

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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District of
Columbia
Official Code*

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To amend the Rental Housing Conversion and Sale Act of 1980 to ensure that tenants have an opportunity to purchase a housing accommodation prior to the sale by an owner; to clarify that the transfer of 100% of the interests in an entity that owns an accommodation as its sole asset to one transferee is not the exclusive example of a sale; to provide that the determination by a Court or by the Mayor that a sale has occurred shall be made by applying an economic substance test; to clarify that a sale shall include the transfer of an equitable or beneficial interest in an entity which owns a housing accommodation as its sole or principal asset which, in effect, results in the transfer of the accommodation; to clarify that the examples of sales are non-exhaustive or exclusive; to exempt certain inter-vivos family transfers from the definition of sale; to require that devices employed or entered into for the purpose of avoiding the requirements of this title be disregarded for the substance of the transaction; to provide for a time-certain Notice of Transfer to tenants and the Mayor prior to the transfer of an interest in an accommodation; to preclude the tenant or tenant organization from asserting any rights relating to a transfer identified in the Notice of Transfer upon failure to provide a timely Notice of Intent to File a Petition or to file timely a petition for relief; to establish a rebuttable presumption of a sale when the Notice of Transfer is not filed; to provide 30 days for the Mayor to respond to a filed petition for relief; to clarify that declaratory orders are the sole means to determine rights and reliance upon any other form of determination shall not be afforded any weight; to provide for conclusive proof, pursuant to certain certifications, of the termination of a tenant's or a tenant organization's rights; and to establish the Rental Housing Conversion and Sale Act Task Force.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Rental Housing Conversion and Sale Amendment Act of 2005".

Sec. 2. The Rental Housing Conversion and Sale Act of 1980, effective September 10, 1980 (D.C. Law 3-86; D.C. Official Code § 42-3401.01 *et seq.*), is amended as follows:

(a) Section 103(17) (D.C. Official Code § 42-3401.03(17)) is amended by adding a new

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second sentence to read as follows:

Amend
§ 42-3401.03

“If the names of 2 or more persons appear on a rental agreement, those persons shall determine which person may exercise a vote under this act.”.

(b) Section 402 (D.C. Official Code §42-3404.02) is amended as follows:

Amend
§ 42-3404.02

(1) Subsection (b) is amended by striking the phrase “this title, the terms "sell" or "sale" include the execution of any agreement that assigns, leases, or encumbers property, pursuant to which the owner” and inserting the phrase “titles IV and V, the terms "sell" or "sale" include, but are not limited to, the execution of any agreement pursuant to which the owner of the housing accommodation agrees to some, but not all, of the following:” in its place.

(2) Subsection (c) is amended to read as follows:

“(c)(1) For the purposes of titles IV and V, the term "sell" or "sale" shall include:

“(A) A master lease which meets some, but not all, of the factors described in subsection (b) of this section or which is similar in effect; and

“(B)(i) The transfer of an ownership interest in a corporation, partnership, limited liability company, association, trust, or other entity which owns an accommodation as its sole or principal asset, which, in effect, results in the transfer of the accommodation pursuant to subsection (a) of this section.

“(ii) For the purposes of sub-subparagraph (i) of this subparagraph, the term “principal asset” means the value of the accommodation relative to the entity’s other holdings.

“(2) For the purposes of titles IV and V, and notwithstanding anything to the contrary herein, the term "sell" or "sale" shall not include:

“(A)(i) A transfer, even though for consideration, by a decedent's estate to members of the decedent's family if the consideration arising from the transfer will pass from the decedent's estate to, or solely for the benefit of, charity.

“(ii) For purposes of sub-subparagraph (i) of this subparagraph, the term "member's of the decedent's family" means:

“(I) A surviving spouse, or domestic partner as defined in the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3)), of the decedent, lineal descendants of the decedent, or spouses of lineal descendants of the decedent;

“(II) A trust for the primary benefit of the persons referred to in sub-sub-subparagraph (I) of this sub-subparagraph; and

“(III) A partnership, corporation, or other entity controlled by the individuals referred to in sub-sub-subparagraphs (I) and (II) of this sub-subparagraph;

“(B) An inter-vivos transfer, even though for consideration, between husband and wife, parent and child, siblings, grandparent and grandchild, or domestic partners as defined in section 2 of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(3));

“(C) A transfer of legal title or an interest in an entity holding legal title to a housing accommodation pursuant to a bona fide deed of trust or mortgage, and thereafter any transfer by foreclosure sale or deed in lieu of foreclosure pursuant to a bona fide deed of trust or mortgage;

“(D) A tax sale or transfer pursuant to tax foreclosure;

“(E) A bankruptcy sale;

“(F) Any transaction involving accommodations otherwise subject hereto expressly contemplated by a registration statement filed with the Securities and Exchange Commission prior to February 22, 1994;

“(G) Any transfer of a property directly caused by a change in the form of the entity owning the property; provided, that the transfer is without consideration, including a transfer of interests in an entity to a limited liability company as contemplated by section 14 of the Limited Liability Company Act of 1994, effective July 23, 1994 (D.C. Law 10-138; D.C. Official Code § 29-1013);

“(H) The transfer of interests in a partnership or limited liability company that owns an accommodation as its sole or principal asset; provided, that the sole purpose of the transfer is to admit one or more limited partners or investor members who will make capital contributions and receive tax benefits pursuant to section 42 of the United States Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2189; 26 U.S.C. § 42), or a comparable District program;

“(I) A transfer of title to the housing accommodation to a limited liability company pursuant to section 14 of the Limited Liability Company Act of 1994, effective July 23, 1994 (D.C. Law 10-138; D.C. Official Code § 29-1013);

“(J) A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where the transferor is the current beneficiary of the trust pursuant to section 302(17) of the District of Columbia Recordation Tax Act, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1102(17)) ;

“(K) A transfer of the housing accommodation to a named beneficiary of a revocable trust by reason of the death of the grantor of the revocable trust, pursuant to section 302 of the District of Columbia Recordation Tax Act, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1102));

“(L) A transfer of the housing accommodation by the trustee of a revocable trust if the transfer would otherwise be excluded under this act if made by the grantor of the revocable trust, pursuant to section 302(19) of the District of Columbia Recordation Tax Act, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1102(19));

“(M) A transfer pursuant to court order or court-approved settlement; and

“(N) A transfer by eminent domain or under threat of eminent domain.

“(3) An owner who is uncertain as to the applicability of this act shall be deemed to be an aggrieved party for the purposes of seeking declaratory relief under sections 503 and 503(a). The tenant or tenant organization in such an accommodation shall be deemed

to be an aggrieved party, for these purposes.”.

(3) A new subsection (d) is added to read as follows:

“(d)(1)(A) In addition to any other notice required by titles IV and V, if an opportunity to purchase is not provided under this section, the owner shall provide each tenant and the Mayor written notice ("Notice of Transfer") of the transfer of an interest in a housing accommodation or of any ownership interest in a corporation, partnership, limited liability company, association, trust, or other entity which owns a housing accommodation.

“(B) Notwithstanding any other provision in this act, an owner shall not be required to file a Notice of Transfer for a transfer exempt under subsection (c)(2)(A), (D), (E), (F), (I), (J), (K), (L), (M), or (N) of this section; provided, that a notice of the transfer shall be filed with the Mayor in a form prescribed by the Mayor.

“(C) Notwithstanding any other provision in this act, a owner shall not be required to a Notice of Transfer for a transfer exempt under subsection(c)(2)(C) of this section.

“(2) The Notice of Transfer shall be sent by registered or certified mail, return receipt requested, by commercial overnight delivery service that maintains proof of delivery, or by personal service, at least 90 days prior to the proposed date of transfer. Notice to tenants shall be sent to their address at the housing accommodation unless a tenant has supplied in writing to the owner a different address for notice.

“(3)(A) The Notice of Transfer shall be substantially in the form prescribed by the Mayor and shall provide, at a minimum, a statement of the tenant or tenant organization's rights under this act, an accurate description of the transfer containing all material facts, the date of the proposed transfer, and the reason, if any, why the owner asserts the transfer may not constitute a sale.

“(B) In addition to any other requirements for the form of the Notice of Transfer prescribed pursuant to subparagraph (A) of this paragraph, a Notice of Transfer for a housing accommodation to be transferred for the purposes of receiving tax benefits pursuant to section 42 of the United States Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2189; 26 U.S.C. § 42), or a comparable District program, shall include a description of the applicable federal or District subsidy, and a description of the steps in the transaction employed by the developer to avail itself of the subsidy.

“(4) The owner's failure to provide the Notice of Transfer, or the provision of a notice that is fraudulent or contains material misrepresentations or material omissions, shall create a rebuttable presumption that the transfer constitutes a sale for purposes of titles IV and V.

“(5)(A) An aggrieved tenant or tenant organization duly organized under section 411 and meeting pursuant to its by laws, whichever shall be applicable, may, within 45 days of the Mayor's receipt of the Notice of Transfer, file a notice indicating an intent to file a petition for relief pursuant to section 503 or 503a.

“(B) A Notice of Intent to File Petition shall be delivered by registered or certified mail, return receipt requested, by commercial overnight delivery service that

maintains proof of delivery, or by personal service to the Mayor and simultaneously to the owner. The owner's address shall be that set forth in the Notice of Transfer.

“(C) Failure of an aggrieved tenant or tenant organization to file timely the Notice of Intent to File Petition shall preclude the tenant or tenant organization from asserting any rights under titles IV and V relating to the transfer identified in the Notice of Transfer.

“(6) Within 30 days of the receipt by the Mayor of the Notice of Intent to File, a tenant or tenant organization shall have 30 days to file a petition for relief under sections 503 or 503a. A copy of the petition shall be delivered to owner by registered or certified mail, return receipt requested, or by personal service. Failure of a tenant or tenant organization to file timely the petition for relief shall preclude the tenant or tenant organization from asserting any rights under titles IV and V relating to the transfer identified in the Notice of Transfer.

“(7)(A) Notwithstanding the time requirements for notice in subsection (e)(5)(A) of this section, an aggrieved tenant or tenants, whichever shall be applicable, may, within 30 days of the Mayor's receipt of the notice of transfer of an accommodation pursuant to an exemption in subsection (b)(3) of this section ("Notice of Transfer Pursuant to an Exemption"), file a Notice of Intent to File Petition.

“(B)(i) Failure of a tenant or tenants, pursuant to paragraph (7)(A) of this subsection, or a tenant or tenant organization pursuant to paragraph (7)(B) of this subsection, to file timely the Notice of Intent to File Petition shall preclude the tenant or tenant organization from asserting any rights under titles IV and V relating to the transfer identified in the Notice of Transfer Pursuant to an Exemption of an accommodation pursuant to an exemption.

“(ii) A tenant or tenant organization shall be precluded from asserting any rights under titles IV and V for a transfer exempt under subsection(c)(2)(C) of this section.

“(C) Any change in the transfer agreement that would invalidate a claim of exemption shall be reported in writing to the Mayor and proper notice shall be provided to the tenant or tenant organization.

“(8) For the purposes of providing notice under this subsection, the term “tenant” shall mean the person or persons who, under the terms of the lease or any amendment or consent executed pursuant thereto, are entitled to occupy the rental unit.

“(9)(A) Upon 5 days of request by any person, the Mayor shall provide:
(i) Written certifications, including date of receipt or non-receipt, of any notices received under titles IV and V; and
(ii) Copies of the notices.

“(B) The certifications may be recorded among the records of the Recorder of Deeds and shall be exempt from filing fees.

“(10) Notice of Transfer, Notice of Transfer Pursuant to an Exemption, Notice of Intent to File, and the petition for relief pursuant to section 503 or 503a shall be referred to as “Time Certain Notices.””.

(c) A new section 402b is added to read as follows:

“Sec. 402b. Registration of a tenant organization.

“In a housing accommodation of 5 or more units, the tenants may form and register the tenant organization with the Mayor, pursuant to section 411, at any time; provided, that this section shall not be construed to alter the time periods within which a tenant organization may exercise the rights afforded by this act. A tenant organization may file a petition for relief pursuant to section 503 or 503a.”.

(d) Section 503a (D.C. Official Code § 42-3405.03a) is amended as follows:

Amend
§ 42-3405.03a

(1) The existing text is re-designated as subsection (a).

(2) New subsections (b), (c), and (d) are added to read as follows:

“(b) The Mayor shall consider a petition for relief and issue a declaratory order with regard to the petition within 30 days after receipt of the petition requesting relief. The Mayor shall promulgate regulations to afford all interested parties an opportunity to participate in any declaratory proceeding.

“(c) A declaratory order issued pursuant to section 503 or 503a shall be the sole means by which the Mayor shall issue an official, binding determination pursuant to the request of an aggrieved owner, tenant, or tenant organization to determine rights under titles IV and V. Reliance upon any other form of determination shall not be afforded any weight.

“(d) Notwithstanding the preceding subsection, the following, when taken together, shall constitute conclusive proof of the termination of a tenant's or a tenant organization's rights pursuant to titles IV and V:

“(1) Certifications provided by the Mayor setting forth the date of receipt of the Notice of Transfer and indicating that no Time Certain Notices from a tenant or tenant organization were received within the prescribed periods;

“(2) An affidavit from the owner or the owner's authorized representative attesting to the date, content, and manner of issuance of the Notice of Transfer; and

“(3) An affidavit from owner or owner's authorized representative in compliance with the Servicemembers Civil Relief Act, approved October 17, 1940 (54 Stat. 1178; 50 U.S.C. App. § 501 *et seq.*), as to any tenant whose rights are affected by this act.”.

(e) Section 503b (D.C. Official Code § 42-3405.03b) is amended as follows:

Amend
§ 42-3405.03b

(1) The section heading is amended to read as follows:

“Sec. 503b. Choice of forum; standard of review.”.

(2) The existing text re-designated as subsection (a):

(3) A new subsection (b) is added to read as follows

“(b) The applicability of this act, and rights created hereunder, shall be determined by examining the substance of the transaction or series of transactions. A step transaction or other device entered into or employed for the purpose of avoiding the obligation to comply with the requirements of this act shall be construed in accordance with the substance of the transaction.”.

(f) A new section 510a is added to read as follows:

“Sec. 510a. Rental Housing Conversion and Sale Act Task Force.

“(a) The Mayor shall establish a Rental Housing Conversion and Sale Act Task Force (“Task Force”) within 30 days after the effective date of this section.

“(b) The general mandate of the Task Force shall be to examine all aspects of titles IV and V, including its implementation and compliance with its requirements, and to determine the best means for preserving rental housing, preventing the deterioration of the housing stock, and preventing the displacement of tenants.

“(c) The Mayor shall establish the methodology for achieving the purposes of the Task Force in consultation with the members. The Task Force shall issue a report and recommendations proposing policy initiatives and revisions to the statute designed to improve titles IV and V, which shall be distributed to all members of the Council and the Mayor and made available to the general public within 30 days after its issuance.

“(d) As part of its review, the Task Force shall consider:

“(1) Whether the District is doing enough to help tenants avail themselves of the opportunity to purchase when an offer is presented, within the prescribed time periods;

“(2) Whether the time periods for tenants to avail themselves of the offer of sale are too long or not long enough;

“(3) Simplifying the procedures for Time Certain Notices by establishing a single notice procedure for all transactions that do not require a notice to tenants, shortening time periods for sending or filing notices, and eliminating the Notice of Intent to File Petition;

“(4) Allowing any tenant in a multi-unit housing accommodation to file a petition for a declaratory order without forming a tenant organization or extending the time period for a tenant organization to form and register;

“(5) Limiting the act to multi-unit housing accommodations;

“(6) Whether the third party rights afforded tenants are being employed to further the purposes of the act; and

“(7) Whether owners are evading the requirements of the act.

“(5) The Task Force shall be composed of 7 members, 5 of whom shall be appointed by the Mayor and 2 of whom shall be appointed by the Chairman of the Council. Members of the Task Force shall represent the interests affected by the act, including tenants, owners, the District government, title insurers, and other industry representatives.

“(6) The Task Force shall continue in existence for 6 months and shall issue its report and recommendations before disbanding.”.

Sec. 3. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

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Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of