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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 11th, 2025
The Maryland State Senate Judicial Proceedings Committee
The Honorable William C. Smith, Jr.
2 East Miller Senate Building
Annapolis, Maryland 21401

Re: Senate Bill 606: Residential Real Property - Tenants' Right of First Refusal

Dear Chairman Smith and Members of the Committee,

Last year, this Committee considered the Governor's bill, HB693, the "Renters' Rights and Stabilization Act of 2024". After extensive workshopping and agreeing on material changes, we passed the bill 10-0 and sent the bill to the floor for final passage. HB693 became Chapter 124 once the Governor signed it.

Chapter 124 had a number of components to it. Most of our work focused on the part of the bill which increased the filing fee for tenant eviction cases.

Another part of the bill did not receive nearly the same amount of attention. That part of the bill set up a very complicated system of according to one or more tenants of a residential rental property containing three or fewer dwelling units the right of first refusal to buy the property in the event the owner should decide to sell it. The statute in this regard is very detailed, providing for notices, notice periods, written offers, counteroffers and follow-on rights of first refusal after certain third party offers for the property are made.

As codified in Section 8-119(h)(1) of the Real Property Article, Chapter 124 concludes with the statement that "[f]ollowing closing on a contract of sale between an owner and a tenant, liability for failure to comply with this section is restricted to the owner and may not attach to the residential rental property that is the subject of the contract."

In retrospect, this language was imprecise and has led to substantial confusion in the title insurance fraternity. The issue of liability for failure to comply with the strictures of the right of first refusal would not arise in the case of a contract of sale between the owner and the purchasing tenant, as suggested in the current language, because those two parties would have come to accord at the closing when each party would have executed the closing documents. Following such a closing, the tenant would own the property and would have no reason to seek to hold the owner liable for failure to strictly follow the provisions of the statute.

Instead, the issue of liability for failure to comply with the provisions of the statute would arise when the owner ends up selling the property to a third party (not the tenant), and the tenant is upset that the owner failed to comply with the detailed right of first refusal regime established by the statute. As enacted last year, the statute does not deal with this situation.

So as the statute stands currently, a tenant feeling aggrieved that the owner failed to comply with the statute has two options. Either the tenant can sue the now-former owner and try to obtain a money judgement against the owner, or else the tenant can sue the third party who purchased the property from the owner. In this latter event, if the tenant were to win his suit, a judgement would be entered against the third party which would constitute a lien on the property.

It is this possibility that has the State's title insurers upset. This is because at the closing between the owner and the purchasing third party, the third party has the right to receive a clean title insurance policy on the property, but because under the current law, there is the possibility that at some future time within the statute of limitations period the former tenant might file suit against the third party purchaser of the property and obtain a judgment lien on the property, the State's title insurers are unwilling to write clean title insurance policies on property sold to third parties under the current terms of Chapter 124.

Fortunately, there is a very easy and clean solution to this problem, and that is what this bill does. It strikes the word "tenant" in the language I quoted earlier and substitutes the words "third party". In this way, it deletes the imprecise language enacted last year and makes subsection (h)(1) correctly reflect the intent of the Governor's team which produced the "Renters' Rights and Stabilization Act of 2024".

Let me read to you the language of subsection (h)(1), as amended by this bill: "Following closing on a contract of sale between an owner and a third party, liability for failure to comply with this section is restricted to the owner and may not attach to the residential rental property that is the subject of the contract."

This simple change will solve the problem, and property purchased by third parties will not get caught up in possible litigation between a disappointed tenant and the original owner of the rental property who allegedly failed to carefully comply with the right of first refusal requirements contained in Chapter 124. If we pass this bill, the State's title insurers will have no cause to refuse to insure clean title on properties acquired by third parties.

I appreciate the Committee's consideration of Senate Bill 606 and will be happy to answer any questions the Committee may have.