

Revisions Suggested by the D.C. Land Title Association as of April 22, 2005

**BILL 16-50 SECOND READING DRAFT– OPTION B
[ONLY NEW LANGUAGE TO § 42-3404.02 INCLUDED]**

The DCLTA would look forward to the “Long Title” and Preamble for review and comment.

§ 42-3404.02. Tenant opportunity to purchase; "sale" defined [Formerly § 45-1631]

(a) . . . [NO CHANGE]

SALE DEFINED

(b) (1) For the purposes of Subchapters IV and V of this title Title, the terms "sell" or "sale" shall mean the execution of any agreement that ~~assigns, conveys or transfers, leases, or encumbers the property~~ a Housing Accommodation, or the execution of any agreement that results in the ~~assignment, transfer, lease, or encumbrance of the property~~ conveyance or transfer of a Housing Accommodation, pursuant to which the owner(s) of the ~~property~~ Housing Accommodation:

[INDICIA TO BE DETERMINED] DCLTA would look forward to the proposed Indicia for review and comment. This is quite important to the DCLTA to ensure that there is objective and clear definition of “sale” that requires no subjective analysis of intent, unintended results, or matters not of record.

(2) Any agreement shall be made subject to the tenant’s rights under Subchapters IV and V of this title Title.

EXEMPTIONS – generally beyond the purview of the review by DCLTA

(2) For the purposes of Subchapters IV and V of this title Title, and notwithstanding anything to the contrary herein, the terms "sell" or "sale" do not include:

- (A) [decendent estates]. . .
- (B) An inter-vivos transfer, even though for consideration, between husband and wife, parent and child, [siblings], grandparent and grandchild, or domestic partners as defined in section 2 of the Health Care Benefits Expansion Act of 1992;
- (C) A foreclosure sale or a transfer to a mortgagee or trustee in lieu of foreclosure;
- (D) A tax sale or transfer pursuant to tax foreclosure;
- (E) A bankruptcy sale;
- (F) Any transaction involving accommodations otherwise subject hereto expressly contemplated by a registration statement filed with the Securities and Exchange Commission prior to February 22, 1994;
- (G) A transfer in the form of ownership, including:
 - a. A transfer of title to the ~~property~~ Housing Accommodation to a limited liability company pursuant to Section 29-3013;

- b. A transfer of bare legal title into a revocable trust, without actual consideration for the transfer, where the transferor is the current beneficiary of the trust, pursuant to D.C. Official Code § 42-1102 (17);
- c. A transfer of ~~property~~Housing Accommodation to a named beneficiary of a revocable trust by reason of the death of the grantor of the revocable trust, pursuant to D.C. Official Code § 42-1102 (18)
- d. A transfer of ~~property~~Housing Accommodation by the trustee of a revocable trust if the transfer would otherwise be excluded under this subchapter if made by the grantor of the revocable trust, pursuant to D.C. Official Code § 42-1102 (19); and
- e. A transfer by operation of law or otherwise among co-tenants in a tenancy-in-common, or members in an entity, that owns an accommodation where the transfer is among named parties in the original agreement. DCLTA notes that this provision is unclear.

~~SUBSTANCE OF THE TRANSACTION~~

~~(d) The applicability of this title, and rights created hereunder, shall be determined by examining the substance of the transaction or series of transactions. A step transaction or other device entered into or employed for the purpose of avoiding the obligation to comply with the requirements of this title shall be construed in accordance with the substance of the transaction.~~

“TIME CERTAIN” ~~NOTICE~~NOTICES

(e)(1) In addition to any other notice required by Subchapters IV and V of this title~~Title~~, the owner shall provide each tenant and the Mayor written notice of the transfer of an interest (“Notice of Transfer”) in ~~an accommodation~~a Housing Accommodation or of any ownership interest in a corporation, partnership, limited liability company, association, trust, or other entity which owns ~~an accommodation~~a Housing Accommodation.

(2) The ~~notice~~Notice of Transfer shall be ~~served~~sent by registered or certified mail, return receipt requested, commercial overnight delivery service that maintains proof of delivery, or by personal service, at least ninety (90) days prior to the proposed date of transfer. Notice to tenants shall be to the Housing Accommodation unless tenant has supplied in writing to owner a different address for notice purposes.

(3) The ~~notice~~Notice of Transfer shall be substantially in the form prescribed by the Mayor and shall provide, at a minimum, a statement of the tenant or tenant organization's rights under ~~the act~~this Title, a description of the transfer, the date of the proposed transfer, and the reason, if any, why the owner asserts the transfer ~~does or does may~~ not constitute a sale.

~~(4) An aggrieved~~ The owner's failure to provide the Notice of Transfer shall create a rebuttable presumption that the transfer constitutes a sale for purposes of Subchapters IV and V of this Title.

(5) A tenant or tenant organization, duly organized under § 42-3404.11 of this Act and meeting pursuant to its by-laws, whichever shall be applicable (hereinafter referred to as tenant or tenant organization), may, within 90-thirty (30) days of the Mayor's receipt of the notice file a notice of Notice Of Transfer, file a "Notice of Intent to File Petition" indicating an intent to file a petition for relief under sections 503 or 503(a) pursuant to D.C. Official Code § 42-3405.03 or 3405.03a. A Notice of Intent to File shall be delivered by registered or certified mail, return receipt requested, commercial overnight delivery service that maintains proof of delivery, or by personal service to the Mayor and simultaneously to the owner. The owner's address shall be that set forth in the Notice of Transfer. Failure of a tenant or tenant organization to timely file the notice of intent Notice of Intent to File Petition within the prescribed period, shall preclude the tenant or tenant organization from asserting any rights under Subchapters IV and V of this title Title relating to that transfer, subject to the protections of subsection (d) of this title. the transfer identified in the Notice of Transfer.

~~(5) The aggrieved~~ (6) Within thirty (30) days of the receipt by the Mayor of the Notice of Intent to File, a tenant or tenant organization shall thereafter, from the date of the filing of the notice of intent, have an additional 45-thirty (30) days to file a petition for relief under sections 503 or 503(a) D.C. Official Code §42 D.C. Code 3405.03 or 3405.03a . A copy of said petition shall be delivered to owner by registered or certified mail, return receipt requested, or by personal service. Failure of a tenant or tenant organization to file timely the petition for relief within the prescribed period, shall preclude the tenant or tenant organization from asserting any rights under Subchapters IV and V of this title Title relating to that transfer, subject to the protections of subsection (d) of this title Title relating to the transfer identified in the Notice of Transfer.

~~(6) Except as otherwise prohibited by law, the owner's failure to provide the notice shall create a rebuttable presumption that the transfer constitutes a sale for purposes of this title.~~

(7) For the purposes of providing notice under this subsection, tenant shall mean the person or persons who under the terms of the lease, or any amendment or consent executed pursuant thereto, are entitled to occupy the premises.

(8) For the purposes of calculating time in this subsection, "days" shall refer to calendar days and shall be strictly construed.

(9) Upon five (5) days of request by any person, the Mayor and the Office of Administrative Hearings shall provide written certifications, including date of receipt or non-receipt, of any notices received under Subchapters IV and V of this Title and copies of such notices. Such certifications may be recorded among the records of the Recorder of Deeds and shall be exempt from filing fees.

(10) Notice of Transfer, Notice of Intent to File and the petition for relief pursuant to D.C. Official Code §42 D.C. Code 3405.03 or 3405.03a shall be known as “Time Certain Notices”.

§ 42-3405.03a. Declaratory relief [Formerly § 45-1653.1]

(1) Designate the existing text as subsection (a);

(2) ~~A new subsection (b) is~~ New subsections (b) and (c) are added to read as follows

“(b) Declaratory orders issued pursuant to D.C. Official Code §42-3405.03 or 3405.03a, et seq., are the sole means upon which the public may reasonably rely in determining rights pursuant to Subchapters IV and V of this Title. . .”

“(c) Notwithstanding the preceding subsection, the following, when taken together, shall constitute conclusive proof of the termination of a tenant’s or a tenant organization’s rights pursuant to Subchapters IV and V of this Title:

1) Certifications provided by the Mayor and Office of Administrative Hearings setting forth the date of receipt of the Notice of Transfer and indicating that no Time Certain Notices from a tenant or tenant organization were received within the prescribed periods;

2) An affidavit from owner or owner’s authorized representative attesting to the date and manner of issuance of the Notice of Transfer; and

~~—“(b) A declaratory order under this section is the sole means by which the Mayor shall issue an official, binding determination.”~~

3) An affidavit from owner or owner’s authorized representative in compliance with the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501, et seq.) as to any tenant whose rights are affected by this Subchapter.