



Advisory Neighborhood Commission 2A

“Serving the Foggy Bottom and West End communities of Washington, D.C.”

January 8, 2016

Councilmember Anita Bonds
Chair, Committee on Housing and Community Development
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Washington, DC 20004
abonds@dccouncil.us

RE: DC Council Bill B21-0443 - The "Condominium Owner Bill of Rights Amendment Act of 2015"

Dear Councilmember Bonds,

At its regular meeting on December 16, 2015, Advisory Neighborhood Commission 2A (“ANC 2A” or “Commission”) considered the above-referenced matter. With seven of seven commissioners present, a quorum at a duly-noticed public meeting, the Commission voted unanimously to adopt the following resolution, which was introduced by Commissioner Coder and seconded by Commissioner Kennedy, by a vote of (7-0-0):

Advisory Neighborhood Commission 2A, representing the Foggy Bottom and West End community, represents the following condominium buildings:

- 1 Washington Circle Condominium
- 22 West Condominium
- 2501 Pennsylvania Avenue Condominium
- 2600 Pennsylvania Avenue Condominium
- Atlas Condominium
- Carriage House Condominium
- Columbia Condominium
- Gibson Condominium
- Knightsbridge Condominium
- Mark on M Condominium
- Potomac Overlooks Condominium
- The Bader Condominium
- The Griffin Condominium
- Jefferson House Condominium
- Letterman House Condominium
- The Metropolitan Condominium
- The Millennium Square Condominium Residential Association
- Monroe House Condominiums
- The Plaza Condominium
- The President Condominiums
- Swarthmore Condo Association



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- West End Flats Condominium
- West End Place Condominium
- Westbridge Condominium
- Westgate Residential Owners Association
- Westminster Condominium
- Whitman Place Condominium

The ANC is opposed to the Condominium Owner Bill of Rights Amendment Act of 2015 for the following reasons:

First, with respect to the proposed changes to Section 42-1903.08 of the Condominium Act to change a Board member’s duty of care, there are a number of concerns regarding the Bill, which, if adopted, will have a chilling effect on the willingness of individuals to serve on a condominium association’s Board.

Condominium boards consists of a number of volunteers that donate a considerable amount of time to ensure that the community is run in a professional manner and that it serves the best interests of the community as a whole. None are compensated for their time, and each are dedicated to the well-being of their building. Boards owe a condominium association a duty of care that is the same of that of a fiduciary. This duty governs the actions of directors for all types of corporate entities that conduct business within the District of Columbia. If the DC Council were to pass this Bill, then the duty of care that condominium board members would owe would be greater than that of every other type of director located in or doing business in the District of Columbia.

Of most concern is the amendment to the act to create mandatory mediation in condominium lien foreclosures. These create another level of bureaucratic requirements to prevent condominium associations from securing payment of the assessments, which are the sole means of revenue and are necessary to permit the associations to pay their bills.

Foggy Bottom and West End condominium associations recently have faced cases with a few owners who refused to pay their assessments and thus accumulated debts to the association. Condo boards are able to use the existing foreclosure process to obtain payment of the entire debt owed to the community. If the mandatory mediation bill were currently law, condominium associations would have additional delays in obtaining payment at a much higher cost, and delinquent owners, who bought into a building knowingly agreeing to monthly assessments, would be able to exercise considerable leverage from the mediation process to obtain a settlement that would leave the rest of the condominium membership footing the bill to make up the deficit.

Unlike mortgage lenders, condominium associations are operated on a not-for-profit basis. A condo association is created for the purpose of operating and



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maintaining the common elements of a condominium that constitute the investment of each owner within the association. When a unit owner does not pay assessments, it is their neighbors that have to absorb the costs associated with their failure to pay assessments, which results in increased assessments to absorb the increase in legal fees. Any mandatory mediation process will serve to further increase those costs, which will result in a proportionate increase in each unit owner's assessment due to such additional costs, along with the increased period that their neighbors have to absorb the burden of the owner's continued failure to pay their monthly assessment.

Currently, the amount of the condominium debts incurred prior to foreclosure typically ranges from \$15,000 to \$25,000. Under the current statutory process, a non-judicial foreclosure typically costs between \$5,000 and \$7,500. Adding a mandatory mediation process could make the non-judicial foreclosure process cost-prohibitive and is more likely to cause associations to seek judicial foreclosure. Moreover, from a practical perspective, associations have limited budgets and resources. Creating a mediation process, which will increase costs, will have a negative effect on association budgets, which will result in a corresponding reduction in home values due to the increased assessments.

This Bill appears to be based on an erroneous assumption that associations foreclose on unit owners without notice and without engaging in good faith efforts to obtain payment of the owner's delinquency. Instead, any foreclosure is an action of last resort. Prior to foreclosure, condominiums typically offer payment plans and other forms of accommodations. Foreclosures only occur when it becomes apparent the owner has no resources to pay the debt. Accordingly, once a condo gets to the extreme measure of foreclosing, there is nothing to mediate.

Therefore, given the previously stated reasons, ANC 2A is strongly opposed to the Condominium Owner Bill of Rights Amendment Act of 2015.

Commissioners Rebecca Coder (2A02@anc.dc.gov), Florence Harmon (2A06@anc.dc.gov), and Patrick Kennedy (2A01@anc.dc.gov) are the Commission's representatives in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,

Patrick Kennedy
Chairperson



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CC: Councilmember Brianne Nadeau, Ward 1
Councilmember Jack Evans, Ward 2
Councilmember Mary Cheh, Ward 3
Councilmember Brandon Todd, Ward 4
Councilmember Yvette Alexander, Ward 7
Councilmember LaRuby May, Ward 8
Councilmember David Grosso, At-Large
Councilmember Vincent Orange, At-Large
Councilmember Elissa Silverman, At-Large