

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 352

(Delegate Holmes)

Environment and Transportation

Judicial Proceedings

**Real Property – Condominiums and Homeowners Associations – Governing
Bodies and Annual Meetings**

This bill amends various provisions of the Maryland Condominium Act (MCA) and the Maryland Homeowners Association Act (MHAA) relating to the governing body of a condominium or a homeowners association (HOA).

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Meetings

The bill requires the board of directors or the developer of a condominium or the board of directors or the declarant of an HOA, as specified, to convene a meeting at least twice a year at which the agenda is open to any matter relating to the condominium or HOA and the unit or lot owners have an opportunity to provide comment.

The Developer/Declarant

In the event that a developer or declarant has already established a board of directors for a condominium or an HOA, the developer or declarant must appoint at least one unit or lot owner who is not otherwise affiliated with the developer or the declarant or a vendor of lots in the development.

For condominiums, this must be done within 30 days after the date on which units representing 25% of the votes in the condominium have been conveyed by the developer to members of the public for residential purposes. If no board of directors has been established within 30 days after the 25% threshold is met, the developer must establish a board of directors and appoint at least one member to the board who is a unit owner and not otherwise affiliated with the developer.

For HOAs, this must be done within 30 days after the date that lots representing 25% of currently subdivided lots that may be part of the development – after all phases are complete – have been conveyed by the declarant to members of the public for residential purposes. If no board of directors has been established when the 25% threshold is met, the declarant must establish a board of directors and must appoint at least one member to the board who is a lot owner and not otherwise affiliated with the declarant or a vendor of lots in the development.

Additionally, the bill requires a developer or declarant to provide each member of the board of directors who is a unit or lot owner and who is not affiliated with the developer/declarant with notice of any bond provided by the developer or declarant to a governmental unit in connection with the development, as well as the contact information of the governmental unit that serves as the bond holder. The developer or declarant must deliver this notice within 15 days after the date of the meeting to elect the board of directors. If the developer or declarant requests to be released from such a bond, the developer or declarant must provide each member of the board of directors, as specified, with notice, at least 30 days before the request, of the intention to be released from the bond and the contact information of the governmental unit that serves as the bond holder.

Books and Records

The bill amends MCA and MHAA recordkeeping requirements for books and records to require that the recordkeeping begin on the date the council of unit owners or HOA is established. The bill also requires that all books and records kept by the council of unit owners or an HOA must be maintained separate and apart from those of the developer, declarant, or any other person. The bill also requires a copy of the fidelity insurance policy or fidelity bond to be included in the *accounts* kept and made available by or on behalf of the HOA, as specified.

Current Law: Statutory provisions set forth procedures for a developer or declarant to transition control of a condominium or HOA, respectively, to a governing body. Each year, the governing body of a condominium and HOA must convene at least one meeting at which the agenda is open to any matter relating to the entity.

The council of unit owners of a condominium must meet to elect a board of directors, as provided in the condominium declaration or bylaws, within 60 days from the date that units representing 50% of the votes in the condominium have been conveyed by the developer to members of the public for residential purposes. If a lesser percentage is specified in the declaration or bylaws, the meeting must occur 60 days from the date the specified lesser percentage of units are sold to members of the public.

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 meetings specified above, the developer or declarant must deliver to each unit or lot owner notice that the applicable number of units or lots has been conveyed and the date, time, and place of the election meeting.

Generally, the books and records of a condominium or an HOA must be available for examination or copying, or both, by any unit or lot owner, the owner's mortgagee, or their respective agents or attorneys during normal business hours and after reasonable notice. The books and records must first be made available to an owner within 15 days after a unit or lot is conveyed and the owner makes a request to examine or copy the books and records. However, if the books and records contain specified private records, they may be withheld from public inspection, except for inspection by the person who is the subject of the record. Statutory provisions set forth additional requirements relating to the books and records of a condominium.

For more information on condominiums and HOAs, which are commonly referred to as common ownership communities, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: HB 1053 of 2020, a similar bill, passed the House as amended and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. SB 652 of 2020, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); 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 2020, 2,739 condominium regimes have been registered with the State. The State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 221,999 condominium units in the State as of July 2020. The Foundation for Community Association Research

estimated that there were 6,785 community associations with an estimated 1 million residents in these associations in the State in 2019, the most recent information available.

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 2020:

- 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);
- 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); and
- increased to \$10,000 the maximum amount of the council of unit owners' property insurance deductible for which a specific unit owner is responsible if the cause of any damage to or destruction of the common elements or units of a condominium originates from an event inside that owner's unit (Chapters 56 and 57 of 2020).

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 and the uniformity of COC depository requirements.