

PROA Board Meeting June 2009

By Bradley S. Dornish, Esq.

The Board of Directors of the Pennsylvania Residential Owners' Association held its quarterly meeting in Harrisburg on June 4th. I attended as ACRE's representative, and met with other Directors representing over twenty different real estate investors' associations from all over Pennsylvania. At the meeting, we reviewed issues including a lot of pending state legislation affecting real estate investors, the status of settled, pending and soon to be filed lawsuits, and an action plan to develop a statewide database of information on rental registration ordinances and their costs. The following is my report:

Pending Legislation

There are 24 different bills pending in the Pennsylvania legislature which have been identified as of concern to real estate investors by PROA's lobbyists, Pugliese Associates. There are four bills on Condominiums and Homeowners' Associations, three bills on blight and abandoned real estate, three attempting substantial revisions to the Landlord-Tenant Act, as well as bills requiring Carbon Monoxide Detectors and Fire Extinguishers in rental units, and one bill to reduce the potential liability of HVAC contractors for mold issues related to the installation of HVAC systems.

None of these bills has passed both the PA House and the PA Senate, but some are likely to be coming up for votes in key committees, or for final passage. Our lobbyists track these bills for us and alert us so that we can express our support, concerns or opposition to each bill at the right time to maximize our input and influence on which of these ideas become new laws by which we must abide.

If you want to track the status of any of these bills, or to read the full versions, go to the PA Bill Room at www.legis.state.pa.us/cfdocs/legis/home/session.cfm. The Bill Room is much easier to use than its address is to remember. You can search by key words, name of the Act or by number. Bill Number is the easiest way to follow the bills.

The first cases under the Conservatorship Act passed earlier this year are just getting underway, and no blighted property has been reclaimed under that law. However, companion bills are working their way through House and Senate to pass the “Abandoned Property Tax Sale Act”. These bills, HB 711 and SB 286 would allow municipalities to use the mechanisms of the Tax Claim Bureaus and Treasurers’ Sales to cause the rapid sale for redevelopment of properties defined as abandoned, REGARDLESS of whether all taxes on the properties have been paid. The bill leaves it up to the municipality to decide if any property which has not been occupied for 12 months is a public nuisance, attractive nuisance, or meets one of several other criteria for sale. If so, the municipality can put the property on a list for sale thirty days before a tax sale, and cause the property to be sold.

There is a clear mechanism in these bills for purchasers of abandoned properties at tax sale to commit to redevelopment or demolition of the properties, but no guidance in their current form as to how the rights of the owners of properties designated as abandoned are protected. We need to watch the development of these bills very carefully, and be prepared to fight the erosion of our constitutional rights to our property.

Another bill to watch is SB 24, called the “Residential Transfer Portable Fire Extinguisher Act”. This bill, which is working its way through the Senate Urban Affairs and Housing Committee, would require every dwelling unit without a sprinkler system to have a fire extinguisher installed by the seller before each sale, and installed by the landlord before each rental. The bill also contemplates regulations being implemented to require the periodic maintenance and testing of the extinguishers placed in the units.

My commercial buildings now have similar extinguisher requirements, and I am aware that the inexpensive, disposable extinguishers available for home use do not meet the durability requirements for testing and maintenance. I use a fire extinguisher company, which provides all of the necessary extinguishers and returns periodically to test and maintain them. The extinguishers cost more, they hang in highly visible places, and the testing and maintenance comes with added costs. Landlords and sellers of residential properties need to be ready to make these points when this bill is voted upon.

The final bill on the short list to be monitored closely is the “Carbon Monoxide Standards Act”, identified as HB 1445. This bill would require all residential

properties with fossil fuel furnaces or appliances, and all with attached garages to have carbon monoxide detectors installed within ten feet of each sleeping area, or as part of a hard wired multi-alarm system. This bill would impose some costs as written, but the biggest issues right now are with conflicts between different applicable codes governing different types of properties. PROA is receiving regular updates on the resolution of these issues, and will advise us when this bill moves closer to law.

Settled Lawsuit

The PROA Board also discussed the disappointing outcome of the Godina Jones case in Federal Court in Pittsburgh. PROA and ACRE filed to intervene in this case two years ago, to try to reverse an injunction which had been granted against the Prothonotary of Allegheny County in that case and hopefully later, a similar injunction which had been entered against the Prothonotary of Philadelphia County. When we asked the court to allow us to intervene in the case, ACRE and PROA knew that the plaintiff in the case was represented by the Community Justice Project, a group which funds its activities through getting courts to award attorneys' fees against the people they sue.

Recognizing the likelihood that the CJP would seek fees against us, we asked the Court to let us into the case, but to protect us from any risk of paying the CJP's attorneys' fees. The court split our motion in two parts, allowing us to enter the case, but refusing to protect us from attorneys' fees.

We spent over a year trying to get the court to reconsider its split ruling, first to avoid the risk of attorneys' fees, then to get out of the case, but nothing worked. To make matters worse, the PA Supreme Court saw the Federal Court injunctions in Philadelphia and Pittsburgh and changed its court rules to reflect those injunctions throughout the state, and thereby undo the success we had previously won in the Pennsylvania Supreme Court in the Smith v. Coyne case.

Once the rules changed, there was no reason to fight in the Godina Jones case, so we gave up that case, and were immediately faced with a motion asking that PROA and ACRE be ordered to pay over a hundred thousand dollars in legal fees to the CJP. We researched and wrote a long and detailed brief, and convinced the judge that the law didn't provide justification for making ACRE and PROA pay those fees. However, in the same opinion where the judge acknowledged we shouldn't have had to pay attorneys' fees under the law, he indicated he was upset that we had spent a year of

the court's time and CJP's time arguing not to have to pay possible attorneys' fees, when he felt we should have been fighting the merits of the case (taking the risk of the fees).

The judge then indicated he wanted to know how much of the fees CJP was claiming related to the year we spent arguing about attorneys' fees, and set hearings and another briefing schedule on those fees. ACRE and PROA then weighed the cost of more hearings and more briefs, as well as a possible appeal of the judge's decision against settling the case by paying a portion of the fees claimed. The economics of settling made sense although the principles involved dictated a fight. We elected to keep PROA and ACRE alive to serve landlords' and investors' interests for the future, and paid a total of \$10,000.00 to CJP to settle the case, shared by PROA, ACRE and Dornish & Scolieri.

We have created the Landlords' Justice Project, LLC as a vehicle to fight similar future federal court actions by the CJP, are doing more asset protection planning for ACRE and PROA, and moving on to other cases. We are also looking to raise money for the ever increasing cost of litigation by accepting non-deductible contributions to legal defense funds for ACRE and PROA.

Pending Lawsuits

PROA is active in several other lawsuits around the state involving what we believe are illegal and unconstitutional uses of rental registration ordinances by local governments to raise more tax revenue from landlords without raising property taxes, to enforce collection of all types of taxes from landlords, and even to create super zoning mechanisms all wrapped within the laudable purpose of providing clean, safe housing for tenants. PROA has joined local associations including ACRE and WPREIA on fighting the Pittsburgh ordinance, and Berwick and West Chester on their respective ordinances in the east, and Uniontown fighting its ordinance in the west. Other associations including Connellsville and Lawrence County are mounting fights against their own ordinances, with issues of statewide interest as well.

However, PROA's legal budget is already more than spent for the year, so the board asked the judicial committee, including Attorneys Daryl Zaslow of HAPCO, Lee Stivale and myself, to review the pending cases and make recommendations on how to allocate our limited resources.

Pennsylvania Rental Registration Database

Finally, the PROA Board entertained a discussion on the database on landlord registration ordinances being started by ACRE in Western PA, and the possibility of collecting similar data statewide. This type of database would help us to show which rental registration fees all over Pennsylvania cover only the costs of administering the programs, and are therefore likely to be upheld by the courts as to amount, and which such fees are really extra taxes on residential rental properties, violating the Local Tax Enabling Act. I will work with PROA's webmaster, John Baldwin, to get the information into user friendly form as we receive it from various municipalities.

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