



# Real Property Section

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**To:** Judicial Proceedings (Senate)

**From:** Legislative Committee of the Real Property Section Counsel

**Date:** February 13, 2024 [Hearing Date February 14, 2024]

**Subject:** **SB 447 – Residential Owners in Common Ownership Communities Bill of Rights**

**Position:** **Opposed**

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The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **opposes Senate Bill 447** – Residential Owners in Common Ownership Communities Bill of Rights. As a threshold matter, although SB 447 is intended to apply to residential owners in common ownership communities, in the condominium context the definition of common ownership community under SB 447 includes a “condominium” as defined in the Maryland Condominium Act, and “residential owner” is defined to mean a “unit owner” as defined in the Maryland Condominium Act. Under the Maryland Condominium Act, “condominium” and “unit owner” are defined to include any condominium regime and any condominium unit owner, not just residential condominiums, and residential unit owners.

A consumer bill of rights is typically a statement or summary of provisions under existing law. However, HB 29 purports to cover certain rights that do not exist under current Maryland law, including among others:

- The right to “be designated as a member of a common ownership community when the community makes that residential owner subject to a lien and to mandatory assessment.” Maryland laws on coops, condominiums, and HOAs define membership, as do existing covenants for existing associations, which should not be subject to any such “right” that defines membership in any inconsistent manner.
- The right to a community manager that is properly trained. There are no state laws that require a common interest community to have a community manager or that impose training requirements on community managers.
- The right of homeowner members to vote to approve any proposed changes to association governing documents and policies. Although Maryland law governs certain amendments to covenants or bylaws that require a vote of association members, other rules and policies of associations are enacted by the association’s governing board,

under the authority delegated to the board by law and/or covenant and are not subject to a vote by all members.

- The right to use all facilities and services of the community, but there is at least one HOA that leases some of its property and amenities to a third-party Club, and therefore it is generally not available for use by the homeowners unless they are also members of the Club. This language would potentially knock out the underpinnings of such leases.

These are just a few examples of problems with SB 447 and not an exhaustive list. The Condominium Act and the Homeowners Associations Act have numerous provisions relating to governance, operation, and affairs of condos and HOAs. The provisions in each act have been enacted (and, as to many, amended) over time. These provisions deal with specific rules for specific provisions. If any of these provisions should be amended, then each suggested change should be individually considered on its own merits.

SB 447 would enact overriding provisions that may or may not dovetail with specific laws that are in the Condominium Act and the Homeowners Associations Act. The bill purports to make all these rights . .

SUBJECT TO THE PROVISIONS OF ALL APPLICABLE LAWS GOVERNING COMMON OWNERSHIP COMMUNITIES ESTABLISHED IN THE STATE, A RESIDENTIAL OWNER IN A COMMON OWNERSHIP COMMUNITY HAS THE FOLLOWING RIGHTS:

But if that is the case, why not simply state the specific rights that are not created elsewhere? What purpose does it serve to have the same rights stated in two places? What happens when one of the general principles of SB 447 conflicts with the law as it now exists? One can easily anticipate the confusion that will result. In short, if SB 447 were enacted it would create an unworkable dual track of community association law containing many inconsistencies with existing Maryland laws that govern coops, condominiums and HOAs.

For these reasons, the Real Property Section Counsel of the MSBA **opposes SB 447** and asks for an **unfavorable report**. Thank you for your consideration.