
CITY OF BALTIMORE

BRANDON M. SCOTT

Mayor



DEPARTMENT OF LAW
JAMES L. SHEA, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

June 14, 2023

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 22-0250 – The Councilmember Mary Pat Clarke Opportunity to Purchase Act

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 22-0250 for form and legal sufficiency. The bill would repeal the existing Subtitle 6 of Article 13 of the City Code concerning a single-family residential tenant's right to purchase her leased premises and replace the entire title. The replacement title includes several new features: it applies to all single-family dwelling units, not just single-family homes; the right to purchase would be transferrable; it requires the disclosure of contracts of sale; the tenant's deadline to accept the offer to purchase resets anytime there is a material change in terms; it mandates earnest money refunds; and it requires disclosures to the Housing Commissioner about property transfers.

In general, the Mayor and City Council may legislate on any topic that promotes the general health and welfare of its citizens. City Charter, Art. II, preamble; § (47). Courts have upheld rights of first refusal for tenants to further stability in housing by allowing the renter currently residing in the property the right to buy it on market terms. *See, e.g., Richman Towers Tenants' Ass'n, Inc. v. Richman Towers LLC*, 17 A.3d 590, 611, 619 (D.C. 2011); *see also Redmond v. Birkel*, 797 F. Supp. 36, 37 (D. D.C. 1992).

However, there is one legal issue with the tenant's ability to transfer her right of first refusal. The purpose of stability in housing may not be furthered by allowing a tenant to transfer that right to other third parties unless those third parties are similar tenants. Transferability to others may also violate the rule against perpetuities, which requires future conditions on real property occur within "a life in being plus 21 years." *See, e.g., Cattail Associates, Inc. v. Sass*, 170 Md. App 474, 488-89 (2006) ("As a formulation of the Rule Against Perpetuities, our cases have adopted Professor Gray's statement that '[n]o interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest.'") (citations omitted). The rule "'is not a rule that invalidates interests which last too long, but interests which vest too remotely.'" *Id.* at 489 (citations omitted). "By voiding future interests that might vest too

remotely, the rule against perpetuities facilitates the alienability of property, helps prevent uncertain title, and encourages owners to make effective use of their property.”). *Id.*

The Right of First Refusal is classically subject to this problem. *See, e.g., Ferrero Const. Co. v. Dennis Rourke Corp.*, 311 Md. 560, 565 (1988) (“The vast majority of courts and commentators have held that rights of first refusal, which are more commonly known as ‘preemptive rights,’ are interests in property and not merely contract rights. This is so because, if the property owner attempts to sell to someone other than the owner of the right of first refusal (‘the preemptioneer’), the latter may have a court of equity enter a decree of specific performance ordering that the property be conveyed to him. Thus, the preemptioneer acquires an equitable interest, which will vest only when the property owner decides to sell. As rights of first refusal are interests in property, the great majority of American jurisdictions have applied the Rule Against Perpetuities to such rights.”) (citations omitted); *accord* 18 Maryland Law Encyclopedia § 12.

While there is generally an exception to this problem for lessees given the right of first refusal to purchase their own dwellings, no such exemption would exist for the third party who receives the right from the tenant because the third-party’s interest in the property would spring up at an undetermined time in the future. *Ferrero Const.*, at 568; Md. Code, Est. & Trust, § 11-102(b)(7) (statutory exception to the Rule Against Perpetuities for tenants given right to purchase the property they lease). Removing the tenant’s ability to transfer the right would insulate this bill from legal challenge on these grounds. Alternatively, the bill could be amended to provide that the tenant can only work with the third-party or transfer the right to a third-party once the tenant receives the offer to purchase. This would put a needed time limit on the transferability. A suggested amendment is attached.

Subject to the required amendment, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,



Hilary Ruley
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor
 Nina Themelis, Mayor’s Office of Government Relations
 Elena DiPietro, Chief Solicitor, General Counsel Division
 Jeff Hochstetler, Chief Solicitor
 Ashlea Brown, Chief Solicitor
 Teresa Cummings, Assistant Solicitor
 Michelle Toth, Assistant Solicitor

AMENDMENTS TO COUNCIL BILL 22-0250
(1st Reader Copy)

Proposed by: Law Dep't

Amendment No. 1 {to remove violation of the Rule Against Perpetuities}

On page 8, in line 29, after "AT ANY TIME" insert "AFTER THE TENANT RECEIVES THE OFFER TO PURCHASE"