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Re: HB358
Maryland Condominium Act
Amendments to the Declaration – Interest in Common Elements

Position: Oppose

Dear Del. Barve & Members of the Environment and Transportation Committee:

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with more than 6,200 community associations (condominiums, homeowners’ associations, and cooperatives) located throughout the State of Maryland.

We are writing in opposition to HB358, which would allow a condominium council of unit owners to amend a condominium declaration to alter the undivided percentage interest in the common elements of any unit. This is problematic for several reasons.

First, it allows the council of unit owners to interfere with the unit owners’ property rights. Each unit owner owns a fee simple interest in their unit and an undivided interest in the common elements. When a condominium is created each unit is assigned an undivided percentage interest in the common elements, usually based on one of two formulas: (i) all units are assigned the same ownership interest or (ii) ownership is based on the square footage of the unit. This undivided percentage interest in the common elements is appurtenant to the unit and cannot be separated from it. It represents each unit owner’s fee simple ownership interest in the common elements of the condominium, which is all of the property within the condominium other than the units. The common elements include all of the condominium’s commonly shared property, such as the lobby, elevator, recreational amenities, and shared building components and facilities. It is an actual property right in the condominium that is conveyed with the unit, determines the monetary value of the unit, and upon which a unit owner may obtain financing for the purchase of the unit.

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In addition to a unit owner's ownership interests in the common elements, the undivided percentage interest assigned to a unit also represents the unit owner's interests in the common profits of a condominium and the owner's share of the liability for the common expenses of the condominium. It should be noted that the language of this Bill still prohibits an amendment to a declaration to change the liability of a unit owner for common expenses or the rights to common profits of any unit. However, a unit does not have a separate undivided percentage interest in the common profits or common expenses that is different from its undivided percentage interest in the common elements. They are one and the same. Thus, an amendment that alters a unit's undivided percentage interest in the common elements also alters the unit's undivided percentage interest in the common profits and liability for common expenses. The result is that this Bill is self-contradictory.

It should be further noted that the total of the undivided percentage interests assigned to all of the units in a condominium must equal 100% or the total square footage within a condominium, depending on the formula used to assign the undivided percentage interests, so it would not be possible to alter the undivided percentage interest of one unit, without altering the undivided percentage interest of at least one other unit.

Second, this Bill contains no limit for the reasons upon which a council of unit owners may alter a unit's undivided percentage interest. It is conceivable that one group of unit owners could vote to alter another unit owner's or group of unit owners' percentage interests for nefarious reasons, such as discrimination, harassment, or to cause certain owners to pay more in common expense assessments, or to receive less of the common profits, or to devalue their units, or alter voting rights if such rights are based on the undivided percentage interests. This scenario could especially play out in a condominium that has a mix of residential and commercial units. For example, one could envision a scenario where residents of a mixed-use condominium could alter the percentage interests assigned to the commercial units to control the commercial unit owners, increase their liability for the common expenses, reduce their share of the common profits, or reduce their voting power.

Currently, other sections of the Maryland Condominium Act cover the limited reasons for which the undivided percentage interests assigned to units would need to be altered. These include:

- 1) the expansion of a condominium under Section 11-120 where as additional units are added the undivided percentage interest of each existing unit is reduced in accordance with the formula used in the declaration to assign percentage interests;
- 2) the consolidation of two or more units under Section 11-107 where the percentage interests of all the consolidated units are combined together; or
- 3) the subdivision of units under Section 11-107, where the existing percentage interest of the subdivided unit is reallocated among the newly created units.

It is difficult to think of another scenario in which the alteration of a condominium unit's percentage interests would need to be altered, making the provisions in this Bill to alter any unit's undivided percentage interest for any reason unnecessary and overbroad.

Third, this Bill will affect the rights of mortgagees who hold mortgages or deeds of trusts on condominium units and could affect mortgagees' willingness to provide future financing on condominium units. As discussed above, a condominium unit's assigned undivided percentage interest in the common elements and common profits are property interests upon which purchasers of units obtain financing. Mortgagees have security interests in these property rights. Most condominium declarations contain certain provisions for the benefit of mortgagees, which include the prohibition of amendments to the

declaration to change the undivided percentage interest of any unit owner in the common elements, common profits

and common expenses (except in the case of expansion), without the approval of some large percentage of mortgagees who hold mortgages or deeds of trust on units (usually 66 2/3% or 75%), and the affirmative vote of unit owners having at least 80% of the votes appurtenant to all units in the condominium. Mortgagees have relied on these provisions as a condition for providing financing and this Bill undermines these mortgagee rights.

If a unit owner defaults on their mortgage loan, the mortgagee can foreclose on the unit and steps into the shoes of the unit owner. The mortgagee would then be responsible for the payment of assessments. With the passage of this Bill, the council of unit owners could amend the condominium declaration to increase the undivided percentage interest appurtenant to the unit now owned by the mortgagee so that the mortgagee would pay higher assessments while the other unit owners would pay less. The mortgagee also has certain rights to a unit's undivided percentage interest in the common profits of the condominium, which includes insurance proceeds in the case of a casualty to the condominium. The council of unit owners could amend the percentage interest of a unit to decrease a unit's percentage interest so that the mortgagee would receive less of the proceeds if the condominium unit owners decided not to rebuild. These are examples of the mortgagee rights that are undermined by this Bill, and could affect future financing of condominium units.

We are available to answer any questions the Committee Members may have. Please do not hesitate to contact Lisa Harris Jones, CAI MD-LAC lobbyist, at 410-366-1500 or by email at lisa.jones@mdlobbyist.com or Steven Randol, CAI MD-LAC Chair, by email at randol@pineyorchard.com, or Judyann Lee, Member of the MD-LAC, at 240-778-2308, or by email at jlee@mcmillanmetro.com.

Sincerely,



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Chair, CAI MD-LAC



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