

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 576

(Delegate Beidle, *et al.*)

Environmental Matters

Judicial Proceedings

Real Property - Regulation of Common Ownership Community Managers

This bill creates the State Board of Common Ownership Community Managers to regulate the provision of common ownership community (COC) property management services in the State. The board is appointed by the Governor and operates under the authority of the Secretary of Labor, Licensing, and Regulation. The bill sets forth the qualifications for the issuance of licenses and limited licenses to COC managers. The board may discipline a licensee and deny a license to an applicant under specified circumstances. The bill also requires COCs to register with the board.

The bill requires the Department of Labor, Licensing, and Regulation (DLLR) to report to the General Assembly by December 1, 2013, on the imposition of a registration fee on COCs in relation to the bill's imposition of license and limited license fees as well as the size of a COC to which a registration fee would apply.

The board is subject to reestablishment and periodic evaluation under the Maryland Program Evaluation Act, with a termination date of July 1, 2023.

Fiscal Summary

State Effect: General fund expenditures increase by \$222,800 in FY 2014 to establish the board within DLLR. The board becomes operational as a special-fund entity in FY 2015 and collects biennial licensing and limited licensing fees and application fees to cover direct and indirect costs. Out-years reflect annualization and staggered license renewals. Potential minimal general fund revenue increases due to the bill's administrative penalty provisions.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$0	\$850,000	\$212,500	\$600,000	\$150,000
GF Expenditure	\$222,800	\$0	\$0	\$0	\$0
SF Expenditure	\$0	\$406,900	\$438,500	\$457,100	\$475,600
Net Effect	(\$222,800)	\$443,100	(\$226,000)	\$142,900	(\$325,600)

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

Local Effect: None; however, COCs and COC managers in Montgomery and Prince George’s counties will now be subject to regulation at both the State and local levels.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Defined Terms

The bill defines a “common ownership community” as a condominium organized under the Maryland Condominium Act that is used for residential purposes, a homeowners association organized under the Maryland Homeowners Association Act, and a cooperative housing corporation organized under the Maryland Cooperative Housing Corporation Act.

Any employee of the Columbia Association who provides management services only to the association or the Affiliated Village Associations in Howard County is exempted.

“License” generally means a license issued by the board that allows an individual to provide management services independently for a COC.

“Limited license” generally means a limited license issued by the board that allows an individual to provide management services for a COC under the supervision of a licensed manager.

Providing management services for a COC means:

- acting with the authority of the COC in its business, legal, financial, or other transactions with COC members and nonmembers;
- executing the resolutions and decisions of a COC or, with the authority of the COC, enforcing the rights of the COC secured by statute, contract, covenant, rule, or bylaw;

- negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of a COC;
- collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to a COC;
- preparing budgets, financial statements, or other financial reports for a COC;
- arranging, conducting, or coordinating meetings of a COC or the governing body of a COC; or
- offering or soliciting to perform any of the above-mentioned acts or services on behalf of a COC.

State Board of Common Ownership Community Managers

The board consists of nine members who serve for a term of four years. A board member may not serve more than two consecutive terms, and the terms of the members are staggered. Board members may not be compensated but are entitled to reimbursement for expenses as provided for in the State budget.

To administer and enforce the bill, the board is required to:

- adopt rules of professional conduct as appropriate for individuals issued a license or a limited license;
- establish criteria and a process for certification of a variety of educational offerings and training programs for issuing licenses or limited licenses;
- establish continuing education requirements for individuals who have been issued a license or a limited license; and
- keep a record of its proceedings.

The board may establish, by regulation, a nonjudicial dispute resolution process to resolve any disciplinary matter, education and training opportunities for governing bodies of COCs, and any other procedures or standards consistent with its mission. The board may also take appropriate actions to enter into a cooperative and information-sharing agreement with any unit of law enforcement as authorized by law, as well as assist a COC in exercising any other rights granted by the bill.

Once licensing activity begins, the board must maintain a public list of the names and mailing addresses of all individuals issued a license or a limited license.

The board must charge fees set to approximately cover both the direct and indirect costs of fulfilling its statutory and regulatory duties and may set those fees by regulation. To inform the fee-setting decision, the Secretary of Labor, Licensing, and Regulation, in consultation with the board, must annually calculate the direct and indirect costs

attributable to the board. The board must publish its fee schedule. Each fee established by the board may not be increased annually by more than 12.5% of the existing and corresponding fee. All fee revenue is deposited into a newly created State Board of Common Ownership Community Managers Fund, a special, nonlapsing fund administered by the Secretary. Interest earnings accrue to the new fund. Expenditures from the fund may only be made in accordance with the State budget.

The Department of Budget and Management (DBM), by budget amendment, may advance sufficient funds to the board to allow operations to commence on October 1, 2013, so that licensing and registration functions may be in place by October 1, 2014.

Licensing Requirements

An individual acting as a COC manager in the State must be issued a license by the board prior to providing management services and may only provide management services in fulfillment of a contract with the COC. An applicant must be a holder of a limited license and:

- complete a board-approved training program;
- pass a board-approved examination; and
- have been actively engaged in providing management services for at least 12 months before applying for a license or hold an active board-approved professional designation.

Until the board adopts regulations concerning examination requirements, license applicants may take a nationally prepared and administered standardized examination for the COC management profession that is developed in a specified manner. Additionally, the board may grant a waiver of the license training and examination requirements to any applicant who presents to the board satisfactory evidence, by October 1, 2015, that the applicant provided management services in the State for the two years immediately preceding the application.

An applicant must submit an application to the board and pay an application fee. If an applicant qualifies for a license, the board must send the applicant a notice stating that the applicant has qualified for a license and, on receipt of a license fee, the board will issue a license to the applicant. Upon payment of a license fee, a qualified applicant must be issued a license by the board.

The term of a license is two years. The board must renew and issue a renewal certificate to each qualified holder. The board must provide a renewal application form and notice to the licensee, at least two months before the license expires, stating the license's

expiration date, the renewal fee's due date, and the amount of the renewal fee. Each renewal certificate issued by the board must include the current license's expiration date.

The board is required to reinstate the license of an individual who has failed to renew his or her license if the individual applies for reinstatement within two years of the license expiration, pays a reinstatement fee set by the board, and meets the aforementioned renewal requirements. If an applicant applies for reinstatement after the two-year period, the board may either treat the application the same as an initial application or reinstate the license if specific requirements are met.

The board may also grant reciprocity to an individual who has an equivalent license in another U.S. state or territory. The board may issue the license by reciprocity only if the applicant pays a license fee set by the board and provides adequate evidence that the applicant has met substantially equivalent requirements as those in the State. The board must establish standards for the issuance of a license to an individual licensed in another state.

If a COC contracts with a licensed manager to provide management services, the contract must identify the responsible manager for the COC. If a COC contracts with a person other than a licensed manager to provide management services, the contract must require that only a licensed manager provide the COC with management services.

Limited Licensing Requirements

An individual must be issued a limited license by the board before an individual may provide management services for a COC in the State. A holder of a limited license may provide management services only while under the general supervision of a license holder.

An applicant for a limited license must be at least age 18, submit an application on a board-approved form, and pay an application fee. In addition, the applicant must complete a board-approved training program and pass a board-approved examination. If an applicant qualifies for a limited license, the board must send the applicant a notice stating that the applicant has qualified for a limited license and, on receipt of a fee, the board will issue a limited license to the applicant.

The term of a limited license is two years. The board must renew and issue a renewal certificate to each qualified limited license holder. The board must provide a renewal application form and notice to the limited license holder, at least two months before the limited license expires, stating the limited license's expiration date, the renewal fee's due date, and the amount of the renewal fee. Each renewal certificate issued by the board must include the current limited license's expiration date.

The board is required to reinstate the limited license of an individual who has failed to renew his or her limited license if the individual applies for reinstatement within two years of the limited license's expiration, pays a reinstatement fee set by the board, and meets the aforementioned renewal requirements. If an applicant applies for reinstatement after the two-year period, the board may either treat the application the same as an initial application or reinstate the limited license if specific requirements are met.

Grounds for Denying, Suspending, or Revoking a License or Limited License

Subject to specified notice and hearing requirements and after considering specified factors, the board may deny a license (or limited license) to an applicant, reprimand a licensee, suspend or revoke a license (or limited license), and/or impose a penalty against a licensee of up to \$5,000 (which is paid to the general fund) if the licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- fraudulently or deceptively uses a license;
- is convicted of a felony or a misdemeanor that relates to the applicant's or licensee's fitness and qualifications to provide management services;
- engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
- fails to properly handle the funds of a COC in accordance with this bill's provisions;
- fails to account in a timely manner for all money and property received on behalf of a COC;
- willfully fails to disclose to a COC relevant material facts of which the licensee has actual knowledge;
- is guilty of gross negligence, incompetence, or misconduct in providing management services;
- has been sanctioned in another state in a matter relating to providing management services;
- violates any of the bill's provisions; or
- violates any regulations adopted by the board.

Before the board takes any of these actions against a licensee, it must give the individual notice and an opportunity for a hearing before the board. If the individual does not appear after due notice has been given, the board may hear and determine the matter. The board may issue a subpoena for the attendance of a witness to testify or the production of evidence in connection with any such proceeding. A circuit court may compel compliance with the subpoena upon petition by the board. An individual who

contests a final decision of the board is entitled to judicial review under the Administrative Procedure Act.

The board may reinstate, in accordance with board procedures, a revoked license or, before fulfillment of the conditions of the suspension, any suspended license.

Registration

Each COC must register with the board on or before January 1 of each year and provide the board with specified identifying information and any other information required by the board. If a COC contracts for management services, the responsible manager is responsible for the registration.

Miscellaneous Provisions

A contracting party must file with the Secretary proof, as required by the board, of a fidelity bond or theft insurance of a specified amount, or other board-required comparable written insurance, that covers (1) any person who provides management services for a COC under the terms of a contract and (2) any individual working under the direction of such a person. The Secretary, or the Secretary's designee, must be named as a certificate holder for any fidelity bond or required insurance. In the event the fidelity bond or insurance is cancelled, forfeited, or terminated or the contracting party fails to notify the Secretary of any changes to the fidelity bond or insurance, the Secretary must suspend any license or limited license until proof of compliance is submitted.

A licensed manager must deposit all money received in connection with the provision of management services in one or more of the financial institution accounts of a COC. A licensed manager who provides management services for more than one COC must maintain separate bank accounts for each COC and may not commingle accounts. Each bank account maintained by the licensed manager must be in the name of the COC. A licensed manager who willfully violates the bill's provisions relating to the handling of COC financial institution accounts is guilty of a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment for up to five years.

Penalties

A person who is not a licensed manager or holder of a limited license as required but, nonetheless, acts as a licensed COC manager is in violation of the bill. In addition, a person may not represent that he or she is authorized to provide COC management services or give false information to the board in an attempt to obtain a license or limited license. A person whose license or limited license has been suspended or revoked may not provide management services to a COC as an associate, agent, employee, or other

subordinate of either a licensed manager or a business entity that provides management services. The board, with the approval of the Attorney General, may sue in the name of the State to enjoin any prohibited activity. The board may also take appropriate actions to assist a COC in exercising the rights of COCs. Violation of the bill's provisions is a misdemeanor and punishable by a fine up to \$5,000 and/or imprisonment for up to three years. The board may also impose a fine of up to \$5,000 for each violation after consideration of specified factors.

Current Law:

Regulation of Management Services

State law does not designate a statewide office to regulate COC management services. As of January 1, 2011, however, all COC management entities in Prince George's County must register with that county's Office of Community Relations (OCR). The registration form provided by OCR must include specified identifying information and request a listing of all associations that received management services from the registering entity in the previous year. The management entity must register and renew by January 31 of each year and pay an annual fee of \$100. Also, in Montgomery County, COCs have been required to register since the county created a 15-member volunteer Commission on Common Ownership Communities in 1991.

Fidelity Insurance Requirements for COCs

State law requires that the board of directors, council of unit owners, or other governing body of a COC purchase fidelity insurance, which is defined to include a fidelity bond, not later than the time of the first conveyance of a cooperative interest, unit, or lot to a person other than the developer, and must keep the insurance in place every subsequent year. The insurance must provide for the indemnification of the COC against loss resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by any officer, director, managing agent, or other agent or employee charged with the operation or maintenance of the COC who controls or disburses funds and also applies to any management company employing a managing agent or other employee charged with the operation or maintenance of the COC who controls or disburses funds.

Maryland Program Evaluation Act

Approximately 70 regulatory entities and activities are currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as "sunset review" as most entities evaluated are also subject to termination. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee

(LPC). LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation usually is undertaken the following year. The evaluation year in statute is typically one year before the termination date of the regulatory entity.

Background: According to the Community Associations Institute (CAI), currently 60,000 individuals and 10,000 businesses offer community association services in the United States. CAI is a national organization with approximately 60 state, regional, and local chapters comprising residential community association members, property managers, community management firms, and other related professionals and companies that provide products or services to associations. As of February 2012, CAI estimates approximately 1,000 to 1,500 professional property managers conduct business in Maryland. Each of the 368 CAI individual manager members in Maryland holds at least one CAI designation. Several CAI members have multiple designations.

The Institute of Real Estate Management (IREM) is a real estate management association with more than 18,000 individual members and more than 530 corporate members. Its credentialed membership program offers the following designations: Certified Property Manager (CPM), Accredited Residential Manager, Accredited Commercial Manager, and Accredited Management Organization. IREM has members in both the multi-family and commercial real estate sectors. There are 546 individuals operating as a property manager with IREM membership in the State. CPM designation requires specified education levels, the completion of professional competency and ethics examinations, experience in the field of real estate management, and an application fee.

The bill requires applicants to complete a board-approved training program and pass an examination and to have been actively engaged in providing management services for at least 12 months before applying for a license *or* hold a board-approved active professional designation. CAI and IREM both offer nationally recognized accreditation programs.

State Fiscal Effect:

Staffing Needs

Despite the bill's October 1, 2013 effective date, DLS assumes that licensing and registration activity cannot begin until fiscal 2015 at the earliest. Given the breadth of the regulatory program and its experience with other regulatory boards, DLLR advises that three and one-half staff are necessary to fully implement the program in fiscal 2014 with an additional two staff in fiscal 2015. DLS concurs with both the total number of staff and the timing.

DLLR advises that three and one-half staff are needed to begin the process of implementing the regulatory program in fiscal 2014 with general fund support. Ordinarily, fewer staff would be hired during the start-up period. However, given that the bill requires a “grandfathering” period prior to the start of licensing and limited licensing activities, administrative, executive, and clerical staff are needed as soon as possible. Thus, an executive director, administrative specialist, office secretary, and part-time assistant Attorney General are needed to develop regulations; implement the licensing, limited licensing, and registration program; process applications and review evidence related to the grandfather exception; and undertake other such preparatory activities. In fiscal 2015, as licensing, limited licensing, and registration activity begins on October 1, 2014, two licensing and registration investigators are assumed to be covered by special funds.

Accordingly, general fund expenditures increase by \$222,758 in fiscal 2014, which accounts for the bill’s October 1, 2013 effective date. Special fund expenditures increase by \$406,864 in fiscal 2015 as shown below. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses – including indirect cost allocation beginning in fiscal 2015.

	GF	SF
	<u>FY 2014</u>	<u>FY 2015</u>
Positions	3.5	5.5
Salaries and Fringe Benefits	\$114,357	\$318,198
Other Operating Expenses	<u>108,401</u>	<u>88,666</u>
Total State Expenditures	\$222,758	\$406,864

Future year expenditures reflect full salaries with annual increases and employee turnover, as well as annual increases in ongoing operating expenses. The estimate does not include any reimbursement for board members.

Direct and Indirect Expenditures

The above expenditures reflect the direct costs of regulating COC managers and the indirect costs that DLLR attributes to each regulatory program within the Division of Occupational and Professional Licensing for the use of division and departmental resources.

Direct costs include necessary expenditures for personnel, equipment and supplies, contractual services, and fixed charges. Indirect costs – such as usage of the central licensing system, general services offices, and a portion of the salaries of some senior staff – are allocated to each program by a formula based on the program’s usage of these services. Thus, special fund expenditures for indirect costs under the bill are anticipated

to be approximately \$25,000 in fiscal 2015 and \$35,000 annually in future years. The indirect costs associated with regulating COC managers are addressed further below.

Revenue Stream for the New Board

The bill provides for three main revenue sources for the fund: license fees, limited license fees, and application fees from COC managers. Although registration fees could be collected pursuant to a determination by the report submitted by DLLR, this estimate does not assume that a positive determination of the need for registration fees will be made. Therefore, all revenue collection begins when the licensing activity begins on October 1, 2014.

The bill requires the board to set reasonable fees that approximate the costs of its services. To cover costs, the board must collect at least \$406,864 in special fund fee revenue in fiscal 2015. This amount must increase because of out-year expenditures. The ability of the board to set application fees by regulation should assist the board in covering its costs.

Exhibit 1 shows the revenue pattern for all sources. As noted above, CAI estimated in 2012 that 1,000 to 1,500 individuals may be subject to licensure. It is likely this number is closer to 1,500 because of the possibility that additional members of CAI would participate in the Maryland licensing program due to the increased economic integration of Maryland, Virginia, and the District of Columbia. The bill requires that any applicant for a license be a holder of a limited license issued by the board. This may significantly delay the licensing of applicants; however, DLS assumes that the majority of eligible individuals will be licensed, both as licensed managers and limited license holders in fiscal 2015 because the bill prohibits the unlicensed management of a COC. As the board ages, the number of limited licenses issued may increase as individuals enter the industry through this lower status and gain the experience needed for licensure. This estimate does not reflect any other growth in regulatory activity, which is expected to be minimal.

In addition to the licensure fees, the board may collect an application fee for the issuance of both a license and a limited license. Based on the projected number of licenses, limited licenses, and projected out-year expenditures, DLLR would have to charge a \$50 fee for each license and limited license application, \$500 for each license issued, and \$200 for each limited license issued to cover expenditures over the first four special-funded fiscal years of the board. Additionally, the bill requires the board to reimburse any funds that have been advanced after the license and limited license fees have been received and deposited in the fund. The bill does not set a timetable for reimbursement. While an advance of general funds is not required by the bill, for purposes of this estimate, it is assumed that DBM advances the necessary general funds

for the board to begin implementation and that those funds will be repaid on a reasonable schedule that is not specified.

Exhibit 1 shows the revenue pattern if 1,000 licenses and 1,200 limited licenses are issued in the first year of activity and 250 licenses and 300 limited licenses in the following year. This assumes that an applicant for an initial license must be a holder of a limited license but that an applicant for license renewal is not required to maintain that limited license. Thus, the number of limited licenses issued by the board decreases dramatically after the first cycle of licensing activity. DLS advises that revenues are likely to be sufficient to cover all costs beginning in fiscal 2015, by drawing down on the fund balance in certain years; however, to reimburse any advanced funds over a reasonable timetable, the board may need to increase license fees or institute a registration fee system.

Exhibit 1
Projected Revenues and Expenditures of the Program
Fiscal 2014-2018

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
Total Costs	\$222,758	\$406,864	\$438,492	\$457,130	\$475,608
Direct Costs	222,758	381,864	403,492	422,130	440,608
Indirect Costs	0	25,000	35,000	35,000	35,000
Anticipated Revenues	0	850,000	212,500	600,000	150,000
License Fees	0	500,000	125,000	500,000	125,000
Limited License Fees	0	240,000	60,000	40,000	10,000
Application Fees	0	110,000	27,500	60,000	15,000
Annual Surplus	0	443,136	(225,992)	142,870	(325,608)
Cumulative Surplus	0	443,136	217,144	360,014	34,406

Note: In fiscal 2014, the board's expenditures are assumed to be covered by general funds, resulting in no surplus at year-end. The \$222,758 in expenditures for that year could be repaid over several years from excess revenues in the fund balance. However, as illustrated above, revenues in the first year of each licensing cycle must be used to help cover costs in the second year.

Source: Department of Legislative Services

It should be noted that the bill also authorizes the board to set a reinstatement fee as well as a fee for the granting of reciprocity to an out-of-state COC manager. However, any revenue attained from these fees is expected to be minimal.

Small Business Effect: As noted above, small business expenditures increase by at least \$500 for a license, \$200 for a limited license, and \$50 for each application, as well as potentially significant costs associated with board-approved training and required exams or attaining specified professional credentialing.

Additional Comments: The bill subjects the new board to periodic evaluation under the Maryland Program Evaluation Act. The termination and evaluation dates for the board are the same under the bill; typically, the evaluation date is one year earlier than the termination date.

Additional Information

Prior Introductions: SB 372 of 2012, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 433, was heard by the House Environmental Matters Committee but was then withdrawn. Other legislation regulating COCs managers by a board has been considered in prior sessions.

Cross File: SB 794 (Senators Kelley and Forehand) - Judicial Proceedings.

Information Source(s): Prince George's and Montgomery counties; Department of Labor, Licensing, and Regulation; Secretary of State; Community Associations Institute; Institute of Real Estate Management; Department of Legislative Services (Office of Legislative Audits)

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