

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 1358 (Delegate B. Robinson, *et al.*)
 Environmental Matters

Residential Condominiums - Investor Ownership and Owner Occupancy Requirements

This bill establishes investor ownership and owner occupancy requirements for units in a residential condominium with 10 or more units. As a result, the bill prohibits a single entity from owning more than 10% of the units of a residential condominium with 10 or more units. The bill also establishes the method by which the condominium must transition to meet the bill’s investor ownership and owner occupancy requirements.

The bill indicates that it is the intent of the General Assembly that any residential condominium of 10 or more units that is in existence on September 30, 2012, must amend its declaration and bylaws to reflect the bill’s requirements.

Fiscal Summary

State Effect: General fund expenditures for the Consumer Protection Division of the Office of the Attorney General (OAG) increase by \$90,600 in FY 2013 to develop legal standards for considering exemption requests, mediate complaints against unit owners, and investigate condominiums for potential violations of the bill’s investor ownership and owner occupancy requirements. Future year expenditures reflect annualization and inflation. The bill’s imposition of existing consumer protection penalty provisions does not have a material impact on State finances or operations. The Secretary of State may amend the condominium application and record any new amendments required by the bill with existing resources.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	90,600	113,700	121,200	126,800	132,600
Net Effect	(\$90,600)	(\$113,700)	(\$121,200)	(\$126,800)	(\$132,600)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill's limitation on investor ownership does not apply to unoccupied and unsold units owned by a developer or units that a developer may rent to tenants until the date of transfer of control from the developer to the council of unit owners.

Additionally, after the date of the transfer of control from the developer to the council of unit owners, at least 50% of the units must be owner-occupied units. However, in a resort community where a unit owner may be expected to offer the unit for short-term vacation rental, the condominium may request an exemption from OAG.

If the condominium does not currently meet the investor ownership and owner occupancy requirements, a method is established by which a condominium may transition to meet the requirements. If a single entity owns more than 10% of the units of a residential condominium, the voting power of the single entity investor owner is limited to 10% until the requirements are met.

If less than 50% of the units are owner-occupied units, a unit offered for sale must be sold only to a person who will occupy the unit. Additionally, if a person purchases a unit with the declared purpose of living in the unit and changes the use to an investment property within five years of its purchase, the person forfeits any voting rights associated with the property for the remainder of the five-year period.

If applicable, the bill requires the condominium's bylaws to (1) express the manner of enforcing the investor ownership and owner occupancy requirements on unit owners and purchasers of units; and (2) contain a provision prohibiting a unit owner from voting at a meeting of the council of unit owners if the unit owner has violated the method by which the condominium must transition to meeting the bill's requirements. Additionally, a condominium's public offering statement must include a written notice of the investor ownership and owner occupancy requirements, if applicable. The condominium's declaration must express the investor ownership and owner occupancy requirements.

The bill requires OAG to grant exemptions to specified condominiums located in a resort community and enforce the investor ownership and owner occupancy requirements. If OAG grants an exemption, the council of unit owners must file the exemption with the

deed in the county records and amend its bylaws to include the notice of the exemption. The bill authorizes an aggrieved owner to file a complaint with OAG against a developer, council of unit owners, or unit owner.

Current Law: The Maryland Condominium Act (MCA) does not prohibit a single entity from owning a specified percentage of total units or require a condominium to have a specified percentage of owner-occupied units.

To the extent that a violation of MCA affects a consumer, the violation is within the scope of OAG as described by the Maryland Consumer Protection Act (MCPA). An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division in OAG is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: The Secretary of State reports that 2,544 total condominiums are registered in Maryland. The office estimates that approximately 2,000 of these registrations are active.

In June 2011, the Federal Housing Administration (FHA) updated its policy regarding FHA mortgage insurance for condominium associations. FHA mortgage insurance, a policy that protects lenders from a borrower default, is often required for mortgages secured with a down payment of less than 20%. According to the Community Associations Institute, FHA-insured mortgages account for between 30% and 40% of all condominium mortgages. FHA sets criteria to determine whether a condominium qualifies for FHA mortgage insurance, including the bill's investor ownership and owner occupancy requirements.

State Fiscal Effect: OAG advises that three part-time staff are necessary to handle additional mediations and legal disputes. The Department of Legislative Services concurs.

General fund expenditures increase by \$90,567 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring one part-time mediation unit supervisor, one part-time administrative assistant, and one part-time assistant Attorney General to develop legal standards for considering exemption requests, mediate complaints against unit owners, and investigate condominiums for potential violations of the bill's investor ownership and owner occupancy requirements. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions (full-time equivalent)	1.5
Salaries and Fringe Benefits	\$81,280
Other Operating Expenses	<u>9,287</u>
Total FY 2013 State Expenditures	\$90,567

Future year expenditures reflect full-year salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Community Association Institute, Office of the Attorney General (Consumer Protection Division), Secretary of State, Department of Legislative Services

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ncs/kdm

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