



MONTGOMERY VILLAGE FOUNDATION, INC.

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February 13, 2023

The Hon. William C. Smith, Chairman
Judicial Proceedings Committee
2 East
Miller Senate Office Building
Annapolis, MD 21401

Re: **Opposition to SB447**
Residential Owners in Common Ownership Communities--Bill of Rights

Dear Chairman Smith and Members of the Committee:

On behalf of the Montgomery Village Foundation, Inc. (MVF) I am writing to **oppose** the Bill of Rights as set forth in SB447. Most fundamentally, MVF asks the Committee to recognize that this proposed new statute, to be placed at the beginning of the Real Property Act, would violate an essential principle of legislative drafting, i.e. **not to create a law that is surplusage**. The basic rights being “declared” in SB447—to participate in meetings, to have access to budget and financial information, to receive notice of meetings and to vote on community matters—are **all already found in the existing Maryland statutes for common interest communities**.

Some of the specific concerns MVF has are as follows:

1. **Many of the rights described in the bill are ambiguous and the bill does not contain a provision for enforcement.** The Montgomery Village Foundation (MVF) recognizes that the concept of declaring rights for numerous categories of Maryland residents is well established in Maryland. But other “bills of rights” in the Maryland Code, such as for children, nursing home patients, and taxpayers, have clear sections that explain the consequences of violating their provisions, but such a provision is missing from SB447. Additionally, it is not clear how the new rights being enumerated impact the provisions of the HOA Act, the Condo Act, and the Co-operative Housing Act.

2. **Although the pre-ample of SB447 invokes the Uniform Law Commission’s approved Uniform Common Interest Communities Bill of Rights Act as a rationale for this bill, SB447 does not track the Uniform Law Commission Bill of Rights in form or substance.** SB447 does not retain the depth and comprehensive organization of the Uniform Law Commission’s bill of rights. Examples of “new” rights that are not in the Uniform Law Commission’s Bill of Rights include:

- A new right to be created in section 1-105-B-(4) ensuring that owners must not be charged to use the amenities at a rate of not more than 50% of “*non-residential owners*.” This is an arbitrary standard that conflicts with an Association’s Board of Directors

fiduciary duty to determine and manage a community's common expenses. Following this standard would curtail MVF's ability to provide superior amenities to its members.

- 1-105(B)(6) creates "the right to fair treatment in the repayment of any debt incurred by the common ownership community for major capital projects or operating expenses so that present and future owners have a relatively equal share in the responsibility to repay such debt." This is an ambiguous right, without enough specificity for a Board to know how to comply.
- Proposed section 1-105(B)(15) would establish a right for a unit owner to be represented by the Attorney General's Office to enforce a provision of state law that governs common ownership communities. Certainly, the Attorney General prosecutes matters on behalf of consumers, but that body of consumer law has been well-developed in the Courts and Administrative Agencies. Whether the Attorney General has the authority to represent an individual member of a common ownership community against an elected Board of Directors is not clear.

MVF strongly endorses the spirit of a Bill of Rights. An underlying theme of SB4772 as drafted, appears to reflect a perceived disparity in the rights of residential owners and non-residential owners in communities where there are both. The point of view of rights as expressed in the current text of SB477 would likely conflict with many of the provisions of Maryland common interest community law that have evolved, as well as provisions of governing documents of the communities, and therefore **MVF opposes SB447**.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael N. Conroy".

Michael N. Conroy
Executive Vice President

Cc: MVF Board of Directors
Christopher Hitchens, MVF General Counsel
Karen Kodjanian, MVF Director of Community Management