

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 541

(Senator Kelley)

Judicial Proceedings

Environmental Matters

Common Ownership Communities - Fidelity Insurance

This bill requires the governing body of a common ownership community (COC) to purchase fidelity insurance not later than the time of the first sale of a cooperative interest with respect to a unit or lot to a person other than the developer. The fidelity insurance must provide for the indemnification of the COC against loss resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by the COC's officers, directors, managing agents, management companies, or other agents or associated employees.

Fiscal Summary

State Effect: If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

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

Small Business Effect: None.

Analysis

Bill Summary: The provisions of the bill apply to cooperative housing corporations, condominiums, and homeowners associations. The bill requires the board of directors, council of owners, or other governing body of a COC to purchase fidelity insurance not later than the time of the first conveyance of a unit or lot to a person other than the developer, and to keep the insurance in place every year thereafter. The insurance must provide for the indemnification of the COC against loss resulting from acts or omissions

arising from fraud, dishonesty, or criminal acts by any officer, director, managing agent, or other agent or employee charged with the operation or maintenance of the COC who controls or disburses funds; and any management company employing a managing agent or other employee charged with the operation or maintenance of the COC who controls or disburses funds.

The bill requires that a copy of the fidelity insurance policy be included in the books and records kept and made available by or on behalf of the COC as required by law. The amount of the fidelity insurance must equal the lesser of *either* three months' worth of gross common charges or annual charges and the total amount held in all investment accounts at the time the fidelity insurance is issued *or* \$3.0 million. The total liability of the insurance to all insured persons under the fidelity insurance may not exceed the sum of the fidelity insurance.

If a unit owner or lot owner believes that the board of directors, council of unit owners, or other governing body of the COC has failed to comply with the requirements of the bill, the aggrieved owner may submit the dispute to the Consumer Protection Division of the Office of the Attorney General.

Current Law: State law does not currently require the purchase of fidelity insurance by COCs to indemnify officers, directors, managing agents, management companies, or other agents or associated employees.

Background: Many COCs hire professional management companies to provide administrative services such as payment collection, financial management, grounds keeping, and other ongoing maintenance. These companies or the COC governing bodies themselves are responsible for managing large sums of money due to and owed by COCs but are not currently required to post any type of security bond or purchase any type of fidelity insurance that protects constituent owners in the event of losses caused by management companies or the COC governing bodies.

Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The full task force met 10 times during 2006 and conducted five public hearings, at which public comments were solicited. In addition, subcommittees comprising task force members met several times. The task force made several recommendations on various topics, including the bonding of COC management. The provisions of the bill reflect those recommendations.

Additional Information

Prior Introductions: Similar bills were introduced in 2008. SB 588 received an unfavorable report from the Senate Judicial Proceedings Committee; HB 1053 was referred to interim study by the House Environmental Matters Committee.

Cross File: HB 687 (Delegate Braveboy) - Environmental Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2009
mcp/kdm Revised - Senate Third Reader - March 31, 2009

Analysis by: Jason F. Weintraub

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