



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: June 21, 2011

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: S.B. 81 [Chancery Court Realty Sale Standards]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 81 which gives the Court of Chancery increased discretion in determining whether it should approve a suggested price for a proposed sale of a person with a disability's real estate. The bill, with the latest proposed draft amendment would result in the following statute:

(b) Whenever application for such a sale is made by a guardian, the Court shall appoint an appraiser of real estate, licensed and certified pursuant to Delaware law, to perform an appraisal of the real property to be sold. The appraiser appointed shall be independent of the parties to the sale and disinterested in the transaction. The appraised value shall be used by the Court as a guideline, in a manner set forth more fully in the Rules of the Court, when considering an application for the sale of real estate by a guardian of a disabled person and the Court shall determine in its discretion based on the appraisal and all other relevant circumstances, whether the requested sale is in the best interest of the disabled person.

This approach would result in adoption of implementing standards by Court rule rather than statutory law which is more cumbersome to revise.

SCPD endorses the concept of the bill and authorizing greater Court discretion and adoption of a "best interest" standard by statute. Selling real estate in the current market is highly problematic and "overreliance" on a traditional appraisal approach is not realistic. Parenthetically, SCPD notes that the reference to "disabled person", which is based on the statutory definition [Title 12 Del.C. §3901(a)], should be reconsidered at some point based on standards reflected in H.B. 91.

Thank you for your consideration and please contact SCPD if you have any questions regarding our position or observations on the proposed legislation.

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

sb 81 court realty sale 6-21-11