

Legislative History for Connecticut Act

<i>Act Number</i>	<i>Session</i>	<i>Bill Number</i>	<i>Total Number of Committee Pages</i>	<i>Total Number of House Pages</i>	<i>Total Number of Senate Pages</i>
PA 95-187		6988	12	51	14
<u>Committee Pages:</u> <ul style="list-style-type: none"> <li>• Judiciary 3220-3222</li> <li>• Judiciary 3130-3132</li> <li>• Judiciary 3378-3383</li> </ul>				<u>House Pages:</u> <ul style="list-style-type: none"> <li>• 2270</li> <li>• 4007-4049</li> <li>• 5773-5779</li> </ul>	<u>Senate Pages:</u> <ul style="list-style-type: none"> <li>• 4727-4740</li> </ul>

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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PART 9  
2874-3234

1995

both great and small. It is small because we can predict that it will not create any significant impact either for the CHRO or the courts. There are only approximately thirty sexual orientation cases filed per year. The CHRO reports that approximately 3% to 4% of employment cases receive releases to sue in court each year, therefore in concrete terms this reform will affect the course of only a small number of cases.

On the other hand, I think the significance is great because without this reform, we will have anti-discrimination statutes which are themselves discriminatory. We will have individual complainants who allege discrimination by their employer and then who as they are pursuing their rights to the CHRO discover that the state of Connecticut denies them by statute the same procedural avenues provided to other victims of discrimination. We think that's simply not fair. I don't think we want to have anti-discrimination statutes which create arbitrary distinctions among protected classes and provide some people with less procedural rights than others. We've had this inequity in the law for several years. I think it's time to fix it. We have to be able to count on the CHRO to provide equal and standard procedures. Thank you very much.

SEN. UPSON: Thank you. Any questions? Thank you very much. William Breetz on a very long bill which he's going to talk on for a short while, Law Revision followed by David Hemond followed by Jack Bailey.

WILLIAM BREETZ: Mr. Chairman, members of the committee thank you for listening to us very briefly on this very long bill. I'll not get into any of the details at all except in response to--

HB 6988

SEN. UPSON: Well we probably will later on. That's the problem. I'm not sure in this first hour if we can do it to be honest with you. If we get everyone else, we'll give everyone else a chance to speak. I apologize for that.

WILLIAM BREETZ: Not at all. I'm the chairman of the

study group on the amendments to the Common Interest Ownership Act which is section forty-seven to two hundred, and this is bill HB6988. Mr. Hemond is with me, a member of the Law Revision Commission's staff and he's given you written testimony which we have no intentions of reading today.

The Common Interest Ownership Act was adopted twelve years ago. It applies to all forms of condominiums, cooperatives and clustered housing projects, so called planned communities in this state, projects as large as Heritage Village - twenty-four hundred units - and as small as two units. The act has worked very well over the ensuing twelve years. The package you have before you is a result of the long term study of all the uniform laws conference about how the act may be enhanced further in a way which helps all of those parties who are involved in these conflicts, whether it's unit owners, whether associations, lenders, developers, title insurance companies, real estate brokers, insurance agents and others.

The advisory committee that the Law Revision Commission put together had representatives of all those groups on it and I'm delighted to be able to tell you that this outrageously long bill has the enthusiastic and unanimous support of all of the members of the advisory committee. I could conclude by simply saying they obviously concluded that it's a good bill and ought to pass, but let me give you at least briefly a sense of the kinds of issues that the act addresses.

One of the major issues that the act has is it creates a differential between old projects and new projects. This act is designed to minimize those differences--

SEN. UPSON: I'm in a condo association by the way.

WILLIAM BREETZ: Then Senator, you understand some of the issues.

SEN. UPSON: I know I save money on snow removal this year.

WILLIAM BREETZ: There you go. To demonstrate that the lawyers involved in this process were acting in an even handed way we've provided in the act provisions which encourage non-judicial dispute resolution between associations and unit owners, minimizing the use of members of our profession. There are significant reductions in cost in terms of the documentation preparation, addressing serious issues involving the relationships between unit owners and tenants and associations and tenants.

Significant increase in flexibility for commercial projects and a particularly troublesome project in this state is how one deals with the expiration of development rights which were reserved in short periods at a time of happier economic times than exist today. And as those rights expire, lenders and developers and association have to address them. And this act helps us deal with those kinds of questions.

Rather than going into any of the details of those or other sections of the act, I'd be glad to simply answer any questions and encourage you to review the materials that Mr. Hemond has given you and obviously we'd be glad to meet with your counsel in detail.

SEN. UPSON: We would like to do that. Thank you.

WILLIAM BREETZ: That concludes my presentation unless there are any questions.

SEN. UPSON: I'm afraid it would take us a long time before we asked you any questions. That's the problem. Thank you. David Hemond.

DAVID HEMOND: Yeah if I may, I'd like to testify briefly in favor of SB1154 which is AN ACT CONCERNING THE INNOCENT LAND OWNER DEFENSE IN POLLUTION CASES. In 1993 the General Assembly created an innocent landowner defense and basically what it said was where a landowner was innocent, the state's remedies were limited to placing a lien on the contaminated property and recovering, with

Lawlor's bills, particularly in support, but today I'm doing it.

I think you have my testimony and I mention the Connecticut Constitution, fundamental and natural right to keep and bear arms and that basically this is directed at a segment of the community that is discriminatory and basically a poorer section of the community, and we think that the current bans on firearms in housing authorities denies guaranteed equal protection and due process of the law.

This is a very, very difficult bill. We know that housing authorities have significant problems with firearms. What we would ask you is to direct the enforcement or the emphasis towards the people who are posing the problem, not the people who are not posing the problem. What the bans do is they ban firearms to legitimate legal citizens. They don't affect the criminals. Opposition basically is to-- the state clearly preempts firearms law. We've passed two or three firearms laws that are very, very restrictive. If people in the housing communities abide by those laws, then they ought to be able to possess firearms. If they don't abide by the laws, then they're criminals and they ought to be ejected from the housing authorities and prosecuted. I have a quote from Thurgood Marshall. It says basically that "history teaches the grave threats to liberty often come in time of urgency when constitutional rights seem too extravagant to endure." We think that this is the premise that these bans are based upon and we'd ask you not to deny constitutional rights to citizens.

SEN. UPSON: Any questions? Thank you very much Bob. Next is Sheryl Rosander. Did I say it right?

SHERYL ROSANDER: Members of the Judiciary Committee, I'm Sheryl Rosander. I'm here to testify in favor of passage of HB6988. I'm the president of the Community Association's Institute, Connecticut Chapter. That's an association comprised of condominium owners, developers, vendors, managers and other--

SEN. UPSON: I live in a condominium.

SHERYL ROSANDER: Yes. So you're a good guy. -- and other people who serve these condominiums. Our membership is comprised of about four hundred members the vast majority of which are the condominium associations.

SEN. UPSON: So why do we have to pay for snow removal, garbage removal?

SHERYL ROSANDER: That's the municipal services issue. We'll try that in another economic climate. In any event, our board of directors has voted unanimously to support these condominium-- the Common Interest Ownership Act revisions. I'm a practicing attorney in the field of common interest community law and I was honored to be a member of the study committee which went through the suggestions of the uniform law commissioners and tailor them to the Connecticut Common Interest Ownership Act and our particular Connecticut experience with condominium associations. Passage of this bill would be a great benefit to owners who do form an increasing percentage of voters within the state.

The bill calls for a number of changes including submission of some matters to arbitration before we clog the court systems with disputes between neighbors. It will allow for better enforcement of rules. It will allow for more accountability of tenants for their actions and we have faced many problems of absentee owners who do not want to be responsible for the actions of their tenants. It will allow developers or associations to take steps necessary to finish the development and the complex where development rights have been terminated by passage of time. And that would be a great benefit to associations, developers, and the banking community.

Also the bill has many other clarifications of the Common Interest Ownership Act that will benefit these communities in the long term including an improved way to amend documents if a consent is required by letters and no one responds. And that has been a particular problem with bank failures in

this state and with the numerous assignment of mortgages, many of which are never recorded in the land records. And so I ask this committee and the legislature that they help the state of Connecticut maintain its interest in the common interest community law area and be the first state to enact the revisions to the Common Interest Ownership Act. Thank you.

SEN. UPSON: Are there any questions? Sheryl, alright thank you very much. Ann Messoth? Is she here? Heidi Winslow, Danbury attorney. We'll take her out for a drink after (laughter). I'm sorry. Elizabeth B. Leete? Heidi did somebody come with you that wanted to speak also? Oh she did. Alright Gary Phalan who wants to speak on SB1157.

GARY PHALAN: My name's Gary Phalan. I'm an attorney, a partner at the law firm of Garrison and Arderton in New Haven. I'm here to speak in favor of passage of SB1157, AN ACT CONCERNING THE AMERICANS WITH DISABILITIES ACT. In particular what I'm here to do is support the idea of amending the law to provide for reasonable accommodation for people with disabilities as well as ensuring that the law extends coverage to individuals who are regarded as or perceived to be disabled.

In 1983, the United States Commission on Civil Rights, in their landmark report called "Accommodating the Spectrum of Individual Abilities" stated that discrimination against people with disabilities cannot be eliminated if programs, activities and tasks are always structured in ways people with normal physical and mental abilities customarily undertake them. Adjustments or modifications of opportunities to permit people with disabilities to participate fully have been broadly termed "reasonable accommodation."

The current law as it's structured is really modeled after age, race and sex discrimination. In those cases, employers generally deny that they took that protected status into account. Disability discrimination is not the same. That's been recognized by the Second Circuit Court of

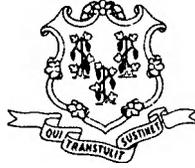
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3235-3628

1995

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# Connecticut General Assembly



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**Testimony of David L. Hemond  
 Chief Attorney, Connecticut Law Revision Commission**

**to the Judiciary Committee**

**in favor of H.B. No. 6988**

**An Act Concerning Amendments to  
 the Connecticut Common Interest Ownership Act**

**March 31, 1995**

House Bill 6988 contains the recommendations of the Connecticut Law Revision Commission for amendments to the Connecticut Common Interest Ownership Act. That act, which is based on and closely follows the Uniform Common Interest Ownership Act, provides the legal framework for the creation, governance, sale, and termination of units in commonly owned developments such as condominiums, planned communities, and cooperatives. The Connecticut Act was adopted, effective January 1, 1984, on recommendation of the Law Revision Commission to provide a more advanced and comprehensive basis for resolution of the various interests affecting common interest communities.

In 1994, the National Conference of Commissioners on Uniform State Laws adopted a set of amendments to the Uniform Common Interest Ownership Act and it logically followed that the Law Revision Commission should study the merits of those amendments with respect to the Connecticut act. After discussions with Senator Win Smith, who had expressed interest in the applicability of the Uniform amendments, the Commission formed a study committee of lawyers who represent associations, developers, lenders, and other interests in legal matters affecting common interest communities. House Bill 6988 is the result of their study, as approved by the Law Revision Commission.

The proposed amendments are intended to address practical problems that have arisen with respect to development and governance of common interest communities. In particular, they reflect a recognition of the quasi-governmental role of associations and of the need to provide associations adequate authority to respond to matters of common interest. That strengthening of associations occurs in governance provisions, in power to extend or create development rights, in power, subject to appropriate restrictions, to bypass certain "bullet-proof" requirements, and in the addition of "deemed consent" provisions whereby a non-responding owner or lender may be "deemed to have consented" to certain association initiatives. The act also addresses a number of more technical issues, including the need to better coordinate the language of the CIOA foreclosure provisions with Connecticut law to clarify the effect of foreclosure on outstanding development rights.

More particularly:

Section 1(4) (revising section 47-202) further clarifies that "common elements" includes any interests in real property that are subject to the declaration, other than the units.

Section 2 (revising section 47-203) contains a conforming revision that reflects an express power authorized for certain nonresidential common interest communities.

Section 3 (revising section 47-213) revises the provisions relating to the adjustment of dollar amounts under the act. Under section 47-215 (section 5 of the act), planned communities with common charges restricted to under \$300, as adjusted pursuant to section 3, are only subject to three core sections of the act unless the declaration provides otherwise. Because the bill deletes a different dollar limitation provision contained in section 47-262 (section 23 of the act), which is replaced by a cross-reference to the section 47-215 provision, these section 3 provisions must be conformed.

Section 4 (revising section 47-214) clarifies that amendments to the act apply to all common interest communities created after January 1, 1984, regardless of when the amendment is enacted. This rule, that new amendments apply retroactively, uses the corporate model and avoids perpetuating retroactivity issues with respect to communities subject to the act.

Section 5 (revising section 47-215) revises the application of the act with respect to certain nonresidential common interest communities, allowing them to completely exempt themselves from the act (really the default status if the declaration is silent) or, alternatively, to take advantage of all or part of the act. The section also includes a new provision clarifying the application of the act to common interest communities that are mixed between non-residential and residential units. Finally, the section revises the exemption provision for planned communities with a limited average common expense liability, raising the limit from \$100 to \$300, as adjusted. The section limits use of the exemption to cases where the limitation is set in good faith and is reasonably believed to be sufficient to pay the community expenses.

Section 6 (revising section 47-216) concerns application of the act to common interest communities created before January 1, 1984. The section is amended to expand the application of the act to include the association governance provisions contained in subsections (7) through (10) and (17) and (18) of section 47-244(a) (section 16 of the act) and the new provision contained in section 47-236(j) (section 12 of the act). (The reference to subsection (j) was inadvertently deleted in the bill draft but should be reinserted if the bill is favorably reported.) Subject to the declaration, subsections (7) through (10) allow the association to take certain actions such as making improvements to common elements, granting of easements over common elements and setting fees for use of common elements. Section (17) authorizes the association to "Exercise any other powers necessary and proper for the governance and operation of the association." New subsection (18) allows the association to require that certain disputes be submitted to nonbinding arbitration. Subsection (j) of section 47-236 contains a new "deemed consent" provision allowing amendment of a declaration affecting certain fundamental changes. Note that technical changes may be necessary, with reinsertion of the reference to subsection (j), to clarify language structure.

Section 7 (revising section 47-217) contains a conforming revision necessary because of the change in treatment of nonresidential communities. See section 5 above.

Section 8 (revising section 47-218) clarifies that the declaration of a pre-1984 community may be amended to achieve any result permitted by the act and otherwise clarifies language.

Section 9 (revising section 47-224) deletes the requirement that restrictions on use and occupancy be included in the declaration. Under revisions to section 16 (which see), restrictions on use and occupancy can be adopted, subject to limitations, pursuant to association regulation. Revisions to section 12 (which see) more explicitly detail the permissible extent of restrictions on use and occupancy which, in fact, are included in the declaration. All of these changes reflect an effort to clarify the law of use and occupancy restrictions in common interest communities and make that law more rationale. The act describes what use and occupancy restrictions must appear in the declaration, what amendment procedures must be used to change those restrictions, what discretion the executive board has in enforcing those restrictions, and what protection the act provides to unit owners, either to be free of regulation inside their units, or to be protected from new restrictions on a once permitted activity. Particular changes are noted further in these comments.

Section 10 (revising section 47-228) revises the requirements for surveys and plans, generally limiting the specificity required with respect to unit descriptions. A new subsection (h), for example, provides that surveys and plans need not show the location and dimensions of a unit's boundaries if the location and dimensions of the building containing the unit are shown and "the declaration includes other information that shows the approximate layout of the units in those buildings and contains a narrative or graphic description of the limited common elements allocated to those units."

Section 11 (revising section 47-231) contains a new provision explicitly dealing with relocation

of boundaries between units and common elements. Experience under the act indicates that it does not adequately address the frequently occurring issue of new additions to existing units, which commonly encroach on the common elements. Subsection (b) offers a direct means to address this situation. In particular this changes the prior rule that would require unanimous consent to vary such a boundary.

Section 12 (revising section 47-236) contains several new subsections that are core provisions of the act. Subsection (d) deletes the prior requirement that restrictions on use require unanimous consent. The provision had created the anomaly that unanimous consent was required to amend a use restriction, but a lesser number could amend restrictions on occupancy or alienation of a unit. New subsection (f) explicitly allows a vote of 80% of the unit owners, or any larger percentage specified in the declaration, to amend the declaration to impose restrictions on permitted uses or occupancy of a unit, provided that "the amendment must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted." Under current law, absent a provision to the contrary in the declaration, restrictions on use require unanimous consent (subsection (d) of this section, the deleted provision above) but no special limitations affect restrictions on occupancy, which presumably can be restricted by a 67% vote. The change reflects the belief of practitioners in the field that restrictions on use and occupancy which unit owners would like to impose after the declaration is recorded ought to be adopted only by a super majority of 80% and only after providing protection for those whose use or occupancy will be affected by the amendment.

Section 12(g) allows unit owners, by an 80% vote, to extend expiring development rights or create new rights. This provision addresses the possibility that development rights may be about to expire at a time which neither the association nor the unit owners find desirable. Such a change may be vetoed by any person holding development rights or security interests in those rights.

Section 12(i) contains a new "deemed consent" provision applicable to persons holding security interests. If such a person's consent is required, and on notice of a proposed action, the person fails to respond within 45 days, that interest holder is deemed to have given consent.

Section 12(j) addresses problems created by declaration provisions that require unanimous consent with respect to amendments relating to the use of units, the relocation of boundaries or the extension or creation of development rights. Unanimous consent may be deemed in such a case if 80% of the owners approve the amendment and no owner objects. Furthermore, if 80% approve and one owner does object, the amendment can be approved by an action in the Superior Court if the court finds that the objecting unit owner does not have "a unique minority interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect."

Section 13 (revising section 47-237) contains clarifying language with respect to foreclosure actions.

Section 14 (revising section 47-238) clarifies the right of lenders to subject the declaration to certain terms as security for the loan. While the general rule is that those terms may not operate to delegate control of the affairs of the association, certain standard lending requirements, including deposits of periodic common charges, are authorized by new subsection (b).

Section 15 (new) contains new provisions authorizing creation of master planned communities, communities of more than 500 acres containing more than 500 units. If information is properly disclosed, such a master planned community may be open-ended - exempted from requirements to disclose the maximum number of units that may be build and exempted, until relevant, from certain other act disclosures.

Section 16(a)(18) (revising section 47-244) adds a new governance provision allowing associations, by regulation, to require that disputes between the executive board and unit owners, or between unit owners, be submitted to nonbinding alternative dispute resolution as a prerequisite to bringing suit.

Section 16(c) adds a provision allowing an association - subject to the declaration - to adopt regulations that affect use and occupancy, but only to prevent activities in violation of the declaration, or to regulate occupancy that adversely affects the use and enjoyment of other unit owners. The subsection further allows the association to restrict leasing of residential units to the extent the restriction is reasonably designed to meet underwriting requirements of certain institutional lenders.

Section 16(d), (e), and (f) provide the association with new rights, subject to limitations, to step into the shoes of a landlord with respect to certain violations by a tenant of the declaration, bylaws, or rules and regulations of the association. Subject to certain restrictions, an association may use those rights to fine or evict a noncomplying tenant.

Section 17(a) (revising section 47-245) adopts the amendments to the Uniform Act concerning the fiduciary standard of care expected of officers and members of the executive board.

Section 17(d) revises the provisions concerning termination of declarant control to apply to the open-ended developments under the new master planned community provision. (See section 15, above.) The subsection also includes a new provision explicitly allowing a declarant to record an instrument voluntarily surrendering control.

Section 18 (revising section 47-246) clarifies the effect of a foreclosure on outstanding development rights.

Section 19 (revising section 47-247) contains a conforming revision recognizing an exception for certain nonresidential common interest communities.

Section 20 (revising section 47-253) clarifies what the drafters believe to be current law, that

a unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Such an action is properly brought under this section against the association. See subsection (b) of the draft.

Section 21(a) (revising section 47-254) clarifies that the proceeds of the sale of a limited common element must be equitably distributed among the owners of the units to which the limited common element was allocated.

Section 21(g) and (h) revise former subsection (g) to clarify the effect of a conveyance of common elements.

Section 22 (revising section 47-258) contains technical revisions.

Section 23 (revising section 47-262) is a conforming revision reflecting the revised broader exemption for planned communities contained in section 5(a)(3) above, which the change references.

Section 24 (revising section 47-270) revises the public offering statement requirements to require delivery of the statement before transfer of possession, if that transfer is earlier than conveyance. The section also requires that the statement include "a statement describing any pending sale or encumbrance of common elements" and "a statement disclosing the effect on the unit to be conveyed of any restrictions on the owner's right to use or occupy the unit or to lease the unit to another person."

Section 25 (revising section 47-277) includes a technical change adding a cross-reference to a tolling period.

Section 26 (revising section 47-278) adds a provision explicitly authorizing parties to a dispute under the act, under the declaration, or under the bylaws to agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, subject to certain limitations.

Section 27 provides an effective date of October 1, 1995, except that section 12, which allows an association to extend certain development rights, is made effective on passage.

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CONNECTICUT  
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HOUSE

PROCEEDINGS  
1995

VOL. 38

PART 7

2265-2666

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House of Representatives

May 12, 1995

So ordered.

REPRESENTATIVE MERRILL: (54th)

To the Committee on Energy and Technology, H.B.No. 6999.

SPEAKER GODFREY:

So ordered.

REPRESENTATIVE MERRILL: (54th)

To the Committee on Planning and Development, H.B.No. 6966.

SPEAKER GODFREY:

So ordered.

REPRESENTATIVE MERRILL: (54th)

To the Committee on Finance, Revenue and Bonding,H.B. No. 7023.

SPEAKER GODFREY:

So ordered.

REPRESENTATIVE MERRILL: (54th)

To the Committee on Banks, H.B. No. 6988.

SPEAKER GODFREY:

So ordered.

REPRESENTATIVE MERRILL: (54th)

To the Committee on Public Safety, H.B. No. 5086.

SPEAKER GODFREY:

So ordered.

REPRESENTATIVE MERRILL: (54th)

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CONNECTICUT  
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HOUSE

PROCEEDINGS  
1995

VOL. 38

PART 11

3805-4169

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House of Representatives

Tuesday, May 30, 1995

House Bill 5077, as amended by House "A"

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	148
Those voting Nay	0
Those absent and not voting	3

DEPUTY SPEAKER PUDLIN:

As amended, passes. The Clerk will return to the call of the Calendar, Calendar 391.

CLERK:

On page 32, Calendar 391, Substitute for House Bill Number 6988, AN ACT CONCERNING THE COMMON INTEREST OWNERSHIP ACT, GROUND LEASES IN RESIDENTIAL COMMON INTEREST COMMUNITIES AND COLLECTION OF DELINQUENT COMMON EXPENSE PAYMENTS. Favorable Report of the Committee on Banks.

SPEAKER RITTER:

The Honorable Representative from the 99th, Representative Michael Lawlor. You have the floor, sir  
REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER RITTER:

The motion is on acceptance and passage. Please

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proceed, sir.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This is a bill that was sent out of the Judiciary Committee on virtually a unanimous vote some weeks ago. It does several things, but for the most part it conforms Connecticut law to what has become the national standard on common interest ownership law, in other words, condo law.

In 1994, the National Conference of Commissioner on Uniform State Laws adopted amendments to the then existing national model law and this bill essentially conform our law to that. It will do two other things. First of all, it will allow, in certain cases, persons who own units in common interest ownership communities established prior to January 1, 1984 to argue in court that a ground lease or other type of lease of common property is in whole or in part, unconscionable and it provides some guidelines for a court to consider that plea and it also allows some recourse to associations to collect past due common fees from absentee landlords.

Mr. Speaker, I would urge passage of the bill. The Clerk has LCO Number 6779. I would ask the Clerk call and that I be permitted to summarize.

SPEAKER RITTER:

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The Clerk has amendment LCO 6799. If he may call and Representative Lawlor would like to summarize.

Wait a minute, 6799, sir?

REP. LAWLOR: (99th)

I am sorry, Mr. Speaker. LCO 6779.

SPEAKER RITTER:

6779. My apologies. We have 6779? Why don't we stand at ease for a moment while we search out this illusive amendment. I am tired of these letters, so let's make sure we can find this.

(CHAMBER AT EASE)

REP. LAWLOR: (99th)

Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Mr. Speaker, apparently I called the wrong LCO Number and I apologize. It is -- may I ask the Clerk to call LCO Number 8018?

SPEAKER RITTER:

Let's just be clear that the motion should be to clarify to ask me to ask the Clerk because we have rules on who calls what. So, why don't we forget about 6779? Okay. So 6779 was called by error. The Clerk does have LCO 8018. If he may call and Representative

gmh

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Lawlor would like to summarize.

Representative Belden -- why don't we make sure the other side has the amendments. Okay.

REP. LAWLOR: (99th)

Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

I think the -- I should formally ask that the amendment I called to you is withdrawn or not.

SPEAKER RITTER:

No, you don't need to do so because it was actually never formally before us since the Clerk couldn't find it. So LCO 8018 will be designated as House "A".

CLERK:

LCO Number 8018, House "A" offered by Representatives Lawlor and Collins.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Mr. Speaker, this amendment essentially incorporates some additional changes suggested by the Connecticut Law Revision Committee which spearheaded this effort to conform our

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state laws with the National Model Act together with some clarification on the language related to unconscionable long term leases and clarifying that in the event an association is seeking to collect common fees not being paid by an absentee unit owner/landlord, that it would have to notify also the mortgagee or other secured lender.

And specifically, Mr. Speaker, the language with regard to the unconscionable long term leases simply specifies that in all cases a lease in order establish this presumptive unconscionability would have to call for an annual rental and other expense payment exceeding 15% of the total face value of the land and then after that element was present, seven of the eight other factors outlined in the file copy.

Mr. Speaker, I would adoption of this amendment.

SPEAKER RITTER:

The motion is on adoption. Will you remark further on the adoption of House "A"? Will you remark further? If not, I will try your minds. I apologize. Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you. Mr. Speaker, a couple of questions, if I may, through you, to the proponent of the amendment?

SPEAKER RITTER:

gmh

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Absolutely.

REP. RADCLIFFE: (123rd)

This particular amendment removes the language on lines 1663 regarding unconscionability and really tracks what I understand is the -- preclude a finding of unconscionability on any other ground. So through you, Mr. Speaker, assuming that unconscionability in this statute was not met, that the individual proponents could meet maybe only six out of eight or five of the particular condition, through you, Mr. Speaker, on other grounds not contained in the statute, would this preclude a court from making a finding of unconscionability?

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. No, it would not preclude such a finding. There is language in the existing law whether or not this initiative becomes law which allows a court under certain limited circumstances to deem any contract to be unconscionable. That language is found in section 47-210 of the General Statutes.

However, with regard to this specific issue that this language in Section 27-28 seeks to address all of the language essentially calls for is that if the

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factors are met as outlined, there would be a presumption of unconscionability which would then lead to additional remedial action by the court if the court feels that is appropriate.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. The definition which the proponent cited requires a finding that a particular or a specific contract was unconscionable at the time that it was entered into or at the time that it was made. This particular amendment drags back that authority past October 1, 1984 and essentially establishes this standard, retrospectively regarding contracts entered into prior or after 1984. So, through you, Mr. Speaker, if a contract was not unconscionable when made, would it thereby become unconscionable through the adoption of this statute? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. If a lease entered into prior to January 1, 1984 meets the criteria established in this bill, in other words, the annual rent and other expenses exceed 15% and seven of the eight other factors, then the extent to which that lease has not

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been performed, could be addressed by a court. In other words, a court could have the option of saying that there be no further lease payments due under the lease or the lease payments are adjusted in some fashion or the other obligations called for on the lease could be reapportioned, but to the extent that is has been performed up-to-date, this bill would not in any way affect those issues and that's the exact point that the Florida Appellate Court ruled on, that it only effects future obligations, not past obligations.

REP. RADCLIFFE: (123rd)

So through you, Mr. Speaker. Are we saying that a specific lease, a contract, entered into, for example, in 1984 which was not unconscionable at the time that it was signed in 1984 could be made unconscionable by operation of this particular statute? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you. This would only raise the presumption of unconscionability and that decision -- yes. I suppose to answer your question, yes. It is possible a court could invalidate some portion or rewrite or in other ways, modify a

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portion of an obligation under a lease if it had been entered into prior to January 1, 1984..

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. In the situation in Florida to which we made reference earlier, were the findings of unconscionability contained in a statute or is that judge made law regarding factors to be considered for unconscionability? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you. There is actually two laws in Florida. One outlawed leases of this type after the effective date of that law and a second and separate statute, established a presumption of unconscionability for leases which predated the adoption of the passage of that law, but which met those standards and it is exactly that that the court ruled upon. A Florida statute which in essence retroactively presumed certain types of leases to be unconscionable and in the Florida case, the trial court rewrote that land lease.

REP. RADCLIFFE: (123rd)

Thank you. Through you, Mr. Speaker. We have

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many provisions of our state constitution that have been given broader effect and provisions of the federal constitution. I assume that this particular statute was found consistent with the Florida constitution. Would this preclude a court of this state from inquiring into whether or not this particular statute or the retrospective nature of this statute was constitutional under our state constitution which would of course, not have been discussed in the Florida case? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you, no this would not prohibit the court, an appellate court or a trial court from engaging in that inquiry.

REP. RADCLIFFE: (123rd)

Thank you. Mr. Speaker, if this particular statute were not adopted, in the finding of unconscionability, would there be anything to prevent a court from applying precisely this standard to some of the cases which were brought to the Judiciary Committee's attention regarding ground leases and regarding the types of leases that were made and which were not disclosed to individual unit owners at the time?

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Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you, no this would not preclude such a procedure being undertaken by a trial court. However, this would certainly give the trial court a clear sense of the public policy of the state as it has been established by this legislature and we would hope that they would abide by it.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. Are there any cases currently pending in this state regarding unconscionability of these acts in state court?

Through you, Mr. Speaker.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. Yes there are. As far as I know, there are at least one.

REP. RADCLIFFE: (123rd)

And does that case involve a claim of unconscionability at the time in which these leases were entered into? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

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Thank you, Mr. Speaker. Through you, among other allegations, yes I believe it does.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. If a court is to apply this retrospectively, are we in essence rendering a directed verdict for the plaintiff in that case?

Through you, Mr. Speaker.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you, no we are not.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. Why not, if we have written this to allow for a standard of unconscionability which on the facts of that case could clearly be established? Through you, Mr. Speaker.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. In no way would a court be obligated to invalidate or rewrite a lease. We are only establishing a presumption. We assume that they would inquire, for example, the landlord as to the reasons and the circumstances surrounding the initial lease and act appropriately.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. If a landlord had made full disclosure at the time this lease was entered into

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to all parties, if that disclosure had been acknowledged by the parties, if the parties had then borrowed money from a lending institution, through you, Mr. Speaker, would that evidence be considered by a court on the issue of whether or not the presumption had been overcome? Through you, Mr. Speaker.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. Yes.

REP. RADCLIFFE: (123rd)

Well, I guess I don't understand then why we need this particular language. If a court can consider this language now on the issue of unconscionability, if this isn't necessarily being adopted in order to give the plaintiffs in that one case and perhaps other cases, a directed verdict and everything is going to be determined on a case-by-case basis, why is it necessary to provide a standard of unconscionability, which clearly didn't exist at the time that any of these leases were entered into? Through you, Mr. Speaker.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you. I certainly think it is a legitimate role of this legislature to speak out when we think that public policy demands it. This type of a lease would be absolutely prohibited under the current law and it appears that at least some

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people were taken to the cleaners, so to speak, many years ago before there was any type of consumer protections for people buying condominium units and for those people, their only recourse is to come here to the legislature. Well not their only recourse, but I think it is the purpose of this General Assembly, when we find that people have been taken advantage of and extraordinary circumstances at the end of an extraordinary process, which is certainly what we are doing here, to state very forcefully, as a matter of public policy, what we state in the preamble to Section 27 of this bill. That is, these leases were entered into by parties wholly representative of the interests of a developer at a time when the unit owners not only did not control the administration of their community, but also had little or no voice in such administration.

In these cases, as I understand them, the people weren't told; didn't know what they were getting into; signed documents that they were shown only moments before the closing took place; were not represented by attorneys and months after the closing, in the mail, received a 99 year land lease consisting of hundreds of pages which they didn't understand.

So, when that happens we know who is taking advantage of whom. That is why we have unconscionable

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contract language in our statutes already and in a case like this, it seems fitting and proper that we come to their defense.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. I appreciate and understand that answer. All of those facts and circumstances could be considered by a court at present, under existing law, in terms of whether or not that particular transaction was or was not unconscionable. Yes, I am a little concerned with our establishing a standard, retrospectively, to be applied to a lease entered into in 1984 or prior to 1984. So, through you, Mr. Speaker, I guess I should ask for the purpose of legislative intent, is the fact that this General Assembly is being asked to adopt this standard now, a tacit admission of the fact that the contracts, when they were entered into, were in fact, not unconscionable, but were in fact, perfectly legal? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. I am not sure this legislation opines one way or the other. In my opinion, however, they were unconscionable when they

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were entered into and if anybody had any doubt about it, if this becomes law, then they are certainly unconscionable now.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. In the opinion of the proponent of the bill, were these leases unconscionable even in the absence of this legislation? Through you, Mr. Speaker.

SPEAKER RITTER:

On the amendment. Okay. Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. In my opinion, they were.

SPEAKER RITTER:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

I am sorry. I didn't hear the answer. They were?

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. In my opinion, what I know of -- I am not sure I read every lease of every one of the affected condominium communities, but to the extent that I am aware of them, they certainly were outrageous and unconscionable. I wish they had been criminal offenses at the time they were entered into,

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but they weren't. But this is a small margin of justice. A small measure of justice for the people who live there.

REP. RADCLIFFE: (123rd)

Thank you. Thank you, Mr. Speaker. I share that opinion as far as the leases, when they were entered into. I simply question our acting now to establish a standard of unconscionability that didn't exist at the time and I don't think this bill should be interpreted as saying that we are making a finding that these leases were not unconscionable, but were in fact, legal arms length transactions. Although certainly one sighted in their results.

I think, under existing law, one of these associations, as I understand them, again, not having read every single individual paragraph of these leases, that an individual plaintiff or a group of plaintiffs could go to court and have those leases declared unconscionable.

I would not want a court to be in a position of finding, however, that because we passed this particular act and dragged back that authority to the time of this act, that they were not unconscionable at the time. Through you, Mr. Speaker. I guess I should ask, if a court were to apply this standard and to find

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unconscionability retrospectively, would there be an issue of a taking on the part of any of the parties to the original contracts? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This law could not be, as I understand it, I am not sure the court would have any power to go backwards in time and order refunds of any money or reinstatement of any benefits that had been given up by the lessors or the unit owners in these cases.

This only affects future payments and I am not sure I understand your question in this context.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. The question would involve the grantor or the lessor in these cases where the lessor has a right to receive rents in any cases, not the type of right that individuals, when they entered into these leases believe that they were in fact, contracting for, but in fact, contracted for those rights and those rights allow a certain individual or a group of individuals to receive rents, to receive payments, virtually in perpetuity.

If a court were to declare right or that agreement

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unconscionable under this criteria, retrospectively, might that lessor have an action for taking of property without due process of law, the agreement having been legal when entered into? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I don't believe this legislation in any way prohibits that and maybe they may very well have such an action.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. Could that action be against the State of Connecticut in the event that this occurred and we are declaring that it is for a public use? Through you, Mr. Speaker.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. I suppose they could try. I would be surprised if they got anywhere, but I suppose they could try.

REP. RADCLIFFE: (123rd)

I would too and through you, Mr. Speaker, for purposes of legislative intent, this is not to be considered legislation for a public purpose. Is that correct? Through you, Mr. Speaker.

REP. LAWLOR: (99th)

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Thank you, Mr. Speaker. Through you, Mr. Speaker. In my opinion, it is a public purpose. We are establishing a public policy and we would hope people would abide by it.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. Are we taking property for a public purpose without compensation? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. No, I don't believe we are.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. Why not?

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Mr. Speaker. Because we are not.

REP. RADCLIFFE: (123rd)

Well I hope that is comforting to a lessor in these particular situations. And the individuals who entered into these leases may not have made complete disclosure at the time and no one should indicate that they have. I would hope, however, that we aren't

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opening the door to one of those individuals bringing suit against the State of Connecticut claiming that the right to receive benefits or the rights to receive payments under these leases has not been terminated unilaterally by this legislature that the issue of unconscionability seems to me, is an issue for the court and I hope we haven't, by getting involved in this measure on behalf of these plaintiffs who certainly deserve help, retroactively created rights in the lessor that they might not otherwise have.

Thank you.

SPEAKER RITTER:

Thank you, sir. Will you remark further on House "A"? If not, I will try your minds. All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, no. House "A" is adopted. Will you remark further on this bill, as amended?

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Only to add that for those of you who don't know it, this is the bill that you have been getting all those letters about from

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Sleepy Hollow. Thank you, Mr. Speaker. I urges its passage.

SPEAKER RITTER:

Will you remark further? Representative Miller.

REP. MILLER: (122nd)

On the bill now, Mr. Speaker?

SPEAKER RITTER:

On the bill, sir. Yes, sir.

REP. MILLER: (122nd)

Okay. Thank you. I rise in support of the bill. I happen to have one of those condominiums that have been sending a lot of letters up here to the Capitol. It is known as Arnold Village and I would like to give you a thumbnail sketch about what it is all about for Arnold people. Arnold condominiums were built in the 1970's. They were new concepts. The condo laws were almost non-existent or too new to understand.

This new concept provided affordable housing. And served as an alternative to owning a home without the burden of painting and cutting the grass and snow shoveling and so forth. Arnold Village was a project offered as an adult condominium in Stratford with no burden to the town at all. There were no school children in the system. They were taking care of their own private streets. No garbage collection. It

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was a win-win situation for the town of Stratford from a tax standpoint and for the people who bought the units.

It was an opportunity for older citizens to remain in the town that they grew up in. The residents of Arnold Village pay \$316,700 a year for the use of two club houses that are located in the complex itself. These club houses are not buildings that could be leased out to any other purpose other than club houses for the association. They have a 99 year lease to date and for the last twenty years, they paid over \$6 million for these two buildings. The size of these buildings probably are around 15,000 square feet a piece with a small pool attached.

They have about seventy more years to go on this lease and that comes to about \$25 million more they are going to have to pay for these two buildings. So when you figure they paid the \$6 million for the first twenty, and an additional \$25 million, that is \$31 million they will have paid for these two club houses that probably aren't worth more than \$1 million total.

This is what I call an unconscionable lease. I think this bill addresses that particular purpose. It will help these people renegotiate and be able to continue to afford to live in that particular

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condominium complex.

So I urge the assembly to please vote in favor of this particular bill. Thank you.

SPEAKER RITTER:

Will you remark further on this bill, as amended? Representative Metz.

REP. DIMEO: (103rd)

Thank you, Mr. Speaker.

SPEAKER RITTER:

Sir, I called on Representative Metz. Okay. I apologize. He is standing up right behind you.

REP. METZ: (101st)

Thank you, Mr. Speaker. Mr. Speaker, I would like to simply put some emphasis on the remarks made by Representative Radcliffe with respect to this legislation. The circumstances that have been put before us by Representative Lawlor and by Representative Miller with respect to the particular condominiums that they were speaking of, might be found by any judge to be unconscionable. The word "unconscionable" already exists in the statutes.

At this point, it is up to the judge hearing the case to decide whether the facts of that particular case are enough to satisfy an unconscionable standard and what we are doing is imposing on that judge seven

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specific items, if which met, will create an unconscionable -- will meet the standard of unconscionability.

The fact is the judge may have found in a particular case that only five of those circumstances would be sufficient to create unconscionability. He may have found that only one. Or he may have found that some other circumstances not contemplated by this statute, would in fact, make that lease agreement unconscionable, and in which case, he could order reformation or void the lease. Just as he could do today, the judge has broader discretion today than he will have when we pass this legislation. It may be that we are hurting consumers more than we are helping them by passing this language that is crafted primarily to meet the facts of an existing case.

It is on this basis that last year I spoke in opposition to this bill. This year there is one change and comparing this change to the circumstances of a project that is more specific concern to me than some of the others in the State where the standard of more than 15% of value be paid in rent and other expenses becomes a specific mandatory standard and then the others are -- the seven of eight, I think the amendment improves the bill as it was before and I will probably

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end up voting for it, but Mr. Speaker, through you, I would like to ask a question of the proponent of the bill.

SPEAKER RITTER:

Please proceed, Representative Metz.

REP. METZ: (101st)

Representative Lawlor, this amendment on lines 86 through 91 sets forth the meaning of the term "annual rental and other expenses" as it applies to this bill. And I notice that compared to the old bill, the original bill where the annual rental was simply the amount to be paid under the lease which would probably be the rental payment itself, you have also included the amount payable for real estate taxes, insurances, capital improvements and other expenses required to maintain the property under the lease terms.

Since capital improvements are often paid at the discretion of the association and not by the order of the lessor, would this not be an opportunity for an association to load these expenses into one year and create the circumstances that would lead to a judgment of unconscionability?

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

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Thank you, Mr. Speaker. My opinion as to the answer to that question is no. That these would only be capital improvements called for under the original lease.

REP. METZ: (101st)

So they would have to be set for -- at least it wouldn't something that the people determine themselves during the course of any given year that they would have to do?

REP. LAWLOR: (99th)

Through you, Mr. Speaker. Yes, that's correct. That is the intent.

REP. METZ: (101st)

Thank you very much. Thank you, Mr. Speaker.

SPEAKER RITTER:

Representative DiMeo.

REP. DIMEO: (103rd)

Thank you, Mr. Speaker.

SPEAKER RITTER:

Please proceed. You have the floor.

REP. DIMEO: (103rd)

It takes fine tuning of my hearing aid.

SPEAKER RITTER:

I can't hear a word you are saying.

REP. DIMEO: (103rd)

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Well.

SPEAKER RITTER:

Okay.

REP. DIMEO: (103rd)

Are we okay now?

SPEAKER RITTER:

Yes, sir.

REP. DIMEO: (103rd)

Alright. It takes some fine tuning sometimes for me to hear what is going on through the speakers and --

SPEAKER RITTER:

After these last two days, let me tell you. Fine tuning is a very good idea.

REP. DIMEO: (103rd)

But we will all try to grow old gracefully. Won't we?

Mr. Speaker, I have some concerns that we are interfering in contractual language that took place when they thought this deal was good. This has already been said on the floor of this House at the time that this was put together that it was a good deal and it made it possible for people who might not have been able to afford housing to have that housing.

Land leases, land leases are common, particularly in the commercial field. And in that regard, I would

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like to ask the proponent, does this also apply to commercial leases? Through you, Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I think your understand your question to be, would this apply to commercial condominium units with land leases and if that's the question, the answer is no.

REP. DIMEO: (103rd)

And again, to expand that, and the explanation of a commercial lease, would it also apply to leases for retail buildings, factory buildings, etc?

REP. LAWLOR: (99th)

Through you, Mr. Speaker. No. First of all, it is not all leases that this -- this only governs leases which are part of a condo development. So it is conceivable to have a business condo, of course, and for any business condo, this would not apply. This language would not apply.

REP. DIMEO: (103rd)

Thank you. Mr. Speaker, we are still treading in a dangerous area. From the holder of that lease point of view, a question to the proponent of the bill.

Through you, Mr. Speaker.

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SPEAKER RITTER:

Representative Lawlor. I am sorry.

REP. DIMEO: (103rd)

Representative Lawlor, if I were presently holding one of those leases, which I am not, but if I were and I had used that lease, that collateral and security, in another business venture, what affect would this legislation have on that lease, with my other agreements?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Through you, the legislation itself doesn't cause anything to happen. It allows a process to unfold where persons who were the tenants in this case could go to court and claim that the terms of their lease were so outrageous that they should be rewritten by the court. So I could imagine that the end result would be that the landlord would end up receiving fair value for the lease rather than what is in essence, extraordinarily over inflated value and what it calls for here is roughly double the going rate for leases, especially triple net leases of fifteen percent of the appraised value or more every year.

SPEAKER RITTER:

You still have the floor, sir.

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REP. DIMEO: (103rd)

Thank you, Mr. Speaker. It very may well have to be a very definite maybe on this vote. If there is such a --, but Mr. Speaker, we --

SPEAKER RITTER:

We look forward to see how your vote is cast.

REP. DIMEO: (103rd)

Thank you. I still have reservations. And that reservation is quite simply that at the time of the signing of these leases no one had an attorney? No one had access to advice? That appears to me a bit difficult to comprehend.

The real estate agents that were party and part of this are getting away scott free. Only the investor who went into a lease arrangement which may have been a good arrangement for them and also for him, at the time, is the one who maybe the one who potentially suffers.

During this economic period, 1984 to 1994, the year that we are now, many strange things have happened in real estate. Many deals that appeared to be right and good put together by banks and put together by investors didn't end up that way. They were good at the time, but apparently no matter how they good they were, they weren't good enough to overcome the factors

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of the economy.

Keeping in mind that during this period of time where the value of the land, the actual value of the land maybe less than the value was even then because of the economy, it was tied to a cost of living factor. That is not unusual. At that time it appeared to be good. Are we going to continue to look over our shoulders at leases and agreements that this General Assembly every ten years will decide because of economic factors beyond the control of anyone in this General Assembly, beyond the control of the investors and beyond the control of the property lessor, that we have to rewrite these things? Is that the free enterprise system? Where nobody takes a lump and everyone is protected?

I am not so sure. I am not so sure. Possibly, they made a good deal at that time that turned sour, but that's part of what this free enterprise system is all about. We are risk takers. We took a risk and it didn't work out.

SPEAKER RITTER:

Thank you sir for those comments. Would the Representative from the 142d, Representative Cafero, you have the floor, sir. I am going to leave you in the hands of the Honorable Deputy Speaker because I

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have to go in the back room for a moment.

REP. CAFERO: (142nd)

Thank you, Mr. Speaker. Welcome, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Proceed, sir.

REP. CAFERO: (142nd)

I rise in support of the bill, as amended. You know, you heard Representative Miller reference a situation in his home town. You also heard reference to Dreamy Hollow Apartments in Norwalk. Those are examples of really horrendous situations that exist, but as horrendous as those are, we have to be careful not to interfere with contract law and that is not what this bill does.

This legislation merely creates a rebuttable presumption to assist the courts in adjudicating unconscionability. And I would argue or submit to Representatives Radcliffe and Metz that the reason this is necessary is that common interest ownership in the scheme of things, in real property law, is relatively new and unique. And certainly, I don't see anything wrong with setting out a statutory prescription to help the courts decided certain circumstances under certain leases that we believe, as public policy, are unconscionable.

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And therefore, I would urge support of the bill.

Thank you.

DEPUTY SPEAKER PUDLIN:

And thank you, sir. Representative Knopp.

REP. KNOPP: (137th)

Thank you, Mr. Speaker. I rise in support of the bill, as amended and would just like to clarify for the Chamber that the unconscionability law in Connecticut is governed by Section 47-210 of the General Statutes.

Representative Radcliffe asked Representative Lawlor whether this bill failed, the tenants of these units could still go into court and claim unconscionability. It appears from reading this chapter that that answer of whether or not they could go in, seems to be in doubt. Section 47-210 establishes the definition of unconscionability, but 47-214 says that the chapter that includes unconscionability does not apply to condominiums that exists before 1984. And that is also the case with Section 47-215. So it may well be that without passing this bill, the tenants of these units would not even have the chance to go into court and argue the issue of unconscionability because the statute appears to deny them that right for units that were open prior to 1984.

So this clarifies first that those tenants have

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that right. It also sets up a standard for the court to use, but it still sets up a very high standard. It still requires that the court find, as a matter of law, that these leases are unconscionable and still a very high burden, but the mere fact that the tenants can get into court, I think, would help them tremendously argue their case and help them negotiate with their landlords and lessors for future conditions.

And therefore, it is a very important bill. The reason we got so much mail from Dreamy Hollow is that this is a matter of desperation to people who risk losing their savings, their investments, their equity and their lifestyle and that's why this is so important.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, Representative Knopp. Representative Miller.

REP. MILLER: (122nd)

Thank you, Mr. Speaker. I would like to respond to Representative Lucien's comments, prior.

DEPUTY SPEAKER PUDLIN:

Proceed, sir.

REP. MILLER: (122nd)

Thank you, Mr. Speaker. With regard to my

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particular problem with those villages is that when these condominiums were built in the 80's a lot of units were unsold at the time so that when the developer cut the deals, so to speak, to rent the club houses out, he made the deal with maybe a handful of people and the handful of people really took the rights of the majority of the people who would later on buy these condominium units and signed away their rights and this was done prior to a lien being placed on everyone of the deeds as these condominium units were sold. So this is a bill that addresses a particular type of problem. I don't think it is going to open up Pandora's box. I think it is going to help a lot of people who really need help in the economy we have here in the State of Connecticut and again, I urge support.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Will you remark? Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. A couple of questions, if I may, to the proponent in light of Representative Knopp's statement. Through you, Mr. Speaker. Representative Knopp seemed to indicate that there might be a question under section 47-210 as to whether

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an individual unit owner or a condominium association could go into court at the present time and thus this legislation was needed in order to essentially open the courthouse door.

Through you, Mr. Speaker. In the bill that is before us, on line 1665, it states that this legislation is remedial and does not create any new cause of action. Through you, Mr. Speaker. If in fact these individuals would be precluded from going into court at the present time, are we not creating a new cause of action or is this purely procedural? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Lawlor, do you care to respond, sir?

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This simply expands the existing cause of action on unconscionability to apply to a set of circumstances which were not heretofore, subject to it.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. In essence, the ability to go into court is procedural rather than creating a substantive cause of action. Is that correct? Through you, Mr. Speaker.

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DEPUTY SPEAKER PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Yes, I believe that is one way to characterize it.

DEPUTY SPEAKER PUDLIN:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker. When it says on line 1665 that this legislation is remedial, through you, Mr. Speaker, could the proponent define remedial in the context of this bill?

DEPUTY SPEAKER PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. That language essentially follows the logic of the Florida decision which argued that in fact, in that case, it was remedial and it was not invalidating a contract. It allowed simply the parties to it to go back and have it essentially reformed according to the outlines of conscionability set forth in the Florida statute and now in the Connecticut statute.

REP. RADCLIFFE: ( 123rd)

Through you, Mr. Speaker. When this General

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Assembly passed the Homestead Exemption a year ago, there was some question as to whether it should be given retrospective as well as prospective effect and whether or not that legislation was in fact remedial. Through you, Mr. Speaker. By saying that it is redial in line 1665, are we indicating that a court should give this legislation retrospective as well as prospective effect?

DEPUTY SPEAKER PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. If by retrospective effect, do you mean, Representative Radcliffe, that the court could order refunds to persons who are unit owners under these circumstances?

REP. RADCLIFFE: (123rd)

No. Through you, Mr. Speaker. Perhaps I should clarify that. By retrospective effect, I mean applying the terms and conditions of this particular bill to contracts entered into prior to the effective date of this bill. Through you, Mr. Speaker.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I would characterize that as a prospective application of these terms on obligations coming due in the future for contracts

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entered into before January 1, 1984. In other words, future rent payments and other aspects of the lease hold agreement could be modified by a court and to that extent, it is prospective in effect.

REP. RADCLIFFE: (123rd)

But, through you, Mr. Speaker. A lease entered into in 1984 for example, the standard of unconscionability or the rebuttable presumption would apply to that lease as if it were present at the time that the lease was entered into. Is that correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Sir.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Yes, that is correct.

REP. RADCLIFFE: (123rd)

Thank you.

DEPUTY SPEAKER PUDLIN:

Will you remark further? Representative Fuchs.

REP. FUCHS: (136th)

Thank you, Mr. Speaker. I rise in support of the bill, as amended. Mr. Speaker, I live in a condominium and I pay common charges and the monies that I pay go towards the upkeep of this condominium. It is enhanced practically every month. Something new happens to

those condominiums within the grounds and the outside of the condominiums.

But in Dreamy Hollow in Norwalk, which happens to be in my district, that is not the case. They pay the equivalent of common charges, but those monies do not go to maintain those buildings. As a result, the buildings are in deplorable condition and the people who would like to get out from under and sell these buildings cannot and in the meantime, they continue to deteriorate and it is just a deplorable condition. I think this will enhance the situation for them.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative O'Neill.

REP. O'NEILL: (69th)

Just briefly, Mr. Speaker. I would also speak in support of the bill. Most of our attention, of course, has been devoted to the amendment which related to the unconscionability clause of the leases. I think there has been a tendency to forget about the underlying bill.

The bill does a number of very important things. I am not going to go back through them, but this does represent a major rewrite of our condominium laws and an improvement in the management of condominiums and I

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think it would be very beneficial not just to those people in Dreamy Hollow and those few places that have this lease issue, but it does a great many things to improve the quality of management for condominiums all over the State of Connecticut and I would therefore urge the bill's adoption. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

And thank you, sir. Will you remark further?  
Representative Sellers of the 140th.

REP. SELLERS: (140th)

Thank you, Mr. Speaker. I would like to say I concur with my fellow colleagues with regards to this amendment and I rise in support of same and I have really gotten a lot of fan mail myself in all due respect to this and I am quite sure that we are all working for the same purpose and the same goal. So again, Mr. Speaker, I rise in support of this amendment.

DEPUTY SPEAKER PUDLIN:

On the bill, as amended, will you remark further?  
If not, we will be voting on the bill, as amended.  
Staff and guests to the well of the House. Members, be seated. The machine is open.

CLERK:

The House of Representatives is voting by roll

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call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER PUDLIN:

If the members have voted and if the votes are properly recorded, the machine will be locked and the Clerk will take the tally.

The Clerk will announce the tally.

CLERK:

House Bill 6988, as amended by House "A"

Total Number Voting 150

Necessary for Passage 76

Those voting Yea 148

Those voting Nay 2

Those absent and not voting 1

DEPUTY SPEAKER PUDLIN:

The bill, as amended passes. Clerk, return to the Call of the Calendar, 107.

CLERK:

On page 5, Calendar 107, Substitute for House Bill Number 6914, AN ACT CONCERNING REVISIONS TO ENERGY AND PUBLIC SERVICE COMPANY STATUTES. Favorable Report of the Committee on Energy and Technology.

DEPUTY SPEAKER PUDLIN:

Representative Fonfara.

REP. FONFARA: (6th)

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Necessary for Passage	71
Those voting Yes	141
Those voting Nay	0
Those absent and not voting	10

DEPUTY SPEAKER HARTLEY:

Bill as amended is passed. Will the Clerk please return to the call of the Calendar. Calendar 391.

CLERK:

On page thirty-eight, calendar 391, substitute for House Bill number 6988, AN ACT CONCERNING THE COMMON INTEREST OWNERSHIP ACT, GROUND LEASES IN RESIDENTIAL COMMON INTEREST COMMUNITIES AND COLLECTION OF DELINQUENT COMMON EXPENSE PAYMENTS. As amended by House amendment schedule "A" and Senate amendment schedule "A", favorable report of the Committee on Banks.

DEPUTY SPEAKER HARTLEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Madam Speaker, I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER HARTLEY:

Motion is on acceptance and passage in concurrence with the Senate, will you remark sir?

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REP. LAWLOR: (99th)

Thank you Madam Speaker. For those of you who are keeping score, this is the bill containing the sleepy hollow information. Madam Speaker, the Senate, this bill was previously considered by this House, it went to the Senate, the Senate adopted Senate amendment "A" LCO number 8359, I would ask the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER HARTLEY:

The Clerk has LCO 8359, previously designated Senate "A", will the Clerk please call.

CLERK:

LCO number 8359, Senate "A" offered by Senator Upson.

DEPUTY SPEAKER HARTLEY:

Representative has asked leave to summarize, without objection, proceed.

REP. LAWLOR: (99th)

Thank you Madam Speaker. This amendment deletes section twenty-nine in its entirety. This is not the sleepy hollow section. This section unfortunately is one that has been deleted in the Senate, but which I think is an excellent idea. I hope there's a way we can find to accomplish the same goal in a way that's acceptable to all of the various interests, including

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the state's banks and including the secondary market.

This language originally would have allowed condo associations to recoup rent from absentee unit owners who are renting their units to other persons. It would have allowed the condo association simply to send a notice to the unit occupant, the tenant essentially, directing them to pay the rent to the association, from which the association could have subtracted the common fees which had been delinquent and then forward the balance to the unit owner.

Apparently some people feel that this language would somehow jeopardize the mortgages, because of the rent not going directly to the unit owner and therefore the unit owner not being able to pay their monthly mortgage. However, that would have certainly worked to the advantage of the associations. In some cases their absentee landlords are many, many months behind on their common fees, jeopardizing the ability of the association to provide the common services.

However, the Senate in its infinite wisdom decided to delete this section so that it could work on some more. Given the lateness of time in the session, I think it would be appropriate at this point to adopt the amendment, strike the section, and continue to work in good faith in the off season and then hopefully

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resolve this issue before we convene again in February.

Madam Speaker, I urge adoption.

DEPUTY SPEAKER HARTLEY:

Question is adoption. Will you remark?

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you Madam Speaker, I rise to support adoption of Senate "A" although some what reluctantly for the reasons just indicated by the chairman of the committee. I certainly hope we will revisit this. This was an attempt to rectify a situation where someone buys a piece of property for investment, has a tenant in that property, the tenant is paying rent to a landlord who usually is an absentee landlord, not on the premises. That landlord has little incentive to pay the common charges or at least to pay them on time before numerous demands and as a result the expenses, the common expenses that have to be paid are shared between the other unit owners, many of whom are residents and all of whom are current with their common expenses.

So it's a problem that needs correcting, I guess there's nothing that we can do between now and next Wednesday, so I would urge adoption of the Senate amendment but would hope that this entire area would be

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revisited. Because it's a disservice of those unit owners who are owning their own units and are in fact occupying them as a principal residence.

DEPUTY SPEAKER HARTLEY:

Thank you sir. Will you remark further on Senate "A"? Will you remark further? If not, I will try your minds. All those in favor please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HARTLEY:

Those opposed nay. The ayes have it, the amendment is adopted, ruled technical. Will you remark further on the bill as amended? Will you remark further? If not, staff and guests please come to the well. Members take your seat. The machine will be open.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

SPEAKER RITTER:

Have all members voted? Make sure since it will be the last roll call tonight.

APPLAUSE

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SPEAKER RITTER:

You should thank Representative Fedele for that he said he had an important engagement down in Stamford. If all members have voted, please check the roll call machine to make sure your vote is properly cast. If it has, the machine will be locked. Clerk please take the tally. Representative Veltri, how do you vote sir? Representative Veltri in the affirmative, anybody else? If not Clerk please announce the tally. Representative Kirkley-Bey was on her feet, in the affirmative, anybody else? Representative Fonfara.

REP. FONFARA: (6th)

Thank you in the affirmative Mr. Speaker.

SPEAKER RITTER:

In the affirmative, anybody else? Clerk please announce the tally.

CLERK:

Senate Bill 6988 as amended by House "A" and Senate amendment schedule "A" in concurrence with the Senate.

Total Number Voting	141
Necessary for passage	71
Those voting Yea	136
Those voting Nay	5
Those absent and not voting	10

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SPEAKER RITTER:

Bill passed. Announcements or points of personal privilege. Representative Norton. Will everybody just be quiet for a couple of minutes that way we'll get all of our announcement, we'll get our schedule for next week and everything else. Representative Norton.

REP. NORTON: (48th)

Mr. Speaker for the purposes of a transcript notation. Would the transcript please note that Representative Barth, Boughton, Garvey, and Nystrom may have missed some votes today because they are outside the chamber on legislative business. Would the Journal note that Representative Cafero was out of state on legislative business.

SPEAKER RITTER:

They will be appropriately noted. Anybody else? Any other announcements or points of personal privilege? Representative Dyson.

REP. DYSON: (94th)

Mr. Speaker for purpose of an announcement please.

SPEAKER RITTER:

Please proceed sir.

REP. DYSON: (94th)

The Appropriations Committee meeting that was previously scheduled for Monday morning at 10:30 has

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Have all members voted?

THE CLERK:

There is a roll call being taken in the Senate.  
Will all Senators return to the Chamber.

THE CHAIR:

Have all members voted? If all members have  
voted, the machine will be locked. The Clerk please  
take a tally.

THE CLERK:

Total number voting, 34; necessary for  
passage, 18. Those voting "yea", 33; those voting  
"nay", 1.

THE CHAIR:

The bill is passed.

THE CLERK:

Page 8, Calendar 529, Substitute for HB6988, An  
Act Concerning the Common Interest Ownership Act,  
Ground Leases in Residential Common Interest  
Communities and Collection of Delinquent Common Expense  
Payments, as amended by House Amendment Schedule "A".  
Favorable Report of the Committee on Judiciary and  
Banks, File 584 and 859.

THE CHAIR:

Senator Upson.

SEN. UPSON:

Yes, Madam President. I move passage of the Joint Committee's Favorable, I'm not paying any attention here.

Madam President, I move the Joint Committee's Favorable Report and passage of the bill in concurrence with House Amendment Schedule "A".

THE CHAIR:

The question is on passage in concurrence with the House. Will you remark?

SEN. UPSON:

Yes, Madam President. I'd like to call and amendment, LCO8359.

THE CLERK:

Senate Amendment Schedule "A", LCO8359 offered by Senator Upson.

THE CHAIR:

Senator Upson, the amendment's in your possession.

SEN. UPSON:

Yes, I move its adoption.

THE CHAIR:

The question is on adoption. Will you remark?

SEN. UPSON:

First of all, Madam President, the bill that we're going to vote on, makes numerous changes to the Common Interest Ownership Act for the State of Connecticut.

Senator Looney is going to elaborate on that.

However, this amendment has to do with a concern on behalf of Fannie Mae, more specifically, the Northeastern Regional Office. They were asked to comment on this bill that we're passing and in their comments to Representative Lawlor of May 31st, it says, it's their understanding this amendment that we're talking about contains a provision that would grant to condominium associations, an automatic immediate assignment of rents for unpaid delinquent assessments.

The federal government feels that this will hurt, or would expose mortgagees to hold security interests in their investment properties to financial risks that had not been contemplated at the time of making these mortgages.

So that what we're doing, Madam President, is by striking out Section 9, sorry, 29, of the proposed bill, we are taking out that provision which would allow for the assignment of rents that it would allow the association to collect rents. And I read that part on Page 38 of the bill, line 1789, if a unit owner is delinquent in the payment of common expenses, the association may collect rent payments, etc.

So we're recommending we strike that out by voice vote if I may, because according to the federal

government it hurts Fannie Mae mortgage holders.

THE CHAIR:

The question is on adoption of Senate Amendment "A". Will you remark further? Senator Looney.

SEN. LOONEY:

Yes, thank you, Madam President. Madam President, the concern raised by Fannie Mae and the letter just recently referred to and quoted from by Senator Upson came a day after the House vote on this bill and it did raise concerns that Section 29 under which the association would have the right to collect rents after notice, collect directly from the tenant when the unit owner is delinquent.

Currently, this can only be done by way of a foreclosure on the lien and Fannie Mae expressed concerns about the security of mortgages and it might affect the secondary market sale, which is so crucial.

That certainly is a substantial concern, but out of deference with a number of House members who felt very strongly on this portion and had worked on it, I would speak against the amendment at this time because we've done some research and it seems to be clear that both New York and Massachusetts have somewhat similar provisions in their common interest ownership law that, and Fannie Mae apparently does continue to do business

in both of those states and does buy mortgages in the secondary market and there is a free flow of financing that goes on there.

So I'm not sure that the concern, although albeit one which was a major one because Fannie Mae of course is so crucial to the lending market. I'm not sure that the concern that it raised is necessarily a valid one, or whether one they were just raising under concern and speculation that it could potentially cause a problem for them because some research done in the course of the day did indicate that Massachusetts and New York have similar provisions for, after notice to a unit owner, rent paid directly to the association, that there is a mechanism for that in both place.

Although in Massachusetts, there is a provision requiring the lender to send letters to the association and to record something on the land records to secure the position of its lien.

So I think that Fannie Mae is being somewhat overly skittish in its concern and on that basis, I would oppose the amendment because I think the concern is probably somewhat overblown. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Looney. Will you remark

further on the amendment? Will you remark further? If not, I'll try your minds. All those in favor of Senate Amendment "A" indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay". Ayes have it. Senate "A" is adopted. Will you remark further on the bill as amended? Senator Upson.

SEN. UPSON:

Yes. If I may, Madam President, I will yield to the distinguished Senator from New Haven. One of the distinguished Senators from New Haven.

THE CHAIR:

Would Senator Looney, the distinguished Senator from New Haven accept the yield? One of the distinguished.

SEN. LOONEY:

Thank you, Madam President and thank you very much, Senator Upson. Senator Upson has done a great deal in bringing this bill to fruition, bringing it for us. The language of this bill, the bulk of it, comes from a study in which all of the elements of interest in the Common Interest Ownership Act were involved. The Act was initially adopted by the General Assembly

in 1983, went into effect January 1, 1984 and over the years certain sections have become obsolete and needed to be changed because of the way the practice has developed in this area, and also there is developed a body of model language for Common Interest Ownership Act nationwide, so this incorporates it into Connecticut's framework.

The changes that have become evident in dealing with the practice in this area over the last twelve years. The vast majority of the language for the bill was recommended by the Law Revision Commission which chaired the study. The language updates, the legal framework for both creation, governance, sale and termination of units in common interest communities such as condominiums, cooperatives, and planned communities.

Another key element of it, Madam President, that is also incorporated in this was language from HB6989, was incorporated in the JF Report, and that deals with the issue of unconscionable ground leases, and that is something that has become a problem in a number of communities in the state, including East Haven, West Haven, Norwalk, Bristol, Stratford and several other communities as well where the situation has arisen whereby a long-term ground lease with an escalating

clause has created a very difficult and punitive situation for the people who own the units but not the ground under them and has rendered those units unmarketable.

And what the bill does is create a standard under which an action might be brought in court to prove that the lease, the ground lease is unconscionable. That there would have to be a standard met which is set out in the bill, and is modeled upon a Florida statute which has been tested in the Florida courts and has been upheld by the Florida Supreme Court to create a number of indicia that would have to be met in order for an owner of the unit, but not of the land, to bring an action seeking reform of the ground lease under a standard of unconscionability which is laid out in the bill under which there would have to be, the lease would be, there would be a presumption of unconscionability if the lease required an annual rental and other expenses exceeding 15% of the leased property's appraised value as defined in the bill and seven of the eight following enumerated elements exist.

And those elements are basically to show that there was not an arm's length transaction of two parties of equal bargaining power involved in the initial execution of the lease, that the lease was not

executed by people elected by unit owners other than the declarant, that it requires either the association of unit owners or the unit owners, to pay all real estate taxes on the leased property.

The third would be it requires either to insure buildings or facilities on leased property against fire or other hazards. It requires either to perform some or all of the maintenance obligations on the leased property or facilities or requires an association to pay rent to the lessor for 21 years or more, provides the failure of the lessee to pay rent, creates, establishes or permits a lien on individual units, provides for periodic rental increase based on a price index and it or other common interest community documents require anyone who purchases or acquires a unit to assume obligations under the lease.

So what we have under the conditions where it would be presumptively unconscionable is when there would be all of these burdensome conditions that the threshold would have to be met and under that, the lessee could go into court to seek reformation of the lease and some relief.

This is something that has become a problem in approximately ten communities that we've heard of in the course of the last year since it first came to the

attention of the Judiciary Committee and this is an element that was originally another bill but it became incorporated into this one and would urge passage of the bill in its entirety, incorporating this element and also the overall changes to the condominium act worked on by the Law Revision Commission and interested parties representing developers, associations, tenants, owners, and scholars in the field.

Thank you, Madam President.

THE CHAIR:

You're very welcome, Senator Looney. Will you remark further? Senator Smith.

SEN. SMITH:

Thank you, Madam President. I must tell you I have some difficulties with some sections of this bill. I feel that the revisions that have been done here are good ones in the underlying CIOWA work.

The sections that deal with the unconscionability, however, although I applaud the goals attempting to be achieved here and do intend to vote for the bill, I would just like to note that reformation of contracts, which is what is being requested here by this legislation, is an equitable remedy and is available to anyone at any time.

And that by setting out these nine factors here,

as establishing some kind of a presumption of being unconscionable, what we are doing is effectively a legislative taking, a condemnation, and I believe that we are going to find some day very soon that this is going to be challenged and that there will be losses and liability due to it.

I don't think that by setting out these nine factors that will just simply create unconscionability, that we're fooling anyone. These factors were designed specifically to meet the leases that are out there, the leases were looked at, the factors were developed, they were laid out in the legislation and this is designed to do nothing other than to abrogate contracts that were earlier entered into.

I'm going to vote for the underlying bill. I think that there are good social policy goals there but I think that this is not going to stand up when the time comes and it will be challenged in court. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Smith. Will you remark further? Will you remark further on the bill as amended? Senator Genuario.

SEN. GENUARIO:

Thank you, Madam President. Just for a moment. I

want to thank Senator Upson for his good work on this bill, Senator Looney for his good work not only this year, but last year on this bill. I know that I have a number of constituents in Norwalk that live in a leasehold common interest ownership community and the sad tale that they tell, and I think very effectively and very accurately, is that for most of them, they have lost their entire investment in their home. They can no longer meet the payments having lost all the equity that they had put into their homes, they now are much in danger of losing their homes themselves.

The cannot keep pace with the rising costs in the lease. It's something that was never anticipated. No reasonable buyer could have anticipated the result that occurred and I think that this statute gives those folks, as well as others similarly situated, a reasonable remedy to take care of the unfortunate situation in which they find themselves.

So I'm happy to support the bill and I want to thank Senator Upson and Senator Looney for their good work on the bill. Thank you, Madam President.

THE CHAIR:

Thank you, Senator. Senator Freedman.

SEN. FREEDMAN:

Thank you, Madam President. I, too, would like to

concur with the remarks of Senator Genuario, only because I heard from all of those people in Norwalk. They live around the corner from where I live in Westport, and I believe Senator Genuario thought it might help if the pressures came from all of us to make the changes.

So thank both of the Judiciary members from both sides of the aisle. Hopefully, this will resolve a problem and the problem will not come forward again.

THE CHAIR:

Thank you. Senator Upson.

SEN. UPSON:

Madam President, may we have a roll call please?

THE CHAIR:

Will the Clerk please announce a roll call vote. The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

Will all Senators please return to the Chamber for a roll call vote.

Will all Senators return to the Chamber for a roll call vote.

THE CHAIR:

Members, I would also ask you to please stay in the Chamber or close by, as we will be voting on the Consent Calendar.

Have all members voted? Have all members voted? If all members have voted, the machine will be locked. The Clerk please take a tally.

THE CLERK:

Total number voting, 35; necessary for passage, 18. Those voting "yea", 35; those voting "nay", 0.

THE CHAIR:

The bill is passed. Senator Upson.

SEN. UPSON:

Madam President, I move for immediate transmittal to the House.

THE CHAIR:

Without objection, so ordered. At this time would the Clerk please call the Consent Calendar.

THE CLERK:

The Senate is about to vote on the Consent Calendar. All Senators return to the Chamber.

The Senate is about to vote on the Consent