

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1080 (Delegate Cullison)
Environment and Transportation

Condominiums and Homeowners Associations - Amendments to Governing Documents

This bill alters the minimum percentage of affirmative votes required to amend specified governing documents of a condominium or a homeowners association; the bill specifies additional requirements for conducting votes and the counting of votes.

Fiscal Summary

State Effect: The bill does not directly affect State governmental operations and finances. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: Generally, the bill applies the same terms and requirements relating to procedures for amendment of governing documents to the statutory regimes governing both condominiums and homeowners associations. Under the bill, "good standing" means having no more than three months of condominium or homeowners association dues or fees overdue, as well as satisfying any other requirements contained in the bylaws of the condominium or homeowners association. "Governing document" means (1) a declaration; (2) bylaws; (3) a deed and agreement; or (4) recorded covenants and restrictions.

Regardless of the provisions of a governing document, a council of unit owners or a homeowners association may amend the governing document by the affirmative vote of unit or lot owners in good standing having at least two-thirds of the votes in the condominium or homeowners association, or by a lower percentage if required in the governing document.

The two-thirds requirement must be met by adding (1) at least a majority of the affirmative votes of unit or lot owners who vote at a properly convened meeting, by returning a ballot by mail, or by electronic transmission (if authorized under the governing documents) and (2) the number of unreturned ballots.

If a unit or lot owner fails to vote at a properly convened meeting or by returning a ballot, the unit or lot owner is deemed to have consented to the adoption of the proposed amendment. However, if the number of affirmative votes of unit or lot owners who vote (at a properly convened meeting, by returning a ballot by mail, or by electronic transmission if authorized under the governing documents) does not equal a majority, the number of unreturned ballots may not be added to the total, and the proposed amendment fails.

Current Law:

Condominiums

Amendments to the Declaration: Except for a specified corrective amendment, the declaration may be amended only with the written consent of 80% of the unit owners listed on the current roster. Amendments to the declaration are subject to specified limitations.

Amendments to the Bylaws: Unless a higher percentage is required in the bylaws, the bylaws may be amended by the affirmative vote of unit owners having at least two-thirds of the votes in the council of unit owners. The bylaws may be amended to require all unit owners to maintain condominium unit owner insurance policies on their units by the affirmative vote of 51% of the votes in the council of unit owners.

Homeowners Associations

Notwithstanding the provisions of a governing document, a homeowners association created before January 1, 1960, may amend the governing document once every five years, or more frequently if allowed by the governing document. Such amendments require the affirmative vote of at least two-thirds of the votes in the development, or by a lower percentage if required in the governing document.

Background: The Secretary of State advises that, in 2015, there were 2,619 condominium regimes in the State, and the State Department of Assessments and Taxation reports that there were 206,180 condominium units. The Foundation for Community Association Research estimated that there were 6,575 community associations in the State in 2014.

Condominiums and homeowners associations are commonly known as common ownership communities (along with cooperative housing corporations). For more information on common ownership communities, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Secretary of State, State Department of Assessments and Taxation, Office of the Attorney General (Consumer Protection Division), Foundation for Community Association Research, Department of Legislative Services

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md/kdm

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Appendix – Common Ownership Communities

When a person purchases a single-family home, condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of a COC.

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. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has 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 lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

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 in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for unpaid fees are generally pursued by way of a landlord-tenant action.

Since registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, public offering statements for condominium regimes are required by law to be registered with the Secretary of State (SOS). Statewide for 2015, the SOS registration records show that there are 2,619 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 206,180 condominium units. The Foundation for Community Association Research estimated that there were 6,575 community associations in the State in 2014.

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 five 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 2014:

- 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 (Chapters 448 and 449 of 2013);

- 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); and
- established meeting standards and standards for late charges for delinquent payments, eviction restrictions, an auditing process for books and records, and a dispute settlement mechanism for cooperatives under specified circumstances (Chapter 567 of 2014).

The task force’s report also featured findings and recommendations relating to the creation of an ombudsman in local governments. 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 and Montgomery County have offices dedicated to COCs that predate 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, and the uniformity of COC depository requirements.