

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 672

(Senator Astle)

Judicial Proceedings

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Condominium Boards of Directors - Membership - Prohibition on Married  
Couples

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This bill prohibits the qualifications established for members of a board of directors of a condominium from authorizing two individuals who are married to each other from serving on the board at the same time, regardless of whether both individuals are unit owners.

The bill applies only prospectively and does not have any effect on any condominium board of directors elected before the October 1, 2014 effective date of the bill.

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Fiscal Summary

**State Effect:** The bill may cause an initial increase in the number of amendments to condominium bylaws sent to the Secretary of State as condominiums alter bylaws to comply with the bill's changes. However, any potential increase in activity can be handled with existing budgeted resources.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. However,

the bylaws (the governing document of the condominium) may authorize a council of unit owners to delegate its powers to a board of directors, officers, or a managing agent.

If the council of unit owners delegates its powers to a board of directors, a council meeting to elect a board, as provided in the condominium declaration or bylaws, is required to be held within a specified period of time. Unless otherwise provided in the bylaws, a unit owner may nominate himself or herself or any other person to be a member of the board of directors. A call for nominations must be sent to all unit owners within a specified period of time.

**Background:** The Secretary of State reports that 2,549 condominiums are registered in Maryland with a total of 164,324 units. For more information on common ownership communities, see the **Appendix – Common Ownership Communities**.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 548 (Delegate Beidle) - Environmental Matters.

**Information Source(s):** Secretary of State, Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2014  
ncs/kdm

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## Appendix – Common Ownership Communities

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When a person purchases a house, condominium, or an interest in a cooperative housing arrangement, he or she may also be required to join an association of owners, which is intended to act in the common interests of the homeowners, condominium owners, or co-op owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs).

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent.

Many new housing developments are subject to governing documents that create a homeowners association (HOA) with the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the owners of lots, or the common areas.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws applicable to corporations.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees.

A growing number of homes are located in condominiums, HOAs, and cooperative housing corporations. The Secretary of State reports that there were more than 2,500 condominiums in the State of Maryland registered with the office in 2013. The Foundation for Community Association Research estimates that there were 6,400 community associations in the State in 2012.

### *Task Force on Common Ownership Communities*

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and

resale of homes within COCs. The task force met 10 times, held 5 public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation intended to improve the operation of COCs. This legislation, enacted from 2007 through 2013:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007);
- eased restrictions on the ability of certain older HOAs to amend their governing documents by allowing an amendment at least once every five years by a specified percentage of votes (Chapters 144 and 145 of 2008);
- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);
- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009 and Chapter 615 of 2010);
- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);
- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapter 449 of 2013); and
- expanded the purposes for which a condominium's board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013).

The task force's report also featured findings and recommendations relating to alternative dispute resolutions and the creation of an ombudsman in local governments. Montgomery County's Commission on Common Ownership Communities was referenced as an alternative dispute resolution model for future local offices. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of HOAs, residential condominiums, and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs that predates the task force.

Finally, findings and recommendations of the report that have not been codified in statute concern reserves of COCs, an insurance deductible cap for unit owners, the suspension of privileges of delinquent unit owners, uniformity of disclosure requirements and packages, and uniformity of COC depository requirements.