



Bill Title: Senate Bill 819, Real Property – Sale of Apartment Facilities – Rights of Qualified Organizations

Committee: Judicial Proceedings Committee

Date: February 28, 2023

Position: Favorable with amendment

This testimony is offered on behalf of the Maryland Multi-Housing Association (MMHA). MMHA is a professional trade association established in 1996, whose membership consists of owners and managers of more than 207,246 rental housing homes in more than 937 apartment communities. Our members house over 667,000 residents of the State of Maryland throughout the entire State of Maryland. MMHA membership also includes more than 216 associate members that supply goods and services to the multi-housing industry. More information is available at <https://www.mmhaonline.org/>

This bill establishes procedures for the sale or transfer of specified apartment facilities in the State. Among other provisions, the bill (1) requires an owner of an apartment facility to send specified notice to the Department of Housing and Community Development (DHCD) of an intent to sell; (2) requires DHCD to post such notices on its website and certify and register “qualified organizations”; (3) establishes a process by which qualified organizations are afforded certain rights regarding specified apartment facilities that are offered for sale; and (4) creates a Right of First Refusal Fund. The bill applies prospectively and does not have any effect on contractual rights created prior to the bill’s October 1, 2023 effective date.

MMHA has the following concerns with the bill:

1. Extends transaction process: MMHA supports efforts to create and preserve affordable rental housing. However, adding at least two months to the apartment transaction process could have the opposite impact on housing affordability. Senate Bill 819 adds time, costs, and burdensome documentation and mailing requirements to the sales and acquisition process, a process that is already complex, but which still requires expediency. New apartment owners who have may have had to wait an extended period of time until after qualified organizations investigated their interest and considered making offers may increase rents to offset the costs of waiting to do business and the cost of additional disclosure requirements.
2. Jeopardizes 1031 exchanges: This bill could also jeopardize 1031 exchanges¹ (tax deferred exchange), which are popular tools used in real estate transactions. In 1031 exchanges, the Exchangor has 45 days from when they sell a property to nominate potential replacement properties, and 180 days total to acquire the replacement property.

¹ IRS Section 1031



If an owner or seller's agent has just sold a property, they may be hesitant to jeopardize their 1031 exchange by pursuing a new property in Maryland due to unpredictability and potential delays caused by the process outlined in this bill.

3. Disincentive to invest: MMHA is concerned that Senate Bill 819 will be a disincentive to invest in apartment communities in Maryland. Senate Bill 819 places potential buyers in an untenable position - spend considerable time and money to negotiate with the Seller, just for a qualified organization to purchase the property instead. This new statewide requirement on private transactions will likely restrict the pool of buyers, which artificially depresses the value of the property. MMHA questions whether passage of Senate Bill 819 will discourage the construction of new multi-family projects, which would generate significant affordable housing units. As a consequence, the State will be unable to collect potential recordation and transfer taxes, and to grow its tax base with new residents.

MMHA supports the establishment of a "Right of First Refusal Fund" to increase the availability of affordable housing by financing the acquisition, rehabilitation and operation of rental properties (see page 9, line 1). MMHA urges retaining the fund provision and striking the bill from page 2, line 18, though and including page 8, line 32,

For the reasons mentioned above, MMHA urges that the Committee give Senate Bill 819 a favorable report with amendment.

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