

House Select Committee on Homeowners Associations Meeting

March 31, 2010

1:00 pm

The House Select Committee on Homeowners Associations met on Thursday March 31, 2010 at 1:00 pm in the Legislative Office Building in room 421 to hold a meeting on issues concerning homeowners associations. The following members were present: Co-chairman McGee (presiding), Co-chairman Weiss, Representatives Howard, Cleveland, Earle, Heagarty and Wray. For visitors in attendance see the attached Visitor Attendance Sheet.

Representative McGee opened the meeting and thanked the staff and sergeants-at-arms for preparing the meeting. He then recognized Representative Weiss to introduce Mr. Carl Lisman, a lawyer from Vermont who is an expert on real estate and homeowners laws and has been involved in drafting model laws for several years.

Mr. Lisman addressed the committee about the Uniform Common Interest Owners Bill of Rights Act (see attachment 1 and 2).and gave a power point presentation to explain the definitions, the evolution the history of the Act and the problems and solutions to management of planned communities (see attachment 3). He added that "hot issues" at this time are: association records, foreclosures, fair elections and fines and debts. Flags and religious symbols are not addressed as they could not get a consensus on how to handle that issue. Also notices and procedures regarding notices are addressed in the Bill of Rights

Representative McGee thanked Mr. Lisman and opened the floor to questions.

Representative Weiss asked Mr. Lisman who was around the table when the Uniform Bill of Rights was written. Mr. Lisman said anyone who had a stake in the outcome, about 80 people including FannieMae, FreddieMac, FHA, VA, bankers, developers, managers, legislators, homeowners groups, credit unions.

Representative Weiss asked about the term "reasonableness" and how the difference between declarations and rules. Mr. Lisman said declarations do not have to be reasonable but rules do.

Representative Weiss asked when he recommends that homeowners find out about covenants. Mr. Lisman responded that rescission provisions are included that includes the delivery of the public offering statement or the resale certificate that includes a 7 day "cooling off period" before the contract is final and that gives the purchaser the time to read the document or hire a lawyer to review it.

Representative McGee asked Mr. Lisman to speak about Article 5, government registration, in the Uniform Act. Mr. Lisman said all states have dropped Article 5 in the adoption of the Uniform Act.

Representative Heagarty asked if there is no specific law, how does one combat an issue with a board when they use "discretion" in their decision about what a homeowner may or may not display. Mr. Lisman said with great difficulty, the owner can go to the board beforehand and bring up the rule and put it back on the board.

Representative Wray asked how the associations keep up with people moving in and out of the community. Mr. Lisman responded that the most common way is through the use of a resale certificate when the homeowner notifies the association, they will issue a resale certificate to the owner to give to the purchaser. If the seller does not request a resale certificate, then the purchaser assumes responsibility for the property.

Representative Weiss asked how difficult was this Bill of Rights to get through the legislative bodies for approval. Mr. Lisman answered that most people approved without a problem or changes.

Representative Weiss directed a question to staff as well as Mr. Lisman if the Bill of Rights covers all community associations or just new ones. Mr. Lisman responded that it applies to every community in the state regardless of how long it has been there.

Representative McGee asked Mr. Lisman to comment on liens and the banks representation on this legislation since some communities are dealing with foreclosures and auctioning of properties. Mr. Lisman answered that the Bankers Associations in most states thinks it works well. The first mortgage comes before the association liens and assessments which means the mortgage company cuts out both and it is in the best interest of the association to buy out the mortgage or fit at sale ????? but they were careful not to tread on the lenders toes as to not have the whole legislation fail.

Representative Weiss asked if regarding the legislation being retroactive, is there an involvement of impairment of contract. Mr. Lisman said originally they thought not, and they have had no court cases, but he could not definitively say that there could not be.

Representative Weiss asked about the cap on legal fees and how that is handled in the Bill of Rights. Mr. Lisman responded that when the declarations are written it is up to the developer to include what categories of expenses fall within the gambit of the associations lien except assessments. At some point the homeowners may take over the association and amend the document.

Representative Weiss asked about excessive fines by homeowners associations. Mr. Lisman said he thought at some time the judge will say that the fines are unreasonable. Sometimes that does not happen and most times it is because two people are fighting for principle and no one wins in that case.

Representative Weiss asked about flexibility and a case involving a fence that was approved and then the owner was told it was illegal and had to be removed. Mr. Lisman said under the Bill of Rights that should not happen. The design review board would have already handled it and made recommendations to the homeowner what was legal to build.

Representative Weiss said that homeowners have no recourse when problems with the homeowners associations take action and hire a lawyer to fight them because they are paying dues that are used to pay the opposing attorney. Mr. Lisman responded that two provisions handle that (1) court may order that reasonable attorney fees be paid by that homeowners association (2) vote the board out.

Representative Heagarty asked what options beyond taking legal action do the homeowners have concerning a rogue board that will not hold an election. Mr. Lisman responded that 20% of the homeowners can call for a meeting and if they do not call one, the homeowners with 20% can call it and vote them out.

Representative Heagarty asked if there is any other action homeowners can take. Mr. Lisman answered that the homeowners can bring a lawsuit against the directors.

Representative McGee asked if the Bill of Rights include a definition for a quorum. Mr. Lisman responded that it does.

Representative Weiss asked if Mr. Lisman thought many other states would be adopting this Bill of Rights. Mr. Lisman said he does and the problem with the uniform laws is that they are long and complicated and this is shorter and easier because it has only 24 Sections.

Representative Weiss asked why North Carolina should adopt this and who would likely oppose it. Mr. Lisman said managers and professional managers who will see this as a limit on their authority.

Representative Cleveland said some do not agree with this entirely because some of it is not a solution to the problems the state is experiencing and requested the Bill of Rights to be sent to the committee in its' entirety.

Representative Heagarty asked in areas where Article 5 was rejected, what do they do? Mr. Lisman they rely on the disclosure and the private enforcement.

Representative McGee thanked Mr. Lisman for his presentation and commented that these meetings were run similarly to the way a mayor runs a meeting or a town hall meeting. He also said that Representative Jones had previously put in a bill to require towns and counties to give the public the opportunity to speak before each meeting and that legislation should be in place to allow condominium owners to speak.

Representative McGee introduced Mr. Bob Leker, the Program Manager for the State Energy Office at the North Carolina Department of Commerce to address the committee concerning issues related to Solar Access Law-Senate Bill 670, Session Law 2007-279 (see attachment 4 & 5). Mr. Leker thanked those at the North Carolina Solar Center for their assistance in preparing his report.

Representative Howard asked about Solar Access issues. Mr. Leker responded that the model ordinance that he spoke about has both a solar access legislation and a solar rights ordinance. Some states have a law that allows solar windows that cannot be blocked and he referenced "A Comprehensive Review of Solar Access Law in the United States (October 2008).

Representative Weiss commented that the work of this committee was to see how other states are empowering homeowners to have solar panels on their own homes.

Representative Howard commented that with a higher density and taller buildings being built, this could become an issue in the future.

Representative Cleveland commented that concerns from his constituents are related to homeowners associations and not solar issues and that if the solar access law that was passed in 2007 needed amending that could be done.

Representative Heagarty agreed with Representative Cleveland in part that the 2007 law does address this issue but that it is the charge of the committee to take it up if necessary. He further stated that his concern was related more to personal property rights.

Representative Earle asked if a committee report would be prepared for the Short Session or would the committee continue to meet after the end of Session. Representative McGee responded that no substantive legislation would be prepared for Short Session unless there are some minor changes that can be made.

Representative Weiss said she felt that a lot of information has come before the committee and there will be an interim report to summarize the work that was accomplished by the committee up to this point and does not expect to have a large bill ready for Session. She added that the Chairs will be talking with the committee members if tweaks are needed in the law and that the committee will provide good recommendations for the Long Session.

Representative Earle commented that with all of the constituent correspondence her office has received, she would like to see something produced to address the current rule and the violations taking place.

Representative Weiss said she appreciated the good presentations and questions and understood that all the members have had numerous contacts with people in their districts over this issue and that the committee will continue to move forward.

Representative McGee thanked everyone for their participation and added if anyone had any ideas for the Chairs to contact them before the next meeting which will be on April 14th. Representative McGee adjourned the meeting at 2:50 pm.

Representative William C. McGee,
Cochairman

Jayne A. Nelson,
Legislative Assistant