

Testimony of Joseph G. Carleton, Jr.

Before the Joint Standing Committee on Housing and Economic Development

In support of

LD 760, An Act to Establish the Maine Common Interest Ownership Act.

Good afternoon, Senator Currie, Representative Gere, and honorable members of the Housing and Economic Development Committee. My name is Joseph Carleton. I'm an attorney with the Jensen Baird law firm in Portland. I'm here on my own behalf and not for Jensen Baird or any client.

I'm here to support LD 760, An Act to Establish the Maine Common Interest Ownership Act.

I'd first like to thank Senator Lawrence and Representative Moonen for agreeing to sponsor this bill.

A Common interest community is a type of real estate development where individual owners share ownership or responsibility for certain common property and amenities. These communities are governed by an association, typically a Maine nonprofit corporation. They may be condominiums, or noncondominium homeowner association developments. The property is subject to private land use restrictions, created by the initial developer and enforced by the association. Owners pay fees for maintenance, repairs, insurance and other community expenses.

At least 128,000 Mainers lived in common interest communities as of 2021, according to the Community Associations Institute.

In many ways these communities are similar to a small municipality. The association manages and maintains common property. They assess mandatory assessments against owners, similar to property taxes. They create rules. They enforce document requirements through fines, which become an automatic lien against the lot or unit. One big difference from municipalities is that due process and other individual rights guaranteed by state and federal constitutions generally do not apply to them. For these rights to exist, they must be in the project documents, or in statutes.

Except for the Maine Condominium Act, current laws that do exist are out of date, incomplete, and sometimes archaic. About 20% of Maine condominiums are subject to a 1960's law called the Unit Ownership Act. Noncondominium common interest communities are subject to ancient case law doctrines. Most common interest communities are also governed by the Maine Nonprofit Corporation Act, which was designed for voluntary membership and modest dues, not appropriate for owner associations where membership is mandatory, and owners are subject to mandatory

assessments running hundreds of dollars a month. Remember, we are talking about the single largest investment most families ever make – their home.

The best solution for this problem is to adopt the Uniform Common Interest Ownership Act, UCIOA. UCIOA is a model law drafted and modified over time by the Uniform Law Commission, a national body of experts. The Uniform Law Commission is responsible for many model laws, for instance, Uniform Commercial Code. LD760 is based on UCIOA. It's called MCIOA, the Maine Common Interest Ownership Act. You will see it soon.

Let me give you a couple examples how current law is inadequate.

Let's say you live in a quiet neighborhood where all the homes are subject to restrictions limiting properties to "residential" use. Your next-door neighbor starts renting their house through Airbnb to short-term party-goers. They don't seem to care how much noise they make.

Does the residential use restriction protect you? Probably not. The use of the neighbor's property is technically residential, according to many courts. The people who drafted the restriction many years ago did not anticipate the rise of short-term rentals.

Can the property owners amend the restrictions to limit short term rentals? Maybe not. If the existing restrictions are silent about this, case law may require unanimous consent for a change.

Another example. You live in a condominium under Maine's first generation condominium law, called the Unit Ownership Act. The board of directors notifies you of a large increase in condominium assessments. Can they do this? Yes.

Is there anything you, as an owner, can do about it? Probably not. Board members can't be removed except by a supermajority vote of owners. In forty years of community association law practice, I have seen it happen exactly twice.

The Unit Ownership Act does not require that the Board notify owners when and where they meet or what they discuss, and owners have no right to attend their board meetings.

LD 760 seeks to fairly balance the interests of owners, developers, the Board of Directors, realtors, and lenders, and in particular, to give owners basic rights they do not now enjoy. It modernizes association practices in light of societal changes occurring since the governing laws were passed over forty years ago. It provides guidance for remote participation in meetings. It also eliminates some of the harsher and more controversial features of UCIOA, particularly regarding priority liens and liability for Public Offering Statements.

I drafted the Maine Common Interest Ownership Act and would be happy to answer questions about it. I will also try to be available during your work sessions.

Thank you.

Fact sheet LD 760

Here is a summary of some features of the Maine Common Interest Ownership Act (MCIOA), in no particular order.

Versions of UCIOA (the Uniform Common Interest Ownership Act) are already law in Vermont, Connecticut and 6 other states.

UCIOA and MCIOA are similar to, and organized like the Maine Condominium Act

Brings all common interest communities under one law

Exempts many small and limited expense noncondo properties and allows opt-out for the rest by majority vote within first three years.

For all common interest communities, budgets and special assessments are subject to ratification by owners.

Allows less than unanimous vote (80%) to change occupancy and use restrictions within a unit.

Eliminates eligible mortgage holders, and gives lenders rights to impose conditions on developers loans

Preserves right to vote and hold office for people subject to fines

All common interest community owners are entitled to reasonable notice of board meetings and the right to attend them.

All common interest communities have broad rights to examine association records.

Authorizes mail in voting without a meeting

Requires that unit owners insure damage to their own unit

Does not adopt superpriority lien provisions found in UCIOA

The board must allow input from owners before adopting rules

Maine Condominium Act requirement of notice and an opportunity to be heard before fines can be assessed against owners would apply to all common interest communities.

Directors can be removed by owners by majority vote of owners, not 2/3

Provisions for board action in emergencies.

Reduces the extreme penalties in UCIOA for failure to supply a Public Offering Statement to potential buyers

Takes into account electronic communications and remote attendance

Flexibility in relocating boundaries between units and limited common elements.

Requires associations to carry fidelity insurance

Gives noncondominium common interest communities right to amend their declaration with 80% approval rather than the unanimous standard which otherwise applies if the documents are silent.

Givers noncondominium common interest communities lien rights if they are not provided for in the documents.