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REPORT OF THE  
GOVERNOR'S COMMISSION  
TO STUDY  
THE LAWS  
GOVERNING CONDOMINIUMS

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February, 1981

## I. Origin of the Commission

This Commission was created initially by a Joint Resolution adopted during the 1977 Session of the Maryland General Assembly (House Joint Resolution 90). In its resolution, the Commission was charged to review and evaluate the then existing law and to formulate a "comprehensive state policy to guide future condominium development." (See the Commission's Final Report to the Governor and the 1979 Session of the General Assembly dated March, 1979.)

During the 1979 Session of the General Assembly, a comprehensive bill (Senate Bill 587) sponsored by Senators Levitan and Steinberg was submitted to the Maryland General Assembly. The bill was introduced and read for the first time on February 13, 1979. It is interesting to note that both senators were members of the Commission on Condominiums.

After the bill was introduced into the General Assembly, it was apparent that the bill was too comprehensive in nature to succeed in final passage after being received by the General Assembly at such a late date. When hearings began, it was determined at public hearings, both before the House and the Senate, that both proponents and opponents could and in fact did agree on a few selective and what were determined to be essential changes in the law contained in SB 587. The General Assembly decided to adopt a much amended version of SB 587 to meet what appeared to be pressing problems in the area of consumer protection. The remainder of SB 587 was deferred for summer study by the Senate Judicial Proceedings Committee.

While everyone agreed and in fact pressed the General Assembly for the passage of the amended version of SB 587, the Governor found a somewhat different situation when the bill reached his desk for signing. It appeared that the bill attracted unusual interest from Montgomery County, and as a result the Governor held a hearing. Primarily in response to citizens and local officials of Montgomery County, the Governor vetoed the measure. (See "Veto" by the Governor of Maryland following the 1979 Regular Session of the General Assembly of Maryland at pages 29 and 30, May 29, 1979.) In the same Veto Message, he decided to reestablish the Commission on Condominiums.

It was not until the fall of 1979 that the Commission on Condominiums was finally reconstituted. Some of the members of the original Commission were recalled and new members were added. The organizational meeting was held in the late fall of 1979. Senator Connell was notified of his chairmanship on September 17, 1979 and names of members were furnished late in October 1979.

### Initial Committee Discussions

In its initial meeting, the Commission discussed the veto of SB 587 in detail. Most of the discussion surrounded the 180-day notice provision that was the subject of the hearing before the Governor. The Commission was unable to obtain a transcript of this hearing, although one was requested. After a thorough discussion, the Commission concluded that while it was an unusual measure it should recommend to the General Assembly the override of the Governor's Veto of SB 587. The Commission concluded that the 180 day notice provision was in fact not detrimental to tenant's rights and that those provisions contained in the bill for the protection of present and future unit owners were consumer measures that should not be delayed any longer.

### Subsequent Meetings 1979-1980

The Commission immediately recognized that the most difficult task it would face was the question of state preemption. The only law governing condominiums available to the majority of Maryland citizens was and is the Horizontal Property Act contained in the Real Property section of the Maryland Code - Title 11. Actually little was really done in the field in Maryland until 1972.

Since the question of preemption would entail receiving testimony in detail, the Committee decided to first review all of the technical aspects of the law, section by section. This was also beneficial to new Commission members in familiarizing them with the 1977 Commission's recommendations contained in SB 587. Some of the members who had served on the original Commission recommended the section by section review and advised us that a number of changes were necessary to SB 587 as the Commission was somewhat rushed in its preparation.

### Explanation and Comment on Proposed Legislation

The Commission, in Sections 11-101, 11-103 through 11-121, 11-123 through 11-126 and 11-132 through 11-135, provides fully detailed legislation designed to apprise a present condominium owner and a prospective condominium buyer of his or her rights, duties and obligations as a unit owner. A mechanism complete in every detail as to how a condominium regime functions is contained in an orderly and logical fashion throughout these sections. The Commission drew from a number of sources including the Uniform Condominium Act, Senate Bill 587, the HUD Report entitled "The Conversion of Rental Housing to Condominiums and Cooperatives" and the March 1979 Final Report to the Governor of the former Maryland Commission on Condominiums. In lieu of setting forth a detailed explanation of each area covered by these sections, a copy of the proposed legislation is attached hereto and made a part of this report.

### Section 11-102

This section deals with the 180-day notice period required to be given to a tenant by a landlord who has or may subject the property to a condominium regime. This section as written does not require the landlord to file the declaration prior to giving the notice. This section is written substantially in the same form as it was contained in SB 587.

While this section was a part of the controversy before the Governor when he conducted his veto hearing, the Commission felt that those opposed overreacted to this provision and were in reality seeking relief for tenants being displaced by virtue of a conversion and who required additional relief. These tenants generally fall into one of three categories:

1. Handicapped Citizens
2. Senior Citizens
3. Lower Income Citizens

The Commission felt that it could better lend relief to citizens in these categories by requiring a developer to provide other relief. Sections 11-136, 11-137 and 11-138 are designed to provide for such relief.

This section also provides in detail the form of notice that must be sent and requires strict compliance on the part of the landlord or developer. In the event proper notice is not sent, the tenant cannot be required to terminate the tenancy. Finally, the section insures that tenants must be afforded a full 180 days even though a lease has expired.

### Section 11-122

The Commission recognized that local legislation adopted by counties or municipalities could easily discriminate against a condominium form of housing. In reviewing the Uniform Condominium Act recommended for all states in August 1977 and approved by the National Conference of Commissioners on Uniform State Laws and later in February 1978 approved by the American Bar Association, the Commission found similar language and decided to adopt and expand upon the language contained therein. (See Sec. 1-106 of the Uniform Condominium Act at pages 29-30.)

### Section 11-127

The Commission noted that there is under present law no central registry for condominiums in the State. Even those of significant experience could not determine with any degree of accuracy the number of condominium units located in Maryland. Further, no State agency is charged with the duty of reviewing the declaration, notices and other pertinent data essential to the orderly control of condominiums.

The Commission considered the possibility of establishing a full-fledged bureaucracy to administer the condominium laws and vesting those duties in the Department of Licensing and Regulation. After much discussion (and strenuous objection by Mr. Urie) the Commission resolved that a limited form of registration and administration through the Office of the Secretary of State would serve the best interests of the State.

#### Section 11-128

This section provides that the Secretary of State may adopt rules and regulations and provide in general for the orderly control and recordation of condominium regimes. In this section, the law for the first time provides for the Secretary to work in cooperation with the Consumer Protection Division of the Office of the Attorney General. While the Commission was again leery of excessive bureaucratic control, it concluded that the Secretary will find it necessary to adopt uniform regulations in order to implement the authority vested in him under the Act. Condominium development is relatively new in this country (less than 20 years) and will no doubt endure frequent changes in its concept.

#### Section 11-129

This section provides for the protection of Marylanders who purchase condominiums situated outside of Maryland where the sales are promoted within this state.

The Commission concluded that broad consumer protection should extend to Maryland purchasers of condominiums even where the units are located outside of Maryland's boundaries. The authority of the Secretary is limited and can extend only when sales promotions occur within the State and the sales are either initiated or consummated in Maryland. Unquestionably, condominiums situated in Washington, D.C., Virginia, Delaware and other surrounding states will and have attracted Maryland buyers. The Commission felt that consumer protection should therefore be extended.

#### Section 11-130

This section is designed to provide that the Office of the Attorney General will have the authority to act in the event a violation of this Act adversely affects a consumer. Rather than establish the enforcement provisions in a separate agency, the Commission felt from its discussions and after conferring with the Office of the Attorney General that enforcement should be within the scope of the duties and powers of the Division of Consumer Protection of the Office of the Attorney General.

The Committee, after a long and arduous debate, decided to extend to the counties and other municipalities the right to enter into and expand the enforcement provisions in their respective jurisdictions so long as the provisions adopted are not inconsistent with the Act.

#### Section 11-131

This section directs its attention to implied and express warranties on individual units and common elements. The Commission agreed, without hesitation, that the implied warranties provided for in Title 10 of the Real Property Article should attach to individual units and common elements. The Commission was somewhat divided over the express warranty provision for unit owners. Some felt that where older apartment buildings convert, they would encounter difficulty as a result of express warranties in the areas enumerated in the proposed legislation. The Commission, however, decided to limit the express warranty to a period of one year because in a condominium development, the condition of an individual could reflect upon the entire regime. The Commission found no difficulty in a three (3) year express warranty on common elements. In the normal course of events, common elements would undoubtedly be upgraded and are essential to quality of living standards for all who reside within the regime.

#### Section 11-136

This section sets out the "Right of First Refusal" on the part of a tenant in possession of a unit at the time the notice of intention to convert is filed by the owner or developer. The Commission in its discussions agreed that a qualified tenant should have a right to purchase his individual unit after the declaration is approved by the Secretary of State. The provision is clear that once the filing is approved, a tenant shall be given sixty (60) days to purchase his or her unit upon terms that must be contained in the notice of right of first refusal. The provisions of the notice are to be clearly set forth so that a tenant can exercise sound business judgment and the law further provides that no additional terms may be added unless all parties agree. In this section settlement must occur within the 180-day period that is provided before a tenant is required to vacate. Further consumer protection is built into this provision by requiring that a developer cannot substantially alter the tenant's unit, thereby defeating the sound purpose of the section. In the event that the tenant's unit is substantially altered or ceases to exist as a result of the rehabilitation or alteration of the building, the tenant shall be granted a right of first refusal conditioned upon the availability of a similar or comparable unit.

In its discussions, the Commission agreed that a right of first refusal did not alienate the owners' or developers' property rights

and that since conversion in most circumstances results in displacement of the tenant, equity dictated such a provision. Section 11-138 b(1) will extend the right of first refusal on set-aside units for an additional 60 days affording the local governments who adopt appropriate legislation an opportunity to exercise the option. In this way, local governments can reduce the loss of available rental units that may result from a single or number of conversions.

#### Section 11-137

This is a section in the recommended legislation that recognizes the possible adverse effects that condominium conversion can have upon an individual who may be displaced and causing that individual to encounter difficulty and hardship beyond his or her control as a result of the conversion. The testimony before the Commission and the lengthy discussions among the members that followed certainly indicated that like any other scheme devised by man, condominium conversions are far from perfect. Certain individuals cannot afford to exercise their option to purchase and find it extremely difficult, if at all possible, to relocate themselves in a dwelling comparable in space and quality and at a rental that they can afford to pay. Generally, we are speaking about the handicapped, the senior citizen, and the lower or lower-middle income citizen. The difficulties and hardships that these individuals may endure depends upon a number of factors; the availability of comparable housing, the cost of relocating, the rent, the proximity of a new location as it relates to the services they require, and transportation is or can be a factor in some cases. The Commission also heard testimony (from senior citizens for the most part) that displacement does impact a number of them psychologically.

On the other hand, the birth of condominium development brought with it an opportunity for many individuals unable to pursue the great dream of owning their own home. The rising costs of construction and the high cost of mortgage dollars has denied many people the ability to afford a home. The price of an individual dwelling or even a town house has soared beyond the reach of many and the condominium appears to be a viable solution. In addition, many families today, as a result of condominium developments, can enjoy amenities through a cooperative effort that would probably never be within their reach if they had to individually defray the costs. Local governments are realizing an increase in their taxable base by virtue of apartment dwellings converting to the individual ownership precipitated by condominium development.

After full and careful consideration of all the factors surrounding the impact of conversions on certain individuals, the

Commission concluded that it would be both reasonable and equitable to provide for a significant number of set-aside units in any apartment building containing ten or more units where conversion was sought.

The criteria set forth for those tenants eligible under the set-aside provision is a product arrived at after receiving testimony from the tenants, local government officials, and the real estate community. The chief difficulty in making provisions for tenants who are displaced as a result of a conversion is that only a limited number of units can be set aside. The twenty percent quota was arrived at after the Commission heard testimony from those who appeared most knowledgeable in the area of finance. Any additional set-asides beyond twenty percent could frustrate the investment market and seriously impair a developer's or owner's ability to finance a conversion.

The eligibility standards set forth in the proposed legislation are designed to assist those who, in most cases, suffer ill effects as a result of displacement. Again, the testimony presented to the Commission formed the basis for their long and detailed discussions and the final decision. While the Commission in this section provides for assistance to handicapped and senior citizens only, the relief can be extended by local governments to include others under the provisions of Section 11-139. However, local governments will not be authorized to increase the percentage of set-asides beyond twenty percent.

Priorities among those eligible where the number exceeds twenty percent are to be determined by local governing officials. If local governments fail to act in this area, this section provides those eligible are to be chosen on the basis of seniority (length of time they resided within the development).

Subsection (j)(1) was designed by the Commission to provide for the unusual case where substantial rehabilitation or reconstruction prohibits continued occupancy of a unit. Here the Commission felt that extraordinary relief should be made available.

#### Section 11-138

Moving expenses are provided for in this section for any tenant who does not opt to purchase his or her unit. While such a proviso is somewhat unusual, the Commission found no opposition from the real estate community and in fact learned that this is a somewhat prevalent practice in condominium conversions. Many times displacement carries with it unbudgeted expenses, and relief at least in part appeared to be appropriate.

## Section 11-139

The most difficult question facing the Commission throughout the many weeks of testimony and discussion was whether or not the state government should preclude the local governing bodies from legislating in the area of condominium conversion.

The Commission was almost equally divided on the question and sought various compromises in an effort to provide for local government control and at the same time continue to promote the development of condominiums. The real question evolves around policy and undoubtedly there is much merit on either side of the question.

A strong minority of the Commission felt that the State should provide minimum standards to protect tenants who would be displaced as a result of the conversion and allow the local governing bodies to legislate based upon their individual situations. They also expressed a strong concern over the impact that conversions have on the availability of rental housing in a given area. Montgomery County strongly opposed preemption and pointed out that mass conversions are frustrating the availability of rental housing within its borders. There was also testimony from Baltimore City and the Association of Counties opposing any attempt on behalf of the State to preempt the field.

The Commission considered the vesting of authority in the local governments to declare moratoriums as a means of deterring condominium conversions in those areas where over-conversion was seriously and adversely affecting the availability of rental units. This was defeated by a very narrow margin.

The Commission considered a proposal allowing local governments the right to legislate a first refusal provision that would provide for either the local governmental body or a duly formed tenants' group to purchase the entire property sought to be converted. The proposal again was defeated by a narrow vote.

The Commission considered the question to allow local governments to legislate generally, considering the state law to be only minimum standards and a protection for citizens in areas where local governments failed to legislate at all. Again this question was defeated by a narrow majority.

In any case, the Commission as a whole felt that a condition precedent to local legislation should be a finding of fact that a rental housing emergency exists in all or part of its jurisdiction resulting from condominium conversions. The drafting of such a provision must contain a preamble reciting the legislative intent in clear and concise terms. Section 11-139 attempts to accomplish this end.

The slim majority of the Commission agreed that a limited role in the legislative process should be made available to the local governing bodies and if necessary future legislation could serve to expand the local governments' ability to provide further relief within the twenty percent set-asides for the designated tenants enumerated in the statute, and the right to further designate tenants who suffer undue hardship as a result of a conversion. They also felt that a right to purchase set-aside units should be vested in local government.

The majority recognized that local governing bodies, for the most part, have opposed any effort to limit their legislative powers in the past and no doubt will do so in the future. To some extent it is merely a "turf battle", but in most cases it is an expression of legitimate concern. If the state legislature decides to preempt, it should and must be predicated upon the principle that to preempt is in the best interests and for the protection of all Maryland citizens as a whole.

Local legislation that has been adopted in this field in some jurisdictions has resulted in extensive litigation already and much is continuing or is at least contemplated at this very hour. Undoubtedly the slim majority of the Commission settled on the position that a statewide enactment would provide for the orderly development of the relatively new concept of home ownership resulting from condominium development and afford the best protection to those citizens who can ill afford to be displaced when a conversion occurs.

There is no doubt that the strong minority view reflects the position that local governments can best deal with their individual concerns and this view certainly has much merit. Their concern that over-development of existing rental units to condominiums can create local problems best handled on a local level was fully explored during the Commission's discussions.

#### Final Comment

This report is designed to insure that the Governor and members of the legislature recognize both points of view developed over an almost two year period during which the Commission members met frequently for rather extensive periods of time. The proposed legislation that accompanies this report has been for the most part discussed in detail herein to fully apprise the policymakers of the Commission's reasoning that led to its conclusions of both the majority and minority.

Respectfully submitted,

Jerome F. Connell, Sr.  
Chairman

References:

1. Uniform Condominium Act
2. House Joint Resolution 90 (May 1977)
3. Governor's Vetoes and Veto Message  
(1979 Regular Session of the General Assembly)
4. Senate Bill 587 (Introduced February 13, 1979)
5. HUD Report "The Conversions of Rental Housing  
to Condominiums and Cooperatives", June, 1980
6. Horizontal Property Act (Title 11 of the Real  
Property Article - Annotated Code of Maryland)
7. Commission on Condominiums Final Report  
to the Governor and the 1978 Session of the  
General Assembly (March 1979)