

Government of the District of Columbia
Department of Insurance, Securities and Banking



HEARING

On

Bill 21-443, the “Condominium Owner Bill of Rights Amendment Act of 2015”

Before the

COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

ANITA BONDS

CHAIRPERSON

Testimony of

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COMMISSIONER

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

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Room 120

**John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Good morning Chairperson Bonds, Members of the Committee on Housing and Community Development, and Committee staff. I am Stephen Taylor, the Commissioner of the Department of Insurance, Securities and Banking (Department). I appreciate the opportunity to testify today on Bill 21-443, the Condominium Owner Bill of Rights Amendment Act of 2015 (Bill).

The Department regulates insurance, securities, banking and other financial services in the District of Columbia. We also administer the District's Foreclosure Mediation Program, which allows homeowners and lenders to meet face-to-face to discuss and mediate alternatives to foreclosure in connection with a residential mortgage.

The Bill, in part, would amend the Condominium Act of 1976 to require mediation before a unit owner's condominium association may foreclose on a unit for the recovery of condominium assessments, fees, charges, or other penalties owed by the unit owner. The District's condominium law currently provides authority to condominium associations to foreclose the interest of a unit owner when the unit owner has failed to pay assessments and other charges that have been assessed pursuant to the condominium bylaws or other governing documents.

The Department recognizes the intent of the Bill is to ensure condominium unit owners facing foreclosure by their condominium association have a mediation option similar to the one provided to a homeowner with a residential mortgage. The Department is very supportive of the Council's intent to protect homeowners and preserve housing opportunities in the District of

Columbia. Moreover, the Department agrees that there may be some benefit to providing an option to mediate as an alternative to the foreclosure of a condominium unit. However, we have some concerns that the Bill, as written, likely will increase costs to condominium associations and may have other unintended consequences. These problems generally result because a foreclosure and mediation of a condominium unit differs from that of a residential mortgage.

While the current mortgage foreclosure mediation process works well to reduce the incidence of foreclosures on residential loans, it may present unintended consequences and challenges within the condominium association sector unless tailored to the nature of condominium foreclosures. Before I discuss our concerns, I want to emphasize to the Committee that the Department stands ready to work with the Committee to establish fair and practical consumer protections for District condominium owners.

The first area of concern is that the proposed mediation process will have an adverse financial impact on condominium associations, and thus, its members (homeowners). If the higher costs and fees associated with the mediation process are not paid by the delinquent homeowner, the association will have to pass those costs on to all the members of the association. Specifically, the Bill could cause the following costs to the association:

1. Increase in the amount of delinquent fees owed by the unit owner facing foreclosure as a result of the additional time required by the mediation requirement.
2. The costs of multiple and complex notices that must be prepared and sent to homeowners, as well as other administrative costs (e.g., scheduling issues).

3. The cost of the mediation services.
4. Legal fees incurred to research and prepare documents and notices for the mediation and to attend and represent the association in the mediation.
5. Recordation costs.
6. Possible penalties, potential litigation costs, and additional delays resulting from a determination that an association may not have mediated in good faith. This could be a significant problem given the standards of good faith in the Bill. Those standards are vague and may be difficult and expensive to implement.
7. The inability to charge the homeowner the mediation costs incurred by the association in cases of a determination that a condominium association did not mediate in good faith.

While mediation could benefit condo owners, the Department is concerned that the Bill could result in consumer protection for one homeowner at the expense of others in the same community; thus, causing new financial stress on the association and its members, as well as additional foreclosures. Further, condominium associations are non-profit organizations which do not typically have the reserves to withstand the non-payment of condominium fees for prolonged periods or incur the increased fees associated with foreclosures that include mediation. Those new costs could be a problem for associations.

The non-payment of condo fees can devastate an association's financial viability. For example, delinquencies could cause an association difficulties in providing basic services, such as common utilities, trash collection, snow removal, property maintenance, and insurance coverage. Additionally, a condominium association's failure to maintain hazard insurance will

cause unit owners to default on their individual mortgage loans because lenders require insurance coverage. These issues are more significant with smaller associations. In order to avoid these issues, the other members of the association will be forced to bear the additional costs associated with the mediation process.

Another concern we have, and somewhat related to the additional time required to mediate, is the impact the new mediation process could have on the availability of mortgages for units in the foreclosing association's property. Most financing on condominiums, for example from Fannie Mae, Freddie Mac or the Federal Housing Administration, prohibit lending where the delinquency rate on condo dues exceed 15 percent. Therefore, requiring the condominium association to go through mediation could result in a higher delinquency rate making it difficult for homeowners to sell or refinance their condos and buyers to purchase a condo.

In addition to the major issues raised above, the following issues need to be addressed:

1. The size of the condominium association subject to the Bill might be increased to protect very small associations;
2. The standard for good faith needs to be simplified and objective;
3. The overall time for the mediation process may need to be shortened;
4. There should be a limit on the number and length of the mandated mediation sessions;
5. The opt-out provision should be re-examined in order to cut down on the volume of owners who do not want mediation;

6. The requirement to record the Mediation Certificate with the Recorder of Deeds needs to be re-examined and the mediation process should not impede the ability to acquire title insurance;
7. There needs to be a determination on who is required to pay for the mediation services (under the current Foreclosure Mediation Program, a lender pays \$600 and the borrower pays \$50);
8. There needs to be a determination on whether there is an impairment of contract issue by limiting the condominium association's ability to proceed directly to judicial foreclosure or assess fees and charges authorized by the association governing documents; and
9. A number of provisions need to be clarified.

Again, while the Department has concerns about the practical application of mediation in condominium association foreclosures and the structure in the Bill, we recognize the need for consumer protections in this area. Accordingly, I and my staff look forward to working with the Committee, Committee staff, and stakeholders to develop a process that provides a valuable opportunity for the parties to mediate a resolution of delinquent association fees, while protecting other members of an association from unnecessary financial stress and disproportional costs.

Thank you again for the opportunity to testify today. I am happy to answer any questions you may have.