

BOMA Legislative Report-2018-Maryland General Assembly - FINAL

The 90 day legislation session in Maryland has now concluded. It has been memorable. 3,101 bills were introduced, of which 889 bills passed – a record number. Normally, an election year in the legislative cycle experiences fewer bills introduced than in other years, with even fewer controversial issues addressed. That is because, during election years, legislators often focus on introducing legislation to include on their campaign literature, irrespective of whether the legislation is likely to pass. In addition, fewer bills in an election year mean more time for legislators running for reelection to return home and campaign during the legislative session.

Such was not the case in 2018. With a divided government (Republican Governor and Democratic legislature) both parties were eager to pursue legislation that served their own political purposes. There was also a strong reaction by Maryland legislators to developments in Washington DC, both from the passage of federal tax reform and from President Trump's actions on issues related to enforcement of federal health care and consumer financial protection laws. In short, the Maryland General Assembly was quite busy, and BOMA dealt with several important issues.

Elevators (SB 831/HB 1107)

Public Safety – Elevator Inspections – Testing and Apprenticeship Program

One issue with a direct impact on BOMA members was elevator inspections. All elevators, public and private, must be tested and inspected under state law at regular intervals. As an association, BOMA has been directly involved with the regulatory and compliance requirements of elevator inspections for many years. In the 2009 legislative session, facing a significant backlog of uninspected elevators, BOMA worked with legislators to develop new procedures under which annual inspections could be conducted by third-party (private) inspectors after the annual mechanical test was completed.

These procedures have been in place for nearly ten years. While there are always a number of inspections that are not performed by their due date, it has generally been a small number and there have been no safety issues associated with this “structural” backlog. With over 19,000 privately-owned elevators in this state, and several thousand more elevators in publicly owned buildings, the system has functioned reasonably well under the supervision of the Maryland Department of Labor, Licensing and Regulation (DLLR). There was no need to make further changes.

For the past several years, however, legislation has been introduced, at the request of the elevator mechanics' union, to change the system. While many states use the Maryland model described above, several (e.g. the District of Columbia) require that the annual test performed by the mechanic on an elevator must be witnessed by an inspector *while the test is being performed*. This mandatory “simultaneous” witnessing is at the heart of this legislation.

BOMA, joined by other commercial real estate organizations such as the Apartment and Office Building Association (AOBA), the Commercial Real Estate Development Corporation (NAIOP), and the Maryland Multi-Housing Association (MMHA), has consistently opposed this idea, and we opposed it again this year. Our reasoning has been that the reforms enacted in 2009 had the beneficial effect of reducing the substantial backlog of uninspected elevators, while maintaining the safety of those elevators. We concluded that requiring simultaneous testing and inspection would be unnecessarily duplicative, and would add considerable cost to this already significant expense for building owners. We observed that an inspector who is present during the testing process would add no value to either the testing or inspection function, and in any event would not be in a position to address any deficiencies identified during the test. In other words, simultaneous witnessing would add cost but no benefit. Finally, and perhaps most important, we predicted that, because of the limited number of inspectors in Maryland today (approximately 60) imposing a simultaneous witnessing requirement would inevitably and substantially increase the backlog of uninspected elevators. In other words, this change could re-create the problem we had in 2009.

While our argument was effective in each of the last two years, it was not effective in this election year. As noted in our introductory remarks above, some legislation this year was introduced for political reasons as much as policy reasons. The influence of the unions and at least one third party inspection company could not be discounted. While the claims

they made in the past about “safety” issues under the current system proved unfounded, their current claim is that a simultaneous inspection with the annual test will actually save building owners money. We rejected that claim, because it became clear that political factors would prevail in this debate.

Complicating our position was a change in the position of DLLR. In previous years they have joined us in opposing this legislation. This year, because the legislation also included a complete shift to third-party inspectors for all inspections (no more inspectors would be employed by the state) they took a position of supporting the legislation with amendments.

Thus it also became clear during the legislative session that we would have to seek compromise with the proponents of the bill. Bill sponsors Delegate C.T. Wilson and Senator Thomas “Mac” Middleton stressed this need to compromise.

So what was the ultimate outcome? The legislation passed, and here are its major provisions:

First, there will be a requirement under Maryland law for simultaneous inspection of elevator tests. It will phase in over time: the first phase will be the five-year tests that privately-owned elevators must undergo, which will begin October 1, 2018. The second phase will cover annual inspections of public elevators only, which begin on October 1, 2019. And the third phase will include annual testing and inspection of private elevators beginning October 1, 2020. The reason for this phased approach is to begin inspections with a relatively small number of private elevators, adding public elevators in phase two, and then adding annual inspections for private elevators – the largest number of inspections in phase three. This approach was taken to address our continuing belief that there are simply not enough third party inspectors in Maryland today to do the job. By the end of the phase-in period, it is hoped that the number of inspectors will be sufficient to do the job.

In case the number is insufficient, BOMA requested additional language in the legislation. This language requires a report by DLLR, immediately prior to the final phase of inspections on “the status of how elevator inspections are being conducted.” This report will go to the relevant committees of the legislature immediately before the 2020 legislative session. It will afford us an additional opportunity to revisit this requirement if there is an insufficient number of inspectors or if other problems arise.

Finally, the legislation requires DLLR to establish an apprentice program for third-party elevator inspectors. This is intended to grow the number of qualified inspectors so that there will be enough of them to do the job.

This legislation was signed by Governor Hogan on April 24, 2018.

Service of Process (SB 1102/HB 1329)

Landlord and Tenant - Action for Repossession of Nonresidential Property - Service of Process

Last year, an issue was presented to the BOMA Legislative Committee that is of interest to some BOMA members, some of the time. The problem is that the issue could become of interest to any BOMA member at any time. And if that issue should arise, it has the potential to become a costly problem for the BOMA member.

We have reported on this issue since it was identified last year, and we are pleased, in this final legislative report, to advise that we are almost across the finish line with a solution. The issue? In those (hopefully rare) situations where a BOMA member must evict a tenant and collect back rent, there are precise statutory requirements that must be followed. One of these requirements addresses the fundamental right that any citizen has to be given proper notice before legal action is taken against the person that could result in a legally enforceable judgment. This notice of legal action is known as “service of process.” In its simplest terms, service of process means that a *legally authorized* person notifies a defendant that a lawsuit has been filed.

The problem in the Maryland statute is with the requirement that the person delivering suit papers must be legally authorized. A law enforcement officer (usually in a local sheriff’s department) can serve legal process, and often does

so. There is also, however, a group of private process servers that are used by plaintiffs, and commercial landlords have traditionally used private process servers to file actions seeking back rent or other damages. One reason for this is simply time – a county sheriff’s department is often quite busy with many different duties, whereas a private process server is engaged for the sole purpose of delivering process for a single legal action. Time is usually of the essence in finding and serving a former tenant. A related issue is timing – court schedules move quickly, and hearings are often scheduled on short timelines. For these reasons, it is highly desirable to serve process on a defendant as quickly as possible.

The problem was that the Maryland statute on this subject did not specifically authorize service of process by a commercial landlord using a private process server (the statute didn’t expressly prohibit it either). Because of this lack of statutory authority, some judges rejected the attempted service of process by a private process server, while other judges approved it. Commercial landlords needed certainty that pursuing their legal rights would not be authorized by one judge and denied by another judge. In short, we needed to have a statute clearly, unambiguously, permit service by a private process server.

In seeking to gain this ability, BOMA met with representatives of the Maryland Sheriffs’ Association, who gave their consent to our legislative initiative and provided a letter of support to the relevant legislative committees. We were also fortunate that Matt Kimball secured the support of the Real Property Section of the Maryland State Bar Association. In addition, our legislation is limited to *nonresidential* leases only – a condition BOMA was willing to accept.

As bill sponsors, we approached Delegate Pam Beidle and Senator Robert Cassilly. Each is a respected member of the legislative committee to which our bill would be assigned, thus assisting in the issuance of a favorable committee report on the bill. Both bills passed overwhelmingly.

This legislation was signed by Governor Hogan on May 15, 2018.

Other Legislation of Interest

While a number of other issues were addressed by the BOMA Legislative Committee this year, (see bill tracking chart for a complete list) one bill in particular was of concern to Committee members.

Wage History (SB 377/HB 512)

Labor and Employment - Pay Scales and Wage History Information

This legislation would have generally prohibited businesses from inquiring about a job applicant’s salary history. BOMA joined many other business organizations in opposing it. While the legislation did not pass, it is worth spending a moment or two to examine the process.

This legislation is similar to a number of other bills introduced this year that generally seek to protect the rights of individuals at the expense of sound business practice. Such bills include not only new requirements on employers, but also new prohibitions on providers of consumer financial products, insurance products etc. Generally, these bills were considered more favorably in the House of Delegates than in the Maryland Senate.

House Bill 512 was a prime example of this trend. An identical Senate Bill (SB 377) failed to move out of the Senate Finance Committee. House Bill 512 passed the House on a vote of 88-47 and was assigned to the same committee, Senate Finance. The session ended with no action being taken on the bill; however, this is an issue likely to reappear in future years.

So what did the bill do? First, for employers with at least 15 employees, the bill prohibits employers from screening job applicants based on the applicant’s wage history. Second, it would have prohibited an employer from seeking wage history information of any kind in most cases.

BOMA Legislative Committee members observed that wage history is an “essential element” in evaluating prospective employees, and that it is not used in a manner that is unfair to the job applicant. A copy of BOMA’s written testimony on the Senate version of this legislation is attached to this report.