

CITY OF BALTIMORE

SHEILA DIXON, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor
101 City Hall
Baltimore, Maryland 21202

November 19, 2008

The Honorable President and
Members of the Baltimore
City Council
c/o Karen Randle, Executive Secretary
409 City Hall
Baltimore, MD 21202

RE: City Council Bill 08-0210 – Vacant Structures – Requisites for Transfer

Dear Madame President and City Council Members:

You have requested the advice of the Law Department regarding City Council Bill 08-0210. Bill 210 would amend the City's Building Code to prohibit the recording of any deed unless it is accompanied by a certificate by the Housing Department stating whether or not the property involves a vacant structure and if it does, that the Housing official has approved "funded plans" for certain repairs to be made by the transferee.

Bill 210 places a local restriction on the recordation of deeds, which is a field preempted by state law. Title 3 of the Real Property Article of the Maryland Code provides for an extensive and comprehensive scheme for the recordation of deeds. *See* Md. Code Ann., Real Prop. §§ 3 – 101 *et. seq.* Maryland's Real Property Article contains specific instructions to the clerks of the Land Records offices regarding which instruments they must accept and which instruments must be refused. *See e.g.* Md. Code Ann., Real Prop § 3-104(g)(7) "A clerk may refuse to record a deed or instrument that effects a change of ownership on the assessment rolls if the instrument is not accompanied by a complete intake sheet ...". If the General Assembly had intended for local governments to add to this list, such an opportunity would have been afforded to them in this section. All local specifications and exceptions to the requirements for the recordation of deeds are set forth in § 3-104, indicating that any local requirements for the recordation of land instruments must be authorized by Maryland statute. Therefore, Maryland law thoroughly and pervasively covers the field of recordation of deeds, preempting any local law on the subject. *Soaring Vista Properties, Inc. v. Board of County Commissioners of Queen Anne's County*, 356 Md. 660, 665 (1999) (holding that comprehensiveness of a statutory scheme is "strongly indicative of the legislative intent to preempt the entire field") *see also Mayor and City Council of Baltimore v. New Pulaski Co. Ltd. Partnership*, 112 Md. App. 218 (1996).

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The recording of deeds is a system that requires uniform, statewide application and is controlled by state courts and therefore must be governed solely by state law.

Finally, the Law Department urges City Council to consider the potential burden that this requirement would place on the Department of Housing.

For these reasons, the Law Department cannot approve City Council Bill 08-0210 for form and legal sufficiency.

Sincerely yours,



Ashlea Brown
Special Assistant Solicitor

cc: Honorable Stephanie Rawlings-Blake
Angela Gibson, City Council Liaison
George A. Nilson, City Solicitor
Linda C. Barclay, Chief Solicitor
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