
CITY OF BALTIMORE

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Mayor



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April 17, 2024

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 24-0490 – Residential Property Wholesalers – The Do
Not Call Act

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 24-0490 for form and legal sufficiency. The bill would define a Residential Property Wholesaler as someone who is in the business of purchasing or soliciting for purchase residential property for other than their own residence. It exempts from that definition licensed real estate agents, Baltimore City employees, and those rehabbing property. It creates a licensing requirement for Residential Property Wholesalers and makes certain actions illegal.

Regulating the business of Residential Property Wholesaler is within the City's general welfare power. City Charter, Art. II, §§ (27), (47). There are at least two other jurisdictions that have passed similar laws. Illinois includes those engaged in "a pattern of business of buying, selling, offering to buy or sell, marketing for sale, exchanging, or otherwise dealing in contracts, including assignable contracts for the purchase or sale of, or options on real estate or improvements thereon" at least two times in a twelve-month period within its definition of a Real Estate Broker, which requires a license, exams, and continuing education. 225 Ill. Comp. Stat. Ann. 454/1-10; 454/5-27; 454/5-70. Oklahoma's Predatory Real Estate Wholesaler Prohibition Act makes publicly marketing "for sale an equitable interest in a contract for the purchase of real property between a property owner and prospective purchaser" an act requiring a real estate license. 59 Okl.St. Ann. § 858-301; 2021 Ok. House Bill 1148.

In 2023 Maryland House Bill 301 sought to include those "buying or selling, offering to buy or sell, or marketing of real estate or otherwise dealing in contracts, including assignable contracts, for real estate or options on real estate, on two or more occasions in any 12-month period" in the existing list of activities defined as providing "real estate brokerage services." 2023 HB 301. However, the Fiscal and Policy note for the bill indicated that existing state law may preclude Real Estate Brokers from wholesaling. Md. Code, Bus. Occ. & Prof., § 17-322. For this, or perhaps other reasons, the state bill was not enacted.

While the general power to license Residential Property Wholesalers is within the City's power, there are several legal issues with this bill. First, the definition of "Residential Property Wholesaler" covers landlords, including those operating group homes, because it captures anyone buying a residential property for other than their own residential use. As such, it would overlap with provisions of state law governing landlords (*see, e.g.*, Section 8-406 of the Real Property Article of the Maryland Code governing local rental licensing requirements) as well as those operating certain group homes (*see, e.g.*, Section 7-608 of the Health-General Article of the Maryland Code). Since neither of these categories of building owner was likely intended to be captured by this definition, it is recommended that the definition be amended to exclude these groups. A draft amendment is attached to this report.

The bill should also be amended to include state and federal government employees performing their official duties in the exclusion from the definition just as the bill excludes City employees. An amendment to effectuate that purpose is attached.

Next, the fee amount for the license cannot be left to the discretion of the executive branch but must be set by legislation or by the Board of Estimates under Section 7(c) of Article VI of the City Charter. *See, e.g., Maryland Theatrical Corp. v. Brennan*, 180 Md. 377, 385 (1942) (statute allowing the Baltimore City Police Commissioner to set a fee for a dance license was struck down as "the amount is left, within certain limits, to the uncontrolled discretion of an administrative official. This is not permitted under the police power.") (cited with approval in *County Council of Montgomery County v. Investors Funding Corp.*, 270 Md. 403, 442 (1973) (statute giving a County Commission discretion to fix civil penalties in any amount up to \$ 1,000 was held invalid because it completely "lack[ed] any legislative safeguards or standards"))).

The amount must be rationally related to the expense incurred by the City in regulating these Residential Property Wholesalers. *See e.g., Mayor and City Council of Baltimore v. Canton Co. of Baltimore*, 186 Md. 618, 631-32 (1946) ("Power delegated to a municipal corporation to 'regulate' or to 'license and regulate' does not include power to impose a license tax or fee to raise revenue that bears no reasonable relation to the expense of regulation.") (citations omitted); *see also Ocean City v. Purnell-Jarvis, Ltd.*, 86 Md. App. 390, 404-05 (1991) ("where an act is passed under the police power, the money collected under it must be not more than that necessary to carry out its provisions.") (citation omitted). An amendment to the language of the bill is attached with a blank for the fee that will recoup the regulatory costs.

The requirements for the license must be permitted under the City's police and general welfare powers. *See, e.g., Mayor & City Council of Baltimore v. Dembo, Inc.*, 123 Md. App. 527, 537 (1998) ("protect the health and welfare of the citizens by licensing"). While the City's police power is broad, it is not without limits. *See, e.g., Burley v. Annapolis*, 182 Md. 307, 315 (Md. 1943) ("The police power is . . . one of the most comprehensive powers, if not the most comprehensive power, outside of the war power which any government may have. It extends to the protection of the health, morals, safety, and general welfare of the public, and all means which may be necessary in the opinion of the authorities to give such protection. Yet it is not without its limitations, and one of these is that it cannot be exercised arbitrarily.") There is no articulated reason for requiring that a license set forth the equitable interests that the applicant holds in other businesses. There is nothing that information does to inform the City's licensing and regulatory

functions for Residential Property Wholesalers. Thus, it exceeds the City's police power. An amendment to remove the language is attached to this report.

Next, the grounds for refusing or revoking the license must be specific and cannot be left to the discretion of the government. *McFarlin v. State*, 409 Md. 391, 410-11 (2009) (citation omitted) (“a statute must be ‘sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties,’ otherwise, the enactment is void-for-vagueness.”). Thus, attached to this report is an amendment to make the license refusal or revocation mandatory if the applicant has engaged in prohibitory conduct.

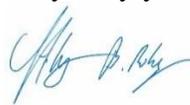
With respect to the required disclosure, the bill's requirements are unclear as to exactly what DHCD is required to do to inform the public. It would be clearer to simply have the legislature provide the text of the required disclosure statement. Suggested language is attached to this report.

Additionally, there is no way to enforce the requirement that a Residential Property Wholesaler force a homeowner to sign that they received the disclosure statement. *See McCrory Corp. v. Fowler*, 319 Md. 12, 20 (1990). Moreover, a homeowner could simply refuse to sign an acknowledgement even though one was provided to them. A suggested amendment (attached to this report) is attached to this report requiring that the Residential Property Wholesaler mail the disclosure to the homeowner via registered mail and retain the proof of mailing.

Section 13-7 should be clarified that the owner would be the one to designate that the property should be on the do not solicit list. The tenant would not necessarily have the right to make such a determination about the property; it would be dependent on the rights the tenant received in the lease. *See, e.g., McDaniel v. Baranowski*, 419 Md. 560, 574 (2011) (“legal relationship between landlord and tenant is governed by the contract between the parties”). An amendment to reflect this change is attached to this report. Finally, the language about intent is overbroad as a property owner may wish to sell or rent the property but just not want to be solicited. An amendment to reflect this is attached to the report.

Subject to the foregoing necessary amendments, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Ebony Thompson, City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Ashlea Brown, Chief Solicitor
Michelle Toth, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 24-0490
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1: Modify definition of Residential Property Wholesaler to Exclude Landlords and Group Home Operators

On page 2, in line 31, and on page 10 in line 11, before the period, insert "OR TO RENT TO OTHERS OR OPERATE AS A GROUP HOME LIVING FACILITY".

Amendment No. 2: Include State and Federal employees in exemptions

On page 3, in line 3, and on page 10 in line 14, delete "A CITY" and substitute "ANY GOVERNMENT".

Amendment No. 3: Fee Needs Legislative Guidance

On page 4, in line 19, delete "NOT TO EXCEED" and substitute "OF \$ _____".

Amendment No. 4: Remove Licensing Requirement that Exceeds City's Police Power

On page 4, delete lines 25 through 29.

Amendment No. 5: Definite Grounds for License Revocation

On page 6, in line 16, delete "A SIGNIFICANT HISTORY OF ENGAGING" and substitute "ENGAGED".

Amendment No. 6: Definite Disclosure Statement

On page 6, in line 24, delete the colon and substitute "CONTAIN THE FOLLOWING STATEMENT: "THE CITY OF BALTIMORE ENCOURAGES YOU TO VISIT ITS HOUSING AND COMMUNITY DEVELOPMENT WEBSITE TO ACCESS INFORMATION ABOUT VALUING YOUR PROPERTY AND WORKING WITH A REAL ESTATE AGENT OR LAWYER.""; and on that same page delete lines 25 through 29; and on page 7 delete lines 1 through 3.

Amendment No. 7: Change Signature Requirement to Registered Mail Receipt

On page 7, delete lines 4 through 6 and substitute:

“(C) RETURN RECEIPT REQUIRED

THE RESIDENTIAL PROPERTY WHOLESALER MUST MAIL THE DISCLOSURE WITH RETURN RECEIPT REQUESTED AND RETAIN THE RETURN RECEIPT AS PROOF THAT THE DISCLOSURE WAS GIVEN.”

Amendment No. 8: Edits to Section 13-7

On page 11, in line 4, delete “, IF THE PERSON HAS” and substitute “AFTER HAVING”; and on the same page delete from “OR ANOTHER” in line 5 through the end of line 9 and substitute “DOES NOT WANT TO RECEIVE SUCH SOLICITATIONS.”

Amendment No. 9: Removal of Overbroad Intent Language

On page 11, delete lines 23-27.