

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 414

(Delegate Healey, *et al.*)

Environment and Transportation

Judicial Proceedings

Cooperative Housing Corporations - Dispute Settlement and Eviction Procedures

This bill makes multiple changes to the dispute settlement mechanism under the Maryland Cooperative Housing Corporation Act, repeals the prohibition against a governing body of a cooperative housing corporation bringing an action to evict a member based on the member's failure to pay specified assessments, and makes other technical and clarifying changes. The bill applies prospectively, and it may not be interpreted to have any effect on any complaint or demand formally arising under the rules of a cooperative housing corporation or the provisions of a member's proprietary lease before its October 1, 2019 effective date, unless the bylaws of the cooperative housing corporation or the proprietary lease of the member states otherwise.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing resources, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill specifies that the dispute settlement mechanism set forth does not apply to complaints or demands related to a member's failure to pay assessments owed to the cooperative housing corporation. The bill makes several other changes to the notice and procedural requirements of the dispute settlement mechanism, including:

- the governing body of a cooperative housing corporation must *provide*, rather than *serve*, a member with specified notices;
- a member of a cooperative housing corporation has a right to *request* a hearing to be held by the governing body;
- notice advising a member of his or her right to request a hearing must specify the procedure for requesting a hearing and the timeframe for submitting the request, which may not be less than 10 days beginning on the date of the notice; and
- the governing body must give a member at least 10 days written notice of the time and place of any hearing.

If the member does not request a hearing within the timeframe specified in the notice, the governing body, at the next meeting, must deliberate as to whether the violation occurred and decide whether a sanction is appropriate for the violation.

Current Law:

Dispute Settlement Mechanism

For any complaint or demand formally arising on or after January 1, 2015, unless the bylaws of a cooperative housing corporation or the proprietary lease of the member who is a party to the dispute state otherwise, the governing body may not impose a fine, suspend voting, bring an action to evict, or infringe upon the rights of a member for a violation of the rules of the cooperative housing corporation or the provisions of the member's proprietary lease until a written demand to cease and desist is served upon the member that specifies (1) the alleged violation; (2) the action required to abate the violation; and (3) a time period of at least 10 days during which an ongoing violation may be abated without further penalty.

If a violation continues beyond the abatement period, or if the same rule is subsequently violated, the member must be served with written notice of a hearing. The notice must (1) be sent to the member at least 10 days before the hearing; (2) contain a description of the alleged violation and proposed sanction; (3) inform the member of the opportunity to produce any statement, evidence, and witnesses on his or her behalf; and (4) note the sanction to be imposed.

The hearing must be held in an executive session of the governing body and provide the member a reasonable opportunity to be heard. Prior to imposing any sanction, the governing body must place in the minutes of the meeting proof of the notice provided to the member. The meeting minutes must also contain the results of the hearing and the details of any sanction imposed. A member may appeal a decision of the governing body in court.

If a member fails to comply with the provisions of the Maryland Cooperative Housing Act, the cooperative housing corporation's bylaws, or a governing body's decision made pursuant to the dispute settlement procedures, the member may be sued for damages or injunctive relief by the governing body or any other member. Reasonable attorney's fees may be awarded by the court to the prevailing party.

Eviction Restrictions

A cooperative project that is no longer subject to a mortgage or deed of trust is subject to eviction restrictions. Notwithstanding the articles of incorporation, bylaws, or regulations of a cooperative housing corporation, or the proprietary lease of any member, a governing body may not bring an action to evict a member based solely on the failure of the member to pay assessments owed to the cooperative housing corporation unless (1) the member has been delinquent in paying assessments for a period of three months or more; (2) the governing body has given the member notice and an opportunity to be heard regarding the delinquency and opportunity to cure the delinquency; and (3) the member has failed to cure the delinquency.

Background: For more information on common ownership communities, see the **Appendix – Common Ownership Communities**.

State Expenditures: Any increase in the workload of the District Court as a result of an increase in the number of proceedings is expected to be minimal and can likely be handled with existing resources. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources.

Small Business Effect: Small cooperative housing corporations may realize administrative efficiencies related to dispute settlement procedures and may be able to evict members before they are three months delinquent in paying assessments.

Additional Information

Prior Introductions: HB 680 of 2018, a similar bill, was withdrawn. Its cross file, SB 21, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 724 (Senator Benson) - Judicial Proceedings.

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, 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). SOS registration records show that, as of December 2018, 2,691 condominium regimes have been registered with the State.¹ The State Department of Assessments and Taxation, which maintains

¹ This number is lower than the 2,875 condominium regimes reported by SOS in 2017. The inflated number was the result of a miscalculation, and the revised number does not reflect a decrease in the number of regimes.

assessment records based on class of property, reports that there are 229,859 condominium units in the State as of December 2018. The Foundation for Community Association Research estimated that there were 6,750 community associations in the State in 2017.

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.