

Testimony of Joseph Carleton
Maine Judiciary Committee Public Hearing
LD 1662 Bill "Resolve, to Study the Adoption of the Uniform Common Interest
Ownership Act"
May 10, 2023

Good Morning Senator Carney and Representative Moonen and members of the Judiciary Committee. My name is Joseph Carleton. I am an attorney with Jensen Baird in Portland, and reside in Kittery. I have practiced community association law for many years. I represent homeowner associations, developers, and individual homeowners.

I'm here as a volunteer for the Community Association Institute (CAI), a national organization with about 43,000 members. It supports the adoption of the Uniform Common Interest Ownership Act, as does the Maine Legislative Action Committee of CAI.

Common interest communities are real estate developments or neighborhoods subject to covenants, conditions, and restrictions governing ownership and use of individually owned and common spaces. Their basic rules are found in a Declaration recorded in the Registry of Deeds and in the nonprofit corporation's bylaws that govern them.

The most familiar common interest community is a condominium. A comprehensive law governs Maine condominiums. It is called the Maine Condominium Act. This law details how the condominium is set up, what restrictions apply, what a developer can and cannot do, how common expenses are determined, how much each owner must be assessed to pay for them, how to amend the documents, disclosure requirements for prospective buyers, and many other details.

Other types of common interest communities exist. Maine law is virtually silent on them.

These other types are typically subdivisions with common areas such as open spaces or amenities. They may have duties imposed on them by the government, such as stormwater control. They usually have expenses that must be paid by assessments against owners.

Since condominium and non-condominium common interest communities have very similar issues, a national group of experts called the National Conference of Commissioners on Uniform State Laws has drafted a uniform act to recommend to states. That act is called the Uniform Common Interest Ownership Act (UCIOA). It's undergone several revisions over the years, the last being in 2021. It combines and consolidates the law for both condominium and noncondominium common interest communities.

Seven or eight states have adopted it, including Vermont and Connecticut in New England. In addition, many other states have laws to protect owners and prospective owners in these developments.

A Maine UCIOA would be like the Maine Condominium Act but extend its provisions to non-condominium communities.

Because the adoption of UCIOA would significantly change Maine law, and because of the complexity of the subject, I asked Senator Lawrence to submit a legislative resolve to create a committee, composed of interested parties, to study the issue and propose legislation for consideration by the second session of this Legislature.

Here are some of the problems I have experienced with non-condominium community associations.

1. Developer overreach. The project developers draft community association documents. They are typically designed to sell units and do not necessarily protect buyers. Developers can, if they wish, draft documents allowing the developer to control the association for a long time.
2. Lack of Disclosure. Developers and other sellers do not have to disclose important information to prospective buyers, such as the restrictions on the property, the size of assessments, whether assessments against the current owner are paid up, whether there are known future expenses, and many other details.
3. Board overreach, lack of accountability, and due process. Often, there need to be more limitations on the powers of the board of directors regarding the operation of the property, particularly regarding rules and rule enforcement. This is especially so since, unlike most nonprofit corporations, a community association's membership (and the duty to pay assessments) is mandatory. No owner can "opt out."
4. Obsolescence. Many CC&Rs, especially older ones, are badly drafted and should be updated. This is sometimes difficult because they have no provision for amendment. Others have no way to enforce the rules other than court action, which is almost always too expensive to be worthwhile.

Existing Maine law is archaic, vague, and inconsistent, based on old caselaw.

I would be happy to answer questions and expect to be available during worksession in person or by Zoom.