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TO: Budget and Taxation Committee (via the MyMGA Portal)
FROM: Michael Scott Cohen, City Solicitor, City of Cumberland
RE: Testimony for SB968
DATE: March 15, 2022

Dear Members of the Budget and Taxation Committee:

I am the City Solicitor of Mayor and City Council of Cumberland (the “City”), the Maryland municipal corporation more commonly known as the City of Cumberland. This letter constitutes my testimony on behalf of the City in regard to SB968. I will speak to the purpose the proposed legislation is intended to serve from a legal perspective. The Mayor of the City, Raymond M. Morriss, will speak to the circumstances giving rise to the need for this legislation.

This proposal adds another tool in the toolbox for local governments to fight blight and it complements SB967. Both measures target tax sale foreclosures. SB968 addresses the disposition of tax sale foreclosures which have not been completed and are not being prosecuted. SB967 provides local governments remedies when a foreclosing plaintiff fails to take title after the foreclosure proceedings have been completed. Both measures are entirely new.

The reasons for the City’s submission of this measure are detailed in my testimony for SB967. In that regard, it is incorporated by reference herein and is attached hereto for ease of reference.

SB968 provides a mechanism for the transfer of a tax sale certificate to a local government when a foreclosing plaintiff fails to diligently pursue the foreclosure case. Under its terms, a local government can petition the court for the assignment of the certificate of sale to it in those instances where a foreclosing plaintiff fails to obtain a final order within 18 months of the filing of the case. If the foreclosing plaintiff does not respond or does not have good cause for failing to pursue the case, the court will enter an order assigning the tax sale certificate to the local government, and the foreclosing plaintiff will forfeit all of the rights it had under the certificate and all money it spent to acquire the certificate.

The benefit of this measure for local governments is that it enables them to take over court cases which are no longer being prosecuted, to complete the foreclosures, and to obtain title to the subject properties as an incident thereto. Oftentimes, these properties are blighted. Once a local government takes title, it can directly address the property conditions.

A foreclosing plaintiff will suffer no loss beyond that which it would incur in the event the foreclosure is dismissed for lack of prosecution or for another reason. It forfeits its right to pursue a foreclosure as well as all moneys it spent to acquire the certificate and pursue the foreclosure.

If passed, SB9678 will provide local governments with a powerful new tool to fight blight.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael Scott Cohen".

Michael Scott Cohen
City Solicitor
City of Cumberland

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TO: Budget and Taxation Committee (via the MyMGA Portal)
FROM: Raymond M. Morriss, Mayor, City of Cumberland
RE: Testimony for SB967
DATE: March 15, 2022

Dear Members of the Budget and Taxation Committee:

I am the City Solicitor of Mayor and City Council of Cumberland (the “City”), the Maryland municipal corporation more commonly known as the City of Cumberland. This letter constitutes my testimony on behalf of the City in regard to SB967. I will speak to the purpose the proposed legislation is intended to serve from a legal perspective. The Mayor of the City, Raymond M. Morriss, will speak to the circumstances giving rise to the need for this legislation.

The City, like other local governments, has a vested interest in the outcome of tax sale foreclosures. Properties are sold at tax sale when real property taxes and certain other sums are not paid. Ideally, a tax sale purchaser would foreclose upon a property, pay the taxes current, take title, maintain and repair the property, and pay the taxes indefinitely into the future.

This bill is intended to address what happens when a tax sale foreclosure proceeding is concluded but the foreclosing party does not take title to the property. Tax sale foreclosures end with the issuance of a final order directing the tax collector to sign a deed once the taxes and other sums are paid. A property remains in limbo when the final order is issued but the foreclosing party does not take title. This occurs with a significant measure of frequency when the properties are bought by large-scale tax sale purchasers and the properties are blighted to the extent that it would not be a sound business decision to invest further sums in the properties.

When the foreclosing party doesn’t take title, the local government may delay offering the property for tax sale or it may again offer it for sale after the requisite number of years of unpaid taxes accrues. Either way, the property will be sold again, most likely to a large-scale tax certificate purchaser without knowledge of the condition of the property, or in the event no one bids, the certificate will be acquired by the county or the municipality in which the property is located. If a local government acquires the certificate, it can conduct its own tax sale foreclosure and acquire title to the property the same way any other certificate holder could.

Every time a tax sale certificate is purchased, the purchaser has two (2) years from the date of the sale to file a foreclosure case. Once the case is filed, it can drag on for an extended period of time, in some instances, more than a year and a half. If the foreclosing plaintiff does not take title after the case has been concluded, this cycle can repeat itself, starting off with the sale of the tax sale certificate to a new purchaser. This process can go on for years. Because the title of the property remains in limbo while this process plays out, the City refers to these properties as “zombie properties” or properties with “zombie titles.”

Presently, Section 14-847 of the Tax Property Article allows an interested party, including a local government, to file a motion to strike a final order if a property is not transferred to the foreclosing plaintiff within 90 days of the final order. If the motion is granted, the foreclosing plaintiff will lose any interest it has in the property. However, this does not directly benefit the interested party because the striking of the final order does not vest it with ownership rights in or the right to exercise dominion or control over the property.

If SB967 is passed, a local government will have the ability to take title free and clear of liens when a foreclosing party fails to do so within 120 days of the date of the entry of the final order. A local government that has been granted this relief will receive all of the benefits of a foreclosing plaintiff even though it did not conduct its own foreclosure. It will expedite a local government’s ability to take title and address blight.

The measure will have no effect upon the right of an interested party to file a motion to strike within 90 days of the date of the final order. The rights of the owner(s) of the property and any lienholders are not affected as the proceedings were already at the point where the owner could be divested of title and the liens would have been stripped. No one’s rights are adversely affected, including those of the foreclosing plaintiff, as the foreclosing plaintiff could have taken title but opted not to do so.

If passed, this measure will add a powerful new tool to assist local governments in fighting blight.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael Scott Cohen".

Michael Scott Cohen
City Solicitor
City of Cumberland