
Government of the District of Columbia



Office of the Tenant Advocate

Post-Hearing Testimony of

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Public Hearing on:

**Bill 21-443, the “Condominium Owner Bill of Rights Amendment
Act of 2015”**

Committee on Housing and Community Development
The Honorable Anita Bonds, Chairperson
Council of the District of Columbia

Tuesday, December 7, 2015
11:00 a.m.

Room 120
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Thank you, Chairperson Bonds, for the opportunity to submit these post-hearing comments on Bill 21-443, the “Condominium Owner Bill of Rights Amendment Act of 2015.”

Bill 21-0443, the “Condominium Owner Bill of Rights Amendment Act of 2015,” would (1) require that an officer or member of the executive board exercise their powers and duties ethically and in good faith; (2) establish a Condominium Association Advisory Council (CAAC), composed of eleven members, to serve as advisors to the Mayor, the Council, and District of Columbia agencies on matters relating to ownership of condominiums in the District of Columbia; (3) require mediation prior to a unit owners' association seeking foreclosure on a unit; (4) establish a Condominium Association Bill of Rights; and (5) require that a Condominium Association Bill of Rights and a copy of the responsibilities of members of the executive board of condominium associations be furnished to purchasers of condominiums.

I recognize the intention of Bill 21-443, which is to help condominium associations and their unit owners address financial issues that can potentially trigger foreclosure actions. In many instances foreclosed units are occupied by a tenant. Mediation can help disputing parties come to an

understanding, preventing the need to foreclose in many cases. However, I do have a number of concerns that I believe the Committee should address:

Tenant Rights

Although foreclosure is not by itself a basis to evict a tenant in the District of Columbia, renters are often unaware that they have the right to stay in the unit, whether it is the bank or the condominium association that has foreclosed on the owner. Therefore, many tenants give up their right to remain in the property through a lack of information or misinformation. Our office has come across many renters who have illicitly been made homeless by the foreclosure, or who are being threatened by an illicit foreclosure.

Recommendation: *Consideration should be given to providing educational material to a current tenant at the time the foreclosure notice is given to the unit owner. The OTA has provided targeted information on tenant rights to those tenants who live in properties that are in the process of going through foreclosure. However, it is imperative that the foreclosing party – the association -- be required to timely provide the tenant with a notice of the tenant’s right to stay in the unit, along with the OTA Tenant Bill of Rights in its entirety.*

Additionally, the Rental Housing Act requires a unit owner to provide the tenant with certain information, including whether the unit is subject to rent control, and whether the owner has qualified for and properly taken an exemption.¹ Condominium owners are too often unaware of these basic rental housing requirements. Therefore, the association should be required to notify any new unit owner of their responsibilities, including disclosure requirements, in the event that the unit is rented out to a tenant. These disclosures should also be incorporated into the condominium association's resale package in conspicuous, plain language and included at the outset of the resale package.

Loss Mitigation Availability

When a lender – as opposed to an association – forecloses using the District's non-judicial foreclosure process, current law in the District offers guidance as to how mediation is to take place.² Most importantly, a description of all loss mitigation programs available to the homeowner is specified and the application process for each described. This is important because it provides a statutory basis for ensuring that the association

¹D.C. Code § 42-3502.22(b)(1)

²D.C. Code § 42-815.02

negotiates in good faith, and gives the homeowner tangible options from which to select the best course of action.

While the rule-making process can flesh out such guidance, it would be helpful to include a starting point in the legislation. The association is not required to provide specific options to the homeowner with alternative choices for curing the delinquency in lieu of foreclosure. Otherwise, the danger is that the mediation requirement will become a mere formality, and will not effectively prevent foreclosures. It is important to keep in mind that the homeowner typically does not fully understand the mediation process or possible options available to cure the deficiency, cannot afford legal counsel, and often lacks the ability to negotiate effectively.

Recommendation: *The mediator should be given a clear and more defined role. The homeowner should specifically be informed of all avenues available to him or her, and provided tailored options for curing the delinquency in lieu of foreclosure.*

Expanding the Reach of this Legislation

Under the Saving Homes from Foreclosure Act of 2010, mediation administered by the Department of Insurance, Securities, and Banking (DISB) is required for lenders who implement a non-judicial foreclosure action against a homeowner's primary residence in most types of property, including a single family property or a condominium or cooperative unit.³ Mediation also applies to lenders who foreclose on a property using judicial foreclosure, but through the court system rather than through DISB.⁴ Thus, the mediation requirement under Bill 21-0443 is consistent with existing law and practice in the District as it pertains to lenders. Bill 21-0443 would fill a gap by making the mediation requirement applicable to Condominium Associations before they may complete a non-judicial foreclosure. However, the proposed legislation does not fill the gap in the law inasmuch as there is currently no requirement that a Cooperative Association engage in mediation before foreclosing on a unit owner.

Recommendation: *This proposed legislation should be expanded to include scenarios where a cooperative forecloses on units in their buildings.*

³ D.C. Code § 42-815.02

⁴ Rogers v. Advance Bank (D.C. 2015)

Sec. 308a. Condominium Association Advisory Council (at Line 85)

This provision calls for the creation of the Condominium Association Advisory Council (CAAC) to be composed of 11 members. While I commend the provision calling for one member to be chosen from each of the 8 District wards, there is little additional guidance as to the criteria from which CAAC members are to be chosen.

Recommendation: *Further guidance should be offered specifying the criteria from which CAAC members are to be chosen. It is important that the CAAC be comprised of individuals diverse in ethnicity and experience. Additionally, the role and authority of the CAAC should be defined so as to offer a clear objective and sound guidance.*

Sec. 313a. Mediation (at Line 117)

This provision stipulates an exemption for associations with 4 or fewer units from the requirements of this legislation and mediation. Condominium Associations, especially those on the smaller side, can be placed at serious risk of insolvency by condominium fee delinquencies, as they still have to pay insurance and utility bills and provide for the upkeep of the building.

Recommendation: *Consideration should be given to expanding the exemption to include associations with, for example, 10 or fewer units.*

Condominium Association Bill of Rights (at Line 305 to 346)

This provision establishes a Condominium Association Bill of Rights. While many of these provisions are already incorporated in the DC Condominium Act and in most condominium resale packages, the Bill of Rights clearly lays out unit owners' rights in one easy to read document. Under this proposed legislation, the Condominium Association Bill of Rights is to be available on the DHCD website; however, it is important to create more timely awareness about the Condominium Association Bill of Rights.

Recommendation: *Consideration should be given to require the inclusion of the Condominium Association Bill of Rights into the condominium resale package and/or as a separate document as part of a contract for sale in a real estate transaction to be initialed by the buyer. This requirement would parallel the DC Tenant Bill of Rights, which must be provided along with other disclosure documents to rental applicants.⁵*

⁵ D.C. Code § 42-3502.22(b)(1)(L)

Financing Options and FHA

This proposed legislation could also impact associations with Federal Housing Administration (FHA) approval status. (FHA is a government backed agency providing mortgage assistance to homebuyers). Mortgages backed by FHA require an association to have a minimum percentage limit on condo fee delinquencies.⁶ An association that has FHA approval status may lose that status if and when the condominium fee delinquency rate of the association exceeds a certain threshold. FHA-backed mortgages make up a large share of some markets, and are the only option available to many borrowers who need the lower down payment minimum and less stringent lending standards. According to the U.S. Department of Housing and Urban Development (HUD) there are over 700 properties in the District alone that are FHA-approved.

To the extent that the legislation would prolong the time within which an association may foreclose on a delinquent unit, thereby increasing costs, the association is at a greater risk of not meeting the minimum percentage limit on condo fee delinquencies established by the FHA. Too many delinquent units could result in the association losing its FHA

⁶ Associations with a delinquency rate above 15% will not qualify for FHA approval.

approval status upon renewal, which could in turn result in fewer potential buyers being able to purchase in the building. This would result in lower property values, and a loss in building maintenance and services.

Recommendation: *Consideration should be given to exempt condominium associations from the mediation requirement where the number of units already in foreclosure exceeds a certain percentage of the total number of units in the building. This will help avoid a spiraling effect in “problem buildings” that could cause further delinquencies and a loss of adequate building maintenance and services, and ultimately FHA approval.*

Closing Remarks

Any comparative analysis of “best practices” in other jurisdictions, which the National Conference of State Legislatures may have done, should be given great weight. This concludes my testimony. Thank you again, Chairperson Bonds, for holding this hearing on such a critical issue. I am happy to take any questions you may have at this time.