

Testimony on HB 1104

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

I first want to thank the co-sponsors, Delegates Charles, Henson, Jones, Landis and Turner, for introducing HB 1104. The 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. Exempting land trust property that are owned by AHLTs will allow AHLTs to conserve their resources so they can focus on making the land trust homes as affordable as possible.

In addition to the property tax relief, there are two other issues concerning AHLTs that, if added to HB 1104, would assist them in their activities of developing affordable housing land trust properties and keeping them more affordable.

I. Condominium Developments

A number of AHLTs are developing multi-unit land trust properties. To enable them to provide the units for homeownership rather than rental, the AHLTs are using condominiums. However, the current Residential Condominium Act, located at MD Real Property Code Ann. Sec. 11-101 et seq., provides at Section 11-102(a)(2)(ii) that a residential condominium cannot be created on a “leasehold estate”. This means that AHLTs that use an Affordable Housing Land Trust Agreement, which in fact is a ground lease that leases the land to an AHLT homeowner, cannot directly create a residential condominium of AHLT homeowners. To get around this prohibition, the AHLT must create two condominium regimes (a commercial condominium and then a residential condominium) to allow for the AHLT to develop a multi-unit condominium of AHLT homeowners/condominium owners. This two-step structure creates added complexity and time, and diverts monetary resources from developing affordable land trust units. It is unnecessary since the purpose of Affordable Housing Land Trust Agreement 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 from statutes pertaining to ground leases. However, the current statute does not address condominiums and does not specifically state that the Affordable Housing Land Trust Agreement is not a leasehold estate.

A simple fix to the Condominium or Land Trust statute would exempt Affordable Housing Land Trust Agreements from being deemed “leasehold estates” for purposes of the Condominium Act. This would allow AHLTs to develop residential condominiums without going through the complex, costly and time-consuming two-step structure. I respectfully urge to amend HB 1104 to remedy this issue pertaining to AHLTs using condominiums.

II. Assessing Homeowner- owned Land Trust Properties

The Affordable Housing Land Trust Act at Section 14-509 provides that in assessing an affordable housing land trust property, “the property shall be assessed based on its market value subject to any restrictions in the affordable housing land trust agreement.” However, many land trust homeowners have not been able to have their land trust homes assessed in accordance with Section 14-509. It appears that the State Department of Assessments and Taxation (SDAT) needs additional guidance to implement this provision.

At a minimum, a chapter needs to be added to the Maryland Assessment Procedure Manual on assessing land trust properties that are owned by AHLT homeowners. Such a chapter would specify in detail how land trusts properties need to be assessed per Section 14-509 of the Affordable Housing Land Trust Act. There already is a chapter on valuing perpetual conservation easements so the addition of a chapter on land trust assessments is not an unusual request.

However, it may be better to specify in more detail in the Affordable Housing Land Trust Act the manner in which land trust properties are to be assessed so that AHLT homeowners pay their fair share of property taxes. Florida and North Carolina have adopted statutes that describe in more detail how community land trust properties are to be assessed. I respectfully urge you to modify Section 14-509 to provide more specificity and direction as to how land trust properties are to be assessed.