

Testimony on HB 0567

HB0567- Residential Property – Affordable Housing Land Trusts – Authority to Establish Condominium Regimes

Tuesday, February 21, 2023

Position: Favorable

Chairman Barve and Members of the House Environment and Transportation Committee:

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

I first want to thank the sponsor, Delegate Robbyn Lewis, for introducing HB 0567. 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.

This is a technical amendment to the original Affordable Housing Land Trust Act, enacted in 2010, and found at MD Real Property Code Ann. Sec. 14-501 et seq. In Maryland because ground leases are disfavored and can be redeemed, the ownership and use of an Affordable Land Trust Agreement by an AHLT was exempted from the restrictions placed upon ground leases. The purpose of an AHLT is to own the land and lease it, pursuant to a 99-year renewable term, to a low- and moderate-income family who purchases and owns the home. The AHLT also helps the family to remain in the home and keep the home well-maintained while restricting the resale price and sharing the home's appreciation when the family decides to sell the home, which is to another low- and moderate-income family.

A number of AHLTs are developing residential multifamily condominiums for low- and moderate-income families. Condominiums allow the homeowner to own its unit, like with a house, and, collectively with the other unit owners, pay for and access the condominium's common elements (i.e., walkways, hallways, community room, etc.).

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". A leasehold estate means that the homeowner who may own the home or building uses the land per a lease (like a renter), rather than by owning it outright. The statute, as it is currently written, means that AHLTs that use an Affordable Housing Land Trust Agreement, which in fact is very similar a ground lease, 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 condominium owners. This two-step structure creates added complexity and time, and diverts monetary resources (primarily, attorney fees) in developing affordable land trust units, which increases the costs of these homes to low- and moderate-income families. The condominium statute does protect residential condominium owners in cases in which the landowner who leases the land to the condominium tries to take over the homes by terminating the lease or having it expire before the condominium

terminates or expires. However, this protection is unnecessary for AHLT projects since the purpose of the 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 and AHLTs 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 technical 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 described earlier. I respectfully urge you to pass HB 0567 to remedy this issue pertaining to AHLTs using condominiums to develop more perpetually affordable homes.