

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 869

(Delegate V. Clagett, *et al.*)

Environmental Matters

Judicial Proceedings

Real Property - Affordable Housing Land Trusts

This bill establishes the Affordable Housing Land Trust Act and specifies the powers and duties of an affordable housing land trust and the contents of an affordable housing land trust agreement.

Fiscal Summary

State Effect: The bill's requirements can be handled with the existing budgeted resources of the State Department of Assessments and Taxation (SDAT) to the extent that online submissions do not exceed departmental projections, otherwise general fund expenditures for SDAT may increase minimally to comply with the bill's requirements.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Defined Terms

An "affordable housing land trust" is an entity that provides affordable housing to low-income and moderate-income families through an affordable housing land trust agreement and is managed or organized by a 501(c) tax-exempt nonprofit organization or a unit of State or local government. An "affordable housing land trust agreement" is an agreement between an affordable housing land trust and a purchaser of real property

owned by the land trust, or for which the land trust has a proprietary or reversionary interest that:

- grants the affordable housing land trust a preemptive right to purchase or repurchase the property, including any improvements;
- contains language restricting the transfer, lease, sublease, assignment, or occupancy of the property with regard to potential occupants or others, as specified, and the price at which the property may be transferred; or
- imposes other conditions on the use or transfer of the property that would trigger a reversionary interest and that are designed to ensure that the property remains available and affordable to low-income and moderate-income families.

Powers and Duties of an Affordable Housing Land Trust

The bill authorizes an affordable housing land trust to acquire residential real property or an interest in property; make improvements on residential real property; enter into affordable housing land trust agreements with qualified persons who meet specified criteria under the bill and the affordable housing land trust agreement; and engage in other activities related to the sale, leasing, management, maintenance, and preservation of properties under the control of the affordable housing land trust.

An affordable housing land trust agreement may:

- restrict the transfer, lease, sublease, or assignment of possession or an interest in property to a person who does not meet the conditions set forth in the affordable housing land trust agreement for that property;
- grant the affordable housing land trust the right to repurchase any interest in the property or improvements on the property under the terms set forth in the agreement and in accordance with the bill's provisions;
- grant the affordable housing land trust the right to take possession and sell the property under specified circumstances;
- provide for the reversion of the property at the end of the term of the affordable housing land trust agreement under the conditions set forth in the agreement;
- provide a mechanism or formula for the sharing of any proceeds from a future sale or transfer of an interest in the property; and
- provide other mechanisms to enforce the terms of the affordable housing land trust agreement.

The bill prohibits an affordable housing land trust agreement from extending beyond 99 years but allows the agreement to be renewed under specified conditions. The bill
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requires a copy of the affordable housing land trust agreement and a signed, notarized affidavit acknowledging receipt by the transferee to be:

- recorded in the local land records in the county in which the property is located;
- indexed in the grantor and grantee indices listing the seller as grantor and purchaser as grantee; and
- accepted for recording by the clerk without payment of recordation and transfer taxes, notwithstanding that a copy of the affordable housing land trust agreement, rather than the original, is offered for record with the affidavit.

The recordation of a copy of the affordable housing land trust agreement and the affidavit terminates the right of rescission and provides a conclusive presumption that a contract of sale was not rescinded.

Registration with SDAT: The bill requires an affordable housing land trust to register with SDAT and submit updates relating to its organization, tax status, address, officers, and any other required information. The department must also maintain an online list of registered affordable housing land trusts in the State.

In any assessment for tax purposes, the property subject to an affordable housing land trust agreement must be assessed on its market value subject to any restrictions in the affordable housing land trust agreement. The assessment must indicate that the sale was not an arms-length transfer on the property tax record.

Possession, Repurchase, and Reversionary Rights: An affordable housing land trust agreement may authorize the land trust to repurchase an interest in the property and any improvements under the conditions set forth in the agreement. The right to repurchase must be specified in the agreement and may not exceed 120 days from the date that the land trust received notice of a triggering event that gives the trust the right to repurchase.

The affordable housing land trust agreement may authorize the trust to take possession of the property and any improvements and sell or transfer the specified interest in the property if (1) a condition defined in the affordable housing land trust agreement is met; (2) the sale is made pursuant to provisions of the Maryland Rules governing judicial sales; (3) the owner of the property interest retains the right to any proceeds of a sale as set forth in the agreement; and (4) the right of the owner to the proceeds has precedence over any claim by the affordable housing land trust to the sale proceeds.

The reversionary rights of an affordable housing land trust set forth in the written agreement are limited to provisions that relate to:

- the transfer of the property or an interest in the property to a person or possession of the property by a person who does not meet the conditions set forth in the affordable housing land trust agreement;
- the waste, destruction, or abandonment of the property; or
- the failure to comply with any financial provision of the affordable housing land trust agreement.

A nonprofit organization operating an affordable housing land trust that gives up or loses its nonprofit status may no longer operate an affordable housing land trust. The bill authorizes a nonprofit organization operating an affordable housing land trust to transfer its interest to another trust under specified conditions. If a nonprofit organization gives up or loses its nonprofit status and does not transfer its interest to another trust, the affordable housing land trust agreement becomes void and any reversionary interest or provision for the sharing of proceeds is unenforceable and the title holder to the property obtains fee simple title without restriction.

Exemptions: The bill exempts an affordable housing land trust from certain time limits relating to the possibility of reverter and right of entry and from provisions governing the creation and redemption of reversionary interests. The bill also specifies that an affordable housing land trust agreement is not a ground lease and is not subject to existing provisions of law applicable to ground leases. An affordable housing land trust agreement is exempted from the application of the common law rule against perpetuities.

Current Law: No provisions of State law currently govern affordable housing land trusts or affordable housing land trust agreements.

Background: A similar bill, SB 929 of 2009, defined a community land trust (CLT) as a 501(c) tax-exempt nonprofit organization or a State or local government agency that provides affordable housing to low-income and moderate-income individuals. The bill exempted CLTs from the statutory prohibition on new ground leases or subleases on residential property with four or fewer dwelling units and from statutory provisions regarding the conversion of irredeemable ground rents to redeemable ground rents.

According to the Institute for Community Economics, a CLT is a democratically controlled nonprofit organization that owns and acquires real estate to provide benefits to its local community and to make land and housing available to residents who cannot otherwise afford them. According to the Planning Commissioner's Journal, CLTs generally have in place "limited equity" policies that restrict the resale price of the housing to maintain its long-term affordability. These features of the CLT model provide homeownership opportunities to people who might otherwise be left out of the housing market.

State Fiscal Effect: To the extent SDAT must create an affordable housing land trust registration form and maintain an online list of registered entities, the bill's requirements can be handled with existing budgeted resources. However, increased general fund expenditures may be required if the number of registered affordable housing land trusts or the number of organizational updates filed with SDAT exceed departmental projections. SDAT advises that a streamlined online application for affordable housing land trusts requires \$25,000 in one-time start-up costs and would require an additional \$7,200 in ongoing operating expenses annually thereafter.

Additional Information

Prior Introductions: None.

Cross File: SB 780 (Senator Raskin) - Judicial Proceedings.

Information Source(s): Caroline, Calvert, Howard, Montgomery, and Prince George's counties; Baltimore City; State Department of Assessments and Taxation; Office of the Attorney General (Consumer Protection Division); Department of Human Resources; Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Institute for Community Economics; *Planning Commissioner's Journal*; Department of Legislative Services

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