

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

URBAN AFFAIRS COMMITTEE

MAIN MEETING ROOM  
MIDDLE SMITHFIELD TOWNSHIP BUILDING  
EAST STROUDSBURG, PENNSYLVANIA

WEDNESDAY, APRIL 20, 2016

INFORMATION HEARING - HB 1774

BEFORE:

HONORABLE SCOTT PETRI  
HONORABLE ROSEMARY BROWN  
HONORABLE HARRY LEWIS  
HONORABLE DAVID PARKER

\* \* \* \* \*

**Pennsylvania House of Representatives**  
**Commonwealth of Pennsylvania**

COMMITTEE STAFF PRESENT:

ASHLEY SCHAEFFER  
RESEARCH ANALYST - REPUBLICAN SIDE

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**P R O C E E D I N G S**

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3           CHAIRMAN PETRI: Ladies and gentlemen, I would  
4 like to call this meeting to order. It's an informational  
5 meeting of the House Urban Affairs Committee.

6           The first thing I should do is thank our hosts,  
7 Middle Southfield Township. It is wonderful to be here;  
8 wonderful facility.

9           I would like to talk to you a little bit about the  
10 committee and we are going to do some introductions.

11           The committee consists of members that are located  
12 across the state. We have some of the members of the  
13 committee here. We also have some local representatives,  
14 and, obviously, we have our prime sponsor. My co-chairman,  
15 Tom Caltagirone, could not be here today and he expresses his  
16 sorrow for that. He wanted to be involved. He knows how  
17 important this is. But I can tell the members of the  
18 audience that he and I work together very well. Our goal is  
19 to try to pass any bill out of committee unanimously, which  
20 means that I really believe in the hard work of this  
21 committee. And I will have some comments in a moment and I  
22 am sure our prime sponsor will.

23           But why don't we start with self-introductions.  
24 All the way to my left, well-known to everybody locally,  
25 would you introduce yourself?

1           REPRESENTATIVE PARKER: State Representative David  
2 Parker from the 115th District right next door to Rosemary  
3 Brown's district here.

4           REPRESENTATIVE LEWIS: Good morning. My name is  
5 State Representative Harry Lewis and I am from Chester  
6 County. That's Downingtown, West Chester -- not West Chester  
7 but Coatesville and in that area, in the middle of the  
8 Chester County area, 74th District.

9           ASHLEY SCHAEFFER: My name is Ashley Schaeffer. I  
10 am the research analyst for the Urban Affairs Committee,  
11 Republican side.

12           CHAIRMAN PETRI: I am Scott Petri. I am the  
13 majority chairman for the committee. I am from Bucks County,  
14 and in Bucks County, we have 10 state representatives; so, I  
15 am interested in hearing what you folks think about planned  
16 communities.

17           REPRESENTATIVE BROWN: Good morning. State  
18 Representative Rosemary Brown, Monroe and Pike Counties and  
19 the 189th District.

20           CHAIRMAN PETRI: We are going to hear from our  
21 prime sponsor about her bill, but I wanted to do some  
22 introductory comments.

23           Good morning. Thank all of you for joining us to  
24 discuss House Bill 1774 and the issues that surround  
25 oversight of common interest ownership communities. I would

1 like to thank all the testifiers who have come today and we  
2 have a great panel of experts to hear their thoughts about  
3 the house bill.

4           While we do not know the exact numbers of  
5 communities that have been formed in Pennsylvania under Title  
6 68, we know that it is common, growing, and it is a system of  
7 living and governing that is becoming more and more  
8 significant in Pennsylvania.

9           The expansion of public facilities in common  
10 elements necessitates that there be an entity to maintain  
11 those facilities. Many homeowners look for communities that  
12 are organized in a manner that allows them to have some say  
13 in their neighborhood, and in many cases, a community that  
14 comes with alluring common elements and advantages.

15           These communities are largely self-governed. And,  
16 as we all know, we have a federal system, a state system, a  
17 local system, and then a very local system. And those are  
18 organized by homeowners' associations of elected board  
19 members who help to navigate and set the bylaws and  
20 declarations that the community follows.

21           Title 68 set up guidelines on how to form,  
22 operate, and govern those communities, but it is still  
23 largely up to the homeowners' association to create the laws  
24 that will impact their community.

25           With this leeway, it is not hard to imagine that

1 there are times when there are disagreements, and even abuse  
2 of governing documents can occur in some circumstances and by  
3 unit owners. As State Representatives, we hear these  
4 complaints from constituents. Often, when disagreements or  
5 complaints are in these communities, unit owners and board  
6 members feel that there is not enough oversight or assistance  
7 in handling the complaints. I personally found, in listening  
8 to some of my residents' personal frustration, too often I  
9 find myself inclined to say I guess you just got to go see a  
10 lawyer.

11 I commend Representative Rosemary Brown for  
12 bringing other possible solutions to this committee and to  
13 the forefront. I know, personally, how hard she has worked  
14 on this issue to try to create a proactive solution. She is  
15 well-versed in these issues, as I understand she also serves  
16 on her own homeowners' association board. Obviously, you  
17 know, because you are local, her District contains portions  
18 of both Pike and Monroe County.

19 While common ownership, interest ownership  
20 communities exist around the state, both of these counties,  
21 in particular, have a high density of common interest  
22 ownership communities and that's one of the reasons the  
23 committee wanted to come to the Poconos to discuss this  
24 issue, because you folks in this audience have some unique  
25 perspectives and knowledge that we want to hear.

1           Our best estimate is that Pike County has  
2 approximately 200 and Monroe about 100. The solution we  
3 fashion in this committee will not and is not intended to  
4 solve personality issues between community members or  
5 aesthetic disputes; however, insuring proper governance, full  
6 disclosure, openness, transparency, and fair elections is  
7 certainly within our wheelhouse as State Representatives.

8           Let me just say, though, no matter what we enact,  
9 there will still be circumstances where the answer will be  
10 with the judicial system to resolve a dispute.

11           With that said, I turn over the platform to our  
12 prime sponsor to talk about her bill.

13           REPRESENTATIVE BROWN: Well, good morning. Thank  
14 you, Mr. Chairman. He covered almost everything I was going  
15 to say, so, I am going to still do my comments, but he did  
16 such a great job. And I do want to thank Chairman Petri for  
17 coming up this way and the staff of the Urban Affairs  
18 Committee and Representative Parker and many of you for  
19 testifying, and, of course, Middle Smithfield Township for  
20 allowing us to have the hearing here.

21           I don't serve on my private community association,  
22 which I should be thankful for because I know it is not an  
23 easy job. And one of the most difficult pieces of bringing  
24 this legislation forward, I think, is the respect for the  
25 people that do serve as board members. It is not an easy



1 job. It is a volunteer position and I know it affects a lot  
2 of people. It's just difficult; we know that.

3 I was raised pretty much in a private community,  
4 lived in a private community most of my life except for my  
5 first home and then those college years when I left the area,  
6 so, I am very well aware of what it's like. And, currently,  
7 I live, as most of know, in a private community; so, I am  
8 very well aware. I remember being at board meetings with my  
9 father laying on the ground during board meetings and kind of  
10 rolling around as a kid saying, okay, let's go, are we going  
11 to be done yet and the differences that had happened.

12 But I can say that growing up in a community --  
13 and I refer to it often and some of you may have heard me say  
14 this -- is I grew up in a resort. I grew up where I learned  
15 to ski, where I learned to play tennis, which I then did in  
16 high school and college. I rode motorcycles. I had family  
17 events with bingos and picnics and everything on the weekend,  
18 all the great things that a community association was meant  
19 to do. So, I had the best of the best, I feel, growing up in  
20 a community. So, we know that that is the environment that  
21 is really supposed to be created with a community. So, there  
22 is a lot of good happening.

23 But I have to say that in the last couple of years  
24 serving, I have had a lot of frustration in my position  
25 because I feel that there have been complaints that have been

1 coming through the office that, really, I haven't had a lot  
2 of authority to help with. And I think there is a lot of  
3 validity to the complaints. I think that we have sent people  
4 to the Attorney General's Office under the assumption that  
5 they had the power to do further investigation and to realize  
6 after some time that they don't have the powers necessary to  
7 address some of the issues that we are dealing with.

8           So, again, to just reiterate what Chairman Petri  
9 said, these aren't complaints of whether, you know, your door  
10 is red or pink or blue or whatever color it would be or, you  
11 know, some of the bylaws that are in your private community,  
12 but these are the illegal nature of following the framework  
13 of what the Planned Community Act creates as framework of how  
14 our communities are supposed to be run and are they being  
15 followed, are those laws being followed, and is there illegal  
16 natures happening under established bylaws and your voting  
17 procedures and everything else to protect, really, the rights  
18 of the members of these associations.

19           I feel very strongly about this legislation. I  
20 feel it has a very big impact to our communities in Pike and  
21 Monroe County. And the reason for the hearing today is to  
22 make sure we believe as legislators, especially I feel  
23 strongly that we have to look at all angles and make sure it  
24 is written well to the best that we can. And I know it is  
25 not an easy issue but we need to make it as clean as we can.

1 And I appreciate your testimony and your honesty.

2           And one request that I have, out of respect for  
3 everyone and for my comments before about the wonderful  
4 nature of our communities but also the struggles we have with  
5 our communities, is if you could please leave out, if you are  
6 testifying, the names of the private community and any other  
7 personal names of board members or members, because we are  
8 trying to really look at the issue and we are trying to look  
9 at the circumstances that you have, but we definitely don't  
10 want this to be a personal attack on any individual, any  
11 community. We know how hard people are working in many ways.

12           So, thank you very much. Thank you for all being  
13 here. And I thank you for your honesty and testimony, as  
14 well.

15           CHAIRMAN PETRI: Well said. I was going to have  
16 the same reminder. I am glad you did that.

17           So, first, we are going to hear from Edward Banz,  
18 a resident of a private community.

19           EDWARD BANZ: Thank you, Representatives, for  
20 hearing our plight.

21           I am here to talk about some events that occurred  
22 in our community that began back in June of 2013. A new  
23 board consisting -- not a new board but a group of  
24 like-minded individuals who, through the process of election,  
25 obtained a majority on the board, not a new board. Once they

1 received that majority, they proceeded to remove a director  
2 on a bogus charge and nominate in an unprecedented  
3 interpretation of the bylaws another one of the like-minded  
4 people. This, on the surface, may appear benign, but two of  
5 those people, the person that was nominated by the board and  
6 the chairman of the board was subsequently arrested the  
7 following year for voter fraud and identity theft and things  
8 of that nature. So, there is a lot of doubt that the outcome  
9 of that 2013 election could be a result of things they had  
10 done wrong.

11           The removal of the person -- I mean, the person  
12 that was nominated had been previously removed from the board  
13 in 2010. That decision was held by the Courts; so, there was  
14 really no reason for this board to reinstate that person.

15           So, subsequently, because of that, there were a  
16 series of events. They interpreted the bylaws to suit their  
17 needs. They created situations where, if you wanted to  
18 appeal a decision by the hearing board or the board, you  
19 either had to go before the board for the appeal, which,  
20 basically, put you before your accuser, or you had to go to a  
21 Court of Common Pleas, which put a financial burden on the  
22 membership. Which was a double whammy, because you not only  
23 had to lay out the money for your case, as being a member of  
24 the association, you were funding the board members' legal  
25 fees. So, basically, it put you in a position of being an

1 unarmed citizen against a 21st century military that had the  
2 high ranking. There was not much you could do. So, it led  
3 to thousands of dollars being spent by the association.

4           The removal of the board member in 2013, that  
5 situation came to Court. That was overturned. That person  
6 should not have been removed. So, everything they did in  
7 prior decisions were found either unjustified or decided it  
8 was moot. However, there were no damages awarded, so that  
9 money was still absorbed by the individual members.

10           The real damage, though, is the wedge this group  
11 drove between two social groups in the community. They were  
12 two groups that were really trying to get along. I mean, as  
13 of 2001, I am sure a lot of communities in the area witnessed  
14 an influx of people because of everybody trying to get away  
15 from New York with the bombing attacks and terror attacks.

16           A lot of understanding had to be done, there were  
17 different cultures and we were making progress. But this  
18 group just drove this wedge and kept dividing this group  
19 further and further.

20           We have since, in October of 2014, for the first  
21 time in many years, the community was so outraged that we  
22 were able to get a quorum in order to -- the last time we got  
23 a quorum, we had to give away turkeys with a bylaws change  
24 made -- but to remove that board, institute a new board, and  
25 there has been a lot of healing and mending going since then.

1           So, in reading the changes, proposed changes to  
2 this, I feel it should go a long way to preventing rogue  
3 boards from abusing their power. And if there is such a  
4 situation, the membership and property owners has the ability  
5 to have some sort of recourse.

6           I thank you for your time.

7           CHAIRMAN PETRI: Any members have questions?  
8 Comments?

9           REPRESENTATIVE PARKER: In your situation, do you  
10 feel that the bylaws -- was that part of the problem, that it  
11 gave the board too much power?

12           EDWARD BANZ: The problem with the bylaws that we  
13 had was depending upon what solicitor the directors hired,  
14 they can interpret the bylaws in a number of different ways.  
15 And most of the situations that came up, they were 25 plus  
16 years of precedent, they just threw that out the window and  
17 just interpreted it the way they did. They had meetings  
18 without having quorums. It was just a mess.

19           Most of the bylaws are old. Our first edition was  
20 back in the late '70s, and because you need a quorum to make  
21 changes to bylaws, it is difficult to make the changes when  
22 they are needed. So, something like this is an added tool  
23 for us. The bylaws were clear enough to where the Court  
24 upheld -- the old board took us to Court saying that the  
25 recall of that board was done illegally because the numbers

1 didn't gel, there were a thousand people and a quorum of 150  
2 people was enough to have an election of another board. But  
3 the Judge said that's the bylaws. If you don't like them,  
4 change the bylaws.

5 CHAIRMAN PETRI: Any other questions?  
6 Representative Brown.

7 REPRESENTATIVE BROWN: Thank you for your  
8 testimony.

9 So, the one thing with a quorum, which I always  
10 think of just the area is a communal population, the amount  
11 of people are running back and forth, so getting the  
12 attendance at the meetings is an issue, right?

13 EDWARD BANZ: Yes, it is.

14 REPRESENTATIVE BROWN: So, I am always looking at  
15 that fact to say -- it's like any election, unfortunately.  
16 Unfortunately, you don't have as many people voting and being  
17 involved as we would like to see. But do you have any  
18 recommendations on that quorum issue, on other options, on  
19 maybe an out-of-the-box thinking on a quorum, whether it is  
20 in a different nature or you have to be present? Is there  
21 any suggestion on that way?

22 EDWARD BANZ: I am sort of a local government kind  
23 of guy, so I think in this case if the community was outraged  
24 enough to where they finally did get together to get a  
25 quorum, if the system had tools so that individual members

1 could seek other help besides having to just rely on that, I  
2 think it should be left up to the communities to deal with  
3 that quorum issue. They need to realize that maybe you need  
4 more than a minimum number, because back when the number was  
5 set, there were maybe only 400 homes in our community and now  
6 there is 1100, you know. And although we are primarily a  
7 full-time community now, it is still difficult to get people  
8 to, when they come up for weekends, to take time out to go to  
9 a meeting and things of that nature.

10 But people need to realize -- I mean, our  
11 community is a microcosm of the country. People don't go out  
12 to vote unless they have an ulcer. And that's what happened.

13 CHAIRMAN PETRI: Do you have any idea what kind of  
14 legal fees were spent between the community association and  
15 your group in this battle?

16 EDWARD BANZ: It was over \$50,000. That was just  
17 the members' end; so, the board spent at least that much.

18 And one of the cases they actually went to appeal  
19 it to the Pennsylvania Supreme Court after being turned down  
20 twice. But, fortunately, because we overthrew that board,  
21 that case wound up becoming moot.

22 CHAIRMAN PETRI: That's a darn shame.

23 EDWARD BANZ: That's a lot of money.

24 CHAIRMAN PETRI: That's a lot of money that could  
25 be used for the community in a lot of other ways.



1 Well, thank you for your testimony, thank you for  
2 your insight, and you will have an opportunity to participate  
3 more.

4 EDWARD BANZ: Thank you. And members of our  
5 association thank you.

6 CHAIRMAN PETRI: We are going to hear from Mr.  
7 Thomas Ryan, Delaware Township Supervisor.

8 THOMAS RYAN: I represent Delaware Township. I  
9 have some history being president of a board. Currently,  
10 Delaware Township has 19 separate community associations. We  
11 are a residency of about 8500 people, 5400 homes, and I would  
12 expect that 85 to almost 90 percent of those are community  
13 associations.

14 It is our job to sit back and manage our community  
15 but we feel like, as Ed spoke before, you know, we are not  
16 allowed to touch the communities. Basically, that's what it  
17 boils down to.

18 What we constantly hear is all the stories that  
19 you just heard from Ed. We have multiple communities that we  
20 hear that from. I can't do anything. My roads -- I have a  
21 corrupt board. I have a corrupt voting process. It is  
22 constant. We have a community that doesn't allow residents  
23 to come to a meeting. So, you know, that has been constant.  
24 We hear it. And the answer is exactly as the Chairman said,  
25 go get a lawyer. I don't know what to tell you or go see the

1 Attorney General.

2           That, in my view, is not productive at all because  
3 the Attorney General sleeps most of the day. So, it is a  
4 frustration of ours that we can't help our residents who are  
5 paying taxes, and not only paying taxes, they are paying  
6 double taxes. They are paying our taxes at the township  
7 level, they are paying an assessment or their maintenance,  
8 their fees, but, also, we have community associations that  
9 just now levied a \$5,000 assessment, \$5,000. That's \$50 a  
10 month or something to that effect. That's what is going into  
11 effect.

12           Those are the kinds of things that the communities  
13 are facing that we can't help them with. And there is no  
14 grant money for them, either.

15           So, we hear it across the board, you know, who is  
16 throwing the litter out, who is speeding. It is just  
17 constant. And there is no enforcement. They can't. They  
18 don't have the ability to enforce. They can assess. And  
19 what happens, what we hear, is when they do finally get  
20 before their grievance committee, if they do, most times,  
21 most counsel or some of the counsel we know that represent,  
22 they recommend that they use an independent counsel for the  
23 grievance committee. Communities don't do that. I think  
24 maybe the one -- maybe one does it now.

25           What happens is you go before a selected group. I

1 mean, come on. You know, they are elected and are appointed  
2 to positions that are like-minded as the board is  
3 like-minded. So, if you get assessed -- and I have heard  
4 some crazy assessments, believe me when I tell you -- \$500  
5 for you tried to run me off the road or something to that  
6 effect.

7           We have communities with constables almost acting  
8 as police officers. They are pulling people over, giving  
9 them assessments. We hear it all the time. And assessments  
10 are \$500, \$400, \$600. I mean, we had one young man, a family  
11 was killed because he was going to see his lawyer because the  
12 community association had gone after him so hard because he  
13 had a Boy Scout event at his house. He crashed his car into  
14 a tree going to see his attorney. He left a young family and  
15 a young wife.

16           That's the kind of stuff that frustrates us to no  
17 end. How do you solve that problem? You are the only guys  
18 that can do it. At the township level, we have no authority.  
19 You are the only people that can sit back and legislate to  
20 protect the communities, the residents of the communities,  
21 not the communities.

22           Most of these people move into a community, they  
23 have no idea that there are bylaws and covenants with the  
24 community. They have no clue. We have people come down and  
25 ask us about paying the maintenance fee, what is that all

1 about. Well, didn't the real estate tell you; no. Well,  
2 they are supposed to tell you. No, they didn't tell us.  
3 Well, you are supposed to get a packet; didn't get a packet.  
4 They don't explain to them the covenants. They don't explain  
5 to them the bylaws. They don't explain to them that they are  
6 subject to another government, not only our government,  
7 another government. They don't explain that. And their  
8 government is more powerful than our government.

9           It's just a process. It doesn't work well. And  
10 most residents -- Rosemary was here and I was here 25,  
11 28 years ago when we were a resort community, we raised our  
12 children or Rosemary was raised there. She is a little  
13 younger than my kids. But that was all fine and dandy  
14 because we had community associations that provided skiing  
15 and all of these other things that you did and it was a  
16 resort community. That's changed.

17           The complexion of the Poconos is very different  
18 now. We are a full-time suburb of New York and New Jersey.  
19 And the people who come here, they come here with these ideas  
20 that they are moving into these wonderful resorts and all of  
21 a sudden they do something silly like don't put their garbage  
22 out or put their garbage on a curb when it's actually  
23 supposed to go in a dumpster and they are assessed \$300, I  
24 mean like nothing. There is no guideline for the assessment,  
25 it is kind of what they feel like at most points.

1           Some of the bylaws, the bylaws are not consistent,  
2 they are different. Every one is different. So, there is no  
3 consistency in the bylaws.

4           The other thing, there is no remedy in the bylaws.  
5 Other than a grievance committee or going to the Court of  
6 Common Pleas, people are not going to be able to afford going  
7 to the Court of Common Pleas. There has to be a remedy from  
8 the legislature to give them relief or give them an avenue  
9 for a solution. That's what they need.

10           CHAIRMAN PETRI: Questions from members?  
11 Representative Parker.

12           REPRESENTATIVE PARKER: Well, I did have a  
13 question on the \$5,000 assessment you mentioned, was that  
14 everyone in the community got that assessment?

15           THOMAS RYAN: That's their intention. What has  
16 happened in that particular community is they have a salt  
17 issue. The salt has migrated down into the aquifer and it  
18 has contaminated, I think, 68 homes. They have to rebuild  
19 their salt sheds. They have to redo their configuration of  
20 the water, centralized water, which they never had any  
21 intention of doing.

22           REPRESENTATIVE PARKER: Well, I guess my real  
23 question was the approval of the assessment. Like my  
24 community, we have had a \$5,000 assessment because we had to  
25 build a new dam and it was approved by the membership. Was

1 this assessment approved by the membership then and not just  
2 the board?

3 THOMAS RYAN: I don't have complete familiarity  
4 with the bylaws, but my understanding is its a board  
5 decision, not a membership decision. And most of them are  
6 like that, if the board agreed to assess, they are going to  
7 assess.

8 REPRESENTATIVE PARKER: But the community could  
9 agree to change their bylaws.

10 THOMAS RYAN: If that's part of their bylaws. You  
11 heard testimony just before me how difficult that is to do.  
12 It is very difficult to get enough people to change their  
13 bylaws or to even come to a meeting, you know, and sit down.  
14 You have to energize that base. And the system in the  
15 communities' associations is more political than even yours  
16 or mine.

17 REPRESENTATIVE PARKER: I mean, it requires  
18 participation by the members, and if they don't come out,  
19 obviously, that won't happen. But it's important to get them  
20 out and get them involved in their communities.

21 THOMAS RYAN: But the assessments that are  
22 assessed, that's a community maintenance assessment. The  
23 assessments that are assessed for \$500 because you put your  
24 garbage out incorrectly, that's an arbitrary decision by the  
25 board. Actually, one community it is by one person, whatever

1 he kind of feels like doing that particular day. It is the  
2 same person that doesn't let you in to board meetings or has  
3 a constable that he thinks is State Police.

4 REPRESENTATIVE LEWIS: I am somewhat baffled by  
5 these bylaws and attendance at these meetings. I am assuming  
6 are a lot of proxy votes that come in for certain things.

7 THOMAS RYAN: We hear about that constantly.  
8 That's one of the things -- you know, the township is  
9 interesting because I never thought -- you think being a  
10 township supervisor, you hear everything, I mean, literally,  
11 everything, every single thing. You walk in, just like you  
12 guys walking in the store, you see your friends or random  
13 people or someone writes you a note or E-mail or something to  
14 that effect.

15 The system of the proxy vote is corrupt. It is as  
16 simple as that. What will happen is they will send out their  
17 votes, they will get them back, and before you know it, you  
18 can't get -- I just heard another story where we had one  
19 community that was sending out, say, 1,000 proxy votes, they  
20 never got back more than 10; all of a sudden, something came  
21 up on the board and they had 500. Where did that come from?  
22 Where did it come from? And one person is counting. There  
23 is not a board counting.

24 The proxy note and the mail-in vote -- the mail-in  
25 vote, specifically, is a corrupt system. It just doesn't

1 work, I think, because those are the things that lead to what  
2 Ed spoke about. Those are the things that I have heard in  
3 multiple communities. It is not the first community.

4 REPRESENTATIVE LEWIS: Are there terms of the  
5 executive boards or boards? There is no control over that,  
6 how long you stay in?

7 THOMAS RYAN: There are terms. My understanding,  
8 when I lived in one, I was the president of one, there are  
9 terms. There is a 2-year, 4-year, 6-year term, but it is  
10 constant. You can stay on the board as long as you want.  
11 There is no such thing as term limits, which I am a firm  
12 believer in, by the way.

13 CHAIRMAN PETRI: Representative Brown.

14 REPRESENTATIVE BROWN: So, Tom, you mentioned the  
15 mail-in proxy and I have heard that all across many years  
16 with different communities. So, what would be your  
17 recommendation on the mail-in process proxy? Because,  
18 obviously, I think you still have to have that availability  
19 to do a proxy, to do a mail-in at some point. But what do  
20 you think can be strengthened to help validate that process?  
21 Because part of the legislation and one of the amendments  
22 that is in the legislation deals specifically with giving the  
23 AG power among the voting process if there is a question or  
24 an illegal nature of the voting process within a private  
25 community, that a complaint could go in and mediation and



1 then investigation. But because of that, I would like to  
2 see, you know, in that process looking at the proxy of the  
3 mailing and is it because of how they are received or where  
4 they go or who opens them. You know, what do you think could  
5 be strengthened?

6 THOMAS RYAN: They come in differently. Some  
7 communities, they come in by mail. Some communities they go  
8 through the CPA. And, specifically, the one I spoke about  
9 goes to a CPA but, yet, the count was crazy. How do you  
10 figure? I can't figure that, who is sending them to the CPA,  
11 that's the interesting part.

12 How do you strengthen it? It is again back to a  
13 bylaw change on how you fix that system. But the best thing  
14 for it to do is to go to an independent organization, an  
15 independent CPA. But you have to handle it like an election  
16 board, independent CPA, but that CPA has to have the  
17 authority to open and count and it has got to be independent.  
18 That's the key to it. It has got to be an independent CPA, I  
19 think, anyway, someone outside the system.

20 And the same thing with the proxy votes, you give  
21 me your vote, I will give you my vote. I got four votes, I  
22 got three votes. The proxy system should be gone. You need  
23 to vote. If you are going to vote, you need to vote. There  
24 is no reason for you to proxy your vote to anyone, you know.  
25 You are the person -- and give them the opportunity to do it.

1 As an absentee ballot, same way, do it the same way. That's  
2 the part about it that is difficult.

3 REPRESENTATIVE PARKER: I would say, essentially,  
4 that's what it is. But on your association, do all members  
5 have access to the membership directory?

6 THOMAS RYAN: When I was the president, no. If  
7 they came and asked, they would get it, but there is no --  
8 like even for me to get as township supervisor sometimes to  
9 figure out how many -- I had to ask my office to send me a  
10 list of my community associations. And in that list, 9 out  
11 of the 19, there is no contact information, absolutely none.  
12 We don't even know who to get in touch with.

13 And that was difficult during Hurricane Sandy. It  
14 was very difficult to reach out and get these guys organized.

15 REPRESENTATIVE PARKER: The reason I ask is in my  
16 association, we do have that. And when I felt a certain  
17 member was being mistreated by the board, we had an election  
18 coming up, so I called everybody on the directory, I went to  
19 visit them, and I got them to vote for me, got their proxies,  
20 and we had the highest participation ever that year and I was  
21 able to get elected to the board and make some changes.

22 So, I think it is not necessarily bad that you are  
23 able to go out and campaign and get proxies, but as long as  
24 everybody has equal access to it. And if you, as president,  
25 had an association that didn't have a membership directory, I

1 think it's important that everybody would have access to  
2 that.

3 THOMAS RYAN: I also think that your outlook is  
4 based on your political career. You are a politician, just  
5 as I. You are able to go out and muster votes and gather  
6 people to your side. Understand very clearly here in the  
7 Poconos that a great majority of our community association  
8 residents commute. They leave here 4:30 in the morning, come  
9 home at 6:00 at night. They commute to make a living.

10 So, now, to get that vote on Saturday, they don't  
11 want to go rolling around shaking hands and kissing babies,  
12 they want to be with their families. That's what they do.

13 REPRESENTATIVE PARKER: I didn't necessarily want  
14 to be doing that, either. I wasn't a politician at the time.  
15 But if it's important to you, you get involved and you do it.

16 But, okay, I just want to make sure everybody has  
17 equal access to the information because if you don't know who  
18 to contact, that is not fair.

19 THOMAS RYAN: I do not believe they do. It is  
20 subject -- you know, they will claim there is privacy acts  
21 and all kinds of things that they don't make that available.  
22 There is all kinds of ways that they can protect it and keep  
23 it.

24 The best thing they do is go knock on doors, go  
25 from house to house. But then the community association has

1 a bylaw that says you can't do that, especially if you are an  
2 outsider, you can't do that.

3 REPRESENTATIVE PARKER: Right.

4 THOMAS RYAN: But with our people moving and going  
5 home, they come home, they want to be with their families.  
6 They don't have time for this. They expect the people that  
7 they elect to the board, just as we expect the legislators  
8 and everyone else, to represent our view.

9 What happens, I think, when they get elected, as  
10 in most positions or a very lot of the positions, they lose  
11 focus. They lose their vision and they become self-centered  
12 with some self-importance and they gather power amongst them,  
13 and all of a sudden you next see a different community and a  
14 different board that's operating differently than what you  
15 anticipated.

16 And, again, I go back to my original testimony is  
17 the fact that people do not understand the bylaws and the  
18 covenants, especially. They have no idea. So, that is big.  
19 I think it is one of the bigger problems. They don't know  
20 what they are getting into, especially with fees and  
21 assessments and those kinds of things and what the limit is.  
22 They will come to the township and will sit there and I have  
23 to say, sorry, can't help you, just can't help you, you know.  
24 And, again, they get angry, they really get angry. What am I  
25 supposed to do? We point them to go see the Attorney

1 General, go to Court of Common Pleas, go to the District  
2 Attorney.

3 But it is a frustrating thing for townships and  
4 for the community associations. It is very difficult for  
5 them, the really good ones. And we have a community  
6 association that is bigger than the township. It has 1700  
7 homes in it alone. Their budget is bigger than ours. Their  
8 road system is bigger than ours. We can't do anything to  
9 help them, nothing.

10 CHAIRMAN PETRI: Mr. Ryan, it strikes me that one  
11 of the things that I was surprised -- and when you come to a  
12 hearing, you always get surprises -- but it just never  
13 occurred to me the frustration that a township official might  
14 have about not being able to control, if you will, or to  
15 provide a reasonable governance for someone who is  
16 theoretically underneath you. I know they have different  
17 roles and responsibilities, but I thought that was a really  
18 valid point to bring home that you, yourself, are frustrated  
19 with the inability to help individuals who you feel are being  
20 mistreated.

21 THOMAS RYAN: We hear it constantly. It's just  
22 the fact that we cannot interfere, is the word. They have  
23 autonomy, basically, with us. The only thing we are able to  
24 do is tax them. That's it. I mean, most of our communities  
25 don't even live on our roads. We have communities that never

1 access the township roads. It's all state roads. It's all  
2 state roads. So, you know, it is very frustrating to sit  
3 back and say, well, I am going to tax you but I can't give  
4 you any services. There is nothing I can give you except  
5 tax.

6 CHAIRMAN PETRI: The other point I thought you  
7 made that is very very valid, and some of the other members  
8 shared that, is the fact that people really don't read their  
9 documents. They really don't go into this understanding what  
10 they are buying into. And more and more we have communities  
11 with different bylaws and different procedures, and I get  
12 that, but when it is so important -- what do you believe,  
13 though, is the primary reason you hear complaints? Is it  
14 about when someone is being assessed or the budget or is it  
15 just about what I would call bad behavior?

16 THOMAS RYAN: Bad behavior.

17 CHAIRMAN PETRI: That we can fix.

18 THOMAS RYAN: And I stress it, one of the comments  
19 that you made is that the people don't read their documents.  
20 And that's a lot of people. But it is an obligation of the  
21 association or us to be sure to understand the documents.  
22 Don't let them walk in blind and that's what they are doing.

23 Now, I think Act 180 was supposed to deal with  
24 that with real estate, but it doesn't happen. They don't get  
25 a detailed explanation. It is kind of breezed over. Hey,

1 come look at this community, look, they got pools, they got  
2 skiing, and, oh, by they way, they do have bylaws. Don't  
3 worry about it. They are very loose.

4 CHAIRMAN PETRI: We may want to take a look at the  
5 resale certificates. As an attorney, unfortunately, at  
6 closing, that's one of the last documents you get. You know,  
7 you are looking at it. You have looked at mortgages and  
8 notes, which is what you are thinking about, and HUD 1, do I  
9 have enough money. And you get this packet, oh, I will read  
10 it later and you never do.

11 THOMAS RYAN: It falls on real estate or the  
12 seller or real estate. Someone needs to inform them very  
13 clearly. And then, if they don't read it, guess what, it is  
14 on you.

15 And some of our answers at times are, listen, you  
16 moved into a community association, your eyes should have  
17 been wide open. And a lot of times I feel so sorry for them  
18 because it is not the case.

19 CHAIRMAN PETRI: Maybe we ought to take a look at  
20 that and make sure the disclosures are really really tight  
21 and maybe even require that they get the document --

22 REPRESENTATIVE BROWN: I think they do have --

23 THOMAS RYAN: They have to provide a packet.

24 CHAIRMAN PETRI: I know they have to have it at  
25 settlement, but maybe at the time you sign an agreement, you

1 should have it so at least you can decide do I sign. The  
2 realtors won't be happy with that.

3 Thank you.

4 Next we have Mr. and Mrs. Denooyer.

5 JOHN DENOYER: I want to thank Rosemary Brown for  
6 bringing this to light and this committee.

7 Now, I want to discuss several issues that are of  
8 major importance. We have the Planned Community Act which  
9 organizations like the private communities have to follow.  
10 The community that I live in, they refuse to follow those  
11 mandates, and they refuse to follow them based on the fact  
12 that they claim that we were an association before this Act  
13 went into effect.

14 In 1996, the Act went into effect. My community  
15 went through a transition period between 1995 and 2000 with a  
16 developer. It was finalized in 2000. That is when we became  
17 an association, not before. The entire community was under  
18 the domain of the developer.

19 What I have here I have submitted to this  
20 committee to substantiate what I am saying is truthful.

21 Now, we have had two statements, one from a  
22 secretary on the board and one from the president stating we  
23 are not required to follow all of the requirements stated in  
24 the Planned Community Act. Okay, that's my first issue.

25 Now, the second issue is the bylaws. We



1 constantly hear from the board that we have bylaws, like it  
2 is the holy grail, okay, we have to follow them. But they  
3 have a tendency to overlook that when it deals with an issue  
4 that the board is involved in.

5 Give you an example. In 2000 -- I can't recall  
6 the exact year, but the board at that time decided that they  
7 wanted to build a maintenance building, okay. The bylaws at  
8 that time stated that you cannot authorize any expenditures  
9 over 100,000 without going to the community. That being  
10 said, they took two buildings, homes that were assessed at  
11 \$90,000 a piece and demoed them, okay. That's \$180,000 right  
12 there that's an asset if you sell those homes.

13 No. 2, when they put up the building, the building  
14 supposedly was to be less than \$100,000. Yeah, the building,  
15 but how about the two buildings that you took down.

16 In that project, the grading wasn't included, the  
17 engineering studies weren't included, the electrical wasn't  
18 included, the plumbing wasn't included. I have got those  
19 facts for you right here.

20 Now, that being said, don't come to us and tell us  
21 and lecture us on the bylaws when you flagrantly are  
22 violating them yourself. Boards, since I have been here, I  
23 have lived here over 30 years, since this association has  
24 been formed, they take an attitude it is either our way or  
25 the highway and pay your dues and be good little girls and

1 boys and don't correct us.

2 Now, the next thing I want to address is the  
3 denying of documents. I requested documents regarding the  
4 building of this maintenance building. I got a letter back  
5 that says we don't have to provide. And I stated that  
6 according to the Planned Community Act, I am entitled to  
7 that. I got a letter back stating that, well, we don't have  
8 to comply with the Planned Community Act because we were an  
9 association before. Hello. Come on. Give me a break.

10 Now, I asked for financials; they denied it. Now  
11 that I am on financials, let me emphasize something else. In  
12 the transition between the developer and the association, we  
13 were given \$3.7 million to bring the community back to its  
14 original state. 1.5 was put aside for 5 years for any  
15 litigation that may be brought against the developer. Just  
16 before that expired, Middle Pond brought a lawsuit against  
17 the developer because the developer didn't maintain their  
18 properties that they had an agreement.

19 Now, in my thinking, they were entirely entitled  
20 to that. When it was settled, those people in Middle Pond,  
21 they got an understanding of what the settlement was about  
22 or else they would have never agreed. There was nobody in  
23 this community who can tell you what that settlement  
24 contained. It was never revealed, okay. And to this day, I  
25 defy anybody in this association to say different.

1           Now, we are talking about finances. In our bylaws  
2 it states that once you reach a certain expense of a project,  
3 you have to send it out for bid. Okay. Sounds good, right?  
4 Oh, wow, when the bids come back, they are not opened in  
5 front of the members, they are opened in closed doors by a  
6 select few. There is something wrong with that picture.

7           Now, my wife and I, we went to a meeting, and when  
8 you challenge the board -- and I don't mean challenge them  
9 just to break horns, I am talking about legitimate complaints  
10 which I believe I have here -- my wife and I go to a meeting  
11 and the president makes a statement at the meeting that we  
12 are sending a letter to our attorney to prevent Mr. and Mrs.  
13 Denooyer from speaking at any future meetings. Okay. Is  
14 there something wrong with that?

15           CHAIRMAN PETRI: Seems like it.

16           JOHN DENOYER: Now, any time, I don't care who it  
17 is, if they are going to do it to me, they can do it to  
18 somebody else. And they have used my wife and I as an  
19 instrument to demonstrate that if you step out of line, you  
20 got a big problem because we are going to shut you down.

21           And that's about the whole situation. Something  
22 has to be done.

23           CHAIRMAN PETRI: Any questions? Representative  
24 Lewis?

25           REPRESENTATIVE LEWIS: I am really baffled a

1 little bit with the documents and this kind of thing being  
2 filed in the right to know documents.

3 JOHN DENOYER: I did with the association. They  
4 didn't.

5 REPRESENTATIVE LEWIS: If you are fined or  
6 assessed a certain amount of money and you just don't pay,  
7 how do they enforce that assessment?

8 JOHN DENOYER: Court, I guess.

9 REPRESENTATIVE LEWIS: You don't have to appear  
10 before the board or pay the fine?

11 JOHN DENOYER: No, not that I am aware of, not  
12 that I am aware of. I have lived in this community since it  
13 is a homeowners' association, 16 years. Now, if you think I  
14 am a rebel, I have lived here without a warning, without a  
15 citation. I don't like what I see in the bylaws but I bite  
16 the bullet and I follow it and I expect everybody else to do  
17 the same thing.

18 But to suppress somebody's right to speak -- in  
19 the meantime, I get this from the lawyer who says, well, the  
20 bylaws state that members don't have the right to speak. If  
21 you go to any meeting, they are lined up. They are allocated  
22 three minutes to view their concerns or their objections and  
23 my wife and I, we have been disenfranchised.

24 CHAIRMAN PETRI: Anybody else? Representative  
25 Brown.

1           REPRESENTATIVE BROWN: I just want to say, Mr. and  
2 Mrs. Denooyer, thank you very much for your testimony. I am  
3 very familiar with your story, as you know, so I thank you  
4 for providing the documentation or exactly what you mentioned  
5 over the several years and I appreciate your feedback.

6           JOHN DENOAYER: I take the philosophy that you  
7 can't make accusations or innuendos because you are a whacko.  
8 But here it is right here, it's all here. So, I mean, let  
9 the documentation determine who is the villain and who is not  
10 the villain. Thank you very much.

11           MRS. DENOAYER: I received a letter from their  
12 attorney when my husband was very ill, okay, we couldn't get  
13 out. John was going to have chemotherapy and what happened  
14 was the cycle had to be broken. And I called up the manager  
15 of Saw Creek who refused to get -- I am sorry, I apologize  
16 for that. I called up the manager and said I need to speak;  
17 they wouldn't get on the phone with me. I had to E-mail  
18 their lawyer. Their lawyer said -- I live on a secondary  
19 road, I am not on a primary, so I couldn't get out for three  
20 days. The chemo had to be cancelled.

21           I would like to also mention that my husband was a  
22 township supervisor -- a zoning officer chairperson for 10  
23 years with Lehman Township, very fair, highly respected.

24           And I would like to also mention as the last thing  
25 my first amendment rights and my husband's was taken away

1 from both of us. I received a letter that I am not allowed  
2 to talk to any employees, any board members, any staff. I  
3 have no constitutional rights. I was born on American soil,  
4 okay, we have no rights whatsoever.

5 I would like to also, as my last statement,  
6 mention that my husband is a Navy veteran. My whole family  
7 served in this country and we have no rights whatsoever.

8 That's all I have to say. I thank everybody for  
9 listening and, Rosemary, thank you very much. I appreciate  
10 it.

11 CHAIRMAN PETRI: Thank you both for your story.  
12 We are certainly going to take that into strong  
13 consideration.

14 And next we are going to hear from Mr. Frank  
15 DeLuca, a community resident.

16 FRANK DeLUCA: We appreciate you having us here  
17 this morning. This legislation is very timely for us. The  
18 past few months our community has really been in turmoil.  
19 Same kind of story, violations of the bylaws, specific  
20 bylaws, seems to us to be clear violations, and no recourse  
21 about it.

22 Also, you know, opposing the board is very  
23 difficult. They have the money, they have our money, they  
24 have the legal opinion, they have the attorneys, and we say  
25 that we can't write, we can't speak, we can't vote, we can't

1 petition. They control the media. They have the monthly  
2 newsletter, weekly events paper and E-mails, and they do  
3 E-mail blasts. We can't write. Even to write a letter to  
4 the editor, if you oppose the view of the board, your letter  
5 doesn't get in. If a letter does get in, it has an editorial  
6 comeback that tries to dispute what you said. And they  
7 always call to try to change your words. We can't vote.  
8 They violate the bylaws. And we will talk specifically about  
9 that. And we can't petition. They ignore the petition or  
10 they get a legal opinion and view it insufficient, even  
11 though what we do is completely to the terms of the bylaws.

12 Specifically now, the issue is a storm water  
13 project that the board introduced. Our bylaws call for any  
14 project, any capital project over \$25,000 to be put up for a  
15 vote of the membership. It has to have the approval of the  
16 membership. This project is \$40 million.

17 CHAIRMAN PETRI: That's a little over 25.

18 FRANK DeLUCA: A little over 25. Actually, they  
19 already spent over \$2 million for the plans for the project  
20 and feasibility studies and permits, all without a vote. And  
21 that is the main issue in the community, the violating of  
22 that bylaw.

23 Clearly, the bylaw spells out that any capital  
24 expenditure over 25,000 is to be voted upon. They get around  
25 this, they hurdle the barrier of the bylaw by claiming that

1 it is maintenance, that it is an operating expense, and,  
2 therefore, you don't need the approval of the community.

3 CHAIRMAN PETRI: I am reading the document,  
4 operating expenses is defined as something other than  
5 Subsection B and C. B is capital expenses, which includes  
6 construction, reconstruction, or improvement or association  
7 buildings and structures and purchase of machinery over 2.  
8 And capital project means construction of the facility  
9 involving expenditures over more than 25; so, I get your  
10 point.

11 FRANK DeLUCA: Now, this project contains many  
12 facilities. I don't want to say hundreds but a large number  
13 of facilities, retention ponds, enormous retention ponds.  
14 Each one of them costs, I would guess, I am guessing over  
15 \$100,000 for each one. There are 20 large retention ponds.  
16 There are 280 swales that they are constructing. So each of  
17 those facilities should go to a vote.

18 Some of the reasons why this community is really  
19 against these projects is these retention ponds alone, some  
20 of them cover over an acre, run 220 feet along the roadway,  
21 along main roadways, are 8 feet deep, require blasting; so,  
22 that is some of the reasons why we are against it.

23 We are also against it because they intend to  
24 use -- they want to have a municipal authority, and with a  
25 municipal authority, they have eminent domain and they want



1 to take properties from people to construct these facilities.

2 CHAIRMAN PETRI: Just a quick footnote, one of the  
3 lawyers in the room that is familiar with this area, do they  
4 have the right to under the Act -- we won't talk about it now  
5 but when you do your presentation -- do they have the right  
6 to create a municipal authority under the Planned Community  
7 Act?

8 ATTORNEY CARL WEINER: No.

9 CHAIRMAN PETRI: I wouldn't think so. Go ahead.

10 FRANK DeLUCA: Also, another reason for being  
11 against this project is they are taking down 60,000 to  
12 \$100,000 trees for the project and it is far too expansive.

13 One of the board members, one of the board members  
14 would not vote for this project. He has since resigned. He  
15 called it the Emerald City of storm water projects. This is  
16 just so overblown.

17 CHAIRMAN PETRI: Have you had a lot of flooding in  
18 the community? Is that what is driving this?

19 FRANK DeLUCA: We don't really feel so.

20 CHAIRMAN PETRI: Obviously, we have had a lot of  
21 floods along the Delaware.

22 FRANK DeLUCA: Part of the problem -- one of the  
23 main parts of the problem is that the community feels, a vast  
24 majority of the community feels that the board is not being  
25 straightforward with us; that this storm water project they

1 portray as being to solve problems that people have with  
2 flooding.

3 CHAIRMAN PETRI: Let me ask you a technical issue  
4 so we can understand the interplay, because we don't have the  
5 ability to debate whether it is a proper project or not,  
6 that's an internal decision. But when the project was  
7 proposed, has there been an intervening election of the  
8 board?

9 FRANK DeLUCA: Yes, since.

10 CHAIRMAN PETRI: What happened?

11 FRANK DeLUCA: Well, not since it was actually  
12 proposed but, I mean, the project has been in the works for  
13 years and there have been several different boards.

14 CHAIRMAN PETRI: Do they regularly present to the  
15 community the scope of the project designs like you would at  
16 a township meeting?

17 FRANK DeLUCA: They present their version of it.

18 CHAIRMAN PETRI: So they present --

19 FRANK DeLUCA: What we see, just reading the  
20 minutes of ad hoc committees that are set up and the E-mails  
21 between people that we have looked into, we see how they  
22 carefully tailor what the community gets. And that's part of  
23 the problem.

24 CHAIRMAN PETRI: So, there hasn't been an  
25 intervening election since people now know what the cost is

1 going to be?

2 FRANK DeLUCA: No.

3 CHAIRMAN PETRI: When is your next election?

4 JOSEPH BARCA: It has only been three months.

5 CHAIRMAN PETRI: And, generally, do people  
6 participate in your community in elections?

7 FRANK DeLUCA: I would say yes. Not full  
8 participation.

9 CHAIRMAN PETRI: Okay. I am just trying to get a  
10 sense of --

11 FRANK DeLUCA: We comprise kind of a steering  
12 committee. And we have a website. We are trying to get --  
13 there is such great sentiment, but everyone is independent.

14 CHAIRMAN PETRI: Another question just popping  
15 into mind. Have you talked to your township about whether  
16 they can perform this project without township approval?

17 FRANK DeLUCA: Well, here is what happened. At  
18 this meeting, the board decided, again, on its own to form a  
19 municipal authority to handle the construction of the  
20 project. Again, the community was strongly against this.  
21 The board sent a memorandum of agreement to the Blooming  
22 Grove Township to form the authority. You need the township  
23 to sponsor the authority.

24 This memorandum included in it a provision that it  
25 remain confidential from the public, that it be secret from

1 the public until the agreement was finalized. The secrecy of  
2 it was in the cover letter sent to the township and the  
3 memorandum, itself. We learned about it through the Freedom  
4 of Information Act. And the first night that it was  
5 presented to the Blooming Grove Township by the Hemlock  
6 board, we were there present, filled the room and voiced our  
7 objection to it. The Blooming Grove Township heard us, they  
8 listened. We had at one meeting 5- to 600 people.

9 CHAIRMAN PETRI: How big is your community?

10 FRANK DeLUCA: There are over 3600 properties.

11 CHAIRMAN PETRI: Do you know how many residents  
12 there are in the township?

13 FRANK DeLUCA: Well, I think there are less  
14 residents in the township than in the community.

15 JOSEPH BARCA: We are the dominant.

16 CHAIRMAN PETRI: Your community spans more than  
17 one township?

18 FRANK DeLUCA: Yes, it is three.

19 CHAIRMAN PETRI: Okay, that didn't sink in. We  
20 don't have that in my neck of the woods, okay.

21 FRANK DeLUCA: There are three townships, Blooming  
22 Grove, Dingman's, and Porter Township.

23 CHAIRMAN PETRI: What do the other townships say?  
24 Don't they also have to participate?

25 JOSEPH BARCA: They don't want any part of the

1 authority.

2 CHAIRMAN PETRI: Okay. What solutions do you have  
3 or suggestions? I know we have to come up with them but do  
4 you have ideas?

5 JOSEPH BARCA: We think this bill is great. We  
6 have no recourse other than the Court. We hope this bill  
7 will provide an alternative for us.

8 CHAIRMAN PETRI: I didn't want to cut you off, I  
9 wanted to kind of figure out.

10 FRANK DeLUCA: We have some other problems other  
11 than the storm water and the authority that come out of this  
12 basic problem.

13 CHAIRMAN PETRI: Would you mind entertaining some  
14 questions from members? Representative Lewis.

15 REPRESENTATIVE LEWIS: I have one question. This  
16 is really baffling. The members of this authority or these  
17 boards, are they residents of the very private communities?  
18 I mean, do you live next door to them or are they all  
19 community --

20 FRANK DeLUCA: They are our neighbors. The nine  
21 members of the board are members of the Hemlock -- I am  
22 sorry, they are members of the community.

23 And, actually, two of the members, if this is  
24 important, two of the members of the Blooming Grove Township  
25 supervisors board are Hemlock residents.

1           JOSEPH BARCA: My name is Joe Barca and I feel  
2 like I am at a focus group. I am a community member. And  
3 the problems that we are having are part and parcel, and we  
4 are sitting here listening, it is almost like the other  
5 people that have spoken live in our community. We all share  
6 a common bond. And we thought we were out here all by  
7 ourselves, but I got to tell you, I have been involved with  
8 bylaws my entire life, my entire professional life.

9           CHAIRMAN PETRI: What do you do?

10          JOSEPH BARCA: I used to be the president of a  
11 union in New York. And in order to conduct business in a  
12 union, we would have Robert's Rules.

13          CHAIRMAN PETRI: Sure.

14          JOSEPH BARCA: We have a thing in our community  
15 called Modern Rules of Order, which almost mirror Robert's  
16 Rules, except they don't allow us to speak at board meetings,  
17 binding us. They give us two minutes. They give us  
18 120 seconds to get off our chest what we think are problems  
19 in the community. And it is called one half hour member talk  
20 time; so, they give our entire community, 3600 homes,  
21 30 minutes to come once a month to speak for two minutes at a  
22 time. And they sit and they listen and, next, nothing is  
23 binding, nothing can get done.

24                 The problem that I see, coming from an environment  
25 that we dealt with years of order, is if you don't understand

1 something, you say point of order, point of order. They look  
2 at you when you say point of order. They don't recognize  
3 you. You are not supposed to speak as a member. You can  
4 talk at member time but now sit down and that's it and they  
5 cut you right off. That's a problem.

6 We have a right to petition in our bylaws. Now,  
7 each lot in our community has two votes. So, we ran a  
8 petition drive to recall the president of the board. 1,089  
9 votes, that's an awful lot in our community. They took the  
10 petition and after 10 days sent me a letter and said the  
11 petition is insufficient because you don't mention a reason.  
12 So, I said I did mention a reason, I mentioned a reason when  
13 I got up to the microphone and I have everything here. And  
14 they said it is insufficient and that was the end of it.  
15 It's like we are going to go away.

16 CHAIRMAN PETRI: Do you have your petition with  
17 you?

18 JOSEPH BARCA: Yeah, I got it.

19 CHAIRMAN PETRI: Do you mind?

20 JOSEPH BARCA: I am going to give you the whole  
21 package.

22 CHAIRMAN PETRI: You know, when you say these  
23 things, obviously, we are trying to discern credibility. We  
24 are trying to discern --

25 JOSEPH BARCA: In there, I have the petition, I

1 have the actual bylaw that says how you petition, and there  
2 is nothing in the bylaw that says we have to give a reason,  
3 but I stated what the reason was the day I submitted the  
4 petition at our board meeting on the 19th.

5 But, conveniently, when we got the minutes back  
6 and I checked them, my statement was not part of the minutes.  
7 So, I quick sent an E-mail to the community manager and I  
8 said a very big part of my statement is missing in the  
9 minutes, I want it included. Heard back from them, he said I  
10 submitted your request to the board and then we got to the  
11 board meeting that we just had Saturday. So, they came out  
12 and they said we are going to approve the minutes of the  
13 meeting. I said, point of order, and they said sit down. I  
14 said, point of order, you want to approve minutes that are  
15 incomplete. My statement was -- sit down.

16 So, I was never able to correct the minutes. And  
17 a very big part of the minutes were the reason why we wanted  
18 to recall the president of the board. We had a requisite  
19 number of signatures, 733, we had 1,089.

20 So, I know it is a long way of saying that this is  
21 how boards take the members' rights away from them when you  
22 have the right to petition and they don't listen to you.

23 CHAIRMAN PETRI: I don't know how recent this is.  
24 I am just curious, did you resubmit a petition?

25 JOSEPH BARCA: No, because there is nothing wrong



1 with that petition.

2 CHAIRMAN PETRI: I understand.

3 JOSEPH BARCA: I mean, they would have -- every  
4 time you give them something, they will think of another  
5 reason why it doesn't apply. It is like it is their candy  
6 store and their rules.

7 REPRESENTATIVE PARKER: On this petition,  
8 submission, was that in a membership meeting or a board  
9 meeting?

10 JOSEPH BARCA: They are called open board  
11 meetings. They have them once a month.

12 REPRESENTATIVE PARKER: Like, in my association,  
13 if you get enough members, you can call a membership meeting.

14 JOSEPH BARCA: You mean have a special meeting?

15 REPRESENTATIVE PARKER: Yes, which is a meeting  
16 that all members speak at and participate in just like the  
17 annual membership meeting. It would seem to me that there  
18 would be that type of meeting that you would want to call.

19 JOSEPH BARCA: To answer your question, we are in  
20 the process of calling a special meeting because they didn't  
21 let us speak at that meeting.

22 REPRESENTATIVE PARKER: Right. At a board  
23 meeting, I mean, we were at the East Stroudsburg School Board  
24 meeting and just school board members speak and vote. As an  
25 audience member, even though I am a taxpayer, it doesn't

1 mean -- I mean, they let you speak but, really, it is the  
2 board's meeting. But I think if you have a membership  
3 meeting, that's what you need to do.

4 JOSEPH BARCA: Following that logic, the only time  
5 that we would have a real voice is once a year.

6 REPRESENTATIVE PARKER: Correct. The gentleman  
7 who testified earlier said we elect these board members to do  
8 what we want and that's the type of representative government  
9 that we have throughout the Commonwealth and at these  
10 association meetings.

11 JOSEPH BARCA: Do you think you would have the  
12 opportunity to clear something up by raising your hand?

13 REPRESENTATIVE PARKER: Look, I agree that things  
14 could be done better and addressed based on the testimony we  
15 are getting today. I just mean for the purpose of conducting  
16 that meeting, it is a board meeting. But, yeah, we would all  
17 like the boards to listen to their members and all forms of  
18 government to listen.

19 JOSEPH BARCA: I would also like to submit this.  
20 This is just a part that says that they have to go by the  
21 Modern Rules of Order as per Pennsylvania Bar Institute; so,  
22 that's in there, as well.

23 The boards that I heard today are very  
24 controlling, much in the same as our community. The board  
25 likes to control who can run for office. So, they have

1 something in the rules that say -- and I have it here -- that  
2 you can only run for a board position if you served on a  
3 committee or are presently serving on a committee. Well, it  
4 is the board who approves you to be on a committee.

5 So, I would think in America, being that I am a  
6 member in good standing and I pay my dues, that should be  
7 interest enough for me to step out and say I want to run for  
8 a board position.

9 They have another rule in my particular case that  
10 says I can't serve as a board member. I can run, I could  
11 win, but I can't serve because my wife works part time as a  
12 secretary, and it says in the rules that you can't. Now, I  
13 understand it is a rule and I am probably going to have to  
14 abide by it, but I don't like abiding by it because I think  
15 that's just another way to stop people from coming forward to  
16 wanting to serve on the board.

17 CHAIRMAN PETRI: It's because she is an employee  
18 of that organization; is that what you are saying?

19 JOSEPH BARCA: Right. I can understand that. I  
20 don't agree with it. But it is a problem, because they just  
21 came up with this rule three years ago -- two elections ago  
22 to prevent some other poor sap from running because his  
23 daughter worked for the community and they knew if they put  
24 this rule in the book, it makes it nice and proper. It just  
25 doesn't make it right. That's my point.

1           You did say something before that piqued my  
2 interest.

3           I sent a letter to the Attorney General's Office  
4 and I got back a letter yesterday. And it was a nice letter  
5 and it came from Deputy Attorney General Thomas Cummings and  
6 it says we have no power to intervene on your behalf. You  
7 should go out and get a lawyer and seek the Courts.

8           And the same point I am going to make, I have to  
9 drive it home, we would be paying twice then. We would be  
10 paying for our own attorney and we would be paying for the  
11 association's attorney to beat us in Court. So; it is a  
12 no-win situation for us. It's like we are bad because we are  
13 now speaking up for members' rights.

14           We don't even have rights to absentee ballots. I  
15 wish we had that problem; we don't have it. We don't have  
16 access to voters' lists. We don't have access to bulletin  
17 boards, E-mail lists, and newspaper. We just don't have  
18 access. And if we are going to mount a serious campaign to  
19 put people on the board that have the interest of the  
20 community, as long as they have access to it, we should have  
21 access. We should have equal access, I believe, under the  
22 law. And that's a very important point.

23           We had to go out and start our own website. We  
24 had to go start our own newsletter because we are prevented  
25 from putting our message out there.

1           CHAIRMAN PETRI: I think it is getting out there  
2 now.

3           JOSEPH BARCA: Our bylaw system in our community  
4 is so complicated. And I don't want to offend any lawyers in  
5 the room, because my son is one, he is a DA in Manhattan, but  
6 you have to be a Philadelphia lawyer to understand the bylaws  
7 in our community. It's unbelievable. You can look at it and  
8 come up with ten different ways it can be interpreted and  
9 that is crazy.

10           Our package, when you move into our community, our  
11 package is that thick (indicating). It is unbelievable. And  
12 that's why no one opens it up is because they are afraid. We  
13 also have codes and policies that we can't change.

14           CHAIRMAN PETRI: When you say can't change, why  
15 can't you change them?

16           JOSEPH BARCA: Because if you can't speak at a  
17 board meeting, you can't even get your point across on what  
18 rules should be changed for what the rationale is. We just  
19 put in another petition and we are waiting for the denial on  
20 this one and that's to limit the amount that they could raise  
21 our dues.

22           The project that my buddy, Frank, talked about is  
23 the largest storm water project in the country, the largest,  
24 and it's going to be right here in the Poconos. Not if we  
25 have anything to do with it, though. So, we have forced the

1 issue upon them. We have experts. We have engineers. We  
2 have lawyers. We have people that are in construction that  
3 do storm water projects and we have said to the board we want  
4 to sit with you with our experts and come up with a plan that  
5 is feasible, one that is affordable, and a little downsized.  
6 So, we are trying to do that.

7 But I appreciate you giving us the time to speak  
8 today because before today, I felt that we were an island all  
9 by ourselves. But it is comforting to know -- it is not  
10 comforting to know that everybody is going through what we  
11 are going through, but it is comforting to know that we have  
12 a body of government that is trying to come up with something  
13 that will work for everybody, the association, management,  
14 and the members. So, I really appreciate the time. Thank  
15 you very much.

16 CHAIRMAN PETRI: Would you entertain a question  
17 from Mr. Lewis?

18 JOSEPH BARCA: As many as you want.

19 REPRESENTATIVE LEWIS: Mr. Barca, one quick  
20 question. When you get your reports or your members, when  
21 you get your report from a treasurer, I am assuming there is  
22 a treasurer, are there any line item expenditures as to where  
23 all this money is going?

24 JOSEPH BARCA: There are. And, again, the only  
25 time you can ask questions are when you are at an open board

1 meeting. And unless it is member time, you can't speak.

2 REPRESENTATIVE LEWIS: But you don't get any kind  
3 of written reports?

4 JOSEPH BARCA: We do, we do.

5 FRANK DeLUCA: They make them available on-line.

6 JOSEPH BARCA: We are an \$11 million a year  
7 operation. That's our budget. It is a premiere community.  
8 I want to say it's almost like a resort and pretty soon we  
9 are not going to be able to afford to live in the resort.

10 CHAIRMAN PETRI: The Chair is going to take, for  
11 the benefit of our court reporter and everybody else, just a  
12 break. We will reconvene at 11:30 and then we are going to  
13 hear from Marshal Granor.

14 (At this time there was a recess taken.)

15 CHAIRMAN PETRI: Call the meeting back to order.  
16 Mr. Granor.

17 MARSHAL GRANOR: Good morning. And thank you for  
18 this opportunity to speak to you this morning. My name is  
19 Marshal Granor. I am the president of Community Management  
20 Services Group. We are an association management company  
21 that handles about 85 communities of varying sizes in  
22 Southern Pennsylvania and in Southern New Jersey. We have  
23 about 11,000 homeowners that we manage.

24 But I am also here on a number of other capacities  
25 and it maybe makes me unique to speak about the House Bill

1 1774.

2           For many years, I was in a family home building  
3 business; as such, we built about 3,000 community association  
4 homes. And as the youngest one, because the company was my  
5 father and my grandmother and me, as the youngest one, I was  
6 placed on the board of each of 26 associations, often as the  
7 president. And that means that over a period of about  
8 35 years, I have been in that position and understand very  
9 well what it's like to be on the board.

10           Each of those 26 associations went through a  
11 smooth transition with developer to homeowners, no lawsuits,  
12 no upsets about finances and things like that.

13           I am an attorney and I am listed as one of the  
14 principal draftsman of the Uniform Planned Community Act,  
15 which somebody testified earlier today was passed in 1996.  
16 We actually began working on it in 1988. I was told it would  
17 be a summer job, it turned out to be 8 years.

18           I do represent developers currently and I write  
19 lots of association documents. I am a member of the Real  
20 Property Probate and Trust Law section of the Bar Association  
21 Governing Council. I am the treasurer and also editor of the  
22 newsletter.

23           Aside from that, my father and I own two  
24 condominium units as investor owners. We all live there.  
25 And I am here today mostly as a member of CAI's Pennsylvania



1 Legislative Action Committee and member of the College of  
2 Community Association Lawyers. So, lots of different hats  
3 that I am wearing and sometimes they conflict a little bit.

4           Just one sentence on CAI. Community Association  
5 Institute is, perhaps, the most unusual organization I have  
6 been involved in because we take a 360-degree view of the  
7 world. We are made up of homeowners, board members, property  
8 managers, attorneys, engineers, other professionals who work  
9 with the industry. And so we get to see and debate many  
10 different sides of the issues even before we come before you  
11 today.

12           When I first saw House Bill 1774, my reaction was,  
13 no, just no. Why? Because we don't need government stepping  
14 into private organizations that run themselves and, in my  
15 experience, almost always run really well. But we also  
16 understand that there are conversations that need to be had  
17 and we heard from some of those today.

18           And so Representative Brown was kind enough to  
19 organize a conversation with the Attorney General's Office  
20 and CAI and the bar association and members of this community  
21 where we were able to share ideas and talk about both  
22 limitations and corralling the organization of the Attorney  
23 General's Office into a way that would hit on the most  
24 important issues that community members have, some of which  
25 you heard today, things that deal with the governance of the

1 community and leaving the Attorney General's Office out of  
2 the size of hats and colors of doors and things like that.

3           So, in that regard, CAI put together with this  
4 Legislative Action Committee a compromise based on the  
5 conversation that we had that would allow the internal  
6 dispute resolution process to take place in an association,  
7 because most have that, use alternative dispute resolution if  
8 an association has gone out and hired a third party to handle  
9 those kinds of things, then to go to the Bureau of Consumer  
10 Protection last. But, certainly, at that point people have  
11 had an opportunity to speak, to talk, to compromise, and if  
12 that compromise is not available and if people are not being  
13 given the opportunity to speak, you get to that level of the  
14 Attorney General fairly quickly.

15           The compromise language limits the authority of  
16 the Attorney General's Office to define the areas, but these  
17 are the areas that we all talked about as being most  
18 important, elections, meetings, quorums, and access to public  
19 records. And since Section 5316 of the UPCA already does  
20 bring in the AG's office for financial books and records, it  
21 makes sense to expand on that the way we have spoken about.

22           So, I guess my closing thoughts are good  
23 legislation is achieved through compromise and thoughtful  
24 exchange. That thoughtful exchange is taking place here  
25 today. And I think that by working together, we can create

1 these opportunities for people to work together first, and if  
2 they can't, then we bring in the additional authority to get  
3 proper results.

4 That's basically my thoughts about it. I have  
5 changed.

6 CHAIRMAN PETRI: Questions? Comments?

7 REPRESENTATIVE BROWN: I have one.

8 CHAIRMAN PETRI: Go ahead, Representative Brown.

9 REPRESENTATIVE BROWN: Mr. Granor, thank you very  
10 much. And I do appreciate all your conversations, even, like  
11 you said, prior to today's hearing and your ability to work  
12 with me on the legislation.

13 I do have a question which has gone back and forth  
14 depending on what community and what association and which  
15 member I am talking to, you know, where they live.

16 The internal resolution piece is very important to  
17 me because, of course, we would try to keep things at bay as  
18 much as possible from going into the Attorney General's  
19 Office. We would like to try to resolve things before they  
20 get to any level, no matter what we are dealing with. But  
21 can you help me understand a little bit better, is there a  
22 pretty consistent nature of that internal resolution process  
23 that CAI sort of recommends for each community that they have  
24 membership to, or is it very different? How would you  
25 consider the resolution? Is there a time frame of 30 days,

1 60 days that a resolution would have to try to be addressed?

2 MARSHAL GRANOR: So the answer is, no, yes, and  
3 maybe. Typical lawyer answer.

4 No, there is no set methodology for an internal  
5 dispute resolution. And as some people currently pointed  
6 out, because the UPCA was passed in 1996, there are many  
7 associations that predate that law and there are only certain  
8 sections of the law that apply retroactively. A little  
9 constitutional issue that you are not supposed to have ex  
10 post facto laws, so that UPCA was worked on very carefully to  
11 figure out those areas where you could apply backwards and  
12 now you can't. So, if you have one of these older  
13 associations, and there are some here in the Pocono area that  
14 go back 100 years or more, we have no idea what that  
15 mechanism might be.

16 Should the legislature or should an association  
17 impose a carefully crafted concept of dispute resolution,  
18 absolutely. But some of our associations are 20 homes, some  
19 of them are 1,000, and, of course, there are many larger  
20 ones, as well. So, a 20-unit association is not going to  
21 spend the time and money to update their bylaws to deal with  
22 dispute resolutions. They may not have an internal dispute  
23 in the last 20 years or maybe they have a problem every day.

24 So, no, there is no set methodology. And that is  
25 a problem that makes every one different. The bylaws are

1 written by lawyers. Sometimes they are not written by  
2 lawyers and they will say whatever they say. Somebody might  
3 have taken them off the shelf somewhere or found them on the  
4 Internet. I have one association in Pennsylvania that got  
5 their bylaws from an island community in Florida. It refers  
6 to alligators. So, you know, we can't control that kind of  
7 problem as much as we would like to. So I hope that answers.

8 REPRESENTATIVE BROWN: Thank you. I just wanted  
9 some clarity on that, because I pretty much assumed that was  
10 going to be the answer based on what I have heard because it  
11 is such an important piece of the legislation before we go  
12 any further; so, thank you.

13 ASHLEY SCHAEFFER: As a follow-up to that, since  
14 by the very nature these internal dispute resolutions would  
15 be the person going to the very board that they are having an  
16 issue with, do you think that there would be a certain way we  
17 could set, hey, if this isn't resolved within 30 days, it is  
18 time for you to go ahead and go to the AG because this is not  
19 going to be resolved as it is two parties that are having the  
20 dispute? Do you feel like there is a time period that could  
21 be put into the legislation to kind of limit how long that  
22 could be drug out?

23 MARSHAL GRANOR: I think, yes. But standing here  
24 on my two feet, I don't know that it is 30 days, 15 days, 60  
25 days, or, for that matter, you know, a hearing might take two

1 or three meetings like a zoning hearing sometimes does. So,  
2 I don't know that you can pigeonhole it in and say it has to  
3 be 30 days from the date of "X".

4 But, yes, there should be some control and that  
5 should not go on forever. And, again, reasonable people can  
6 come up with reasonable solutions to these things. When you  
7 are dealing with some unreasonable folks, it becomes much  
8 more difficult. There should be so much time to have -- you  
9 make the request, there is a response, you have a hearing,  
10 you get a decision. Sometimes you go to a committee of the  
11 board and then your right is to go up to the full board as  
12 the review. And, yes, I understand that it is sometimes  
13 uncomfortable to go before a committee of your peers, but  
14 then, again, that is what associations are. And in our  
15 communities, I wouldn't say that there is 100 percent  
16 agreement on everything; there is not. You are dealing with  
17 human beings. But we get to Court once a year with 11,000  
18 people, maybe twice. So, usually, you are able to come up  
19 with a resolution.

20 REPRESENTATIVE LEWIS: Is there any time for  
21 arbitration or arbitrators involved with these disputes?

22 MARSHAL GRANOR: There can be. Some states have  
23 arbitration arrangements. Pennsylvania has a few private  
24 companies that will do arbitration, for the most part. I  
25 don't know that associations avail themselves of that. And

1 CAI has an organization that has been looking at the idea of  
2 setting up a statewide arbitration arrangement where  
3 inexpensively and quickly you could have people from the  
4 industry who are disinterested but interested in getting a  
5 proper resolution, who could be available. And that's  
6 something that is pending and, hopefully, we will be able to  
7 roll that out some day.

8 ASHLEY SCHAEFFER: One other question. The  
9 communities that you work with, do you suggest, when you  
10 suggest the dispute resolution program within their  
11 community, do you suggest a third party be a part of that and  
12 do they utilize that suggestion? I mean, how many do you see  
13 actually using third party dispute resolution?

14 MARSHAL GRANOR: Okay, it has been used a few  
15 times for really sticky situations. Again, we don't have  
16 that many really dramatic disagreements. The disagreements  
17 that we have are mostly noise, pets, trash, fences, things  
18 that the Attorney General's Office probably does not want to  
19 be involved in and we probably don't want their resources  
20 involved in. So, it is less likely that those kind of  
21 disputes are going to go to arbitration.

22 But, yes, we have had some arbitrations. And  
23 people, in general, like it because the attorney's bills are  
24 less. The formality is less. The money that is being  
25 spent -- as a homeowner, you are paying both sides, you are

1 paying the defense and prosecution. That's a double whammy.  
2 So, this is an easier way, in my opinion, for most  
3 situations.

4 CHAIRMAN PETRI: Representative Parker.

5 REPRESENTATIVE PARKER: Yeah, for community  
6 association, is there a law that would state that all members  
7 must have access to contact information in the membership?

8 MARSHAL GRANOR: Contact information is interesting.  
9 And we have debated that. We have some homeowners who  
10 absolutely, positively do not want their contact information  
11 out. We have one woman who has a protection from abuse order  
12 and she doesn't want anybody in the world to know where she  
13 lives. But we have had people in the community say I am  
14 entitled to phone number and E-mail address and names of all  
15 of the occupants of the homes.

16 So, we are put in, as a manager, in a funny  
17 position of not wanting to release that information but, yet,  
18 do we have to release that information. Homeowners are  
19 entitled to financial data and any of the books and records  
20 of the association, except for the communications, privileged  
21 communications with your attorney. So, other than that,  
22 yeah.

23 REPRESENTATIVE PARKER: So, they are entitled to  
24 it?

25 MARSHAL GRANOR: They are absolutely entitled to



1 the information. If there is a really good reason to  
2 withhold it, we will shield somebody if there is a protection  
3 order or something like that.

4 REPRESENTATIVE PARKER: Okay.

5 MARSHAL GRANOR: It doesn't come up that often.

6 REPRESENTATIVE PARKER: Well, the disputes we are  
7 talking about are elections and that's where I see it.

8 MARSHAL GRANOR: Names and addresses, yes; cell  
9 phone numbers and E-mail address we don't give out.

10 REPRESENTATIVE PARKER: But as long as you can  
11 make contact with all the members if you want to run or you  
12 wanted to call a membership meeting.

13 MARSHAL GRANOR: Books and records of the  
14 association are available to any owner.

15 REPRESENTATIVE PARKER: So, if they are being  
16 compelled, that is a violation of law and that could be  
17 remedied with the Attorney General?

18 MARSHAL GRANOR: I don't think it can. Actually,  
19 it can for a planned community and cannot for a condo, which  
20 is a strange dichotomy in the law.

21 ASHLEY SCHAEFFER: I would like to clarify the UPC  
22 does say that if they are withholding financial documents  
23 that you have requested, you can file currently with the  
24 Attorney General's Bureau.

25 MARSHAL GRANOR: Correct.

1           ASHLEY SCHAEFFER: So, I do want to clarify that.  
2 When it comes to other documents that the law states that you  
3 are entitled to, there is no recourse at this time if they  
4 refuse to give those to you, which is what House Bill 1774 is  
5 looking at.

6           MARSHAL GRANOR: Just to comment on that, there  
7 are many areas in the Uniform Condominium Act, the  
8 Cooperative Act, and the UPCA that say thou shalt but they  
9 don't say what if you don't. There are things directed at  
10 the developer, there are things directed at the board, and  
11 there are no consequences for many of the requirements in the  
12 Act. That's a conversation for another day.

13           CHAIRMAN PETRI: I noticed in the comments that we  
14 had in the packet that there was one particular complaint  
15 about a circumstance -- and I don't remember all the  
16 details -- but, essentially, it was that somebody had lost an  
17 election but refused to vacate the seat. So, I was trying --  
18 I have never filed -- I have been a practicing attorney for  
19 30 years, but for those in the audience that are interested  
20 in that issue, this bill would not address it, it couldn't  
21 address it. It is a Quo warranto action. You have to figure  
22 out how to file it. I have never filed one. But I am sure  
23 there is a form somewhere where if somebody has lost their  
24 position and they refuse to vacate the seat, you probably  
25 have to go to Court.

1           And I offer that only because I started off with  
2 comments that we won't solve every situation; we are not  
3 trying to. And, certainly, I think I agree with your  
4 comments about the aesthetic pieces. Like we don't want to  
5 tie up the Attorney General's hands on those issues. I don't  
6 think it would be possible. I do like your idea of trying to  
7 force a resolution through internal procedures. But I also  
8 agree with the maker that there ought to be some sort of  
9 framework that if the parties don't extend because they are  
10 making progress, that somebody has the right to say, okay,  
11 you know. And one of the things that strikes me, you were  
12 talking about the types of complaints you see in your  
13 communities, and what we heard today were completely  
14 different. And I think we would all agree that they raise  
15 constitutional questions, it raised questions about fairness  
16 and decency.

17           One of your counsel and I were talking about how  
18 many times we even see in non-profits -- boards that function  
19 in an unhealthy sense exist in our Commonwealth in  
20 non-profits. Those unhealthy circumstances are some of the  
21 things we heard where you can't be on the board unless you  
22 have been nominated and the nominating committee is appointed  
23 by the board; so, if they don't nominate you, then they run  
24 the slate. I have seen in my own practice non-profits,  
25 somebody goes in the back room and rigs the vote. It

1 happens. It is shameful. But I don't think legislation is  
2 going to change that because it would appear to be illegal  
3 already.

4 But to have an outlet where somebody could raise  
5 that inexpensively and quickly and expose it for what it is,  
6 what I would call shameful acts, whether they are legal, not  
7 legal but they are certainly shameful, I think that's what  
8 the author is trying to get to to provide a reasonable  
9 solution. So, I really appreciate your comments, but I do  
10 have a question.

11 You practice in New Jersey, as well. Does New  
12 Jersey do it better, worse, or is there anything we could  
13 borrow from our neighbor?

14 MARSHAL GRANOR: I have lived my entire life in  
15 Pennsylvania. I know Pennsylvania law better than I know New  
16 Jersey law. I am not an attorney in New Jersey or anything  
17 else. So, there is a Department of Community Affairs that  
18 watches over condominiums. They don't touch homeowners'  
19 associations and planned communities.

20 The law in New Jersey is the wild west of cobbled  
21 together pieces of legislation that were never done in an  
22 organized way. So, from that point of view, you get no  
23 guidance. There is a huge amount of case law in New Jersey  
24 about associations. We don't have anywhere near that in  
25 Pennsylvania. They love to litigate and the Courts there are

1 not consistent, in my opinion. So, I think we do it better,  
2 but that doesn't mean we can't do it better than we are  
3 currently doing it.

4           And I want to add that there are sometimes where  
5 you have an illegal activity going on in a community where  
6 somebody's life is being threatened or where money is being  
7 stolen, the police and the District Attorney have to get  
8 involved in that right away. That's not something for this  
9 legislation or the Attorney General's Office. That's  
10 criminal. And, so, if that does happen, criminal response  
11 has to be made.

12           CHAIRMAN PETRI: Do you think there is adequate  
13 training for lawyers who seek to represent community  
14 associations? I mean, obviously, we have no mandate. I  
15 don't know much about the law, but I guess I could be hired  
16 by some community. God bless you if you did that.

17           MARSHAL GRANOR: There are a limited number up  
18 here. You have got Alan Young, who is the Dean of  
19 Pennsylvania community associations.

20           But you have some people who have been doing this  
21 for a very long time. Training? CAI offers that. There are  
22 legal symposiums. I mentioned I am a member of the College  
23 of Community Association Lawyers. We have an annual law  
24 seminar from around the country and many of us attend that.  
25 But it is a very small bar. There are very few people who

1 want to spend their lives devoted to community association  
2 questions. You don't make big bucks like you do doing  
3 asbestos cases and things like that.

4 CHAIRMAN PETRI: I know the fees are a little  
5 lower, from what I have seen. But, on the other hand, I have  
6 seen, I have to say in Bucks County I have seen cases where  
7 the board seems to almost retaliate against people that  
8 complain. And, so, we heard some of those stories with  
9 excessive fines.

10 I will give you an example of one thing that  
11 really bothered me. So, the guy is complaining and he has  
12 bought a unit. He has owned it for 10 years, never made any  
13 changes, and suddenly there are violations. So, he has an  
14 acceptance when he takes it over that it conforms, and once  
15 he starts complaining, you know, the association and  
16 management company start piling on fines and all. It even  
17 went so far, which I thought was wrong but maybe you think  
18 it's okay, went so far as to say that his patio was  
19 non-conforming and violated his property line. He never  
20 changed the patio. And the board's position and counsel's  
21 position was he had to get a survey to prove that he was  
22 correct, as opposed to they should get a survey to prove that  
23 he was wrong. We worked it out, but it can get expensive.

24 MARSHAL GRANOR: I was an expert witness in Bucks  
25 County in a case that a homeowner brought against the board.

1 The gentleman lived there for 17 years and he claimed that he  
2 was being charged too much. The total he was looking for for  
3 17 years of overcharges with interest was \$1300. He spent  
4 three hours in Common Pleas Court time, the Judge threw it  
5 out because there was no basis for it. But if you have the  
6 time and money, you can bring a case. It just happens.

7 CHAIRMAN PETRI: We are going to hear next from  
8 John Carney, general manager Wallenpaupack Lake Estates.

9 JOHN CARNEY: Good morning. Your opening  
10 statement on communities was very good, and, as always,  
11 Representative Brown, we really appreciate your dedication to  
12 communities.

13 I don't want to be redundant on what Marshal said.  
14 I think you have basically an idea of where the CAI is coming  
15 from.

16 But just a little bit of my background. I have  
17 been general manager of Wallenpaupack Lake Estates for  
18 26 years. It is a large scale community, almost 1400 homes.  
19 We have central sewer and water, 18 miles of roads,  
20 clubhouses, pools, and we have the biggest marine on Lake  
21 Wallenpaupack.

22 So, being with one community for 26 years, I have  
23 to admit I can't relate to some of the things that have  
24 already been said. And right now, I think I feel very  
25 fortunate that I can't relate to some of them. But I do

1 appreciate the previous speakers on what they are going  
2 through and what they had to say.

3           But with the CAI, you know, being a nationwide  
4 organization, you talk about education, and I believe this is  
5 where between the attorneys and managers, volunteers, you  
6 know, the leaders of the community and other professionals,  
7 that's where they can get this education. And, you know,  
8 listening to people talk, I think maybe it is time that with  
9 the CAI we need, maybe, to develop some type of mediation or  
10 ways of getting the word out with education.

11           And I know, with us, we have fairly strict rental  
12 rules. And as far as now, because of seasonal renting, that  
13 kind of becomes a little bit of a problem in these areas that  
14 are considered resort areas around Lake Wallenpaupack, so, we  
15 have instituted some different rules that, with membership  
16 approval, went out to vote, it was membership approval.

17           The thing is communication is key. And many of  
18 the realtors, they are not going to know what is going on.  
19 We had to educate the realtors. We sent out letters. And  
20 when realtors came into the office, we prepared a package for  
21 the renters so they knew what was going on. Because we  
22 actually now just established a two-year moratorium for  
23 renting. You build or purchase your home, you cannot rent  
24 that house for two years. And not everybody likes that, but  
25 the board, we had reasons for doing it. The membership voted



1 on it and the membership approved it. And that always helps,  
2 when you get the membership to approve something, that always  
3 helps.

4           And I feel that the provisions the communities  
5 have to offer between rules and regulations, bylaws,  
6 covenants, and now with state statute, there are recourses  
7 for the membership. They are property owners' associations.  
8 The property owners are the ones that own this. Yes, they  
9 elect that board to manage their community or hire the  
10 managers, but, for the most part, as one gentleman already  
11 mentioned and they are already doing, for the most part,  
12 there are provisions to recall that president or that board  
13 or, you know, like he mentioned, a special meeting, you can  
14 call for a special meeting.

15           And, in my opinion, if a community is having those  
16 types of problems and it can only be making the minority  
17 happy, it cannot be making the majority of the people happy  
18 in that association, they need to band together, get that  
19 special exception, and do whatever they need to do.

20           And, you know, Marshal already touched on it and I  
21 don't want to be redundant, but the Uniform Planned Act,  
22 between Section 5308, 5309, 5310, and 5316, you know,  
23 relating to meetings, quorums, voting proxies, and  
24 association records, which we already said association  
25 records you can already contact the Attorney General,

1 listening to many people talk, quite a few of the complaints  
2 dealt with those sections. And the CAI suggestions to the  
3 amendment of the bill, they would be included where the  
4 property owner could then go to the Attorney General.

5 I am very adamant with the association that I run  
6 we have a review committee. We have a person gets a  
7 citation, fine, or whatever, there is a review committee.  
8 Not the Board of Directors, this is of their peers. They  
9 meet with them first. If they do not like their decision,  
10 then, yes, they would have to appeal to the Board of  
11 Directors. So, there is a process. And there is a process  
12 in between the common core, there is a magistrate's level,  
13 which is on a smaller scale and also a cheaper scale. So,  
14 there are other alternatives.

15 You have got the lawyer's perspective of the bill  
16 and now you are getting a property manager's perspective.  
17 And when I first read the bill, which Representative Brown  
18 has already answered this question, when I first read the  
19 bill, to me, it seemed really wide open and I was really kind  
20 of wondering what kind of complaints do they really want to  
21 deal with. Because in my experience, 26 years, if I look  
22 back at my records, the most complaints that I get are  
23 barking dog, noisy neighbor, speeding, unkempt properties.  
24 And I really wasn't sure if the bill was intended to be able  
25 to handle something like that. Because, if it was, then I

1 really have to say a person needs to go through their  
2 community for all avenues for them to resolve the issue  
3 first.

4 CHAIRMAN PETRI: I think we are talking about due  
5 process type issues.

6 JOHN CARNEY: Yes. Then when I looked at the  
7 bill, my opinion of what I consider major complaints would be  
8 allegations of embezzlement, fraud, discrimination,  
9 harassment, rigging elections, violating fair housing. Now,  
10 these are all criminal offenses. Where would they be better  
11 suited for? Would it be to the Attorney General's Office or  
12 would it be into the county in which the community is in?

13 CHAIRMAN PETRI: My sense is it could be both,  
14 because you have a DA who just decides whether they have  
15 evidence and whether they are going to prosecute and not  
16 everything -- you know, it may be serious, it may be  
17 criminal, but they may just decide not to use their resources  
18 that way. So, to me, both could work, as long as we keep it  
19 narrow.

20 JOHN CARNEY: That's exactly what the CAI is  
21 looking to do is narrow the bill. And if that can be done, I  
22 can see the CAI supporting this bill. And I think with the  
23 different people that have spoken today, you know, with  
24 compromise, hopefully, we can make all groups happy.

25 CHAIRMAN PETRI: Let me share one thing with you

1 and the audience, Mr. Carney. The first bill I ever passed  
2 really never needed to be a law. It is basically a copy of  
3 the fire hydrant law and said you can't park in front of a  
4 sign notifying the neighbor that there is a blind or deaf  
5 child. I had a family that had a daughter who was both  
6 legally blind and legally deaf. Under the law, they pay for  
7 their own sign. They put it up. And they had a neighbor,  
8 even though they had plenty of room to park their van  
9 anywhere else, refused to park it in the driveway and parked  
10 it on the road and refused -- they could have moved -- they  
11 had 150 feet of frontage, they could move anywhere.

12           You shouldn't have to pass a law to tell somebody  
13 that you are ignorant, but, apparently, sometimes we do.

14           JOHN CARNEY: Common sense goes a long way. And  
15 listening to the one gentleman speak and things that he has  
16 heard at the grocery store or whatever, believe me, in my  
17 26 years of managing a community, I have had property owners  
18 come to me and tell me some things where I am saying, no way.  
19 Like I don't know where you heard that, but no way.

20           So, from one thing, the property owners need to  
21 get facts.

22           With talking to property owners who do not know  
23 what they are getting themselves into when they come into a  
24 community, well, you know, what group can educate people to  
25 know what you are doing before you get into it. For one

1 thing, really, buyer beware. I think that buyer needs to do  
2 their homework and their research. But through the  
3 communities, themselves, and through the realtors, through  
4 the township, you got to have a good relationship with the  
5 salespeople, with your municipality, with the township  
6 supervisors, and also then with the commissioners on a County  
7 level.

8           CHAIRMAN PETRI: So, let me share with you the  
9 typical complaint I get at my office. The board won't allow  
10 me to go door to door to campaign because they say that is  
11 solicitation. They won't give me financial documents even  
12 though I have asked for them. The same things we have been  
13 hearing today. So, I know what Representative Brown is  
14 trying to do because she is getting the same complaints. I  
15 don't get the complaints from constituents that, you know,  
16 they picked on me for this or that, generally; I mean,  
17 occasionally, but we usually then refer them to a lawyer or  
18 somebody to talk to.

19           So, we know we have a problem. We know it is not  
20 the vast majority of boards, but we do have to create, I  
21 think, an outlet for somebody to be able to try to get their  
22 complaints heard.

23           There has always been a great town hall tradition.  
24 I love town halls where people come in and can freely speak.  
25 But, apparently, sometimes on the board -- and I know we

1 talked about it even among members here -- you have to have  
2 control over of a meeting. You have to an assembly. But you  
3 should be able to speak your opinion and I am sure you can in  
4 your community.

5 JOHN CARNEY: We can, and that's why it is hard  
6 for me to relate to this. I do look forward to continuing  
7 the conversation.

8 CHAIRMAN PETRI: Representative Parker.

9 REPRESENTATIVE PARKER: I had a constituent stop  
10 in, have a complaint about neighbors running businesses out  
11 of their home in a private association, if that's against the  
12 bylaws.

13 JOHN CARNEY: That's against covenants. It is a  
14 sticky situation because with our covenants, it basically  
15 says the home has to be a single family dwelling. So, we are  
16 in a residential community, so, if it is a business, what  
17 kind of business. Are they selling Am way products out of  
18 their house or somebody bringing traffic into the house? And  
19 that could very easily be a township violation.

20 REPRESENTATIVE PARKER: In which case the township  
21 could resolve it.

22 JOHN CARNEY: Yes.

23 REPRESENTATIVE PARKER: So, if they are fixing  
24 cars in the driveway and basically running a garage.

25 JOHN CARNEY: Thank you. Yes.

1           CHAIRMAN PETRI: For the audience's benefit, we do  
2 have a number of experts in the room from Community  
3 Association who can answer questions. We are running a  
4 little late, so I am not going to have them answer questions,  
5 necessarily, unless they want to take them. But at the end  
6 of the meeting, there are a number of people here who have  
7 this background and experience, and if you have a particular  
8 question, I wouldn't ask them about things that are factually  
9 related, but legally related, is it in the law, should it be  
10 in the law, those kind of things.

11           We do have a resident who arrived late who wanted  
12 to speak, so we are going to recognize Bob Fenlon and then we  
13 are going to go right to the Attorney General who is going to  
14 talk to us about this legislation.

15           ROBERT FENLON: Thank you for letting me speak.  
16 My name is Bob Fenlon. I am the president of a local  
17 homeowners' association consisting of 1256 homes. My  
18 involvement with the association goes back to 2007 when I  
19 joined the finance committee. In my tenure, I had been  
20 mostly in the capacity of a president. I have been involved  
21 with overthrowing two corrupt boards.

22           CHAIRMAN PETRI: When you say corrupt, can you be  
23 a little -- not as to what they did but types of things. Is  
24 it embezzlement? What is it?

25           ROBERT FENLON: It was a long list of things,

1 including not allowing people to run for election. That was  
2 something that really --

3 CHAIRMAN PETRI: So it was election fraud,  
4 potentially.

5 ROBERT FENLON: Well, I was the subject of  
6 election fraud later. I have documentation for that. But  
7 disqualifying people from running because of shaky rules, so  
8 to speak. They were in arrears at one point in the year. We  
9 later changed the bylaws to that any member in good standing  
10 can run.

11 But I have been involved in numerous Court  
12 proceedings all the way up the Appellate Division of the  
13 Pennsylvania Courts. And I guess there is a lot to be said  
14 about associations. They are democracy at its, really,  
15 finest level, you know. These are people, homeowners that  
16 live in these communities. And while you will see oftentimes  
17 that there is problems, there are certain rules and  
18 regulations you have to have to run these.

19 Originally, my concern with this bill was that  
20 certain fines like -- typically, the fines, the problems that  
21 we have that we issue fines for would be ATVs, firing guns  
22 within the association. We are having a very big problem  
23 with short-term rentals, which is a little bit of a problem  
24 here. And things that, typically, we get complaints from  
25 people that live there, they call the association office to



1 say do something about this.

2           So, I guess in the history that I have had with  
3 the association, I have a couple of points where it reached a  
4 concern with what I was hearing. One was that we received a  
5 complaint from the Pennsylvania Human Rights Commission. The  
6 complaint after it was reviewed, which started off very badly  
7 with the state investigator calling our bookkeeper and  
8 telling her to settle with this person for \$7600, I thought  
9 that was very inappropriate. But as we got further into how  
10 a complaint with the Pennsylvania Human Rights Commission  
11 works, we were very disadvantaged in the fact that we had to  
12 go to Harrisburg to address this and she had the benefit of,  
13 basically, a state investigator and we had to spend  
14 association funds. We spent over \$5,000. And in the end the  
15 complaint was dismissed.

16           And what the woman's real issue was she didn't  
17 want to pay her dues, but a very crafty attorney sent her in  
18 this direction and it really hurt us.

19           So, my concern here is that we don't become  
20 burdened. It's hard enough to get good people to serve on  
21 these boards now. They are not all corrupt. There is a lot  
22 of people that do this for free. I am taking a day off from  
23 work today to come here, I thought it was that important.  
24 But I think the most important thing that you can deal with  
25 from the legislative perspective is the elections, because

1 what you really need to do is these elections need to be  
2 audited by CPAs. We had a election, I was the target of it.  
3 And I have some materials here for you to look at. We were  
4 fortunate to have an ombudsman that was pretty sharp. He was  
5 a printer in a former job he had, but we had 134 counterfeit  
6 ballots cast by mail that changed the course of the election.  
7 We went to Court and the Judge ran the election again and the  
8 results of the election were reversed.

9 CHAIRMAN PETRI: So, you are saying the Judge  
10 found that the ballots were forged?

11 ROBERT FENLON: Sure, so she added a new election.

12 CHAIRMAN PETRI: But no financial damages?

13 ROBERT FENLON: Well, here is the problem that you  
14 run into with elections -- and this is something you really  
15 need to take a look at -- different District Attorneys look  
16 at this stuff differently. Monroe County District Attorney  
17 looked at this like that is a civil battle. We don't want  
18 anything to do with homeowners' associations.

19 I recently saw in Pike County where the District  
20 Attorney took an entirely different approach and the people  
21 were charged. I think, really, when you take away the  
22 people's right to a fair election, you know, that's the worst  
23 thing that can happen.

24 CHAIRMAN PETRI: It is the core of our democracy.

25 ROBERT FENLON: It really needs to be a felony

1 because a lot of this is done through the mail. It should be  
2 criminal. The cost of re-running an election because you  
3 find out -- and many of them people probably never know. So,  
4 there needs to be a legislative review and a place where  
5 people can go with election complaints. It's very very --  
6 you know, it's like you said, the core issue here. So, I do  
7 have that for you, the ombudsman report that we had with  
8 that.

9 CHAIRMAN PETRI: Who paid for the ombudsman?

10 ROBERT FENLON: He is an elected official within  
11 our association. This would be the file regarding the  
12 Pennsylvania complaint.

13 CHAIRMAN PETRI: Light reading.

14 ROBERT FENLON: There is always two sides to this.  
15 But if we have a government agency that is reviewing  
16 complaints, we can't go to Harrisburg and send -- it's going  
17 to be prohibitive cost-wise and we would have to just throw  
18 in the towel.

19 CHAIRMAN PETRI: Any questions or comments?

20 ROBERT FENLON: The other issue we have is  
21 short-term rentals. This is something we do issue fines.  
22 But you have Internet air bed and breakfast. These people  
23 are renting out and it is causing tremendous problems within  
24 the association. And we created rules because we have  
25 fireworks shooting off in residential areas and 35 people at

1 a house. We fine these people, they say we didn't do it,  
2 okay.

3 CHAIRMAN PETRI: It is a real problem and it is  
4 occurring in residences and neighborhoods where it's not  
5 allowed even under local zoning. I would encourage you to  
6 contact Pennsylvania Association of Township Supervisors and  
7 all the other associations, because they are focused on this,  
8 as well.

9 ROBERT FENLON: It's a big problem. I sat through  
10 five hearings with the township. It is really a nightmare.

11 CHAIRMAN PETRI: I am not sure now you police it.

12 ROBERT FENLON: It is very problematic because  
13 people are going to say they are my friends. They have no  
14 qualms about lying. And this is where the boards, if they  
15 issue a fine for fireworks or for registrations or ATVs, they  
16 can't go to Harrisburg.

17 CHAIRMAN PETRI: You remember the Pope came to  
18 Philadelphia, right? What do you think all of those were,  
19 those rentals?

20 ROBERT FENLON: I am going to keep my remarks  
21 brief. This is a little bit of -- you know, people have  
22 these things registered on Internet sites, but when you fine  
23 them, they say I am not doing it.

24 CHAIRMAN PETRI: This is proof of violation of  
25 short-term rentals.

1           ROBERT FENLON: To me, it is.

2           CHAIRMAN PETRI: Thank you. It is another subject  
3 that somebody is working on.

4           ROBERT FENLON: There was one other thing, I don't  
5 know if it comes into play with this committee, but if it is  
6 at all possible, we have to be able to pay our dues. We have  
7 to collect the dues and we can't pay our staff with IOUs or  
8 widgets. One of the things that has come to our attention in  
9 looking at taking people to Court for dues is there is  
10 something called a Planned Unit Development Rider. And in  
11 these homeowners' associations, they should all be required  
12 to do it. They should also be a mechanism for the  
13 associations to be able to contact the banks so that they can  
14 start escrowing homeowners' association dues before they are  
15 \$40,000 behind.

16           CHAIRMAN PETRI: The bankers are going to love  
17 you.

18           ROBERT FENLON: Thank you very much for your time.

19           REPRESENTATIVE BROWN: We are looking into that.

20           CHAIRMAN PETRI: Next we are going to hear from  
21 Basil Merenda, Chief Deputy Attorney General and Director of  
22 the Office of Attorney General's Bureau of Consumer  
23 Protection. This is the guy that really heads the department  
24 that would be involved in this legislation, so we are  
25 interested in your comments and you may proceed.

1           BASIL MERENDA: Good afternoon, Chairman Petri,  
2 Representative Parker, Representative Lewis, Representative  
3 Brown.

4           For the record, my name is Basil Merenda. I serve  
5 as a Chief Deputy Attorney General in the Pennsylvania  
6 Attorney General's Office, Director of the Consumer  
7 Protection Bureau. I am responsible for directing the  
8 Bureau's staff of 83 lawyers, investigators, and clerical  
9 staff working out of six regional offices across the  
10 Commonwealth.

11           I began my tenure in the office of the Attorney  
12 General in April of 2014 when I was brought on to  
13 restructure, refocus, and reinvigorate consumer protection  
14 efforts in the state.

15           Mr. Chair and committee members, I can assure you  
16 that the AG's Bureau of Consumer Protection Division and  
17 Bureau will not be sleeping during my watch.

18           CHAIRMAN PETRI: I was hoping you would say  
19 something about that.

20           BASIL MERENDA: With that background, I appreciate  
21 the opportunity to appear before you to provide some insight  
22 on the Bureau's mediation, investigation, and litigation  
23 efforts in consumer protection and how that information can  
24 possibly provide valuable insight into issues you are hearing  
25 from your constituents about the associations that govern

1 Pennsylvania's planned communities.

2           Simply put, the powers and duties of the Bureau  
3 boil down to four basic functions, education, mediation,  
4 investigation, and litigation, all of which are to serve at  
5 and to protect consumers in Pennsylvania.

6           Please note that the Bureau does not accept  
7 complaints about businesses, referred to as so-called  
8 business to business disputes, because our thing is to  
9 protect consumers first and foremost. So, please, permit me  
10 to focus in on our mediation function.

11           The vast majority of complaints filed within the  
12 Bureau proceed to a voluntary mediation process. As I will  
13 explain, this process may be useful in addressing the issues  
14 that the homeowners' associations have been identified in  
15 House Bill 1774.

16           The Bureau's mediation process begins with a  
17 review of the complaint to determine whether the matter  
18 implicates consumer protection laws. We are responsible for  
19 enforcing over 30 different consumer protection statutes in  
20 the Commonwealth and the centerpiece is the Consumer  
21 Protection Act. If the Bureau has jurisdiction over any  
22 complaint pursuant to those laws, the complaint is assigned  
23 to a consumer protection agent to begin the mediation  
24 process. It is a simple and straightforward process. Agents  
25 first forward the complaint for the business and request a

1 written response to the consumer's allegations. When a  
2 response is received, it is reviewed by the agent and  
3 forwarded to the consumer for their review and response.

4 Now, this is important. Our mediation process  
5 doesn't usually include the face-to-face session which many  
6 attorneys are familiar with in the simple action context. Be  
7 that as it may, we have directed our agents to be more  
8 proactive and continue the process as long as there is a  
9 basis to agreeably resolve a complaint. In fact, in more  
10 urgent matters, agents mediate complaints over the telephone  
11 or, in special circumstances, visit the business, itself.

12 Now, the end result of our mediation process is  
13 equally straightforward. Mediations are closed when the  
14 complaint has been successfully resolved or it is determined  
15 that an agreement between the two parties cannot be  
16 reached.

17 It is worth noting that complaints are also  
18 codified internally to allow the Bureau to track patterns of  
19 consumer protection violations and other illegal practices.  
20 When patterns are discovered, we review those patterns for  
21 potential further investigation. In appropriate situations,  
22 these investigations could possibly lead to the filing of a  
23 legal action in Common Pleas Court, in Commonwealth Court,  
24 and even in Federal District Court.

25 That brings us to the litigation function. The



1 legal actions are only pursued when they are found to be in  
2 the best interest of the Commonwealth. Now, there is one  
3 important caveat the Bureau faces in every investigation we  
4 open and every lawsuit we bring. In order to proceed to  
5 Court, we must have a proof of a pattern or a continuing  
6 practice of illegal conduct that impacts a group of  
7 consumers, as opposed to an individual consumer.

8           The Bureau is prohibited by law and limited by  
9 resources from providing legal representation to one single  
10 person or one single consumer.

11           Finally, if the Bureau is unable to resolve the  
12 complaint and is not a matter chosen for further  
13 investigation or litigation, the consumer is free to pursue  
14 their own private legal action under the consumer protection  
15 law.

16           Now, moving to the Bureau's current involvement in  
17 homeowner association complaints, I would like to note for  
18 the record that the Bureau's jurisdiction and authority  
19 pursuant to the Uniform Planned Community Act, UPCA for  
20 short, is very limited. Specifically, the Act permits  
21 members of a homeowners' association to file a consumer  
22 complaint with the Bureau when the association has failed to  
23 provide within 30 days of a written request a copy of the  
24 annual financial statement. In fact, the Bureau has received  
25 a limited number of complaints related to this particular

1 provision. We have only received 41 complaints in 2015 and  
2 27 complaints in 2014. However, the provisions of House Bill  
3 1774 would significantly increase the Bureau's duties and  
4 responsibilities regarding homeowner association disputes.

5 But I must make a cautionary warning, and I think  
6 you might know where I am going with this. I must note --

7 CHAIRMAN PETRI: You are right. It is always  
8 about scope. And the other thing is we don't want this to  
9 become a witch hunt.

10 How do you think the amendment would impact you?  
11 We know the bill is a little broader and the amendment is  
12 surgically designed to deal with some of the complaints we  
13 heard about today. Would that be something you think you  
14 could handle?

15 BASIL MERENDA: Absolutely. I agree that the  
16 amendment goes a long way in focusing our efforts pursuant to  
17 our limited resources and what we can and cannot do and what  
18 we can do best and what we can't do. For example, the board  
19 is well suited to assist in complaints related to  
20 transparency, governance, and direct violations of the UPCA.  
21 With additional resources, it is possible the Bureau could  
22 effectively address governance and transparency matters and  
23 issues related to meetings, quorums, voting, and records.

24 In contrast -- and this needs to be put on  
25 record -- we believe it would not be appropriate for the

1 Bureau to entertain complaints about the inner workings of  
2 the association. For example, the Bureau does not have the  
3 expertise to effectively address issues about aesthetic  
4 guidelines that homeowners must follow and also like it is  
5 described as the subjective disputes over requirements for  
6 the purchase or lack of purchase of a specific good or  
7 service by the association for a homeowner for a unit in that  
8 regard.

9           Therefore, it comes full circle. And consistent  
10 with our recommendations, I submit that the Bureau could  
11 mediate association matters in the same way the Bureau  
12 mediates consumer protection complaints that we receive. And  
13 I can make that assertion if the reach of the legislation is  
14 amended as explained.

15           In short, the Bureau of Consumer Protection has  
16 the experience, the expertise, the skill to effectively  
17 mediate specific types of disputes involving transparency,  
18 governance, and things of that nature. That's our bailiwick.  
19 That's what the CP does best. And with some additional  
20 resources, we can make a difference for homeowners and their  
21 associations throughout the Commonwealth.

22           So, on behalf of the Office of Attorney General,  
23 thank you, Mr. Chair, thank you, committee members, for this  
24 opportunity to present testimony on 1774. I hope I was able  
25 to provide the committee with some useful information related

1 to the functions of our Bureau and I look forward to working  
2 with Representative Brown and members of the committee to  
3 better protect Pennsylvania consumers. And I welcome any  
4 questions or comments.

5 CHAIRMAN PETRI: Representative Parker.

6 REPRESENTATIVE PARKER: We had some issues brought  
7 up today and if you would be able to, knowing the legislation  
8 and looking at that situation, how would the Attorney  
9 General's Office approach that and resolve it?

10 BASIL MERENDA: Well, a lot of the issues that, I  
11 am assuming from the audience, a lot of the issues involve  
12 transparency, records, and things of that nature. And that's  
13 a set of issues that we could probably address through the  
14 mediation process. It's going to be a strain on our  
15 resources, but we will try to work around that.

16 REPRESENTATIVE PARKER: Then you would render a  
17 decision which one party may not be happy with and then they  
18 could, I guess, appeal or legally challenge your decision?

19 BASIL MERENDA: Yes, I am not sure about the  
20 appeal procedures that are included. Maybe that's something  
21 that we could address in subsequent amendments.

22 ALYSSA WEINHOLD: If I may, we often reopen  
23 complaints. So, if they would file a complaint with our  
24 office and we wouldn't be able to reach a resolution, they  
25 could ask us to reinitiate the mediation. Or, like Basil

1 said, if we decide that we really can't do anything, the  
2 board is not willing to work with us, they could file their  
3 own private complaint as they can under current law.

4           BASIL MERENDA: In the context of our  
5 run-of-the-mill consumer protection complaint, if our  
6 mediation process can't resolve the dispute between the  
7 business and the consumer, and if it doesn't involve a  
8 pattern, then the case would be filed, we keep it on file to  
9 see if a pattern emerges.

10           However, if in that situation that particular  
11 mediation can't be resolved and it is a part of a larger  
12 pattern, then we proceed to the next step, which is  
13 investigation and ultimately litigation under our consumer  
14 protection laws.

15           So, in this situation, if we find that it involves  
16 an egregious violation, if it involves a similar type of  
17 complaints, we might be able to see if we can probably bring  
18 a legal action under our Consumer Protection Act.

19           CHAIRMAN PETRI: Which you have the right to do  
20 now, anyway.

21           BASIL MERENDA: Correct, under the Consumer  
22 Protection Act.

23           CHAIRMAN PETRI: We are not changing that part of  
24 the law.

25           BASIL MERENDA: For the record, that is Alyssa

1 Weinhold. She is our legislative director for the Attorney  
2 General's Office.

3 CHAIRMAN PETRI: Representative Brown.

4 REPRESENTATIVE BROWN: I appreciate your testimony  
5 and your willingness to work with us, especially in regards  
6 to the amendment. So, the amendment is kind of, for  
7 everybody, if it has been a little confusing, focusing in on  
8 some specific provisions and measures to make sure we are  
9 really dealing with the right complaints and still giving the  
10 freedom that is necessary for the private communities under  
11 the Planned Community Act. So, I appreciate your willingness  
12 to work with us on the amendment and, hopefully, we can  
13 address the constituent needs that I think are very very  
14 large here.

15 I am very surprised by the numbers that I see.  
16 They seem very minimal to me, compared to what I get even  
17 from a very small district that I have. The amount of  
18 complaints that I get, the numbers that you reference in here  
19 for the financial ability that you have is much smaller than  
20 I thought.

21 However, I think there might be some issues,  
22 because one of the reasons I began this legislation and  
23 started to dig and drove Miss Ashley here crazy was my  
24 constituents were not getting responses from the AG's Office.  
25 And not in any -- with all due respect, it wasn't within your

1 powers to be able to respond to these.

2 So, earlier, someone mentioned that they actually  
3 received a letter from the AG's office that said, I am sorry,  
4 we don't have the ability, the powers to address this. So, I  
5 was very pleased to hear that. And I know, like I said, this  
6 was not your responsibility, so that's why they were not  
7 getting responses. But that's what urged me to dig further  
8 and start to say where are these complaints going into a  
9 black hole. They were going into a black hole because there  
10 was no ability to deal with it. So, that's where we started.

11 We don't have any recollection of those numbers of  
12 complaints that came in to your office, do we?

13 BASIL MERENDA: No, just the hard numbers. For  
14 the most part, kind of a general review indicates that there  
15 were complaints that we just didn't have jurisdiction over,  
16 many of the same complaints that came up in the hearing  
17 today. But we are limited in our jurisdiction to just issues  
18 involving that annual financial report that's issued.

19 I attribute to the fact that many of the consumers  
20 really don't even realize that there is a governmental  
21 agency, the Bureau of Consumer Protection, that is out there  
22 to address consumer protection complaints. And, you know, we  
23 are trying to address that. And that letter that was  
24 mentioned earlier, that was from Tom Cummings, one of our  
25 young lawyers out of our Scranton office who does an

1 excellent job.

2           And during my watch, I want our folks to be  
3 accessible, responsible, and accountable. And even if we  
4 don't have jurisdiction, I want them to explain to the  
5 consumer in a letter why we don't have jurisdiction and what  
6 possible alternatives there are.

7           So, like I said, during my watch, I want to try to  
8 change that.

9           REPRESENTATIVE BROWN: Thank you. And I think  
10 from the one testimony today, I have seen that that has  
11 changed. So, I appreciate that.

12           BASIL MERENDA: I just want to note we had a very  
13 productive session to go over the amendment that you  
14 participated in with the other folks; so, we are here to work  
15 with the committee on anything that you folks need from us to  
16 try to put together a good piece of legislation.

17           CHAIRMAN PETRI: Two quick questions.

18           No. 1: Do you feel that the amendment is crafted  
19 now in a way that your agents would understand exactly the  
20 demarcation of their jurisdiction or do you think it still  
21 needs some more work?

22           BASIL MERENDA: I would ask to give us a little  
23 more time to look at it and see if we can -- I would like to  
24 sit down, quite frankly, with some of our agents who are not  
25 attorneys but who we can -- our tactical folks and maybe we



1 can see something that we missed. So, just maybe a couple  
2 weeks.

3 CHAIRMAN PETRI: That's more than adequate. I  
4 just need some sort of feedback so we can run the bill out of  
5 committee.

6 BASIL MERENDA: We will work around your  
7 timelines.

8 CHAIRMAN PETRI: Soon. The other question I had  
9 that gave me a little pause, you talked about if you saw a  
10 pattern; how does the agent determine there is a pattern or  
11 not if you have a change of boards over a period of time? In  
12 other words, do you think you have the ability to analyze,  
13 okay, well, yeah, it is the A, B, C community but, oh, they  
14 are different boards members, so, is that really a pattern

15 BASIL MERENDA: I think that would depend on the  
16 facts of that situation. And, in fact, I would hope that our  
17 agents and our attorneys are resourceful and creative enough  
18 to kind of look beyond those specifics and drill down and get  
19 some good information and reach out directly to consumers,  
20 homeowners to get that background and maybe they could kind  
21 of craft something together that indicates there is a  
22 pattern.

23 CHAIRMAN PETRI: Because the reason I ask that is  
24 we heard from a couple of people, well, the Court ruled that  
25 that election was okay and this one wasn't and they reversed

1 that, you know. So, obviously, at least by the Judge, there  
2 was some wrongdoing and there was some okay, based upon the  
3 bylaws.

4           BASIL MERENDA: Taking it on face value, yeah, you  
5 could probably make an argument there was no pattern. But,  
6 like I said, I like to have our folks drill down a little bit  
7 and get some good information and speak directly to the  
8 homeowners that are involved and maybe they could get that  
9 piece that maybe the Court didn't have that we might be able  
10 to craft into a pattern.

11           CHAIRMAN PETRI: Well, I want to thank everybody  
12 for attending and your patience. I know we went over our  
13 time, but to me, the clock means nothing if we had to stay  
14 here until 5:00 o'clock in order to resolve the issue.

15           The information you have given the committee will  
16 enable us to make intelligent decisions. We never know if  
17 amendments are going to be offered and people will head in  
18 different directions; so, for the members of my committee to  
19 be able to go back and talk to other members and say we  
20 talked about that and this is what we heard makes the process  
21 better.

22           Probably the worst part of the legislative process  
23 is when amendments are offered at the last moment after a  
24 long time period and those in the room that are involved in  
25 the process know sometimes it is difficult because people

1 aren't always exactly truthful about their letters and the  
2 like. So, the committee work and the work that you are  
3 doing, Representative, on this bill is much appreciated  
4 because she has really done all the hard work, along with  
5 staff. I am just steering the ship right now.

6           And I want to thank the community association  
7 lawyers for being willing to look at this as an issue that we  
8 can improve on. And I like your idea of offering a mediation  
9 service. I think for you to have that as an outlet would be  
10 extremely helpful. The litigation costs we heard earlier,  
11 \$50,000 on one side, I mean, I am a lawyer, \$50,000 is a lot  
12 of billable hours. That's drawers and drawers of documents  
13 and it is needless and it is not helpful.

14           Remember, these are your neighbors. These are  
15 people you have to live with and you, hopefully, want to  
16 respect. And we have to earn respect, but we have to give  
17 respect. And for your communities to be tearing each other  
18 apart on these issues -- you know, the one example I heard  
19 was, well, yeah, we may need some storm water but maybe we  
20 don't need this plan. You know, we could handle this plan.  
21 And for that not to be publicly debated -- and I accepted  
22 your word as truthful that it is not -- just seems wrong to  
23 me. The communities ought to be able to get together and  
24 debate, agree where they can and disagree where they can't.

25           But back to my example, sometimes we have to do

1 things when people won't act reasonably. Go back to my  
2 analogy of the sign. I never should have had to pass that  
3 law. It was interesting, when the law was almost signed,  
4 when the reporter knocked on the door and said are you going  
5 to move your van, the response outside the door, according to  
6 the reporter, was when it is law, I will move it. Really?  
7 Really? That's how you are going to treat your neighbor?

8           Okay. So, a lot of work to do. Keep talking. I  
9 want to commend you on all your good work and let's get this  
10 over the finish line. But we want it narrow. We don't want  
11 this to become an ability to use public resources for a  
12 witch hunt.

13           Remember, mediation and arbitration are  
14 different. Arbitration, in theory, uses the law as a  
15 backdrop to get to a solution. Mediation tends to disregard  
16 what the law is and say can the two sides fashion their own  
17 remedy. And I think that's what you need for your  
18 communities.

19           And, again, I commend you for doing the hard work  
20 and being brave. You have to be brave to enter this field.

21           JOSEPH BARCA: Can I say it is refreshing to be in  
22 a meeting where you are allowed to exchange ideas. It is  
23 very new to us. We really appreciate it. I am not trying to  
24 make a commercial. I can't tell you how wonderful today was.

25           CHAIRMAN PETRI: It is our pleasure.

1           JOSEPH BARCA: On the mediation piece, if both  
2 parties go to a mediator and one wants to walk away after the  
3 process is over, then that's the end of that?

4           CHAIRMAN PETRI: That's the end of that. So,  
5 yeah, you have other remedies. You have other remedies.

6           The advantage of this bill is that with the  
7 Attorney General involved, if there has been a clear  
8 violation of you didn't give me the financial records,  
9 despite requests, you didn't hold a fair meeting, a fair  
10 hearing, it is certainly a lot better than putting together  
11 all the litigation and trying to bring a packet in front of a  
12 Judge and get everybody to come in and testify. I think it's  
13 going to have an impact. And if the community association  
14 creates a mediation opportunity, they could do it with  
15 independent experts who are from different areas who are in  
16 the field. You would have the ability to select who you want  
17 as your mediator and at least have an independent person,  
18 hopefully, look at the community and say you are not doing  
19 this right.

20           This meeting is now adjourned.

21                       (At this time the hearing  
22                       in the above-captioned matter  
23                       was concluded.)

24

25

C E R T I F I C A T E

1  
2 I, Teresa A. Crossin, do hereby certify that the  
3 proceedings and evidence are contained fully and accurately  
4 to the best of my ability, in the stenographic notes taken by  
5 me in the proceedings of the above case and that the copy is  
6 a correct transcript of the same.

7  
8 Teresa A. Crossin, RMR

9 Keystone Court Reporting, Inc.  
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