

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 183

(Delegate McConkey, *et al.*)

Environmental Matters

Judicial Proceedings

**Real Property - Maryland Homeowners Association Act - Enforcement
Authority of Division of Consumer Protection**

This bill provides that a violation of the Maryland Homeowners Association Act, to the extent that it affects a “consumer,” is within the scope of the enforcement authority of the Consumer Protection Division within the Office of the Attorney General. The bill authorizes a county or municipal corporation to adopt a law, ordinance, or regulation for the protection of a consumer to the extent that it is not inconsistent with the Maryland Consumer Protection Act. Within 30 days after adoption of such a law, ordinance, or regulation, the county or municipal corporation must forward a copy to the homeowners association depository in the office of the clerk of the circuit court in the county where the homeowners association is located.

Fiscal Summary

State Effect: General fund expenditures could increase by \$131,800 in FY 2008 to process complaints and pursue litigation under the bill. Out-years reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	131,800	170,600	178,900	187,700	197,000
Net Effect	(\$131,800)	(\$170,600)	(\$178,900)	(\$187,700)	(\$197,000)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill would not directly affect the finances or operations of local government.

Small Business Effect: None.

Analysis

Current Law: The Maryland Homeowners Association Act establishes a framework for homeowners associations in the State. It provides rules of construction and gapfillers for the recorded documents, bylaws, or other governing documents that govern homeowners associations.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine whether there are “reasonable grounds” to believe that a violation of the Act has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of the Act are subject to: (1) civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and (2) criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or up to one year’s imprisonment.

To the extent that it affects a consumer, a violation of the Maryland Condominium Act is enforceable by the Consumer Protection Division. A county or municipal corporation may adopt laws or ordinances for the protection of a consumer to the extent that they are not inconsistent. Copies of local laws or ordinances must be forwarded to the Secretary of State, who maintains records about condominiums.

Background: Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The full task force met 10 times during 2006 and conducted 5 public hearings, at which public comments were solicited. In addition, subcommittees comprising task force members met several times. One of the topics discussed by the task force was enforcement of State laws affecting common ownership communities. The task force recommended that local governments should be required to coordinate referrals of disputes involving alleged violation of State common ownership community laws to the Office of the Attorney General for review and appropriate enforcement action.

State Expenditures: The Consumer Protection Division receives approximately 100 to 140 complaints annually dealing with common ownership communities. Of those, approximately half concern homeowners associations, and the rest concern condominiums. Complaints involving these communities are complex and frequently time consuming. The division attempts mediation of complaints concerning both

condominiums and homeowners associations. If mediation fails to resolve a complaint concerning a condominium, the division may seek to enforce the requirements of the Condominium Act through litigation. Conversely, mediation may fail to resolve a complaint concerning a homeowners association because an association is not threatened with litigation for failing to mediate in good faith.

General fund expenditures could increase by an estimated \$131,847 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. This estimate reflects the cost of hiring one assistant attorney general and one investigator to investigate complaints and handle additional litigation by the division to enforce the bill. It includes salaries, fringe benefits, one-time start-up costs, automotive travel, and ongoing operating expenses.

Salaries and Fringe Benefits	\$118,662
In-state Travel	3,000
Operating Expenses	<u>10,185</u>
Total FY 2008 State Expenditures	\$131,185
Positions	2

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Charles County, Frederick County, Montgomery County, Prince George's County, Somerset County, Department of Legislative Services

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ncs/jr

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