

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 883 (Senator Lee)
Judicial Proceedings

Homeowners Association Act - Boards of Directors, Voting, Meetings,
Recordation, and Rules

This bill makes multiple changes to the Maryland Homeowners Association Act (MHAA), significantly expanding provisions related to boards of directors, meetings, voting, recordation, and rules of a homeowners association (HOA). The bill also increases the maximum fee that an HOA may charge for a specified inspection from \$50 to \$100.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State operations or finances.

Local Effect: The bill is not anticipated to materially impact local government operations or finances.

Small Business Effect: Potential minimal.

Analysis

Bill Summary/Current Law:

HOA and Governing Body

The bill specifies that the HOA must be composed of all lot owners. The bylaws may authorize the delegation of any power of the HOA to a board of directors, officers, managing agent, or other person for the purpose of carrying out the responsibilities of the HOA. The governing body of the HOA, even if unincorporated, constitutes a legal entity for all purposes.

Boards of Directors

The bill newly specifies that the board of directors of an HOA has specified powers. These powers include the power to (1) adopt and amend reasonable rules and regulations; (2) adopt and amend budgets; (3) sue and be sued; (4) make contracts and guarantees; (5) issue bonds, notes, and other obligations secured by a mortgage or deed of trust on any part of the board's assets; (6) hire and terminate managing agents and other employees; (7) regulate common areas; (8) impose and receive payments, fees, or charges for the use of the common areas; (9) impose charges for late payment of assessments and levy fines for violations of the declaration, bylaws, and rules and regulations of the HOA; (10) enforce the provisions of MHAA, the declaration, bylaws, and rules and regulations of the governing body; and (11) designate parking for individuals with disabilities. All powers are subject to limitations included in MHAA or the HOA's declaration or bylaws.

Meetings

Under current law, with specified exceptions, all meetings of the HOA, including meetings of the board of directors or other governing body or committee, must be open to all members or their agents, and all members must be given reasonable notice of all regularly scheduled open meetings.

The bill specifies that a meeting of the HOA or board of directors or other governing body *may not be held* if notice is not appropriately provided. The bill establishes other notice requirements related to regular and special meetings of the HOA or the board of directors.

The bill requires the board of directors to maintain a current roster of names and addresses of each lot owner to which notice of meetings must be sent at least annually. Each lot owner must provide the HOA with the lot owner's name and current mailing address, and a lot owner may not vote at meetings until the required information is provided.

Meeting to Elect the Board of Directors

The bill specifies that a meeting of the HOA to elect a board of directors must be held within (1) 60 days from the date that lots representing 50% of the votes in the HOA have been conveyed by the *developer* to members of the public for residential purposes or (2) if a lesser percentage is specified in the declaration or bylaws, 60 days from the date the specified lesser percentage of lots are sold to members of the public for residential purposes. The bill requires the *developer* to deliver specified notices to lot owners about the meeting, and include specified information.

Under current law, in provisions left in place by the bill, a meeting of the members of an HOA to elect the HOA's governing body must be held within 60 days from the date that at

least 75%, or a lesser amount if specified by the HOA's governing documents, of the total number of lots that may be part of the development after all phases are complete are sold to members of the public for residential purposes. Before the date of the election meeting, the *declarant* must deliver to each lot owner notice that the applicable number of lots has been conveyed and the date, time, and place of the election meeting.

The bill requires the *developer*, within 30 days from the date of the meeting to elect the board of directors, to deliver to the officers or board of directors (1) the HOA funds, including operating funds, replacement reserves, investment accounts, and working capital; (2) the tangible property of the HOA; and (3) a roster of current lot owners, including mailing addresses, telephone numbers, and lot numbers, if known.

Current law requires, in provisions left in place by the bill, within 30 days after the election meeting, the *declarant* must deliver to the governing body specified information, including HOA funds, the tangible property of the HOA, and a roster of current owners. If the *declarant* fails to provide the appropriate information, an aggrieved lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General.

Voting

The bill defines a "quorum" for the purposes of votes by the HOA, and it provides standards for calling additional meetings if a quorum is not present. The bill also establishes procedures related to (1) the allocation of votes; (2) voting, including voting by proxy, and the electronic transmission of votes; and (3) the nomination of individuals to be an officer or member of the board of directors.

Rules

The bill specifies that the board of directors of a HOA may adopt rules for the HOA and establishes specified notice, hearing, and voting procedures. Each lot owner or tenant may request an individual exception to a rule adopted while the individual was the lot owner or tenant of a lot owner in the HOA. Any such request must be filed with the board of directors, in writing, within 30 days after the effective date of the rule. A rule may not be adopted if the rule is inconsistent with the declaration or bylaws of the HOA.

Recordation

If any part of an HOA is located in two or more counties, including common areas, the bill requires specified documents to be recorded in all counties where any portion of the property is located. Subsequent instruments affecting a lot that is located entirely in one county need only be recorded in that county, notwithstanding the fact that the common areas are not physically located entirely within that county.

Late Charges

Under current law, the declaration or bylaws of an HOA may provide for a late charge of \$15 or one-tenth of the total amount of any delinquent assessment or installment, whichever is greater. The charge may not be imposed more than once for the same delinquent payment and may only be imposed if the delinquency has continued for at least 15 calendar days. The bill specifies that if the declaration or bylaws provide for an annual assessment payable in regular installments, the declaration or bylaws may provide that if a lot owner fails to pay an installment when due, the HOA may demand payment of the remaining annual assessment coming due in that fiscal year. Any such demand by the HOA is not enforceable unless specified notice requirements are met.

Amendments to Governing Documents

Under current law, notwithstanding the provisions of a governing document, an HOA may amend the governing document by the affirmative vote of lot owners in good standing having at least 60% of the votes in the development or by a lower percentage if required in the governing document.

The bill specifies that, if the declaration or bylaws contain a provision requiring any action on the part of the holder of a mortgage or deed of trust on a lot in order to amend the bylaws, the provision must be deemed satisfied if the HOA delivered to each holder of a mortgage or deed of trust a copy of the proposed amendment to the bylaws. If a holder of the mortgage or deed of trust fails to object in writing to the proposed amendment within 60 days, the holder must be deemed to have consented to the adoption of the amendment.

The bill's amendment procedures do not apply to amendments that (1) alter the priority of the lien of the mortgage or deed of trust; (2) materially impair or affect the lot as collateral; or (3) materially impair or affect the right of the holder of the mortgage or deed of trust to exercise any rights under the mortgage, deed of trust, or applicable law.

Background: The Foundation for Community Association Research estimated that there were 6,700 community associations in the State in 2016. For more information about HOAs, and common ownership communities generally, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: HB 1007 (Delegate Cullison) - Environment and Transportation.

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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nb/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 2017, the SOS registration records show that there are 2,875 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 225,947 condominium units. The Foundation for

Community Association Research estimated that there were 6,700 community associations in the State in 2016.

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 2017:

- 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 condominiums and HOAs to amend their governing documents (Chapters 144 and 145 of 2008 and Chapter 480 of 2017);
- 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, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016 and Chapter 817 of 2017).

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 pertain to reserves of COCs, an insurance deductible cap for unit owners, and the uniformity of COC depository requirements.