

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 703

(Delegate Doory, *et al.*)

Economic Matters

Judicial Proceedings

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Commercial Law - Hotels and Retirement Communities - Operating Agreements

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This bill provides rules of interpretation for operating agreements relating to the management, operation, or franchise of a hotel or a retirement community.

The bill applies to all such operating agreements that are executory agreements as of October 1, 2004 or are executed and delivered after October 1, 2004.

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Fiscal Summary

**State Effect:** None. The bill will not directly affect governmental finances or operations.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** The bill provides that if a conflict exists between the express terms and conditions of an operating agreement relating to the management, operation, or franchise of a hotel or a retirement community and the terms and conditions implied by law governing the relationship between a principal and agent, the express terms and conditions govern. A court may order specific performance for anticipatory or actual breach, or attempted or actual termination of the operating agreement, notwithstanding an agency relationship between the parties to the agreement.

Express covenants or other provisions that establish a party's duties and obligations under an operating agreement create the only duties and obligations enforceable against the party under the agreement.

If an operating agreement states that it continues for a period of time or until an event happens, the agreement is enforceable between the parties until the time period expires or the event occurs, unless the agreement contains a right of early termination.

The covenant of good faith and fair dealing is implied in an operating agreement unless the agreement states that a party may perform a duty or obligation at its sole discretion. Unless an operating agreement contains a covenant or other provision that specifically incorporates a duty into the agreement, no duties are implied under the agreement.

The bill applies to hotels or motels that have more than 30 rooms for rent that are primarily used by transients who are lodged with or without meals. The bill also applies to retirement communities but excludes: (1) freestanding nursing homes; (2) State facilities; (3) programs licensed under the State's developmental disabilities or mental hygiene laws; (4) freestanding hospice care programs; (5) freestanding elderly day care centers; (6) retirement communities owned or affiliated with church or religious organizations; (7) cooperative housing corporations certified as continuing care providers and separate entities certified as continuing care providers that provide services to residents of cooperative housing corporations; or (8) condominiums certified as continuing care providers and separate entities certified as continuing care providers that provide services to residents of condominiums.

**Current Law:** Operating agreements relating to the management, operation, or franchise of a hotel or a retirement community are governed by the common law of contracts and, to the extent that a principal-agent relationship is found to exist, the law of agency.

**Background:** Beginning in 1991, some out-of-state court rulings began applying the common law agency principles, rather than common law contract principles, to the legal relationships between hotel owners and operators.

**Small Business Effect:** Depending on how Maryland courts would view such agreements, the bill could determine the rights, duties, and obligations of small business operators of hotels and retirement communities under their operating agreements.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 603 (Senator Garagiola, *et al.*) – Judicial Proceedings.

**Information Source(s):** Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - February 16, 2004  
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