

TESTIMONY ON HB 263
(Real Property—common ownership community ombudsman)

Joel Yesley
11604 Lakewater Lane
Columbia, MD 21044
410-730-0428

Dear Chairman McIntosh and Members of the Environmental Matters Committee:

I am president of the Alliance for a Better Columbia (ABC), a community-wide citizens activist group in Columbia. Today, I am pleased to offer ABC's support of HB-263, with amendments.

Under HB-263, responsibility for mediation, arbitration, and other non-judicial dispute resolution of common ownership community cases would be transferred from the Attorney General's Office (OAG) to an Ombudsman Office in DLLR, allowing OAG to devote additional resources to enforcing the state common ownership community laws in case alternate dispute resolution processes fail, which has been a problem in the past.

Homeowners generally lack the time, money, and skills to prevent governing homeowners associations from overstepping their authority. They should not be forced to rely on lawyers hired by their homeowner associations for legal advice, which could easily involve a conflict of interest, or to resort to the courts for their own protection.

Although we agree with the concepts engendered in this legislation, we believe that the provision that would exempt Columbia from the purview of this regulation is entirely without any justification and should be stricken (page 3, lines 2-4). In fact, an argument could be made that Columbia homeowners are all the more in need of the protections afforded by this bill than would typically be the case.

For example, ABC lodged a formal complaint a few years ago with OAG involving several alleged violations of the Columbia Association of its own by-laws as well as a number of provisions of the Homeowners Association Act. Although the OAG saw some merit in our criticisms, CA has steadfastly refused to submit to arbitration or even mediation. In fact, CA has had the audacity to use the lien payers' assessment fees to pay a lobbyist to argue that it should be excluded from this and similar legislation. One has to wonder whether the interests of CA are at all aligned with those of the community it governs.

In view of the demonstrated unwillingness of CA to submit to the authority of an objective third party referee, we also recommend that the authority of the ombudsman be strengthened in this bill. The ombudsman should have subpoena power for investigations, as recommended by a model statute promulgated by AARP. In addition, all homeowner associations should be required to submit to compulsory binding arbitration if the ombudsman finds merit in an alleged violation of a homeowner's rights

or responsibilities and voluntary means of alternate dispute resolution are unsuccessful. There also needs to be a mandatory enforcement mechanism, whether in the Ombudsman Office or in the OAG, to remedy current problems in state enforcement of the provisions of the Maryland Homeowners Act.

I urge your committee to report favorably on this bill with the amendments suggested by ABC to ensure that Columbians may receive equal protection under the law, a principle enshrined in our Constitution.