."

Another critical-- We were at a seminar recently, Dave Byrne and I, and this came up, and it was a very, very hot issue with the crowd. And if you look at 46:8A-410 and 411, there are provisions for "need not be built" in promotional materials and models, and so forth. I think that is very dangerous from a consumer standpoint.

ASSEMBLYMAN KELLY: What did you say? Need not be built?

MR. McGOVERN: That's correct. If a developer can put promotional materials together and, perhaps, models and put a small label on them, or it says actually conspicuous, but we all know what need not be built means. That says, "Need not be built." From my experience with consumers

dealing with these homeowners, they do not read that. If they see a tennis court on a model or a picture, they think a tennis court is going to be there. If they think a tot lot is going to be there, they think it's going to be built. So if they put little disclaimers at the bottom that says, "This need not be built," then you got a big problem. I spent 45 minutes at a board meeting last night where the board was asking me, "Fran, when we looked at the models in this place, the models had the utility boxes all covered with shrubs. Everything was screened." Now we have our units, they say, "We don't have to give you any screen for those utility boxes." It says, "Need not be there." I'm concerned that that is very misleading to these people who are purchasing units, and people get themselves in deep, and I'm sure that leads to many of the complaints in the DCA. People have false expectations of what they're going to get from a developer.

The last thing I really want to mention is the disclosure required in the transition vote requirements in terms of putting it to a vote of whether to institute an action with the developer. The way it's written right now it requires that the association disclose to everyone in the community the association's arrangement with its attorneys and how much its going to spend on basically attorney fees and engineering fees. That to me is very, very dangerous because a developer will eventually, if that's distributed to the community, get a hold of that information and be able to get the association by the neck, in my view, because it will know, "Hey, is that association attorney working on a contingency basis? Is he working on an hourly basis? How much money do they have in their budget? How much can we run the fees?" So from a leverage standpoint, I think it puts the homeowners who are at a disadvantage already at a very great disadvantage.

ASSEMBLYMAN BIONDI: I think what we need are the exceptions, pending litigation and contracts. Those records are not available until after the action is taken. The same as local government.

MR. McGOVERN: That's right. I agree with you. It's just a technically -- is the way it plays into the--

ASSEMBLYMAN BIONDI: Yes.

MR. McGOVERN: --transition litigation. My final point is this.

ASSEMBLYMAN BIONDI: Because you're right. The developer will outbid them.

MR. McGOVERN: Oh, he certainly will.

ASSEMBLYMAN BIONDI: He'll take you down the road--

MR. McGOVERN: The developer will bury these people in litigation.

ASSEMBLYMAN BIONDI: Yes. I agree.

MR. McGOVERN: If it knows every card that you're holding -- if we're playing cards and you know every card I'm holding, you're going to bury me.

The last thing and this is very, very technical. This provides for a statutory lien. In bankruptcy court, a debtor can avoid a statutory lien. That's been held by Judge Tripp down here in Trenton. I've always taken the position that this is a consensual lien because it's a matter of contract in the POS. These people consented to these liens. It's just something to think about. A consensual lien in bankruptcy court cannot be avoided if it's the only interest you have in that house. So a consensual lien, rather than a statutory lien, provides some further protection for an association.

Thank you very much for your time.

ASSEMBLYMAN KELLY: Thank you for enlightening us.

**DAVID BYRNE, ESQ.:** Mr. Chairman, if I could just add to that. I'm also an attorney in New Jersey. Real briefly, one of the provisions in the ADR part of the pact deals with the developer's relationship to a community, and it creates a -- what I think is a procedural minefield because it deals with arbitration for developer issues, namely, defects in common elements. Arbitration and mediation in the developer context isn't necessarily a problem, but what this bill does is it makes it mandatory if a developer wants to arbitrate a common element defect, okay, throughout the community, if the association has to participate in it. What that will mean is the association will then incur attorney fees and incur engineering fees to do that arbitration. And at the end, if the developer doesn't like the result, the developer doesn't have to go with it. So at that point, the association has now spent \$30,000, \$40,000 perhaps to litigate this arbitration with no guarantee that it's ever going to get a result at the end. That seems to fly in the face of the new policy in this state which is to encourage mediation and arbitration.

If you represent a 90-unit condominium, 100-unit condominium, okay, you're going to be hard-pressed to fund an arbitration especially with some of the problems you're going to have to fix as this arbitration is going on, if they're severe enough. You're going to be hard-pressed to fund that arbitration only to find out at the end that you can't even rely upon it, and then you may have to sue anyway. Another problem you're going to see as well is under PREDFA, which is a State law that governs disclosures from developers, and it also has been interpreted very broadly to remedy and try to address the difference in the power of the consumer versus the power of the developer. Developers have to contribute finances to an association while they

still own units because they're getting a benefit from what the association is doing. Obviously, a well-groomed community is easier to sell units than one that would not be maintained. If a developer does not fund the association through the payment of fees, but instead leaves a deficit to the homeowners when they take control, how are those homeowners then going to arbitrate these cases and then bring them to litigation if they ever need to at the end? This bill doesn't address that. The bill seems to empower the unscrupulous developer when most developers in New Jersey stand behind their product and act in good faith. Most of them do. Some don't, and those developers now have even more of a reason to not fund their association so that their association can't arbitrate these disputes with them and can't litigate these disputes with them.

Like Fran said, the concept of UCIOA is a good concept to attempt to bring all of these communities under one law. If for some reason, the power between a developer and a consumer got involved here somehow, and I don't quite understand why, and I think the Act really needs to be restructured in that regard or maybe left silent. I don't know why if a current law and current case law seems to address a lot of these things and PREDFA does as well -- as, I think, the DCA is involved with a lot also.

So that's just my comment.

ASSEMBLYMAN BIONDI: Just a question on the common ground or deficiency by the developer. Wouldn't that fall under the municipality, either the Department of Engineering or Construction? Maybe some towns are different than my hometown, but wouldn't that -- where it would come under?

MR. BYRNE: Well, I need the lawyer-type answer to that. Some of the common elements roads and some curbing and some of the common elements that are considered public-type improvements are covered by bonds. And, yes, when you have a diligent township, that diligent township is going to ensure compliance. Not all townships are diligent. Obviously, there was a need for Municipal Services Act that seems to say that maybe municipalities aren't as diligent in some of the rights of some of their citizens. Even if a township is diligent, the association still may not agree with the determination of the municipal engineer.

MR. McGOVERN: One thing, too, most homeowners don't know this as well. Generally speaking, the association does not have standing to hold up to bonds at all.

ASSEMBLYMAN BIONDI: Right.

MR. McGOVERN: If the township engineer says the bonds go, they go. Oftentimes, the homeowners are deceived by the bonds being there because they think, "Oh, we have bonds in place, but we're okay."

ASSEMBLYMAN BIONDI: But the association certainly has the wherewithal and the right to discuss it with the township engineering. Some towns like mine have an ordinance that says, if it's general health, public safety and welfare, we can go back two and three years later to that developer and--

MR. McGOVERN: Right. Right.

ASSEMBLYMAN BIONDI: --have him make the improvement. So I just wanted to know where you--

MR. BYRNE: There are protections in that regard. But a lot of times, if I could add, the developer may create a corporation just to address that scenario.

ASSEMBLYMAN BIONDI: Oh, yes. I agree.

MR. BYRNE: And once all the units are sold, there's nothing to go back to.

ASSEMBLYMAN BIONDI: I agree.

ASSEMBLYMAN KELLY: Do you want any comments, Mr. Connolly?

MR. CONNOLLY: Just that we do agree with the last comments related to the Act. In general, the bill says that it doesn't change anything in the Act. But there is one section, Section 402, that makes about four or five changes to the Act explicitly. The worst of them being the one that says, "If a developer discloses information which is not correct, but he did so in a reliance upon one of his consultants, he's not to be held accountable."

ASSEMBLYMAN KELLY: That doesn't sound right.

MR. CONNOLLY: Two or three others that are less significant, so we would welcome if the Committee would address those--

ASSEMBLYMAN KELLY: That should be taken out of there.

MR. CONNOLLY: --half a dozen areas where this bill weakens the protections people currently have under the Act.

ASSEMBLYMAN BIONDI: I agree, and I don't believe that was ever anyone's intent.

ASSEMBLYMAN KELLY: No.

You've been standing up for quite a while. I think you want to say something.

**HENRY F. NESMITH:** Yes.

ASSEMBLYMAN KELLY: Well, say it, and we're going to move out of here very shortly.

MR. NeSMITH: Thank you, Mr. Chairman.

ASSEMBLYMAN KELLY: What's your name?

MR. NeSMITH: My name is Henry NeSmith. I'm here representing only myself as a homeowner in a condominium association. My association has consistently denied me access to certain records that I feel that I'm entitled to for a period of two to three years.

I see nothing in the current laws that I've seen that would rectify --

ASSEMBLYMAN KELLY: May I ask, what records are you talking about?

MR. NeSMITH: Okay. You should have a copy of a letter to Senators (*sic*) Bateman and Gregg in front of you where I outlined the problems, but I'll briefly state them for you.

ASSEMBLYMAN BIONDI: We don't have it. Would you briefly--

MR. NeSMITH: Pardon.

ASSEMBLYMAN KELLY: Give us a brief--

ASSEMBLYMAN BIONDI: We do not have it in front of us, could you just give us a brief synopsis of it?

MR. NeSMITH: Okay. The problem is this. In the records that I'm wanting access to and the Department of Community Affairs has ruled that I'm not entitled to those records either, and that's records of certain of my association's salaries of management employees. I don't feel that-- I have been given various reasons such as unwarranted invasion of privacy, that the association wasn't required to, that it was a record that the association was required to keep, so therefore, I wasn't entitled to the information.

I strongly feel that any expenditure, and the current law very plainly states that, that any record of expenditure of an association is accessible by the unit owners. I believe Mr. Connolly has ruled in favor of my association in this controversy.

ASSEMBLYMAN KELLY: Specific salaries, in my own opinion, specific salaries, that's rather personal. Is it not? I don't want anybody to know my salary when I was working for a corporation. You can get the town engineers, but you can't get specific.

MR. NeSMITH: Let me ask you, Mr. Kelly?

ASSEMBLYMAN KELLY: Yes.

MR. NeSMITH: If you had an employee working for you and you went to your business manager and asked him what you were paying this employee, and he refused you, how would you feel about that?

ASSEMBLYMAN KELLY: I'd fire him.

MR. NeSMITH: And that's all I'm asking.

ASSEMBLYMAN KELLY: Do you have the ability to fire him?

MR. NeSMITH: Pardon.

ASSEMBLYMAN KELLY: Do you have the ability to fire this person?

MR. NeSMITH: I'm sorry, I can't hear.

ASSEMBLYMAN KELLY: Do you have the ability to fire this individual who won't give you this information?

MR. NeSMITH: No.

ASSEMBLYMAN KELLY: Well, that's the rule then. You can't fire him. That's the way at least I interpret it. If you can't fire him, you're not entitled to get the information. That's up to your board to do that.

ASSEMBLYMAN BIONDI: That's who he wants the records from, the board.

MR. NeSMITH: I should have that authority, but I don't unfortunately.

ASSEMBLYMAN BIONDI: You wanted the records of the fees they're paying to the management firm, not the association, the board members. They're not paid, right? That's volunteer.

MR. NeSMITH: These are our employees, association employees, not the management firm. These are association employees. I as a member of the association, they are my employees.

Further in connection with that, and as I said, this is outlined in the letter to Senator -- Assemblymen -- I gave them a promotion.

ASSEMBLYMAN KELLY: He'll be a Senator some day, don't worry about it. (laughter) He's working on it now.

MR. NeSMITH: I've outlined some wording in there that I think still preserves unwarranted invasion of privacy but excludes employees salaries from such a unwarranted invasion of privacy in those cases where employees are paid by me as an association member and being our employees.

ASSEMBLYMAN KELLY: Okay. Thank you.

MR. NeSMITH: Oh, one other small point in connection with the records-- In the new bills, the records that we will be allowed to see or to inspect, I've noted a change there, too. I feel very strongly that all records that an association maintains with the exception of unwarranted invasion of privacy, and so forth, should be opened to inspection by the employees. If we pay for the production and maintenance of those records, we should be allowed to inspect them. And the same thing applies to my association, also, claims

attorney-client privilege and won't allow me to see how much we're paying our association attorney. I want that excluded as well.

You may recall in the recent Supreme Court ruling where President Clinton tried to prevent the -- Starr from taking testimony from the White House attorney. Supreme Court ruled and said, "Mr. Clinton, this is the people's attorney. He is not your private attorney." I feel that the association should not be able to claim attorney-client privilege in the case of an association member. This is our attorney, not the board members' attorney.

ASSEMBLYMAN KELLY: I sort of agree with you. I agree with you on that issue.

MR. NeSMITH: Thank you. Thank you very much.

ASSEMBLYMAN KELLY: Sir, you want to address us? Tell us who you are? And this is the last one. We were supposed to end at 1:30. It's 1:45.

You have the floor.

**WENDEL SMITH, ESQ.:** Thank you, Mr. Chairman. My name is Wendel Smith. I've been practicing in the vineyard for about 40 years in this field, and I commend the Subcommittee for their interest and their patience in listening to this, and I wasn't going to say anything because I think you're headed in the right direction, and I'd be disagreeing over the details. But the need for a uniform law I think is clear to everybody, and I think we'll get there sooner or later, hopefully, along the lines of Assemblyman Corodemus's bill.

However, there were some comments made at the end by a gentleman before Mr. NeSmith where they made some comments about the successor declarant provisions of the UCIOA and also about the provisions dealing with the need not be built, and so on. I just wanted to say that those

come out of the Uniform Act. They're not tailor made. They worked in 11 or 12 states. I think if you study them a little bit more and understood what they meant, which I don't really think that they understood what they meant, that it is not really a big problem.

But more importantly and why I came up here is they started talking about the arbitration proceedings and the procedure for transitional developers and phase control, etc. This is something that philosophically really I think you have to understand. We've seen provisions, and you all have -- they say you have to get unit-owner approval for putting in a swimming pool or capital improvement over \$10,000 or over \$25,000, and yet for a lawsuit and a construction lawsuit against a developer, etc., you don't have to get unit-owner approval. Those things are \$50,000, \$100,000 real quickly when you get into it. There are six figures real quick. That's designed to try and give the unit owners an idea of what's going on instead of having a lawyer -- and I'm a lawyer, and we handle both sides. But having a lawyer come before an association, get dollar signs in their eyeballs, make them think that they're going to have a big victory at the end, etc., without the unit owners knowing what they're voting on. They have to vote on a swimming pool, but they don't have to vote on a construction lawsuit doesn't make sense. I wanted the Subcommittee to understand that.

Thank you.

ASSEMBLYMAN KELLY: You understand that, Mr. Corodemus?

ASSEMBLYMAN CORODEMUS: Very clearly.

ASSEMBLYMAN KELLY: I think we're going to adjourn.

We're going to move this bill over to the full Committee, and there will be a lot of discussion on both of these pieces of legislation.

I thank you all for coming. We're finished.

**(MEETING CONCLUDED)**