

DOUGLAS F. GANSLER
Attorney General

Katherine Winfree
Chief Deputy Attorney General

John B. Howard, Jr.
Deputy Attorney General



ROBERT A. ZARNOCH
Assistant Attorney General
Counsel to the General Assembly

Sandra Benson Brantley
Bonnie A. Kirkland
Kathryn M. Rowe
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

May 2, 2007

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

Re: SB 287

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency SB 287, which would authorize a circuit court, upon petition, to appoint a receiver to manage the affairs of a condominium's Council of Unit Owners or a Homeowner's Association if those entities have failed to fill vacancies sufficient to constitute a quorum. In so doing, we have considered whether the legislation would impose a nonjudicial duty on a judge in violation of the Separation of Powers doctrine embodied in Article 8 of the Maryland Declaration of Rights.

In our view, SB 287 does not impose a nonjudicial duty on a circuit court judge.

In the exercise of equitable powers, a judge may appoint a receiver. However, this authority is circumscribed, *Lust v. Kolbe*, 31 Md. App. 483, 489 (1976) ("It must be exercised with great circumspection."), and is typically incidental to the fulfillment of a judicial function, e.g., when a receivership is sought as an ancillary remedy in an action which has been brought. See *Petitpren v. Taylor School District*, 304 N.W. 2d 553, 558 (Mich. App. 1981). However a statute can broaden this authority. *Id.* and Article 5, Maryland Declaration of Rights (General Assembly can revise the common law). Moreover, even under the common law (or equitable powers), a court is permitted to appoint a receiver where a corporation "abandons its business and neglects to elect its officers and there is no one to

Page 2
May 2, 2007

administer or care for its business,” 65 Am. Jur. 2d *Receivers* at §44.

This is precisely the situation SB 287 seeks to address. Because an appointment of a receiver under these circumstances is a proper exercise of judicial power, the legislation, in our view, would not violate Separation of Powers.

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG/RAZ/as
cc: Joseph Bryce
Secretary of State
Karl Aro