



Testimony

HB 567

Environment and Transportation Committee

February 21, 2023

Position: FAVORABLE

Dear Chairman Barve and Members of the Environment and Transportation Committee

The Community Development Network of Maryland (CDN) is the voice for Maryland's community development sector and serves nearly 200 member organizations. CDN—focuses on small affordable housing developers, housing counseling agencies and community-based non-profits across the state of Maryland. The mission of CDN is to promote, strengthen and advocate for the community development sector throughout Maryland's urban, suburban and rural communities. CDN envisions a state in which all neighborhoods are thriving and where people of all incomes have abundant opportunities for themselves and their families.

HB 567 – Authorizes a condominium regime to be established on certain land owned by an affordable housing land trust.

A number of Affordable Housing Land Trusts (AHLT) are developing multi-unit land trust properties. To enable them to provide 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 resources from developing affordable land trust units. It is unnecessary since the purpose of AHLT Agreement is to keep the condominium units perpetually affordable.

There is an urgent need for affordable housing in Maryland we want to have as many tools as possible to address this need. Community Land Trusts offer an excellent opportunity.

We respectfully request a favorable report for HB 567.

Submitted by Claudia Wilson Randall, Executive Director

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.



CHARM CITY LAND TRUSTS

2424 McElderry Street, Baltimore, MD 21205

February 17, 2023

Hon. Kumar P. Barve, Chair
Environment and Transportation Committee
Room 251
House Office Building
Annapolis, Maryland 21401

RE: HB 0567 Residential Property-Affordable Housing Land Trusts-Authority to Establish
Condominium Regimes

Dear Chairman Barve,

Charm City Land Trusts (CCLT), a community land trusts operating in Baltimore City supports HB 0567 and asks the Environment and Transportation Committee to give it a favorable report. The bill makes a technical change to the Condominium Act that will clear up confusion between its regulatory structure and that of Affordable Housing Land Trusts.

CCLT was incorporated in 2000 to provide permanently affordable housing to low income and rent burdened families in East Baltimore. The affordable housing sector in Baltimore City has become more robust thanks to grassroots organizing that resulted in the creation of the Affordable Housing Trust Fund (AHTF). The AHTF is a pot of city money dedicated to subsidizing permanently affordable housing development, specifically that of CLTs. CLTs use Affordable Housing Land Trust Agreements (AHLTAs) to maintain affordability through use of a resale formula that ensures that CLT homes are not sold at for-market prices. Nationally, CLT housing has proven to be stable, safe, and more attainable to working-class people of color.

A number of Affordable Housing Land Trusts (AHLTs) are developing multi-unit housing and providing the units for homeownership through a condominium-like structure. However, the current condominium law does not envision or make provision for the AHLT agreements. AHLT agreements, commonly known as ground leases (though distinct from “ground rents”), technically makes the AHLT housing a “leasehold estate.” Such estates are prohibited in the condominium structure that is governed by the Residential Condominium Act (MD Real Property Code Ann. Sec. 11-101 et seq.).

AHLTs must sidestep this prohibition by first creating a “commercial” condominium and then a “residential” one. These two-steps add complexity and confusion to financiers, both public and private, and operate to delay and prevent successful property acquisition and housing financing.

The Affordable Housing Land Trust Act (MD Real Property Code Ann. Sec. 14-501 et seq.) exempts the Affordable Housing Land Trust Agreement from statutes pertaining to ground leases but does not address condominiums. While legislative acts must be construed by the courts *in pari materi* (in harmony), there is no reason for this to be resolved by litigation. This simple fix to the Condominium statute would exempt Affordable Housing Land Trust Agreements from being deemed “leasehold estates” for purposes of the Condominium Act. The amendment is consistent both with the intent of the regulatory structure under both the AHLT and Condominium acts, in harmony with each considered together, and involves no fiscal cost to the state.

We thank you for your anticipated support and favorable report of HB 0567.

Sincerely,

Cheryl Bryant
Executive Director



Garrick R. Good, JD, MBA, CFRE
Executive Director

February 17, 2023

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Hon. Kumar P. Barve, Chair

Environment and Transportation Committee

Room 251

House Office Building

Annapolis, Maryland 21401

RE: HB 0567 Residential Property-Affordable Housing Land Trusts-
Authority to Establish Condominium Regimes

Dear Chairman Barve,

North East Housing Initiative “NEHI” in Baltimore City supports HB 0567 and asks the Environment and Transportation Committee to give it a favorable report. The bill makes a technical change to Condominium Act that will clear up confusion between its regulatory structure and that of Affordable Housing Land Trusts.

NEHI was established in 2014 to provide permanently affordable housing for families at or below 80% area median income through Affordable Housing Land Trusts (AHLTs), also called Community Land Trusts (CLTs), that were forming in Baltimore City. AHLTs/CLTs provide housing that also supports development without displacement. AHLTs legally separate land from the housing upon it, and then knit them together in legal documents that enable homeownership, rental, and co-operative housing to occur in traditional ways with traditional financing, but on land owned by a community-led non-profit organization. The legal land trust agreement that brings them together keeps this housing permanently affordable by prior-set formulas that govern subsequent sales. This enables the community to maintain an affordable sector regardless of market conditions.

Funded Partner



5307 Belair Road
Baltimore, MD 21206

A number of Affordable Housing Land Trusts (AHLTs) are developing multi-unit housing and providing the units for homeownership through a condominium-like structure. However, the current condominium law does not envision or make provision for the AHLT agreements. AHLT agreements, commonly known as ground leases (though distinct from “ground rents”), technically makes the AHLT housing a “leasehold estate.” Such estates are prohibited in the condominium structure that is governed by the Residential Condominium Act (MD Real Property Code Ann. Sec. 11-101 et seq.).

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The Affordable Housing Land Trust Act (MD Real Property Code Ann. Sec. 14-501 et seq.) exempts the Affordable Housing Land Trust Agreement from statutes pertaining to ground leases but does not address condominiums. While legislative acts must be construed by the courts *in pari materi* (in harmony), there is no reason for this to be resolved by litigation. This simple fix to the Condominium statute would exempt Affordable Housing Land Trust Agreements from being deemed “leasehold estates” for purposes of the Condominium Act. The amendment is consistent both with the intent of the regulatory structure under both the AHLT and Condominium acts, in harmony with each considered together, and involves no fiscal cost to the state.

We thank you for your anticipated support and favorable report of HB 0567.

Sincerely,

A handwritten signature in cursive script that reads "Garrick R. Good".

Garrick R. Good, JD, MBA, CFRE
Executive Director



February 17, 2023

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Hon. Kumar P. Barve, Chair
Environment and Transportation Committee
Room 251
House Office Building
Annapolis, Maryland 21401

RE: HB 0567 Residential Property-Affordable Housing Land Trusts-Authority to Establish Condominium Regimes

Members

Northeast Housing Initiative

Dear Chairman Barve,

Charm City Land Trusts

The SHARE Affordable Housing Land Trust Network in Baltimore City supports HB 0567 and asks the Environment and Transportation Committee to give it a favorable report. The bill makes a technical change to Condominium Act that will clear up confusion between its regulatory structure and that of Affordable Housing Land Trusts.

Harbor West Collective Affordable Housing Land Trust

South Baltimore Community Land Trust

SHARE was established in 2018 to provide mutual and technical support to Affordable Housing Land Trusts (AHLTs), also called Community Land Trusts (CLTs), that were forming in Baltimore City. AHLTs/CLTs provide housing that also supports development without displacement. AHLTs legally separate land from the housing upon it, and then knit them together in legal documents that enable homeownership, rental, and co-operative housing to occur in traditional ways with traditional financing, but on land owned by a community-led non-profit organization. The legal land trust agreement that brings them together keeps this housing permanently affordable by prior-set formulas that govern subsequent sales. This enables the community to maintain an affordable sector regardless of market conditions.

Cherry Hill Community Development Corporation

York Road Partnership

AHLTs/CLTs have an exemplary track record in maintaining affordability and security of tenure. Ninety percent of low-income, first-time homebuyers under the AHLT/CLT structure are still housed five years later, either by remaining in AHLT/CLT housing and transitioning to traditional homeownership. In contrast, 50% of low-income, first time

homebuyers have returned to renting under government programs designed to assist them. (Jacobus and Davis [The Asset Building of Shared Equity Homeownership](#), Jan 2010.) AHLTs/CLTs also showed fewer foreclosures than traditional housing models during the foreclosure crisis of the early 2000s and fewer evictions during the COVID 19 emergency (Sabonis, [The Transformative Potential of Community Land Trusts](#), Shelter Force, Sept. 2021.)

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We thank you for your anticipated support and favorable report of HB 0567.

Sincerely,

Danise Jones-Dorsey