

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 199

(Senator Waldstreicher)

Judicial Proceedings

Environment and Transportation

**Residential Property - Affordable Housing Land Trusts - Authority to Establish
Condominium Regimes**

This bill authorizes a condominium regime to be established on a leasehold estate owned by an affordable housing land trust.

Fiscal Summary

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: Under current law, the fee simple owner or lessee under a lease that exceeds 60 years of any property in the State may subject the property to a condominium regime by recording in the appropriate county land records a declaration, bylaws, and condominium plat that comply with the requirements specified in the Maryland Condominium Act.

However, a leasehold estate may not be subjected to a condominium regime if it is used for residential purposes unless the State, a county that has adopted charter home rule, a municipal corporation, or the Washington Metropolitan Area Transit Authority, as specified, is the owner of the reversionary fee simple estate. The bill adds an affordable housing land trust to this list of entities.

An affordable housing land trust is an entity that (1) provides affordable housing to low-income families and moderate-income families through an affordable housing land trust agreement and (2) is organized or managed by a specified tax-exempt nonprofit organization or a unit or instrumentality of the State or a political subdivision of the State. An affordable housing land trust agreement is an agreement between an affordable housing land trust and a purchaser of real property owned by the affordable housing land trust, or for which the affordable housing land trust has a proprietary or reversionary interest, that (1) grants the affordable housing land trust a preemptive right to purchase or repurchase the property, including any improvements on the property; (2) contains language restricting the transfer, lease, sublease, assignment, or occupancy of the property with regard to potential transferees, sublessees, assignees, or occupants, and the price at which the property may be transferred; or (3) imposes other conditions on the use or transfer of the property that would trigger a reversionary interest and that are designed to ensure that the property remains available and affordable to low-income families and moderate-income families. Section 14-502 of the Real Property Article further specifies that an affordable housing land trust agreement is not a ground lease and not subject to related statutory requirements.

In accordance with applicable provisions, an affordable housing land trust may (1) acquire residential real property; (2) acquire an interest in property for the construction of residential real property; (3) make improvements on residential real property; (4) enter into affordable housing land trust agreements with persons who meet the criteria set out in the relevant subtitle and any other criteria as established in the affordable housing land trust agreement for the transfer of an interest in residential real property; and (5) engage in other activities related to the sale, leasing, management, maintenance, and preservation of properties under the control of the affordable housing land trust.

For more information on condominiums, a type of common ownership community, see the **Appendix – Common Ownership Communities**.

Additional Comments: Although the bill’s provisions have a potentially meaningful benefit on affordable housing land trusts, these entities are not small businesses.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 567 of 2023.

Designated Cross File: HB 13 (Delegate R. Lewis) - Environment and Transportation.

Information Source(s): Secretary of State; Judiciary (Administrative Office of the Courts); Department of Housing and Community Development; State Department of Assessments and Taxation; Department of Legislative Services

Fiscal Note History: First Reader - January 25, 2024
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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. Because registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, the Foundation for Community Association Research estimated that there were 7,100 community associations with an estimated 1 million residents in these associations in the State in 2023.

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; instead, 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 outstanding fees are generally pursued by way of a landlord-tenant action.

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 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.

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 and Montgomery counties have offices dedicated to COCs that predate the task force.