

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 950 (Delegate Braveboy)
Environmental Matters

Real Property - Homeowners Associations and Condominiums - Transition of Control

This bill establishes several provisions regulating the transition of control of a homeowners' association community or a condominium community from a developer to the governing body of either type of community.

Fiscal Summary

State Effect: The bill would not directly affect State finances or operations. If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

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

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill applies to condominiums and homeowners' associations, which are hereafter collectively referred to as "communities." With regard to homeowners' associations, the bill defines a developer as a person that • builds the development served by the association; or • succeeds to the rights and liabilities of the person that created the development served by the association.

Under the bill, a meeting to elect the governing body of a community has to be held within 60 days from the date that units representing a specific percentage of units or lots have been conveyed by the developer under bona fide arm's length contracts to members

of the public who intend to occupy or rent the units or lots for residential purposes. For condominiums, the percentage is 50%, and for homeowners' associations the percentage is 75%. If a lesser percentage is specified in the governing documents of the community, the meeting has to be held within 60 days from the date that units or lots representing that percentage have been similarly conveyed.

Within 30 days from the date that units or lots representing the required percentage of votes have been conveyed as stated above, the developer is required to • schedule a transitional meeting to elect members of the governing body; • give notice to the unit or lot owners of the date of the meeting and the unit owner's right to elect such positions; and • obtain the resignations of all members of the governing body appointed by the developer. The bill requires this meeting to be held within 60 days after the time that the unit or lot owners are entitled to elect the members of the governing body.

Also within this 60 days, the bill requires the developer, at its own expense, to deliver to the governing body • all documents required by existing law; • the resignation of all members of the governing body appointed by the developer, or required to resign as a result of the transition of control; • the community funds; • the tangible property of the community; and • a roster of current unit or lot owners, including addresses, telephone numbers, and unit numbers.

Documents that are required to be turned over include • the deed to the common elements or areas of the community; • the originals of the community's articles of incorporation, declaration, and all recorded covenants and restrictions of the condominium or primary development and related developments; • a copy of the bylaws and rules of the community; • the minute books, including all minutes; • the books and records of the community; • any policies, rules, and regulations adopted by the governing body; • the financial records of the community from the date of incorporation to the date of transfer of control; • a copy of all contracts to which the community is a party; • the name, address, and telephone number of a contractor or subcontractor employed by the community; • any insurance policies or warranties in effect; • any State or federal government permit; and • drawings, architectural plans, or other suitable documents that set forth the information necessary for location, maintenance, and repair of all condominium facilities.

The bill prohibits the governing body from entering into a contract that does not contain a clause providing for the termination of the contract at the discretion of the community at least 60 days after notice, until all officers or board members are elected by the unit owners at the required transitional meeting. This provision does not apply to a contract entered into before October 1, 2008.

The bill requires that books and records of the community that are required to be made available to a unit or lot owner by current law first be made available to a unit or lot owner no later than 10 days after a unit or lot owner finalizes the sale of the unit or lot from a developer and requests to examine or copy the books and records.

If a developer fails to comply with the requirements of the bill, an aggrieved unit or lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General.

Current Law: The Maryland Condominium Act and the Maryland Homeowners Association Act do not specifically regulate the transfer of control of a community from a declarant or developer to the governing body of the community.

With limited exceptions, all books and records kept by or on behalf of a community must be made available for examination and copying during normal business hours after reasonable notice by an owner, an owner's mortgagee, and their agents or attorneys. The governing body of the community may impose a reasonable charge for reviewing or copying the books or records. The books and records must be deposited in the county's depository, which is maintained by the clerk of the circuit court in each jurisdiction. If a community fails to deposit specified disclosures in the depository, those disclosures are unenforceable until deposited.

In Montgomery County, common ownership communities (condominiums, cooperative housing corporations, and homeowners associations) are required to register with the Commission on Common Ownership Communities, a 15-member volunteer body. The county's Office of Consumer Protection, together with the commission, operates a dispute resolution process.

Background: Chapter 469 of 2005 established the Task Force on Common Ownership Communities (COCs). 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, and the task force made several recommendations on various topics. The task force noted that the period of transition from developer control to control by a governing board of resident members can be a difficult time for a COC. In such situations, the developer is seeking to keep its own expenses down, while the governing board is obligated to ensure adequate funding for operation and repair of common elements in the community. The task force received testimony that many COCs are burdened with unusable common elements, because their governing bodies have no way to reject the transfer of those unusable elements from the developer to the COC.

Additional Information

Prior Introductions: None.

Cross File: SB 587 (Senator Kelley, *et al.*) – Judicial Proceedings.

Information Source(s): Office of the Attorney General (Consumer Protection);
Department of Legislative Services

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Analysis by: Alexander M. Rzasa

Direct Inquiries to:
(410) 946-5510
(301) 970-5510