Summary of Division 15 Comments To D.C. Law Revision Commission

The attached letter addresses the issue of reforming and revising the real property laws of the District of Columbia. Earlier this fall, the D.C. Law Revision Commission, an agency of the District government, solicited the views of a number of interested organizations, including Division 15, regarding the areas of the real property law requiring revision and the priorities among those areas. Members of the Steering Committee of Division 15 have subsequently met with staff of the Commission, and the Steering Committee has solicited the comments of individual Division members. The Steering Committee, in its letter, recommends that the Commission review and revise the law in the following subject areas, and in the order in which they appear:

1. Conveyancing (simplify and conform with other jurisdictions)

2. Foreclosure (specify procedural requirements; no substantive changes)

3. Dower (statutory dower should be abolished)

4. Landlord and Tenant (compile all applicable laws and regulations in a single section of the D.C. Code)

5. Lien Priority (clarify the relative priority of certain liens involving adjustable rate mortgages, mechanics' liens and unpaid taxes)

6. Out-of-State Mortgage Lenders (clarify the statutory test for "doing business" and for the exclusion from gross income of interest earned by out-of-state lenders)

7. Rental Housing Laws (review these laws for consistency and procedural completeness; no substantive changes recommended)

DIVISION 15: REAL ESTATE, HOUSING AND LAND USE

Michael A. Cain
Co-Chairperson
872-9080

James Bruce Davis
Co-Chairperson
466-3930

Nancy L. Feldman
377-6440

James W. Jones
872-6954

Marilyn R. Lowney
363-6908

Dennis K. Moyer
955-9669

Lois J. Vermillion
457-7835

The District of Columbia Bar

1426 H STREET, N.W., EIGHTH FLOOR WASHINGTON, D.C. 20005
(202) 638-1500
Lawyer Referral and Information Service 638-1509

James C. McKay, Jr.
Director
District of Columbia Law
Revision Commission
1341 G Street, N.W.
Suite 510
Washington, D.C. 20005

Re: Revision of Real Property Laws of the District of Columbia

Dear Mr. McKay:

In response to your letter of October 11, 1984 to Michael A. Cain, and as a follow-up to your meeting on October 25, 1984 with Michael A. Cain, J. Bruce Davis and Dennis K. Moyer of the Division 15 Steering Committee, we wish to offer our suggested priorities for your review and revision of the District of Columbia real property law. Many of the following proposals have been the subject of detailed recent correspondence to you from the individual member lawyers of Division 15, and we offer them here to you in summary fashion, and in the order in which we suggest your staff consider them:

1. Conveyancing. The District of Columbia law in this area should be simplified and brought into conformity with that of the majority of states, including Maryland and Virginia. Specific actions to be taken:

The views expressed herein represent only those of Division 15-Real Estate, Housing and Land Use of the D.C. Bar and not those of the D.C. Bar or of its Board of Governors.

a. Adopt Uniform Acknowledgements Act;

b. Allow for recording of deeds signed under power of attorney (see Annotated Code of Maryland, Real Property Article, § 4-107 ("Maryland Code");

c. Abolish attorney-in-fact requirement for deeds signed by corporations;

d. Abolish straw deeds (see Maryland Code, § 4-108);

e. Enact a curative statute for correction of minor defects in existing deeds and other conveyancing instruments (see Maryland Code, § 4-109); and

f. Enact a "wet settlements" requirement, as in effect in Maryland and Virginia, requiring disbursement of settlement funds and recordation of documents at the closing or within a specified time period thereafter;

g. Simplify release procedures for deeds of trust, eliminating need for preparation of deed of release, finding (or substituting) trustees, etc.;

h. Eliminate requirement for notarization of transfer and recordation tax forms.

2. Foreclosure. The D.C. Code provisions regarding mortgage foreclosures should not be changed, except to add specific requirements concerning how the property must be advertised before it is sold. The existing practices followed by Thomas J. Owen, Auctioneer, would serve as a good model. We would oppose any effort to bring the judiciary into the foreclosure process or to establish any redemption period following a foreclosure sale; such laws could increase the reluctance of lenders to make residential mortgage loans in the District of Columbia.

3. Dower. Statutory dower rights (D.C. Code, § 19.102) should be abolished. The existence of dower creates problems in the sale and financing of real estate, particularly in the case of separated spouses, and often acts as a restraint on the free transferability.

4. Landlord and Tenant. Compile all laws or regulations affecting landlord and tenant into a single chapter of the D.C. Code. For example, the District of Columbia Housing Regulations require landlords to place tenant security deposits in an interest-bearing account; this provision should be transferred to the D.C. Code, where it will be easy for practitioners to locate.

5. Lien Priority.

a. Provide that an adjustable rate mortgage or variable rate mortgage has priority over junior liens with respect to an upward rate adjustment or negative amortization that occurs after the junior lien is placed on record.

b. Revise the mechanics lien statute to provide that such liens take priority from the date that a notice of claim is filed in the public records, but not before.

c. Revise D.C. Code, § 47-1812.9 (Cum. Supp. 1984) to clarify that a lien for unpaid income taxes takes priority as to the taxpayer's real estate from the date the notice of lien is filed in the public records. This is currently the practice, but the first sentence of the statute can be read to imply that a lien for unpaid income taxes would take priority over an earlier mortgage.

6. Out-of-State Mortgage Lenders. In 1982, the City Council revised generally the income tax laws of the District of Columbia and, in what appears to be an inadvertence, dropped a section excluding from "gross income" interest income received by out-of-state lenders on loans secured by District of Columbia real estate. The test for whether or not such a lender was deemed "doing business" here was also eliminated. To ensure that city property owners have sufficient sources of financing, the statutory scheme should be restored. See D.C. Code, § 47-1803.2(b)(16) (1981) (ed.) (former exemption now repealed).

7. Rental Housing Laws. Review these laws for internal consistency, consistency with other laws and procedural completeness. We would regard any substantive revision of these laws as a political issue and therefore make no recommendation concerning substantive changes.

The views expressed herein represent only those of Division 15: Real Estate, Housing and Land Use of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.

We look forward to a continuing and important role for Division 15 in this law revision effort, and we pledge the cooperation and support of our members. We will be contacting you shortly regarding your anticipated work schedule.

Sincerely,

STEERING COMMITTEE OF DIVISION 15:
REAL ESTATE, HOUSING AND LAND USE

Members:

J. Bruce Davis
Michael A. Cain
Nancy L. Feldman
James W. Jones
Marilyn R. Lowney
Dennis K. Moyer
Lois J. Vermillion