

Testimony on SB 199

SB 199 - Residential Property – Affordable Housing Land Trusts – Authority to Establish Condominium Regimes

Monday, January 29, 2024

Position: Favorable

Chairman Smith and Members of the Judicial Proceedings Committee:

My name is Daniel Ehrenberg and I am a board member of the Community Development Network of Maryland, a resident of Kent County and an affordable housing attorney who works with Affordable Housing Land Trusts (AHLTs) in Maryland and elsewhere.

I first want to thank the sponsor, Senator Jeff Waldstreicher, for introducing SB 199. This bill will provide immense help to AHLTs in fulfilling their mission of providing affordable housing in perpetuity to low- and moderate-income families who otherwise would not be able to afford to purchase a home.

This is a technical amendment to the original Affordable Housing Land Trust Act, enacted in 2010, and found at MD Real Property Code Ann. Sec. 14-501 et seq. In Maryland, because ground leases are disfavored and can be redeemed, the ownership and use of an Affordable Land Trust Agreement by an AHLT was exempted from the statutory restrictions placed upon ground leases. The purpose of an AHLT is to own the land and lease it, pursuant to a 99-year renewable term, to a low- and moderate-income family who purchases and owns the home. The AHLT also helps the family to remain in the home and keep the home well-maintained while restricting the resale price and sharing the home's appreciation with the family when the family decides to sell the home. The AHLT normally requires that the home be sold to another low- and moderate-income family, thus keeping the home perpetually affordable.

A number of AHLTs are developing residential multifamily condominiums for low- and moderate-income families. A condominium allows the homeowner to own his/her/their unit, similar to owning a house, and, collectively, pay for and access the condominium's common elements (i.e., walkways, hallways, community room, etc.) with the other unit owners of the condominium.

The current Residential Condominium Act, located at MD Real Property Code Ann. Sec. 11-101 et seq., does not allow a residential condominium to be created on a "leasehold estate". (See Section 11-102(a)(2)(ii) of the Residential Condominium Act.) A "leasehold estate" means that the homeowner who owns the home or building leases the land (like a renter), rather than owning the land outright. A leasehold estate includes a ground lease. Thus, the Residential Condominium Act means that AHLTs that use an Affordable Housing Land Trust Agreement, which in fact is remarkably similar a ground lease, cannot directly create a residential condominium of AHLT owners. The work around to this prohibition requires that the AHLT create two condominium regimes (a commercial condominium and then a residential condominium) to be able to develop a multi-unit condominium of AHLT condominium owners. This two-step structure adds not only complexity and time, but also diverts monetary resources (primarily, attorney fees) in developing condominium affordable land trust units, which reduces the affordability of these homes to low- and moderate-income families. The condominium statute does protect residential condominium

owners in cases in which the landowner who leases the land to the condominium tries to take over the homes by terminating the lease or having it expire before the condominium terminates or expires. However, this protection is unnecessary for AHLT projects since the purpose of AHLTs is to keep the condominium units perpetually affordable.

Section 14-502 of the MD Real Property Code Ann., which is the Affordable Housing Land Trust Act (found at MD Real Property Code Ann. Sec. 14-501 et seq.), already provides that an Affordable Housing Land Trust Agreement is not a ground lease and exempts the Affordable Housing Land Trust Agreement and AHLTs from statutes pertaining to ground leases. However, the Affordable Housing Land Trust Act does not address the prohibition against having leasehold estates for residential condominiums and does not specifically state that the Affordable Housing Land Trust Agreement is not a leasehold estate. Most likely, this was an oversight to the Affordable Housing Land Trust Act since the Act exempts AHLTs from ground lease requirements and restrictions in all other Maryland statutes.

A simple technical fix to the Residential Condominium Act would be to exempt Affordable Housing Land Trusts from the “leasehold estates” prohibition in creating a residential condominium. As a result, AHLTs can develop residential condominiums without going through the more complex, costly and time-consuming two-step condominium structure described earlier. I respectfully urge you to pass SB 199 to remedy this issue so AHLTs can use residential condominiums to develop more perpetually affordable homes in the most timely and cost-effective manner.