

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 95 (Senator Benson)
Judicial Proceedings

Condominiums and Homeowners Associations – Voting, Records, and Conflicts
of Interest

This bill makes multiple changes to statutes governing condominiums and homeowners associations (HOAs) related to notice requirements, voting, prohibited acts, recordkeeping, and conflicts of interest. The bill also clarifies that specific conduct constitutes a crime, and it authorizes the prosecution of a person under specified provisions of the Criminal Law Article, if the person violates the bill’s requirements.

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State finances or operations, as discussed below.

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Notice Requirements

The bill requires 30 days’ notice, rather than 10 days’ notice, to hold a regular or special meeting of a council of unit owners, and it specifies that the notice must include a copy of

the proposed agenda for the meeting. The bill newly applies the same notice criteria to HOAs.

Voting Restrictions

Units or Lots Controlled by a Receiver: The bill specifies that, if a receiver has been appointed for a unit or lot owner, the receiver may not exercise voting rights on behalf of the unit or lot owner. Generally, under current law, if the council of unit owners or governing body of an HOA fails to fill vacancies on the board of directors or governing body sufficient to constitute a quorum in accordance with the bylaws, three or more unit or lot owners may petition the circuit court to appoint a receiver to manage the affairs of the council of unit owners or HOA.

Limitations on Voting Rights for Nonpayment of Assessments: Under the bill, a governing body may prohibit a unit owner or lot owner who owes more than \$1,000 in unpaid fees to the condominium or HOA from voting on matters relating to the condominium or HOA if the governing body provides specified notice to the unit or lot owner and the unit or lot owner does not pay the amount due within 30 days after the date of the notice.

Under current law, there are relatively few restrictions on voting for lack of payment of assessments. Chapter 480 of 2017 authorizes condominiums and HOAs to amend specified governing documents with the affirmative vote of 60% of members “in good standing,” which is defined as being not more than 90 days in arrears in the payment of any assessment or charge due. Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees.

Prohibited Acts

Criminal Acts: The bill specifies that an individual may not (1) willfully or knowingly obtain money or a thing of value belonging to the governing body of a condominium or HOA with the intent to deprive the governing body of the money or thing of value or (2) use a debit card issued in the name of the governing body of a condominium or HOA for an expense that is not a lawful obligation of the governing body. The bill authorizes an individual who violates the prohibition to be prosecuted for crimes under specified provisions of the Criminal Law Article.

A person who destroys a book or record kept by or on behalf of a council of unit owners or an HOA for the purpose of supporting a criminal act may be prosecuted for obstruction of justice or tampering with evidence.

Purchasing Unit or Lot: The bill prohibits any of the following persons from purchasing a condominium or lot that is foreclosed or sold in lieu of foreclosure: (1) a member of the

board of directors of a council of unit owners or a member of the governing body of an HOA; (2) a person that is employed by the condominium or HOA to provide management or maintenance services; or (3) an employee of a person that is employed by the condominium or HOA to provide management or maintenance services.

Generally, the bill prohibits a person that is employed by a condominium or HOA to provide management or maintenance services from owning more than 50% of the units in the condominium or lots in the HOA. This restriction does not apply until units representing 50% of the votes in the condominium or HOA have been conveyed by the developer or declarant to members of the public for residential purposes.

Attorneys: Under the bill, a council of unit owners or HOA may not hire an attorney to represent the council of unit owners or HOA if that attorney also represents a person employed by the condominium to provide management services.

Recordkeeping and Document Requirements

Records of Bids: The bill specifies that books and records of a condominium or HOA must include bids for materials, equipment, and services.

Access to Governing Documents: As required by the bill, the declaration, bylaws, and rules of a condominium or HOA must be made available for examination or copying by a tenant of a unit owner or a lot owner during normal business hours and after reasonable notice. Generally, under current law, the books and records of a condominium or HOA must be made available for inspection with specified notice. Additionally, State law requires that copies of specified documents must be filed with the circuit court for the county in which the condominium or HOA is located, and copies of specified documents must be provided by the seller to the purchaser of a unit or lot.

Website: The council of unit owners of a condominium or an HOA consisting of at least 150 units or lots must maintain a website. The website must meet specified security requirements and include copies of specified documents. Any meeting notice posted to the website must meet the bill's notice requirements.

Restrictions on Access to Books and Records: A member of a governing body of a condominium or HOA who has been charged with specified crimes related to the destruction of documents, theft, or fraud involving the condominium or HOA may not access the books and records of the condominium or HOA except by court order while the criminal charge is pending.

Conflicts of Interest

Under the bill, “relative” means a person who is related to another person within three degree of consanguinity by blood or marriage.

Required Disclosure: Under the bill, a member of a council of unit owners or HOA must disclose any activity of the member or a relative of the member that may reasonably be construed to be a conflict of interest. Unless a conflict of interest is disclosed and subsequently approved by the council of unit owners or HOA in accordance with the bill’s requirements, a council of unit owners or HOA is prohibited from entering into a contract with a person with which there is a conflict of interest.

Rebuttable Presumption of a Conflict of Interest: With limited exceptions, the bill specifies that there is a rebuttable presumption that a conflict of interest exists if (1) the council of unit owners or HOA is considering entering into a contract with an entity that is owned or operated by a member of the council of unit owners or HOA, a person who has a financial relationship with a member, or a relative of a member or (2) a member or a relative of a member holds or proposes to gain an interest in a business entity that conducts business with the condominium or HOA, or proposes to enter into a contract or other transaction with the condominium or HOA.

Requirement to Hold Vote: The bill requires the council of unit owners or HOA to vote on whether to engage in any proposed activity for which a conflict of interest has been disclosed. The member for which there is a conflict of interest may make a presentation to the council of unit owners or HOA regarding the proposed activity but may not participate in any discussion or vote. If the council of unit owners or HOA votes against a proposed activity, the member for which there is a conflict of interest must notify the council of unit owners in writing of the member’s intent to not pursue the proposed activity, or withdraw from office.

Required Documentation: A conflict of interest disclosed under the bill’s provisions and any associated documentation related to the proposed activity must be documented (1) in the agenda or minutes of the meeting in which the conflict of interest is disclosed and (2) in any contract subsequently executed.

Effect of Failure to Disclose: If the member of the governing body for which there is a conflict of interest does not provide the required notification, the bill authorizes the member to be removed from office. If the bill’s disclosure and voting requirements are not met, a contract entered into by a person and a council of unit owners or HOA is void.

Background: In 2017, Florida passed legislation containing several similar provisions that imposed criminal penalties on condominium violations such as electoral fraud, theft

of funds, and conflicts of interest. The bill was approved one year after local media had published the results of an investigation into condominium scandals which highlighted cases of electoral fraud, fake signatures on ballots, conflicts of interest, misappropriation of funds, and rigged bids.

In Maryland, statewide for 2017, Secretary of State 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 222,947 condominium units. The Foundation for Community Association Research estimated that there were 6,700 community associations in the State in 2016. For more information about condominiums and HOAs, which are broadly referred to as common ownership communities, see the **Appendix – Common Ownership Communities**.

State/Local Fiscal Effect: Although the bill’s provisions clarifying that specific conduct constitutes a crime could potentially result in additional cases, they are not expected to significantly impact the Judiciary or the Department of Public Safety and Correctional Services at the State level. Likewise, they are not expected to significantly impact the circuit courts, State’s Attorneys’ offices, or local detention centers.

Small Business Effect: Condominiums and HOAs may incur additional costs to comply with the bill’s various recordkeeping, documentation, notice, and website requirements. Small business property managers may be similarly affected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); *The Miami Herald*; Office of the Attorney General (Consumer Protection Division); Secretary of State; 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, 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.