

MEMORANDUM

February 27, 2015

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Bill 44-14, Landlord-Tenant Relations – Licensing of Rental Housing – Common Ownership Community Fees

**Planning, Housing and Economic Development Committee recommendation
(3-0): enact the Bill with amendments.**

Bill 44-14, Landlord-Tenant Relations – Licensing of Rental Housing – Common Ownership Community Fees, sponsored by then Council Vice President Leventhal and Councilmembers Floreen and Branson, was introduced on September 23, 2014. A public hearing was held on October 21 and a Planning, Housing and Economic Development Committee worksession was held on February 2.

Background

Bill 44-14 would require an owner of a dwelling unit in a common ownership community to certify payment of common ownership community fees in order to receive a rental housing license for the unit. It would also authorize the Director of Housing and Community Affairs to deny, suspend, revoke, or refuse to renew a rental housing license for a dwelling unit in a common ownership community if the owner fails to pay the common ownership community fees due for the unit. Although the Bill would not replace the need for a common ownership community to use the Courts to collect unpaid fees, the Bill would add an additional tool to encourage a unit owner to pay these fees.

Public Hearing

Ilanya Branda, on behalf of the Montgomery Housing Partnership (©9-10) and John Driscoll, President of the Montgomery Village Foundation Board of Directors (©11-12) each supported the Bill, but suggested that an applicant for a rental license be required to submit a letter from the association stating that fees were paid instead of self-certifying. Ronald Bolt, speaking for the Washington Metropolitan Chapter for the Community Associations Institute (©13-16) and Vicki Vergagni, President of the Board of Directors for Glen Way Gardens Condominium (©17-19) each supported the Bill, but suggested that an association be permitted to get a rental license revoked by submitting a statement of lien under the Maryland Contract Lien Law rather than requiring a Court judgment. Alyson Meiselman, President of the Vistas at Washingtonian Woods Condominium Association (©20) supported the Bill, but wanted more tools to enforce collection

of unpaid fees. Lawrence Dorney (©21-22) supported the Bill as introduced. Tim Knobloch, testifying for the Greater Capital Area Association of Realtors (©23-24) opposed the Bill arguing that the Bill would encourage landlords to rent units without obtaining a license.

February 2 PHED Worksession

Clarence Snuggs, DHCA Director, represented the Executive Branch. Mr. Snuggs expressed concern that some owners who receive less rent than their mortgage payment might choose to permit the unit to go to foreclosure if they are forced to pay back association fees to rent the unit. Foreclosures lead to vacant units because FHA will not guarantee a mortgage loan on a unit where the association revenue is insufficient to maintain the common areas. The Committee agreed that foreclosures in common ownership communities cause significant problems for public health and welfare in the County. Although the Bill would not eliminate this problem, the Committee felt that it would help associations collect more fees. The Committee approved the following amendments:

1. permit an association to prove non-payment of fees with a recorded statement of lien; and
2. add a sentence limiting the fee an association can charge to certify payment of fees to \$25.

The Committee recommended (3-0) approval of the Bill as amended.

Issues

1. What is the fiscal and economic impact of the Bill?

OMB estimated that the Bill would have no impact on revenues or expenditures. (©5-8) DHCA would require a minimal amount of staff time to set up an internal process to record information on unpaid common ownership association fees as part of their rental license system. Finance estimated that the Bill would have no effect on the County's economy.

2. Should an association be able to prove unpaid fees by providing a recorded statement of lien obtained under the Maryland Contract Lien Act?

The Maryland Contract Lien Act, MD Code, Real Property, §§14-201 through 14-206, permits a common ownership association to obtain a statutory lien against the property for failure to pay association fees without first obtaining a judgment in court if the association documents permit it. Under the Maryland Contract Lien Act, the dwelling owner can file suit to contest the lien after receiving notice from the association. This State law creates a simpler, less costly method for an association to collect unpaid fees. Several speakers suggested that the Bill be amended to permit an association to seek to have a rental license revoked or denied by DHCA by submitting a statement of lien against the property obtained under the Maryland Contract Lien Act. **Committee recommendation (3-0):** amend the Bill to permit the use of a statutory lien created under the Maryland Contract Lien Act. See lines 31-39 at ©3.

3. Should the Bill be amended to limit the amount of fees an association can charge to certify that association fees have been paid?

The Bill would require an owner to certify that fees have been paid in order to obtain a rental license. An owner would have to obtain from the association a statement of proof of payment to obtain a rental license. The Bill would not limit the amount of a fee an association

could charge the owner for a proof of payment. **Committee recommendation (3-0):** amend the Bill to limit the fee charged by the association to no more than \$25. See lines 27-30 at ©2-3.

4. Should the Bill be enacted?

Unpaid association fees are a problem for common ownership communities because they reduce the funds available for the maintenance of common areas. A failure to properly maintain common areas can result in a loss of property values for all dwelling unit owners. While this Bill would not guarantee payment of association fees, it is an additional tool that can be used to secure payment from those owners who choose to rent their units. The Greater Capital Area Association of Realtors opposed the Bill because, in their opinion, the Bill would encourage dwelling unit owners to rent the unit without obtaining a license rather than ensuring payment of association fees. While this is a potential unintended consequence, it is based upon speculation rather than facts. It is also reasonable to assume that the Bill would result in more payment of fees rather than owners violating the rental license law. **Committee recommendation (3-0):** enact the Bill with the amendments described above.

This packet contains:

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Bill No. 44-14
Concerning: Landlord-Tenant Relations
- Licensing of Rental Housing -
Common Ownership Community
Fees
Revised: February 24, 2015 Draft No. 2
Introduced: September 23, 2014
Expires: March 23, 2016
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Vice President Leventhal and Councilmembers Floreen and Branson

AN ACT to:

- (1) require an owner of a dwelling unit in a common ownership community to certify payment of common ownership community fees in order to receive a rental housing license for the unit;
- (2) authorize the Director of Housing and Community Affairs to deny, suspend, revoke, or refuse to renew a rental housing license for a dwelling unit in a common ownership community if the owner fails to pay the common ownership community fees due for the unit; and
- (3) generally amend the laws governing the licensing of rental housing.

By amending

Montgomery County Code
Chapter 29, Landlord-Tenant Relations
Sections 29-1 and 29-19

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

28 common ownership community decides to charge a fee to certify
29 that the common ownership fees for a dwelling unit have been
30 paid, the fee must be no more than \$25.

31 (2) The Director may deny, suspend, revoke, or refuse to renew a
32 housing rental license for a dwelling unit in a common ownership
33 community if the governing body of a common ownership
34 community submits proof of [[an unsatisfied final judgment
35 against the owner for]] unpaid common ownership community
36 fees for the dwelling unit through:

37 (A) a recorded statement of lien obtained under the Maryland
38 Contract Lien Act; or

39 (B) an unsatisfied judgment against the owner.

40 (f) Each licensee must give the Department a current address for the receipt
41 of mail. If the Department sends first class or certified mail to the
42 licensee at the designated address and the mail is returned as
43 undeliverable, the Department may treat the mail as having been
44 received.

45 *Approved:*

46

Craig L. Rice, President, County Council

Date

47 *Approved:*

48

Isiah Leggett, County Executive

Date

LEGISLATIVE REQUEST REPORT

Bill 44-14

Landlord-Tenant Relations – Licensing of Rental Housing - Common Ownership Community Fees

DESCRIPTION:	Bill 44-14 would require an owner of a dwelling unit in a common ownership community to certify payment of common ownership community fees in order to receive a rental housing license for the unit. It would also authorize the Director of Housing and Community Affairs to deny, suspend, revoke, or refuse to renew a rental housing license for a dwelling unit in a common ownership community if the owner fails to pay the common ownership community fees due for the unit.
PROBLEM:	Common ownership communities are having problems collecting association dues from dwelling unit owners who rent their unit.
GOALS AND OBJECTIVES:	The goal is to increase the payment of association dues to common ownership communities.
COORDINATION:	Consumer Protection, CCOC, Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Loss of rental license.



ROCKVILLE, MARYLAND

MEMORANDUM

October 24, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget *J. Hughes*
Joseph F. Beach, Director, Department of Finance *J.F. Beach*

SUBJECT: FEIS for Council Bill 44-14 Landlord Tenant Relations Licensing of Rental Housing - Common Ownership Fees

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Eric Friedman, Director, Office of Consumer Protection
David Platt, Department of Finance
Helen Vallone, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill 44-14 & Landlord Tenant Relations – Licensing of Rental Housing – Common
Ownership Fees

1. Legislation Summary

The purpose of this legislation is to ensure that the owner /landlord of a dwelling unit in a common ownership community are current in paying the common ownership community fees. This bill would prohibit the owner/landlord of a dwelling unit from receiving a rental housing license from the Department of Housing and Community Affairs (DHCA) if the owner/landlord fails to pay the common ownership community fees that are due.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

No impact on revenues or expenditures.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

No impact on revenues or expenditures.

4. An actuarial analysis through the entire amortization period for each regulation that would affect retiree pension or group insurance costs.

Not Applicable.

5. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.

Not Applicable.

6. An estimate of the staff time needed to implement the regulation.

DHCA would require a minimal amount of staff time to devise and implement an internal process regarding their rental housing license procedures to reflect information regarding a unit owner's/landlord's failure to pay common ownership community dues.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

DHCA believes that these additional steps in the rental housing licensing procedure would be incorporated and made part of their routine license issuing process.

8. An estimate of costs when an additional appropriation is needed.

Not Applicable.

9. A description of any variable that could affect revenue and cost estimates.

Not Applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not Applicable.

11. If a regulation is likely to have no fiscal impact, why that is the case.

Not Applicable.

12. Other fiscal impacts or comments.

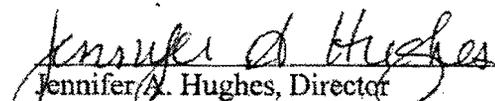
None

13. The following contributed to and concurred with this analysis

Timothy Goetzinger, Department of Housing and Community Affairs

Eric Friedman, Director, Office of Consumer Protection

Helen P. Vallone, Senior Management and Budget Specialist, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

10/22/14
Date

Economic Impact Statement
Bill 44-14, Landlord-Tenant Relations – Licensing of Rental Housing
Common Ownership Community Fees

Background:

This legislation would require an owner of a dwelling unit in a common ownership community to certify payment of common ownership fees in order to receive a rental housing license for the unit. This legislation would authorize the Director of Housing and Community Affairs to deny, suspend, revoke, or refuse to renew a rental housing license for a dwelling unit in a common ownership community if the owner fails to pay the common ownership community fees due for the unit.

1. The sources of information, assumptions, and methodologies used.

Office of Consumer Protection
Department of Housing and Community Affairs
Office of Management and Budget

The methodology used by the Department of Finance was a query to the Department of Housing and Community Affairs (DHCA) on how many owners of a dwelling unit were delinquent for not paying common ownership community fees. According to DHCA, the Department has no data on the number of delinquencies and that any applicant for a license or renewal will update his or her certification such that they will get a license.

2. A description of any variable that could affect the economic impact estimates.

The economic variable that could affect the economic impact estimates is the number of delinquent property owners. However, DHCA maintains that there is no economic impact of Bill 44-14.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Because there are currently no known delinquencies, Bill 44-14 will likely have no economic impact on employment, spending, saving, investment, incomes, and property values in the County

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph #3

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.



Joseph F. Beach, Director
Department of Finance

10/23/14
Date



2

12200 Tech Road, Suite 250, Silver Spring, Maryland 20904-1983 Phone: 301-622-2400 Fax 301-622-2800 www.MHPartners.org

October 21, 2014

The Honorable Craig Rice
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Rice:

On behalf of Montgomery Housing Partnership (MHP), please allow me to take the opportunity to share some thoughts on the Bills 44-14 and 45-14. MHP fully supports the Council's critically needed focus on the struggles and issues facing many of our County's common ownership communities. Bills 44-14 and 45-14 are both important first steps to begin to provide additional support and security for our common ownership communities.

Many of you are familiar with MHP's role within the County as a developer of affordable rental multi-family communities, but might not be as familiar with some of neighborhood work. Neighborhood revitalization is a cornerstone of MHP's mission. MHP has been working in various communities throughout the County for over twenty years. These include the greater Glemont area, Long Branch, Germantown, and Gaithersburg. On behalf of the County, we have tackled such issues as: vacant and distressed property, small business development, crime and safety, health and well-being, and environmental stewardship. In 2011, MHP worked with home owner associations (HOAs) in Germantown dealing with high rates of foreclosures and the inability to collect dues and assessments. MHP worked closely with Cinnamon Run, a 600 plus unit association on conducting a capital reserve study and providing technical assistance and support to establish a financial planning strategy for the future. With 25 other HOAs in the area, MHP conducted a best practices report, including site surveys, neighborhood profiles, and individual meetings with HOA representation. We worked with the associations and the County to ensure both sides understand their maintenance responsibilities. Additionally, in 2004, we worked with the Ken-Gar, Bailey's Court, and Badger Drives HOAs to undertake a similar analysis, which included surveying the residents and analyzing market and demographic data.

MHP is also an owner of many individual units scattered throughout the County. We purchase most of these units within ownership communities to create the opportunity for affordable rental housing where it was previously not available. Recently, we have begun to purchase units for very different reasons – to support sellers who can't find buyers. Buyers can't purchase in those communities. Why? Because too many of our communities, at least 250 out of 400 who at one point had FHA certification have allowed their FHA certification to lapse, or been rejected. Without FHA certification many first time homebuyers are unable to find alternative financing to support purchases within these communities, leaving sellers without buyers and

creating additional problems within the community. There are three main factors that contribute to FHA certification eligibility – delinquency rates, investor rates, and existing concentration of FHA loans.

These bills begin to address two of the main reasons why our communities have lost their FHA certification – education and delinquency rates. Bill 45-14 goes to the heart of the education issues. We have very vested, passionate residents who are willing to dedicate their time and energy to support their community associations. However, their professional skills don't always align with the necessary skills to successfully support and manage their association. We need to ensure all boards have the skills to understand and craft a budget, to select and manage their management company, to understand how and when to apply for FHA financing, and to deal with residents who are delinquent, among others areas. Providing such training is the first step in developing resident leaders who will serve to mitigate the challenges their community may encounter.

The second bill, Bill 44-14, begins to get to the heart of some of the issues the communities are facing today. The high rate of delinquencies among our common ownership communities are preventing proper upkeep and maintenance, limiting our communities' ability to put money away for a rainy day, and are preventing many communities from obtaining FHA financing, as outlined above. We fully support preventing owners from renting out their units, when they are not properly supporting their community. We would like to suggest one tweak – instead of allowing owners to self-certify that their payments are up to date we would recommend that rental license applicants furnish a letter from their board or management company certifying that they are up to date with all fees and assessments.

I thank the Council for working to support our common ownership communities. We need to ensure that our communities are on solid financial footings, that they have the tools and knowledge to support themselves, and are positioned for turnover. We must also recognize that some of these challenges potentially require changes on a State and/or Federal level. For example, per State legislation when a bank has foreclosed on a unit in a common ownership community the bank is only responsible for \$1,000 or four months of fees, even if the owner had been delinquent for years.

Thank you for taking the time to consider these thoughts and for always keeping the needs of Montgomery County citizens at the forefront of your mind. We look forward to the opportunities to continue to work with the County ensuring all our residents live in quality communities.

I welcome the opportunity to discuss this issue with you further. Please feel free to reach me at rgoldman@mhpartners.org or 301-812-4114.

Sincerely,



Robert A. Goldman, ESQ.

President

Montgomery Housing Partnership
Bills 44-14 and 45-14

Testimony before the Montgomery County Council

By John Driscoll, President, Montgomery Village Foundation Board of Directors

October 21, 2014

Bill 44-14

Landlord-Tenant Relations – Licensing of Rental Housing – Common Ownership Fees

Good evening, I am John Driscoll, President of the Montgomery Village Foundation Board of Directors. We support this bill which would require owners of rental properties in our community to certify to the County that they have paid their common ownership community fees in order to receive a rental housing license.

By way of background, the MVF Board of Directors are elected and represent over 40,000 residents. We are a large-scale community association in which every homeowner is required to pay MVF assessments. In addition, every homeowner pays a homes corporation or condominium association assessment to support their individual budgets. Approximately 25 percent of our homeowners rent their properties, and each year, we cooperate with the Montgomery County Department of Housing and Community Affairs by sending them a list of rental properties within Montgomery Village, based on billing addresses to the Foundation. This list does not include the four multi-family apartment complexes, which also pay MVF assessments based on our governing documents.

We greatly appreciate the Council's intent to help associations receive the common ownership community fees, which are necessary to carry out the communities' operating and capital needs. Given the recent years of economic downturn and slow recovery, including increased bankruptcies and foreclosures, this new requirement for landlords might provide needed assistance to associations where delinquencies have grown.

The bill might be more effective if it required more of an owner applying for a rental license than mere self-certification that they are current in their assessment. As it is written, self-certification would only be challenged in the event that an association brought contrary information to DHCA in the form of a judgment.

We believe that more assessments will be paid if the owner is required to submit, along with his rental license application or renewal, a copy of his account statement showing that his balance is current. A current account statement can easily be obtained by any owner from his HOA or condo association.

In our view, this process would give owners an incentive to pay assessments, and would be more effective in obtaining assessments than relying on associations to identify delinquent owners to DHAC, as is proposed in the bill.

We would also point out that the County can satisfy its requirements to provide due process for applicants at the point of granting a license with far less effort than it would have to expend in order to revoke a license.

Thank you for the opportunity to testify.



October 2, 2014

Montgomery County Council
 c/o Mr. Craig Rice, President
 100 Maryland Avenue
 Rockville, Maryland 20850

**Re: Bill 44-14, Landlord-Tenant Relations – Licensing of Rental Housing –
 Common Ownership Community Fees
 (Hearing: October 14, 2014, 7:30 p.m.)**

Dear Council members:

I serve as co-chair of the Maryland Legislative Committee of the Washington Metropolitan Chapter Community Associations Institute (“WMCCAI”). WMCCAI is a 501(c)(6) organization that serves the educational, business and networking needs of the community association industry in Maryland, Virginia, and the District of Columbia. Members include professional managers and community association volunteer leaders from condominium, cooperative and homeowners associations as well as those who provide products and services to associations. I am writing to provide the Chapter’s comments on the referenced Bill.

The Chapter supports the Bill, with amendments allowing revocation of licenses if liens are recorded and/or a final judgment has been entered with respect to a covenant or bylaw violation.

In this economic downturn, the nonpayment of assessments has been a serious problem for community associations in the County. Assessments are necessary to perform basic operations, such as trash removal, street repairs, landscaping, snow removal, and to provide other property maintenance and community services. Although landlords/investor-owners receive the community benefits (which may even include the payment of utilities), and rent from their tenants, some investor-owners fail to timely pay assessments, requiring community associations to institute costly legal actions. As an attorney representing community associations, I find that the proposed certification requirement, as a requisite for rental licensing by investor-owners, would be important enforcement tool for community associations.

Comparison to Other Counties

We note that Bill 44-11 is similar to laws recently enacted in Howard and Prince George's Counties. Pursuant to Howard County law, an application for a residential landlord license must include, "Certification from the [applicant] that homeowner association or common ownership community fees for the dwelling unit are not more than 30 days past due" (Section 14.901(d)) and a license may be issued unless a community association submits "proof of a final adjudication against the homeowner for unpaid fees relating to the unit" (Section 14.901(e)).

The law in Prince George's County, however, provides much greater enforcement capability for community associations. Pursuant to Prince George's County law, as part of an application for a residential rental license, a landlord must certify "that the dwelling unit does not have a lien placed upon it by a Common Ownership Community for non-payment of Common Ownership Community Fees and that the dwelling unit does not violate the covenants or bylaws of the Common Ownership Community" (Section 13-183(b) (emphasis added)). Also, during the term of the license, the license may be revoked if a community association submits evidence of a final adjudication that "use of the dwelling unit as a rental violates the covenants or bylaws that govern the unit" (Section 13-183(c) (emphasis added)).

Recording of Liens

Being able to demonstrate that assessments are delinquent as reflected in a recorded lien (per Prince George's County law), rather than a "final judgment" (as proposed in Bill 44-14), is very important. Legal actions to pursue delinquent assessments can be very costly and, under current court rules, not all of an association's collection costs may be awarded. This is especially true for homeowners associations where annual assessments are typically lower. Courts generally award attorneys' fees in an amount equal to 15% of the principal debt (see, e.g., Maryland Rule 3-741). A homeowners association that imposes, e.g., an annual assessment of \$300.00, would therefore recover only \$135.00 in attorneys' fees in a lawsuit for 3 years of assessments, even though the lawsuit costs the association much more. As a result, a community association may elect to pursue collection through the lien process, as authorized by the Maryland Contract Lien Act (Real Property Article, Section 14-201, *et seq.*).

Liens should not require "final adjudication" before they can serve as the basis for license denial or revocation because the Maryland legislature, through the Maryland Contract Lien Act, has allowed liens to be recorded without costly litigation. (The Act does allow a debtor to institute a court challenge to the claimed lien, provided the provisions of the Act are followed.)

Unless amended in a similar fashion to Prince George's County law, Bill 44-14 would require community associations to undertake litigation in order to take advantage of its provisions. Bill 44-14 would better serve community associations in the County if it allowed enforcement through the Maryland Contract Lien Act as well.

Covenant and Bylaw Violations

Subjecting the rental license to conformance to covenants and bylaw provisions, including rental restrictions, is also important. Just as landlords may have less incentive to timely pay assessments, they may also have less incentive to adequately maintain their property, or abide by rental restrictions. If a community association must take covenant or bylaw enforcement action to compel abatement of violations, such circumstances should be an additional basis for license denial or revocation. Although contempt or other legal proceedings could be initiated, having the additional, less-costly, option of seeking license suspension or revocation would be useful. Here, we agree that requiring a "final adjudication" would be appropriate. "Final adjudication" should be defined to confirm it includes orders of a hearing panel of the Commission on Common Ownership Communities.

Accordingly, the Chapter supports the Bill but respectfully requests that the Council consider amending the Bill to include provisions allowing revocation of licenses if liens are recorded and a final judgment has been entered with respect to a covenant or bylaw violation. Specifically, we suggest the attached language shown in bold underline, be included.

Thank you for your consideration.

Sincerely,



Ronald M. Bolt, Esq.

Enclosure

cc: Matt Rankin, Executive Director, WMCCAI (via email)
Ruth Katz, Esq., Co-Chair, Maryland Legislative Committee (via email)
Peter Drymalski, Esq., Staff, CCOC (via email)

Bill 44-11
Landlord-Tenant Relations – Licensing of Rental Housing –
Common Ownership Community Fees

Amendments proposed by
Maryland Legislative Committee
Washington Metropolitan Chapter Community Associations Institute

- (1) The Director must not issue or renew a rental housing license for a dwelling unit in a common ownership community unless the owner certifies that: (i) the common ownership community fees for the dwelling unit are no more than 30 days past due; and (ii) there has been no final adjudication that a covenant or bylaw violation exists concerning the dwelling unit and such violation has not been abated.

- (2) The Director may, at any time, deny, suspend, revoke, or refuse to renew a housing rental license for a dwelling unit in a common ownership community if the governing body of a common ownership community submits proof of (i) a lien for unpaid common ownership fees for the dwelling unit, recorded pursuant to the Maryland Contract Lien Act; (ii) an unsatisfied final judgment against the owner for unpaid common ownership fees for the dwelling unit; or (iii) a final adjudication against the owner for an unabated covenant or bylaw violation concerning the dwelling unit.

“Final adjudication” should be defined to include, “a final judgment entered by a court of competent jurisdiction or by a hearing panel of the Commission on Common Ownership Communities”.

**Testimony for the Montgomery County Council
Tuesday, October 21, 2014**

Bill 44-14 – Common Ownership Community Unpaid Fees by Landlords – FOR

Bill 45-14 – Common Ownership Community Governing Body Training -- AGAINST

**Vicki Vergagni
President, Board of Directors and
On-Site Community Manager
Glen Waye Gardens Condominium**

My name is Vicki Vergagni. I represent 214 condominium units in Glen Waye Gardens. My comments are based on 39 years of owning and living in a condominium, 14 years of leading the community as the Board president and serving as its on-site manager, and five years of serving as a Commissioner on the County’s CCOC – with two years as Vice Chair.

First I must thank the Council for looking at two issues of some import to our communities – a collections tool related to landlords who collect rent but do not pay their community fees, and the lack of knowledge of elected members of these communities’ governing bodies.

I am here on behalf of a condominium and trust that the Council understands that, although most condominiums come in the form of apartments, the Apartment and Office Building Association does not speak for condominium owners who are charged with all of the responsibilities of homeownership, but who under this County government reap very little in return for the taxes and fees that they pay. Not only are condominiums required to provide free data collection services for County agencies (e.g., recycling, leased units), they also are required to purchase more permits than single-family homes, and to pay higher fees than those paid by single-family homes for the same service – all while being shut out of nearly every well-intended County rebate program. This occurs because most legislation assumes that all residences are single-family in nature. But when condominiums are included, County folk do not understand them operationally so the condominiums cannot apply for and receive the rebates to which they are entitled (e.g., rain tax, energy efficiency by both unit owners and by the association). You will continue to hear from me as our communities try to survive in spite of poor public policy in more than twenty areas for which the County is responsible.

First I will address Bill 44-14 related to rental licenses. I must speak in favor of this bill with the modifications suggested by the Washington Metropolitan Chapter of the Community Associations Institute. However, based on my experience with the County, I am very concerned

about implementation. Will DHCA be reviewing a landlord's judgments via the Maryland Judiciary Case Search prior to issuing a license just to keep him/her honest? If the rental unit is occupied but is not licensed, who will check to see that it is no longer rented – the County, or will the County require the property managers to contact them re occupancy as they currently do for “condemned” units? And what will the procedure be to remove the occupants of an unlicensed rental property? Hopefully there will not be an endless timeline for a delinquent owner to pay up and there will not be yet additional burden on our communities.

Now I will address Bill 45-14 related to mandatory training for members of our governing boards. I surveyed both current and former members of my boards, and they strongly advised against this bill.

I learned a long time ago that I should not expect from others what I do not expect from myself. How many Federal, state and local governments require that elected officials be trained on the subject matter on which they will be making decisions? Montgomery County certainly does not. Yet, elected officials are considering mandatory training for us whose decisions are far less comprehensive than theirs?

While theoretically a great concept, this bill will have a chilling impact on recruiting volunteers for our governing bodies. We already have difficulty finding volunteers to serve on the Board. And finding volunteers is a repetitive task, as Boards have staggered terms of office with one or more positions expiring annually. To pass this bill without having firm training requirements and options is putting the cart before the horse. And how would the law be enforced? Would the one staff person at the CCOC have to review monthly a list of thousands of board members that constantly changes– and to then send out reminder notices and/or report those uneducated folks to a County official? Is the County going to fine the uneducated individual or the Board that has an uneducated member or two? Would such a law put boards out of business because the volunteers have no need for additional mandatory requirements when they already serve in a politically difficult and thankless environment?

In the alternative, I would suggest that the County encourage companies that provide officer and director liability insurance to give discounts to “educated” boards. CCOC also could develop an itemized list of issues about which a Board member should be knowledgeable which will vary considerably since HOAs are not the same as condominiums which are not the same as cooperatives. And even each condominium is unlike the next. This list could highlight issues

for which each community could provide information to its incoming Board members, such as for what portions of the property is the association responsible for maintenance, repair and replacement. The CCOC also could provide a reference list of education courses and publications from which Board members could select as they felt the need. And it might be fairly easy for the CCOC staff person to e-blast all board members with relevant information as it becomes available.

I look forward to exploring later with each of you Maryland's priority lien bill for condominiums that requires a lender to foreclose on a property before a community can collect up to \$1,200 in delinquent fees – when that delinquency may be \$600 monthly with master-metered utilities included with delinquent accounts frequently exceeding \$20,000 and some up to \$40,000+. Lenders don't foreclose because they will have to pay condominium fees as the property owner. With the lenders leaving virtually hundreds of vacant, non-paying condominium units in the County, paying community members picking up all the bills for the non-paying members. And many communities are nearly insolvent. Property values in these communities have plummeted and are not recovering -- \$60,000 for a spacious two-bedroom in Gaithersburg in Montgomery County -- and with one unpaid water/sewer bill, virtually hundreds of families will be homeless since their homes will be condemned.

Thank you for the opportunity to speak on these issues of concern.

Alyson Meiselman, President
Vistas at Washingtonian Woods Condominium Association
913 Hillside Lake Terrace, Unit 410
Gaithersburg, Md. 20878-5250
(301) 412-3133

Testimony before the County Council on Bill #4414, October 21, 2014

The Vistas is comprised of 13 buildings and 152 units on the southwest corner at intersection of Muddy Branch Road and Great Seneca Highway. The development, within the city limits of Gaithersburg, has been in existence since 1991. Roughly sixty percent of the units are owner occupied; the balance of forty percent are rental units, including four percent (six units) controlled by Montgomery County's HOC.

While the City of Gaithersburg requires a "rental license" for any dwelling, the ability of the Vistas Board of Directors, on behalf of all the unit owners, to collect condominium fees from rental unit owners, or tenants, is problematic. We have pursued collection proceedings in the District and Circuit Courts of Maryland, received judgments, but, have never been able to actually receive payment. Currently we are owed in excess of \$150,000 in arrearages. The "license" requirement does not seem to be a deterrent to the scofflaws who purchase units but never intend to pay any condominium fees. The Courts, by denying foreclosures based on arrearages of fees (as compared to the value of the homes), effectively tie our hands, and allow these owners to avoid our collecting fees that are due.

These arrearages impact our budget management. More importantly, they impact our reserves, which also have a direct effect on our obtaining FHA approval on funding requests on property sales.

My testimony this evening is to alert you to the fact that unless homeowner and condominium associations have a statutory right to foreclose on the legal judgments received, the mere fact that the unit owners fail to obtain a license, or the county not renewing the rental license, if there is an arrearage, is not likely to change the situation with these absentee landlords.

As example, we have three absentee landlords that owe \$100,000, and another four that owe \$50,000. For some of these units, for which we have alerted the City of Gaithersburg, while the unit owner has no "rental license," the owners that are remote, living out of the State of Maryland, make themselves effectively judgment proof and beyond the reach of the City to effectively control the situation of non-payment. The additional use of bankruptcy by these landlords only exacerbates the problem. We have, unfortunately, had some file bankruptcy, still not pay condo fees post filing, and, continue to rent their units, or in a worst case, leave the unit vacant... paying only the property taxes, thus retaining ownership.

On behalf of our condominium association, I encourage both the passage of this bill and further investigation as to other remedies that will effectuate payment of our association fees.

Thank you.



TESTIMONY: BILL 44-14

THIS IS MY TESTIMONY TO THE COUNTY COUNCIL REGARDING PROPOSED BILL 44-14

I HAVE BEEN A CONDOMINIUM OWNER SINCE 1990.

Dear Council Members:

Thank you for the opportunity to testify. I support proposed Bill 44-14.

If the Council thinks tenants in a condominium are adequately and properly protected, the Council would be wrong!

I have lived in common owned communities in Montgomery County for 45 years since 1969 to date.

From 1969 to 1990, I was a resident owner in a town house home owners association (21 years).

From 1990 to date, I have been a resident owner of a condominium unit (24 years).

Although I am a long time condominium owner, a longtime resident owner, I am testifying to represent, protect, and plea for the interests of tenants in a condominium. It should be no surprise that tenants in a condominium are second class residents in the condominium. Many condominium owners believe renters lower the quality of life and the resale value of their units. In a fashion, the Federal Housing Association (FHA) supports this view.

When their Landlords fail to pay the condo's monthly fees, the tenants are subjected to social and economic scorn as free loaders. Condo owners, including members of the Board, want to deny these tenants their access to the condo pool, to revoke their rights to park their vehicles at the condo, etc. all of which violate the tenants' rights under the Landlord-Tenant Administration (LT/A) rules and regulations. Due to the 2008 crash, I had to advise my Board not to impose such actions on tenants of delinquent landlords even though the condominium needed those funds.

Passage of Bill 44-14 would provide Boards with the relief to seek economic redress from delinquent landlords. In addition, it would take the pressure off their tenants. However, consideration of the tenants' rights after the LT/A suspends the Landlord Rental License must be included in Bill 44-14. For instance, there is to be no eviction of the tenants after a Landlord Rental License has been suspended. Measures are to be implemented where the tenant can pay the rent to an appropriate authority while the landlord remains responsible and liable for the rental unit.

Tenants are good people! An example was the family who lived in the rental unit (unit 201) across from my condominium unit. The father and mother were immigrants from Guatemala. They had a son and daughter both born in the U. S. The father was a construction worker who drove the car to work every day. The mother took the Grosvenor Metro subway to DC where she worked in housekeeping. The son was a senior in Walter Johnson H.S. and worked part time in the DSW shoe store. The daughter was a student in Middle School.

The children were always well dressed. The son wore a white shirt, tie, and either a suit or sports jacket. The daughter wore a dress or skirt and blouse.

The son dressed that way when he went to school and when he was working at DSW. He also dressed that way when I saw him leaving from and returning to his unit.

[My parents required my brother, sister and me to dress that way. I was required to dress that way when I was going to school, going to church, going to visit family and friends, attending civic events, etc. My parents were immigrants from Ireland: Pop was a porter cleaning toilets in a bank, Mom was a cleaning woman at night in a bank. We were never latch key kids. There was a 30 minute turnover meeting between Pop and Mom - 30 minutes after Pop arrived home from work and before Mom left for work.

Due to Pop and Mom hard work, privation, and determination, my brother, my sister, and myself received college diplomas. Mom was very liberal. We kids could do anything we want in our lives after we received our diplomas. Pop always reminded me (and my brother) that I could become the President of the United States. Pop explained we were born in this country and so we should dress like gentlemen.

I was born, literally, and raised in a 'cold water' flat in the slums of East Harlem, NYC.]

I had discussions with the son. After his graduation from Walter Johnson his plans were to work and attend Montgomery County in Rockville. The Ride On Bus 46 conveniently runs between Grosvenor Park and Montgomery College - Rockville. I would have been proud to have him as a son.

One day, the father told me he was being evicted by the condominium board for violating the County's regulation against incest. He was told that the County required a 3 bedroom unit for his unit: one bedroom for his wife and him, the second bedroom for his teenage daughter, and a third bedroom for his teenage son. The condominium only has efficiencies, 1 bedroom, and 2 bedrooms units.

I called Michael Denny of the Landlord - Tenant Administration to discuss the matter. Mr. Denny asked me to describe their unit to him. I told him it was identical to my unit - it had 2 bedrooms, a full bathroom, a galley kitchen fully equipped, a dining room, and a large living room. Denny asked me the square footage; I answered "912 square feet". Denny answered there were no violation of County regulations, and he never heard of any incest regulation.

When I summoned enough courage, I went to the Site Office and asked the Site Manager what was it all about. She responded "They weren't our type of people!" giving me her focused, hard look. I got the message, and returned to my unit with my tail between my legs.

Once again, **If the Council thinks tenants in a condominium are adequately and properly protected, the Council would be wrong!**

LAWRENCE DORNEY



**TESTIMONY OF THE GREATER CAPITAL AREA ASSOCIATION OF REALTORS®
BEFORE THE MONTGOMERY COUNTY COUNCIL ON
Bill 44-14, “Landlord-Tenant Relations—Licensing of Rental Housing—Common Ownership
Communities Fees”**

**Position: Oppose as currently written due to uncertainties and unintended consequences
October 21, 2014**

Council President Rice and members of the County Council, my name is Tim Knobloch and I am the 2014 Treasurer for the Greater Capital Area Association of REALTORS® (“GCAAR”) – the voice of Montgomery County and the District of Columbia’s more than 9000 REALTORS®, property managers, title attorneys, and other real estate professionals. GCAAR is also a voice for many homeowners throughout the entire DC metro region on important property rights and land use issues. On behalf of GCAAR, this testimony is to voice our opposition on Bill 44-14, “Landlord-Tenant Relations—Licensing of Rental Housing—Common Ownership Communities Fees,” as currently written due to the vast number of uncertainties and unintended consequences we believe could come from this legislation

GCAAR recognizes the serious problem certain common ownership communities (“COCs”) have with collecting dues from property owners, some of whom rent their units. Such delinquencies have significantly put the financial livelihood of entire COCs at risk, and warrant attention from lawmakers. While GCAAR commends the Council’s effort to protect the County’s homeowners’ and condominium associations, we do not believe Bill 44-14 as currently drafted will achieve that and will actually harm it.

First and foremost, Bill 44-14 strikes GCAAR as ineffective because it does not address the crux of the problem: direct enforcement of delinquent dues payment. Instead, it indirectly aims to increase payments by conditioning the issuance of a rental license for a property in an association on payment of association dues or fees. It is our understanding that, more often than not, those not paying dues and renting their units are often unlicensed. Bill 44-14 does not guarantee that those who fail to obtain a rental license will pay their dues so they can rent their properties: they will simply rent them regardless. Further, how does the County currently monitor and how will it enforce when landlords are not obtaining rental licenses in these situations?

Disincentivizing landlords from obtaining a rental license may lead to even worse consequences because existing law does not allow one to evict a tenant living in an unlicensed unit. This leads into a realm of dangerous questions. What happens if the tenant gets behind on their rent? Then, what if the landlord can no longer afford their mortgage? What if the property goes towards foreclosure? In all of aforementioned scenarios the landlord and COC are in worse of a position

because they cannot evict tenants in unlicensed units. Being stuck with landlords not paying dues or a mortgage, along with tenants not paying rent, creates more jeopardy of the entire COC.

GCAAR is also seriously concerned with the costs associated with the legislation. As it stands, acquiring documentation from these homeowners' and condominium associations can already cost hundreds of dollars. If the County puts an additional mandate on anyone trying to get a rental license (irrespective of whether they are up to date or not on their dues), innocent homeowners will have more burdensome beaurocratic processes every year with very little guaranty of a community benefit.

Alternatively, GCAAR suggests granting COCs enforcement mechanisms for collecting unpaid dues in addition to their current option of court orders, which are extremely costly and time-consuming. Such mechanisms should not be tied to whether the delinquent unit owner is renting their property, as the two are not necessarily linked together. We would be happy to work together with stakeholders in developing more effective legislation towards those ends.

Again, GCAAR acknowledges Bill 44-14's goal of helping homeowners and condominium associations collect unpaid dues. Be that as it may, we maintain the proposed Bill would be unsuccessful because it could encourage unlicensed rentals, create additional paperwork for well-meaning landlords, and possibly lead to higher dues for costs of administration, because almost every Common Ownership Community charges a fee for any paper they generate and we feel this will be no different. We urge the Council to reexamine Bill 44-14's entirely and sincerely thank you for consideration of our perspective.