

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE

Senate Bill 873 (Senator Exum)
 Judicial Proceedings

Maryland Community Association Managers Act

This bill creates a regulatory program governing individuals and businesses that offer community association management services in the State. Regulation is conducted through a newly created State Board of Community Association Managers, appointed by the Governor and operating under the authority of the Secretary of Labor, Licensing, and Regulation. The bill establishes pre-licensing education and examination requirements for individuals subject to biennial licensure and the conditions under which a business may receive a permit to operate, subject to quadrennial renewal. The board must establish a continuing education requirement and may discipline licensees and permit holders as well as deny licenses and permits to applicants under certain circumstances.

The board is subject to reestablishment and periodic evaluation under the Maryland Program Evaluation Act, with a termination date of July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by \$164,700 in FY 2010 to establish the board. The board becomes operational as a special fund entity in FY 2011 and collects license and permit fees to cover direct and indirect costs. Out-years reflect staggered license renewal. Potential minimal general fund revenue and expenditure increases due to the bill’s civil and criminal penalties.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	\$0	-	-	-	-
SF Revenue	\$0	\$480,000	\$180,000	\$240,000	\$120,000
GF Expenditure	\$164,700	-	-	-	-
SF Expenditure	\$0	\$273,900	\$304,900	\$316,200	\$328,200
Net Effect	(\$164,700)	\$206,100	(\$124,900)	(\$76,200)	(\$208,200)

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

Local Effect: Potential minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Potential meaningful. Small businesses that operate as community management associations must meet the bill's permitting and licensure requirements and pay the associated fees.

Analysis

Bill Summary: Beginning on July 1, 2010, the board may set fees to cover the approximate costs of maintaining the board, including indirect costs attributable to it. Fee revenue is deposited into the newly created State Board of Community Association Managers Fund, a special, nonlapsing fund. Members of the board may be compensated as provided for in the State budget and may be reimbursed for expenses.

The Secretary, in consultation with the board, must calculate annually the direct and indirect costs attributable to the board. Each fee established by the board may not be increased each year by more than 12.5% of the existing fee rate.

Licensing of Individuals

Individuals practicing community association management in the State through a permitted partnership, limited liability company, or corporation must be licensed by the board. Applicants must be of good character and reputation and at least 18 years old. Applicants must have satisfied education requirements to qualify for the Certified Community Managers Association examination offered by the National Board of Certification of Community Managers, or its equivalent. Applicants must also have passed the Certified Manager of Community Associations examination offered by the National Board of Certification of Community Association Managers, or its equivalent. Individuals must also pay an application fee to the board. On payment of a license fee, a qualified applicant is issued a license by the board.

An individual who has provided community association management services full time for two years on or before October 1, 2009, may qualify for a license issued by the board without meeting the education and examination requirements. Such an applicant must present adequate evidence to the board before October 1, 2010.

Licenses may not be renewed for a term longer than two years. The board must notify individuals of the impending expiration of a license at least one month prior to the end of the license term. In order to renew a license, an individual must pay a renewal fee and

satisfy any continuing education requirement adopted by the board. The Secretary may determine that licenses must expire on a staggered basis.

The board may reinstate an individual who failed to renew a license if he or she remains qualified, fulfills any continuing education requirements, and pays a reinstatement fee set by the board.

Grounds for Denial, Suspension, or Revocation of a License

An application for licensure may be denied or a license may be revoked if the applicant or licensee:

- fraudulently or deceptively obtains or attempts to obtain a license;
- fraudulently or deceptively uses a license;
- is convicted of a felony, or a misdemeanor that is directly related to the fitness and qualifications of an individual to practice community association management;
- is guilty of fraud, dishonesty, or gross negligence in the practice of community association management;
- has had a community association management license or certification suspended or revoked in another state or been sanctioned in another state in regards to the practice of community association management;
- has had a license or certification renewal denied in another state for any reason other than failure to pay a renewal fee;
- has had the right to practice as a licensed or certified community association manager suspended or revoked by any unit of the State or federal government;
- has been sanctioned by any unit of State or federal government for an act or omission that directly relates to the fitness of the applicant or licensee to practice community association management; or
- violates the prohibited acts established under the bill or the board's rules of professional conduct.

The board may impose a penalty of up \$5,000 for a violation instead of or in addition to reprimanding, suspending, or revoking a license. To determine the amount of a penalty, the board must consider the seriousness of a violation, the harm caused by the violation, any history of violations committed by a licensee, and the licensee's good faith.

The board must consider the following facts in the granting, denial, renewal, suspension, or revocation of a license or reprimand of a licensee when an individual is convicted of a felony or misdemeanor:

- the nature of the crime,
- the relationship of the crime to the activities of community association management;
- if a felony, the relevance of the conviction to the fitness and qualification of the individual to practicing community association management;
- the length of time since the conviction; and
- the behavior of the applicant or licensee before and after the conviction.

Individuals have the opportunity to have a hearing before the board takes final action. The board may hold the hearing or delegate the authority to the Office of Administrative Hearings.

An individual's license must remain in effect and may not expire while the licensee is under investigation by the board or while awaiting a hearing. Unless the board agrees to accept the surrender of a license, a licensee may not surrender a license while under investigation or awaiting a hearing or the disposition of charges related to disciplinary action taken by the board.

The board may reinstate a license if it has been revoked or, for a license that has been suspended, before fulfillment of the conditions of suspension. A license may be reinstated only if the individual whose license has been revoked or suspended submits a written request to the board; the board holds a hearing on the request; a majority of the board votes to reinstate the license; and the individual pays a reinstatement fee.

Permits for Businesses

Licensed community association managers may practice through a partnership, limited liability company, or corporation only if the business entity holds a permit issued by the board. To qualify for a permit, a business must have, or intend to establish, a permanent office in the State that is managed by a partner, member, or stockholder who resides in the State. To operate in the State, permit holders must employ a State-licensed community association manager.

An individual who is not licensed to practice community association management in the State may have an ownership interest if a simple majority of the ownership of the business is held by individuals licensed to practice community association management in this State or another state; the individual is an active participant in the business; the company submits, to the board, the name of the State licensee who is responsible for the registration of the business; and the business complies with any other requirement imposed by the board.

In the case of partnerships, at least one general partner and any other partner who practices or intends to practice community association management in the State must be licensed by the board. If the business is a corporation, it must meet the applicable requirements of the Maryland Professional Service Corporation Act or the requirements of a comparable law in another state.

The board establishes a permit's expiration date, and a permit may not be renewed for a term of more than four years. The board must notify permit holders of the impending expiration of a permit at least one month before the permit expires.

A permit holder must notify the board within one month of the occurrence of any of the following events:

- a change in the name of the business;
- any organizational changes related to the individual who is appointed to register the permit holder, or who is licensed to practice community management association within a business;
- the admission or withdrawal of an officer or director of a corporation, a member of a limited liability company, or a partner of a partnership who is licensed to practice community association management in the State; or
- the death of an officer or director of a corporation, member of a limited liability company, or partner of a partnership who was licensed to practice community association management in the State.

An application for a permit may be denied, or a permit may be revoked or suspended for any of the reasons listed for licensees, or if the applicant or permit holder:

- fraudulently or deceptively obtains or attempts to obtain a permit;
- fraudulently or deceptively uses a permit;
- fails to meet or continue to meet the qualifications described above for partnerships, limited liability companies, or corporations; or
- has a partner, member, or corporate officer whose license has been suspended or revoked by the board.

A permit must remain in effect and may not expire while the permit holder is under investigation by the board or awaiting a hearing. Unless the board agrees to accept the surrender of a permit, a permit holder may not surrender a permit while under investigation, or awaiting a hearing or the disposition of charges related to disciplinary action taken by the board.

The board may reinstate a permit if it has been revoked or, for a permit that has been suspended, before fulfillment of the conditions of suspension. A permit may be reinstated only if the business whose permit has been revoked or suspended submits a written request to the board; the board holds a hearing on the request; a majority of the board votes to reinstate the permit; and the business pays a reinstatement fee.

Prohibited Acts

The bill establishes several prohibited acts including:

- a person may not practice, attempt to practice, or offer to practice community association management unless licensed by the board;
- a person may not practice community association management through a partnership, limited liability company, or corporation unless the business holds a permit issued by the board; and
- a person may not represent to the public by the use of certain titles that the person is authorized to practice community association management, unless the person is licensed or permitted by the board.

Violators of these prohibitions are guilty of a misdemeanor and are subject to a fine of up to \$500 and/or imprisonment for up to six months.

Current Law: State law does not designate a statewide office to regulate these services. In Montgomery County, however, common ownership communities are required to register with the Commission on Common Ownership Communities, a 15-member volunteer body.

Program Evaluation

Approximately 70 entities are subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as “sunset review” as most agencies evaluated are also subject to termination. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation usually is undertaken the following year.

Background: According to the Community Associations Institute, there are currently 60,000 individuals and 10,000 businesses offering community association services in the United States. Nine states regulate these types of organizations in some fashion, several

through a state real estate commission rather than through a separate board or commission.

State Fiscal Effect: Despite the October 1, 2009 effective date of the bill, DLS assumes that licensing and permitting activity cannot begin until fiscal 2011 at the earliest. The bill requires payment of a fee to be licensed or permitted but does not specify the amount of the fee. Instead, the bill authorizes the Department of Labor, Licensing, and Regulation (DLLR) to set fees by regulation, *but not until July 1, 2010* (fiscal 2011).

Given the breadth of the regulatory program and its experience with other regulatory boards, DLLR advises that three and a half staff are necessary to fully implement the program. DLS concurs. However, DLS assumes that only one and a half staff are needed to begin the process of implementing the regulatory program *in fiscal 2010 with general fund support*. Thus, in the first year, DLS assumes that a full-time program manager and a half-time assistant Attorney General to develop regulations, implement the electronic licensing program, and undertake other such preparatory activities. In fiscal 2011, as licensing and permitting activity begins, an administrative specialist and an office clerk join the board’s staff and related costs are assumed to be covered by special funds.

Accordingly, general fund expenditures increase by \$164,714 in fiscal 2010, which accounts for the bill’s October 1, 2009 effective date, and special fund expenditures increase by \$273,868 in fiscal 2011 as shown below. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses – including indirect cost allocation beginning in fiscal 2011.

	GF	SF
	<u>FY 2010</u>	<u>FY 2011</u>
Total Positions	1.5	3.5
Salaries and Fringe Benefits	\$86,660	\$213,439
One-time Start-up Costs (including electronic licensing)	58,130	4,830
Ongoing Operating Expenses (including indirect costs)	<u>19,924</u>	<u>55,599</u>
Total State Expenditures	\$164,714	\$273,868

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover and 1% annual increases in ongoing operating expenses. The estimate does not include any compensation for board members.

There is limited information on the numbers of individuals and businesses likely to fall under the regulatory purview of the new board. Nevertheless, DLLR anticipates that 1,200 individuals may be subject to licensure and 250 businesses may be subject to permitting, applying a proportionate share attributable to Maryland to national data. DLLR advises that, in the first year of regulatory activity, approximately two-thirds of the individuals subject to licensure and 80% of businesses subject to permitting comply with the bill's requirements and the remainder comes into compliance in the second year. Based on this scenario and DLLR's expectation of charging a \$300 fee for biennial licensure and a \$1,200 fee for quadrennial permits, DLS assumes the revenue pattern shown in **Exhibit 1**.

Exhibit 1
Anticipated Special Fund Revenue Collections for the
State Board of Community Association Managers

<u>Regulatory Activity</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Licenses Issued	800	400	800	400	800
Permits Issued	200	50	-	-	200
<u>Anticipated Revenue</u>					
Licenses @ \$300	\$240,000	\$120,000	\$240,000	\$120,000	\$240,000
Permits @ \$1,200	240,000	60,000	0	0	240,000
Total Revenue	\$480,000	\$180,000	\$240,000	\$120,000	\$480,000

This estimate does not reflect any growth in regulatory activity, which is expected to be minimal. DLS advises that, over the five-year period shown, revenues are likely to be sufficient to cover all costs, by drawing down on fund balance in certain years. However, due to the biennial and quadrennial nature of regulatory activity under the bill, fees may need to be raised in fiscal 2015 to ensure sufficient fund balance to cover costs in subsequent years. As fees are subject to a 12.5% cap on any annual increase, it may be necessary to increase fees sooner. DLS further advises that, to the extent regulatory activity differs from that anticipated, fee amounts and associated revenue may vary significantly from this estimate.

Additional Comments: The bill subjects the new board to periodic evaluation under the Maryland Program Evaluation Act. Although regulatory activity is not anticipated to begin until fiscal 2011, a preliminary evaluation must be conducted in 2012.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of Administrative Hearings; Secretary of State; Department of Legislative Services

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