

**Department of Legislative Services**  
Maryland General Assembly  
2014 Session

**FISCAL AND POLICY NOTE**

House Bill 259 (Delegate Frush)  
Environmental Matters

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**Condominiums - Warranty Claims**

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This bill establishes that any provision of an instrument, such as a declaration, bylaw, or contract for the initial sale of a condominium unit, made by a developer or vendor in accordance with the Maryland Condominium Act (MCA) is unenforceable if the provision places specified limitations on specified claims. The bill does not apply to a condominium that is occupied and used solely for nonresidential purposes.

The bill also establishes that, notwithstanding the declaration, bylaws, or rules and regulations of a condominium, a council of unit owners has the power to (1) sue and be sued, complain and defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium and (2) enforce the implied warranties made to the council of unit owners by a developer as required by MCA.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect State governmental operations and finances.

**Local Effect:** The bill does not directly affect local governmental operations and finances.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** Any provision of an instrument made by a developer or vendor, including a declaration, a bylaw, and a contract for the initial sale of a unit to a member of the public, is unenforceable if the provision:

- purports to shorten the statute of limitations applicable to any claim;
- purports to waive the application of the “Discovery Rule” or other accrual date applicable to a claim;
- requires a unit owner or the council of unit owners to assert a claim subject to arbitration within a period of time that is shorter than the statute of limitations applicable to the claim; or
- operates to prevent a unit owner or the council of unit owners from filing a lawsuit, initiating arbitration proceedings, or otherwise asserting a claim within the applicable statute of limitations.

The above only applies to a provision relating to the right of a unit owner or council of unit owners to bring a claim alleging the failure to comply with (1) applicable building codes; (2) county-approved plans and specifications; (3) manufacturer’s installation instructions; or (4) other applicable construction industry standards.

Additionally, a provision that requires the council of unit owners to obtain a vote of unit owners or the approval of the developer or any nonunit owners as a precondition to the institution or maintenance of a lawsuit, arbitration, mediation, or a similar proceeding is unenforceable unless the council of unit owners adopts the provision on a date after the unit owners, other than the developer and its affiliates, first elect a controlling majority of the board of directors. The adoption of this provision must follow any procedures to amend the declaration or bylaws required by MCA.

**Current Law:** The governance of every condominium is determined by its bylaws, which must be recorded with the declaration. If the council of unit owners is incorporated, the bylaws must be the bylaws of that corporation. The bylaws also may contain a provision regarding the management and operation of the condominium, including any restriction on or requirement respecting the use and maintenance of the units and the common elements. Unless a higher percentage is required in the bylaws, the bylaws of a condominium may be amended by the affirmative vote of unit owners having at least two-thirds of the votes in the council of unit owners.

In contrast, the declaration of a condominium may be amended in specified circumstances only with the written consent of 80% of the unit owners listed on the current roster.

**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, including the transition of control from developer to governing body, see the **Appendix – Common Ownership Communities**.

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### **Additional Information**

**Prior Introductions:** SB 167 of 2013, a similar bill, passed the Senate as amended, but received an unfavorable report by the House Environmental Matters Committee. HB 1141 of 2013, a similar bill, received an unfavorable report by the House Environmental Matters Committee. SB 725 of 2012 a similar bill, passed the Senate, but no further action was taken. Its cross file, HB 740 passed the House and Senate, as amended, but a conference committee was not fully appointed to resolve the differences.

**Cross File:** SB 207 (Senator Kelley) - Judicial Proceedings.

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

**Fiscal Note History:** First Reader - January 29, 2014  
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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.