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CITY OF BALTIMORE

BRANDON M. SCOTT  
Mayor



DEPARTMENT OF LAW  
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October 24, 2022

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 22-0287 – Real Estate Practices – Disclosures – Historic Districts

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0287 for form and legal sufficiency. It would require that the seller of any real property in the City disclose whether the property is located in an Historic and Architectural Preservation District. The disclosure must be initialed by the seller.

Past Law Department reports on City Council bills proposing disclosures prior to the sale of real estate have noted that while the government has the ability to enact reasonable regulations those must not impair the Constitutional right to be free from burdens on private contract. *See, e.g.,* City Council Bills 12-0069, 16-0765, 17-006; City Charter, Art. II, §§ (27), (47); *Tighe v. Osborne*, 149 Md. 349, 356 (1925); *Maryland Bd. of Pharmacy v. Sav-A-Lot, Inc.*, 270 Md. 103, 119-120 (1973). The current law avoids a general impairment of the right to freedom of contract because it is narrowly tailored to give notice of an objectively identifiable feature of the property, but its failure to be given does not impair the contract of sale. Nor does it require a buyer's signature on the disclosure, which when not obtained could be seen as breach that "would permit the buyer to terminate the contract." *Dennis v. Rockville*, 286 Md. 184, 190 (1979); *accord Maryland National Capital Park and Planning Commission v. Washington National Arena*, 282 Md. 588, 606 (1978) ("reluctance on the part of the judiciary to nullify contractual arrangements on public policy grounds also serves to protect the public interest in having individuals exercise broad powers to structure their own affairs by making legally enforceable promises").

However, the bill does need an amendment to be clear that it does not operate retroactively in violation of the United State Constitution's Contract Clause by requiring sellers to give the notice if an offer for sale of the property has already been accepted. *See, e.g., Board of Trustees of Employees' Retirement System of City of Baltimore*, 317 Md. 72, 99 (1989). Suggested language is attached to this report.

Subject to this amendment, the Law Department can approve City Council Bill 22-0287 for form and legal sufficiency.

Very truly yours,



Hilary Ruley  
Chief Solicitor

cc: James L. Shea, City Solicitor  
Matthew Stegman, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
Jeffrey Hochstetler, Chief Solicitor  
Ashlea Brown, Chief Solicitor  
D'ereka Bolden, Assistant Solicitor  
Michelle Toth, Special Assistant Solicitor

**AMENDMENTS TO COUNCIL BILL 22-0287**  
(1<sup>st</sup> Reader Copy)

Proposed by: Law Dep't

**Amendment No. 1** {prevent retroactivity}

On page 3, after line 10, insert, "**SECTION 2. AND BE IT FURTHER ORDAINED**, That this ordinance does not operate retroactively to require any property sellers to give the notice created by this bill if an offer for sale of that property has already been accepted prior to the bill's effective date."

On page 3, in line 11, strike "**2**" and substitute "**3**".