

Fall 2011 PROA Report

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The quarterly PROA board meeting was held on the first Thursday of September. Our lobbyists from Pugliese Associates in Harrisburg reported on the status of almost a hundred different bills of interest to landlords and real estate investors which bills are working their way through House and senate committees. The subjects of these bills range from property assessments, to amending the Landlord Tenant Act, to amendments to the Construction Code Act.

The legislature recently passed and the governor signed HB 377, which will require the changes to the Uniform Construction Codes which come out every three years to be reviewed by a Code Review and Advisory Council in PA before becoming part of PA law. This will hopefully prevent the type of problem we faced when the IBC was amended to require sprinklers in residential construction, and became Pennsylvania law without review or action by our own legislature. Another high point was the passage of HB 442/ SB 353, which prohibit private transfer fees from being built into deeds to real property.

Conversely, PROA is very concerned about several of the bills making their way through committee, and will have our lobbyists watch them closely. HB 400 would require the owners of many multi-unit rental properties to provide monitored security in and about their buildings. That bill faces hearings in the House Urban Affairs committee. HB 642, which would provide for the accelerated tax sale of vacant properties, and HB 979, which would require landlords to allow early termination of residential leases for certain physical and mental illnesses, are also in the House Urban affairs committee.

Senate bills to watch include SB 542 which would require carbon monoxide alarms in rental units with combustible fuel heat, hot water heaters, stoves or fireplaces, and SB 887, which would provide for the disposition of personal property abandoned by tenants. Both bills are in the Senate committee on Urban Affairs and Housing. The PROA judicial committee also reported on its activities at the board meeting. PROA is funding part of the legal fees for the appeal of the Berwick rental registration case. Briefs have been filed and argument in the appellate court is scheduled in November. It may take much more time before we have a final decision in the case, but we hope it will limit the proliferation of new and more outrageous

rental registration ordinances throughout Pennsylvania. Meanwhile, revised, less onerous rental registration ordinances are going into effect in Washington and New Castle, so those suits are inactive, while we wait for the new ordinances to be enforced. Pittsburgh's ordinance is still on hold, and we have completed preliminary discovery in Erie, and are demanding a refund of excessive charges there, as well as adjustment of future fees. Sharpsburg is not enforcing its ordinance fully against members of the association there, on a case by case basis.

Demands are in process against unjust and illegal ordinances in Brackenridge and Mount Pleasant, and lawsuits may be filed in those municipalities if we are unable to work out appropriate compromises.

Finally, new "Rent Sequestration" ordinances in several Pennsylvania towns were reported to PROA's board and discussed by the judiciary committee for possible action, based on constitutional equal protection challenges. These ordinances allow the municipal tax collector to send a letter to all of the tenants in a commercial or residential rental property for which any real property taxes are due and not paid, requiring the tenants to pay their rent to the tax collector instead of the landlord until all property taxes are current. Further, a receipt from the tax collector as to amounts paid by the tenant to the tax collector becomes a receipt for rent paid, preventing eviction or collection action by the landlord against the tenant.

After review of the ordinances and their justification, the judicial committee concluded and reported to PROA that we should not fight these ordinances. The ordinances are based on authority granted by the legislature to the tax collectors in Section 19 of the Local Tax Collection Law of 1945, 72 P.S. section 5511.19. The 1945 law was upheld by the PA Supreme Court in the case of *Cedarbrook Realty, Inc. v. Nahill*, 484 Pa. 441, 399 A.2d 374 (1979).

With that history, and the present budget problems facing many Pennsylvania municipalities, we believe fighting the sequestration ordinances would not be productive. Instead, we are advising real estate investors to be forewarned that many Pennsylvania municipalities are likely to pass similar ordinances this year and into next year. Therefore, it is prudent to make sure all of your property taxes on rented properties are paid in full and on time. However, the 1945 law only mentions taxes, not any other municipal fees, so it would still be improper for a municipality to sequester rent for utility or garbage bills, or other municipal fees.

Among new business items, the PROA board discussed providing a mechanism for PROA groups throughout the state to offer live simulcasts of real estate educational lectures by national and statewide speakers at other PROA group meetings and seminars. We hope to test this program by year end. The next PROA board meeting will be in December.

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