

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 651

(Delegate Holmes)

Environment and Transportation

Judicial Proceedings

Real Property - Condominiums and Homeowners Associations - Reserve Studies
- Annual Budgets

This bill requires a study every five years of the reserves required for major repairs and replacement of the common elements of a condominium or the common areas of a homeowners association (HOA).

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. Revenues are not affected.

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

Small Business Effect: None.

Analysis

Bill Summary: “Reserve study” means a study of the reserves required for major repairs and replacement of the common elements of a condominium or the common areas of an HOA, conducted at the condominium’s or HOA’s expense, and in a manner approved by the governing body of the condominium or HOA.

Condominiums and Homeowners Associations Established on or after the Effective Date of the Bill

If a condominium or an HOA has more than 50 units and is established on or after October 1, 2017, the governing body of the condominium or HOA must conduct a reserve study at the community's expense. The reserve study must be carried out at least 30 days, but no more than 90 days, prior to the first meeting of the condominium's council of unit owners after units representing 50% of the votes have been conveyed to initial purchasers or the first meeting of the HOA after a majority of the lot owners, other than the developer, have a majority of votes.

Within five years after this first required reserve study, and at least every five years thereafter, the governing body of a condominium or HOA must conduct another reserve study.

Condominiums and Homeowners Associations Established Before the Effective Date of the Bill

If a condominium or an HOA has more than 50 units and is established before October 1, 2017, the governing body of the condominium or HOA must conduct a reserve study by October 1, 2018, unless the condominium or HOA had a reserve study conducted on or after October 1, 2013. In any event, all condominiums and HOAs must conduct a reserve study at least every five years.

Requirements of the Reserve Study

Each reserve study must:

- include a statement of the qualifications of the person who prepared the study;
- be available for inspection and copying by any unit owner or lot owner;
- be reviewed by the governing body of the condominium or HOA in connection with preparing the annual budget; and
- be summarized for submission with the annual proposed budget to the unit owners or lot owners.

Applicability

The bill applies only to an HOA that has responsibility under its declaration for maintaining and repairing common areas. The bill does not apply to an HOA that issues bonds for the purpose of meeting capital expenditures.

Current Law: The annual budget of a condominium or an HOA must provide for reserves and capital items or expenses among the expenses of the condominium or HOA. In a condominium, unit owners must be assessed for current common expenses and reserves for future expenses in proportion to their percentage interests in the common expenses and common profits.

Background: The Secretary of State advises that, in 2016, there were 2,859 condominium regimes in the State, and the State Department of Assessments and Taxation reports that there were 222,664 condominium units. The Foundation for Community Association Research estimated that there were 6,600 community associations in the State in 2015. For more information on condominiums and HOAs (commonly known as common ownership communities (COCs)), see the **Appendix – Common Ownership Communities**.

In addition to the recommendations discussed in the appendix, the Task Force on Common Ownership Communities also recommended requiring the governing board of a COC owning common capital elements to conduct or commission a reserve study at least once every five years to determine the amount and necessity of reserves for anticipated capital replacements, repairs, and improvements.

Additional Information

Prior Introductions: SB 345 of 2010, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Similar bills were also introduced in 2009, 2008, and 2007.

Cross File: None.

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

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Appendix – Common Ownership Communities

When a person purchases a single-family home, a 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 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 2016, the SOS registration records show that there are 2,859 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 222,664 condominium units. The Foundation for Community Association Research estimated that there were 6,600 community associations in the State in 2015.

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 2016, accomplished the following:

- 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);
- 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); and
- altered the contents of a required disclosure for the resale of a condominium unit, authorized the assessment of specified fees by a condominium council of unit owners or an HOA for providing specified information, set limits on those fees, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016).

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 and Montgomery counties have offices dedicated to COCs that predate the task force.

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