



Apartment and Office Building Association of Metropolitan Washington Position Statement on Expedited Bill 38-23

October 10, 2023

The Apartment and Office Building Association of Metropolitan Washington (AOBA) is a non-profit trade association representing the owners and managers of more than 133,000 apartment units and over 23 million square feet of office space in Prince George's and Montgomery Counties. In Montgomery County, AOBA members own/manage over 60,000 of the County's estimated 83,769 rental units and 20,000,000 square feet of office space.

On behalf of its members, AOBA submits this testimony on Expedited Bill 38-23; Tenant Displacement—Right of First Refusal (ROFR) to Buy Rental Housing—Amendments.

Currently, County law requires the owner of a multifamily property to offer a right of first refusal to the County, the Housing Opportunities Commission, and any certified tenant organization. This ROFR allows those entities to match a contract to purchase the multifamily property within 60 days of the seller receiving that offer. Expedited Bill 38-23 would allow the County to assign its ROFR to a "qualified entity." This ROFR assignment concept mirrors Prince George's County's ROFR law.

AOBA supports the County's objective of preserving affordable housing. However, our members are concerned with such a broad expansion of the ROFR law and the impact that it will have on property sales in Montgomery County. Attached to this testimony is a letter from Transwestern outlining the negative impact that Prince George's County's law has had on sales. As noted in the letter, Prince George's County's use of "qualified entities" resulted in a six-month delay to a sale. The property ultimately sold for \$6.5 million less than the initial contract resulting in less transfer and recordation tax revenue to the county.

AOBA offers the following amendments to improve the ROFR law and process:

- 1. Require the county to make an initial evaluation of whether a potential sale is a good candidate for a ROFR.**

As introduced, the bill requires the property to provide a copy of the contract to all qualified entities. Rather than require the property owner to disclose confidential contract information to all qualified entities, the county should be required to make an initial evaluation and provide in writing to the owner a notice of interest within 7 days of the offer. This amendment should expressly include language that makes clear that the initial evaluation does not extend the 60 day offer period. For reference, Montgomery County only exercised its ROFR on 2 out of 44 property sales last year. Similarly, Prince George's County has waived their ROFR on 5 out of the last 7 sales in the county.

2. Shorten the initial offer period from 60 days to 45 days and shorten closing period from 180 days to 90 days.

The 60 day offer and 180 day closing periods add considerable length and potential risk to a property sale as evidenced by the Transwestern sale. Moreover, in the absence of a ROFR law, private transactions take 30-60 days to close. The offer period should be shortened to 45 days to match Howard County's ROFR law, and the closing period should be shortened to 90 days.

3. Require that the ROFR deposit matches the terms of the contract offer and is non-refundable or limit "good faith failure" to obtaining financing.

As introduced, the bill caps the deposit at 5% of the contract price. Instead, the ROFR offer should be required to match the contract terms. The bill also makes the deposit refundable in the event of a good faith failure to perform under the contract, but this provision should be limited to a good faith failure to obtain financing.

4. Create an exception process that allows buyers to enter into written agreements with the county to maintain affordability in exchange for waiving the county's ROFR.

Prince George's County routinely enters into written agreements with purchasers to maintain affordability in exchange for waiving the county's ROFR. This saves all interested parties considerable time and expense.

5. Allow the contract purchaser to provide a best and final offer.

If the goal of the legislation is to maximize affordable housing, then the contract purchaser should be given the opportunity to match or exceed the terms of the ROFR offer.

6. Create a waiver process for sales that result in a price change or fail to close resulting in a subsequent offer that is 10% or less than the initial contract.

Rather than requiring a property to go through a second round of ROFR, if a sale falls through or the price changes, the county should create a waiver process that exempts

the property from ROFR if the price change or subsequent offer is 10% or less than the initial offer.

7. Exempt new construction for 20 years.

New construction sells at a premium that often exceeds the county and any qualified entity's ability to provide affordable housing.

AOBA looks forward to working with the Council on affordable housing solutions. However, AOBA opposes Expedited Bill 38-2023 unless amended for the above reasons. If members of the Council have any questions or comments, please do not hesitate to contact Brian Anleu by emailing banleu@aoba-metro.org or calling (240) 381-0494.

October 6, 2023

Montgomery County Council
Council President Evan Glass
100 Maryland Ave
Rockville, MD 20850

RE: Montgomery County Public Hearing - Expedited Bill 38-23; Tenant Displacement – Right of First Refusal to Buy Rental Housing – Amendments

Dear Council President Glass,

We wanted to share our experiences as the broker for the sale of a 488-unit apartment community in Oxon Hill, MD in Prince George's County.

The property was openly marketed and we received over 8 initial offers from qualified buyers at the end of October 2021.

A buyer was selected and went under contract in December of 2021 at a price of \$90 million with a firm non-refundable deposit of \$1 million and subsequently began their due diligence inspections.

In January of 2022, the seller was notified that Prince George's County planned to exercise and assign its ROFR rights to a new purchaser.

As part of the Prince George's County ROFR regulations, Section VII. A. 1. B. provides the ROFR assignee with up to one hundred eighty (180) days financing contingency even when no financing contingency exists in the original contract.

The new contract purchaser conducted its own due-diligence inspections over the next few months.

In April of 2022, this new purchaser sent a letter stating that:

“Despite Purchaser’s best efforts, Purchaser’s progress in finalizing terms with its debt and equity partners has been slowed by challenges beyond Purchaser’s control” “Based on its debt and equity financing discussions, Purchaser believes the most likely path to Closing would involve the following changes to the terms of the Contract: 1. A Purchase price reduction in the amount of Seven Million Dollars (\$7,000,000) and 2. An outside closing Date of July 1, 2022”

The seller was unwilling to provide the new contract purchaser with any price adjustment and the original contract purchaser at \$90 million was no longer prepared to move forward at that price. Ultimately, we sold the property to a separate group for \$83,500,000 and closed in August of 2022.

Due to the Financing Contingency component of the Prince George's County ROFR regulations, this seller lost over \$6,500,000 and closed approximately six months later than it would have.

In addition, the original contract purchaser lost the money (approximately \$50,000) and time it had spent on Contract negotiation and Due Diligence prior to Prince George's County assigning it ROFR rights to the ROFR assignee.

Many potential purchasers in Prince George's County are no longer willing to risk the time and cost of contracting to purchase a property, because they lose the money and time they have spent if the County exercises its ROFR rights. This has almost certainly had a major impact on Revenues related to Transfer and Recordation taxes in the Prince George's County negatively impacting residents in the County at large. Perhaps more importantly, it has disincentivized investment in Prince George's County as many real estate investment firms (many of which that have a affordable housing preservation focus) cannot take on the risks associated with the County's ROFR rights as currently structured.

This has significantly affected the Multifamily sales volume in Prince George's County over the last two years as many buyers are simply looking at other markets that are less governmentally restrictive. Prior to Q4 2021, Prince George's County had not been opting to exercise their ROFR rights as frequently as they have during 2022 and 2023.

Multifamily real estate values have decreased significantly, which will also severely impact real estate assessment values moving forward.

Sincerely,

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