

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 742

(Senator Kelley)

Judicial Proceedings

Environmental Matters

Condominiums and Homeowners Associations - Transition of Control

This bill establishes the procedure for the transition of control of a condominium or a homeowners association from a developer to the governing body of each community that is elected by its owners.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General 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 bill applies to condominiums and homeowners associations (community). A meeting to elect the governing body of a community must be held within 60 days from the date that a specific minimum percentage of units or lots have been sold to members of the public 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 must be held within 60 days from the date that units or lots representing that percentage have been similarly conveyed. Before the date of the meeting, the developer must notify each unit owner in a condominium or lot owner in a homeowners association (1) that the

requirements which allow the owners to hold a meeting to elect their governing body have been met; and (2) the details of when the meeting will take place.

For condominiums, within 30 days of the meeting, the developer, at its own expense, must deliver to the governing body:

- copies of the condominium's filed articles of incorporation, recorded declaration, and all recorded covenants, bylaws, plats, and restrictions on the condominium;
- all financial statements, books, minutes, and records of the condominium, maintained in an appropriate location, as specified;
- any policies, rules, and regulations adopted by the governing body;
- the financial records of the condominium as specified, including information related to reserves required for major repairs and replacement of the common elements;
- a copy of all contracts to which the condominium is a party;
- specified contact information for any contractor or subcontractor employed by the community;
- any insurance policies or warranties in effect and all prior insurance policies;
- any local, State, or federal government permit;
- drawings, architectural plans, or other suitable documents that include the necessary information for location, maintenance, and repair of all condominium facilities;
- individual owner files and records, including assessment account records and correspondence;
- the condominium funds, including operating funds, replacement reserves, investment accounts, and working capital;
- the tangible property of the condominium; and
- a roster of current unit owners, as specified.

For homeowners associations, within 30 days of the meeting, the developer, at its own expense, must deliver to the governing body:

- the deeds to the common areas;
- copies of the homeowners association's filed articles of incorporation, declaration, and all recorded covenants, plats, restrictions, and any other records of the primary and related developments;
- copies of the bylaws and rules as filed in the county depository where the development is located;

- financial statements, books, minutes, and records, as specified;
- any policies, rules, and regulations adopted by the governing body;
- financial records of the homeowners association as specified, including information related to reserve funds for major repairs and replacement of the common areas;
- a copy of all contracts to which the homeowners association is a party;
- specified contact information for any contractor or subcontractor employed by the homeowners association;
- any insurance policies or warranties in effect and all prior insurance policies;
- any local, State, or federal government permit;
- the homeowners association funds, including operating funds, replacement reserves, investment accounts, and working capital;
- the tangible property;
- a roster of current lot owners, including mailing addresses, telephone numbers, and lot numbers;
- individual member files and records, as specified; and
- drawings, architectural plans, or other documents that contain the necessary information for the location, maintenance, and repairs of all common areas.

Until all members of a board or governing body are elected at the required transitional meeting, the board or governing body of a community may terminate a contract entered into by the board or governing body at its discretion within 30 days after notice without liability for the termination. This provision does not apply to a contract entered into before October 1, 2009, or to any contract for utility services or communication systems.

The books and records of the community that must be made available to a unit or lot owner for examination and copying under current law must first be made available to a unit or lot owner no later than 15 business days after a unit or lot is conveyed from a developer and the unit or lot owner 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 Consumer Protection Division 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 examining 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 five 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 limit its own expenses, 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: Similar bills were introduced in the 2008 session. SB 587 and HB 950 were both withdrawn.

Cross File: HB 667 (Delegate Braveboy) - Environmental Matters.

Information Source(s): Secretary of State, Department of Legislative Services

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