



**Testimony to the Committee on Housing and Community Development in Support of
B21-0433, the Condominium Owner Bill of Rights Amendment Act of 2015**

**Jennifer Klein Joseph, Equal Justice Works Fellow
Legal Aid Society of the District of Columbia**

December 7, 2015

The Legal Aid Society of the District of Columbia (“Legal Aid”)¹ strongly supports the Condominium Owner Bill of Rights Amendment Act of 2015, which would require condominium associations to participate in mediation before initiating foreclosure.

For Legal Aid’s clients—the District’s most economically vulnerable residents—a temporary hardship, such as short-term unemployment or unanticipated medical expenses, can mean falling behind on condominium assessments. Under existing law, even a brief lapse in payments puts condominium owners at risk of losing their homes to foreclosure. Avoiding foreclosures where possible is a policy goal that this Council has rightfully endorsed, and the need to take steps in furtherance of that goal is particularly acute now given the increasing number of condominium owners we see facing foreclosure and the affordable housing crisis in the District.² The negative impact of a foreclosure extends beyond the individual family that loses its home; foreclosures reduce neighboring property values, and much of that impact is felt by communities of color.³ In our experience, when a conversation is facilitated between the association and the unit owner, payment plans are reached and unnecessary foreclosures are avoided. By requiring mediation, this bill would not only help families avoid the upheaval associated with the loss of a home, but also prevent low-income residents from being displaced from our increasingly unaffordable city.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last eight plus decades, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer protection. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² Preserving homeownership, including condominium ownership, is integrally linked to persevering affordable housing. In the District, a housing payment consisting of a small mortgage payment and condominium fees may be substantially more affordable than renting an apartment. Many of the foreclosure cases that Legal Aid handles arise in the context of a residential mortgage delinquency. We are frequently able to resolve the mortgage delinquency through a loan modification that results in a housing payment, including both the mortgage and condominium fees, that is approximately 31% of the homeowner’s gross monthly income, an amount generally considered to be affordable. In contrast, renters living in the District spend a significantly higher percentage of their income on housing. See Wes Rivers, D.C. Fiscal Policy Institute, *Going, Going, Gone: DC’s Vanishing Affordable Housing 1* (March 2015), <http://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>. Among the lowest-income tenants – those below 30% of the area median income – 64% spend half or more of their income on housing. *Id.* at 7.

³ Ctr. for Responsible Lending, *2013 Update: The Spillover Effects of Foreclosures 1* (August 2013).

In its current form, the Condominium Act contains very few protections for condominium owners. An association can foreclose by sending a notice, via certified mail, setting a sale date as soon as 31 days from the date the notice is mailed.⁴ There is no requirement that a unit owner actually receive the notice. The incredibly short turnaround time between the issuance of the foreclosure notice and the auction date—as little as 31 days—is usually not enough time for the owner to come up with the amount required to stop the sale, particularly when the owner has recently experienced a financial hardship. The result is that homeowners who might have been able to save their homes were they given the opportunity to discuss payment plans and other workout arrangements end up losing their homes to foreclosure.

The bill addresses the problems posed by a process currently fast-tracked toward foreclosure by establishing a mediation program and certain baseline protections for condominium owners. First, the bill requires condominium associations to wait until the unit owner has been in default for 90 days before initiating the foreclosure process. This cushion gives those unit owners who suffer a temporary financial hardship time to cure their delinquency without the risk of losing their home because of one or two missed payments.⁵

Second, the proposed legislation requires more effective notice procedures. Rather than immediately issuing a notice of foreclosure and setting a sale date, condominium associations would be required to send a notice of default, providing, among other things, a breakdown of all past due assessments, costs, and attorneys' fees, as well a statement as to which lien is being foreclosed upon and the exact dollar amount of that lien. This notice of default would be significantly more transparent than the notices that are currently being issued, allowing unit owners to fully understand and evaluate their options. Further, the notice of default would be sent to both the property address and the unit owner's last known mailing address, thereby increasing the likelihood that the homeowner will timely receive the notice.

Third, within 60 days of issuing the notice of default, the unit owner and the association would participate in mediation facilitated by the D.C. Department of Insurance, Securities, and Banking ("DISB").⁶ At the mediation session, the parties would have the opportunity to discuss payment plans and other workout agreements.⁷ With the benefit of a neutral third party facilitating the settlement discussions, unnecessary foreclosures will be avoided.

⁴ D.C. Code § 42-1903.13(c).

⁵ The Uniform Common Interest Owners Bill of Rights Act recommends that associations not be permitted to commence foreclosure until the unit owner owes an amount equal to at least three months of assessments. In the residential mortgage context, federal regulations prohibit a lender from initiating foreclosure until the borrower's loan is more than 120 days delinquent. 12 C.F.R. § 1024.41(f).

⁶ With the understanding that this bill imposes costs on condominium associations which may be difficult for some small associations to bear, the bill includes a carve-out for buildings with four or fewer units.

⁷ In addition to repayment plans, there are a number of potential settlement options that could be explored at mediation. Unit owners may be able to cure their default by working out a global settlement agreement involving both the association and the mortgage lender. Unit owners over the age of 62 may explore the possibility of obtaining a reverse mortgage that would enable them to pay their condominium assessments. Owners who can no longer afford the unit may use mediation to explore selling the property as a way to avoid foreclosure.

In order to ensure that mediation is productive where possible, the bill as currently drafted requires both condominium associations and unit owners to mediate in good faith. After listening to the concerns of other stakeholders, however, we suggest that the Council remove this provision of the bill and replace it with a requirement that every aspect of the foreclosure and sale be commercially reasonable.⁸ We believe that such a requirement would adequately incorporate the protections behind the good faith standard—such as preventing personal animosity between neighbors from resulting in foreclosure when a foreclosure would not serve the financial interests of the association—while at the same time addressing the potential problems posed by having the mediation administrator make determinations of good faith.

In short, the proposed legislation would implement important protections in a system where they are currently lacking and give condominium owners an opportunity to avoid foreclosure where possible. We urge the Council to enact the Condominium Owner Bill of Rights Amendment Act of 2015 as part of its strategy for preserving affordable housing in the District. Thank you for the opportunity to testify today.

⁸ Uniform Common Interest Owners Bill of Rights Act, Section 15(d).