



ACTION ALERT

To: All AOBA Members with Residential Property Located in Montgomery County
From: Lesa Hoover, Esq. Vice President Government Affairs, Maryland
Re: Concession Fees
Date: November 5, 2008

After a series of successful meetings throughout the summer and into the fall with Montgomery County Executive Ike Leggett, Montgomery County Attorney Leon Rodriguez and Director of Housing and Community Affairs Rick Nelson, AOBA is pleased to inform the membership that the County will discontinue all enforcement efforts regarding the use of concession fees arising anytime before **December 1, 2008**.

In May, the County Attorney's Office issued a legal opinion stating that it is the County Attorney's position that the use of concession fees constitutes an illegal late fee and is a violation of both County and State law. This opinion accompanied a letter sent to every multi-family rental housing provider demanding that the housing provider self-report, by affidavit, whether it currently, or had in the past, utilized "concession fees" and, if so, to identify and compensate every affected tenant going back three years. Without conceding the legal merits, AOBA strenuously objected to both the policy and enforcement approach the County Attorney's letter embodied.

647 letters were sent out to rental housing providers, of which 559 letters were sent back stating that the company did not use concession fees and were thus in compliance with the County Attorney's Opinion. 13 rental companies admitted to the use of concession fees in their rental leases and refunded money to tenants. Two companies admitted to the use of concession fees, but have not, as of yet, compensated the affected tenants. 29 rental companies questioned the legal opinion and have neither admitted to the use of concession fees nor compensated tenants.

The County Attorney made it clear that the County still perceives the practice of identifying one rent as the "market" rent, and then offering a discount off of that rent if the "market" rent is paid by a date which is earlier than the date specified in the lease violates both State and County law. The County, however, will not enforce this determination for companies that engaged in the use of concession fees before December 1, 2008. Most importantly, the County Executive has informed AOBA that when issues of this nature arise in the future, AOBA will have the opportunity to address concerns with the County before the County unilaterally makes policy decisions regarding the apartment and office building industries.

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