

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

Senate Bill 931 (Senator Kelley, *et al.*)
 Judicial Proceedings

Common Interest Community Managers - Licensing and Regulation

This bill creates the State Board of Common Interest Community Managers to regulate the provision of common interest community property management services in the State. The board is appointed by the Governor and operates under the authority of the Secretary of Labor, Licensing, and Regulation. The bill sets forth the qualifications for a common interest community manager’s license subject to biennial licensure and the conditions under which a business may receive a permit to operate, subject to biennial renewal. The board may discipline a licensee or permit holder and deny a license or permit to an applicant under specified circumstances.

The board is subject to reestablishment and periodic evaluation under the Maryland Program Evaluation Act, with a termination date of July 1, 2016.

Fiscal Summary

State Effect: General fund expenditures increase by \$164,000 in FY 2011 to establish the board. The board becomes operational as a special fund entity in FY 2012 and collects biennial licensing and permitting fees to cover direct and indirect costs. Out-years reflect staggered license renewals. Potential minimal general fund revenue and expenditure increases due to the bill’s administrative and criminal penalty provisions.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
SF Revenue	\$0	\$425,500	\$164,600	\$425,500	\$164,600
GF Expenditure	\$164,000	\$0	\$0	\$0	\$0
SF Expenditure	\$0	\$272,700	\$285,900	\$297,400	\$309,500
Net Effect	(\$164,000)	\$152,700	(\$121,400)	\$128,000	(\$145,000)

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: Significant, as discussed in more detail below.

Analysis

Bill Summary:

Defined Terms: The bill defines a “common interest community” to mean real estate located in the State subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, with common areas to which a person, by virtue of owning a lot, is a member of an association and obligated to pay assessments. A “common interest community” does not include a time-share project.

State Board of Common Interest Community Managers: The term of a board member is four years. A board member may not serve more than two consecutive terms. Beginning on July 1, 2011, the board may set fees to cover the actual direct and indirect costs of fulfilling its statutory and regulatory duties. Fee revenue is deposited into a newly created State Board of Common Interest Community Managers Fund, a special, nonlapsing fund. The board members may be compensated as provided for in the State budget and reimbursed for expenses. The Secretary, in consultation with the board, must annually calculate the direct and indirect costs attributable to the board. Each of the board's fees may not be increased by more than 12.5% of the existing fee rate per year.

Licensing of Individuals: Individuals providing management services to a common interest community in the State must be licensed by the board. Applicants must be of good character and reputation and at least age 18. Applicants must:

- hold an active designation as a Professional Community Association Manager (PCAM) and provide proof of having been actively engaged in providing management services for at least one year immediately preceding the application date;
- hold an active designation as an Association Management Specialist (AMS) and provide proof of at least five years of experience in providing management services, with a minimum of 12 months of experience gained immediately preceding the application date; or
- complete and pass a board-approved training program and examination.

A common interest community manager must obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy that insures the community manager against losses from acts of theft or dishonesty committed by the officers, directors, and employees of the common interest community manager. The bond or insurance policy must provide coverage for the lesser of (1) \$2,000,000; or (2) the highest aggregate amount of the operating and reserve balances of all associations under the community manager's control during the prior fiscal year. The bond or insurance policy must provide minimum coverage of \$10,000 and must also name the community manager on the bond or policy.

An applicant must submit an application to the board, pay an application fee, and provide proof of the fidelity bond or insurance policy. Upon payment of a license fee, a qualified applicant must be issued a license by the board.

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. To renew a license, an individual must pay a renewal fee, provide proof of the required fidelity bond or insurance policy, 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 the individual remains qualified and pays a reinstatement fee set by the board.

Each common interest community manager must be in good standing, authorized to conduct business in the State, and establish a code of conduct for the officers, directors, and individuals employed by the manager to protect against conflicts of interest. The bill requires management services to be governed by a written contract between the community manager and the association to which management services are provided. Each common interest community manager must (1) establish a system of internal accounting controls to manage the risk of fraud and illegal acts; and (2) have an independent certified public accountant review or audit the manager's financial statements at least on an annual basis.

Grounds for Denying, Suspending, or Revoking a License: Subject to specified notice and hearing requirements, the board may deny licensure to an applicant, reprimand a licensee, or suspend or revoke a license if the applicant or licensee:

- fraudulently or deceptively obtains, or attempts to obtain, a license for his/her own use or for another;
- 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 provide management services;

- is guilty of fraud, dishonesty, or gross negligence in providing management services;
- has had a common interest community management license or certification denied, revoked, or suspended in another state or been sanctioned in another state regarding the provision of management services;
- has had a renewal application denied in another state for any reason other than failing to pay a renewal fee;
- has had the right to practice as a common interest community 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 applicant's or licensee's fitness to provide management services;
- has any pending judgments or tax liens that are unpaid; 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 each 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, the licensee's prior history of violations, and the licensee's good faith. The board must consider specified elements 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.

A person who contests a final decision of the board is entitled to seek judicial review.

Permits for Businesses: Licensed common interest community managers may provide management services to a common interest community through an association, partnership, corporation, limited liability company, limited liability partnership, or any other business entity that holds a permit issued by the board. To qualify for a permit, an applicant must:

- have a permanent office in the State;
- hold an active designation as an Accredited Association Management Company (AAMC) by the Community Associations Institute (CAI); and
- be current on all applicable county and State financial and tax obligations.

An applicant for a permit must submit an application and pay the required fee. While a permit is in effect, it authorizes the holder to (1) operate a business through which a

licensed common interest community manager provides management services; and (2) represent to the public that the business provides the services of a licensed common interest community manager. A permit authorizes the holder to provide management services only if the services are performed by an individual licensed to provide management services to a common interest community.

The board establishes a permit's expiration date, and a permit may not be renewed for a term of more than two years. The board must notify permit holders of the impending expiration of a permit at least one month before the permit expires. Before a permit expires, the permit holder may renew the permit for an additional two-year term upon submitting a renewal application, paying a renewal fee, and otherwise complying with the provisions of the bill. The bill also sets forth the circumstances under which the board may deny a permit, reprimand a permit holder, or suspend or revoke a permit and the procedures for reinstatement.

Prohibited Acts: A person may not provide, attempt to provide, or offer to provide management services to a common interest community in the State unless licensed by the board. Except for a licensed community manager operating as a sole proprietorship, a person may not operate a business through which management services are provided unless the entity holds a permit issued by the board. In addition, a person may not represent to the public by the use of certain titles that the person is authorized to provide management services to a common interest community in the State, 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. The board may also impose a penalty of up to \$5,000 for any violation of these prohibitions.

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 (MPEA). MPEA 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 CAI, 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. CAI is a national organization with approximately 60 state, regional, and local chapters comprising residential community association members, property managers, community management firms, and other related professionals and companies that provide products or services to associations. CAI awards qualified property management professionals and businesses with designations related to community management, including the following designations: AMS, PCAM, and AAMC.

The bill requires individual applicants for a common interest community license to hold an active PCAM designation, AMS designation, or complete a board-approved training program and examination. As of March 2010, there are 330 individual property manager members of CAI and the organization estimates there are approximately 1,000 professional property managers conducting business in the State. Of the 330 CAI individual manager members in Maryland, 96 hold a CAI designation or certification, 96 hold a certified manager of community association (CMCA) designation or equivalent, 63 hold an AMS designation, and 23 hold a PCAM designation.

To receive an AMS designation, an individual must:

- successfully pass an essentials of community association management course (\$395 to \$545) or have at least five years of community association management experience;
- successfully pass the CMCA examination (\$250 to \$300);
- successfully pass a professional management development program (PDMP) course (\$395 to \$545);
- complete two or more years of community association management experience;
- complete and submit the AMS application (\$150 to \$250);
- pay annual maintenance fees (\$75 to \$175);
- redesignate every four years; and
- comply with the CAI professional manager code of ethics.

In addition to meeting the AMS qualifications, an individual seeking a PCAM designation must:

- successfully pass all six PDMP courses (\$395 to \$595 each);
- complete a comprehensive case study examination;

- complete five or more years of community association management experience;
- complete and submit the PCAM application (\$195 to \$295);
- redesignate every three years;
- pay an annual maintenance fee (\$150 to \$250); and
- meet continuing education requirements.

The bill further requires a business seeking a permit from the board to hold an active AAMC designation from CAI. To receive AAMC accreditation, a business must have:

- a minimum of three years' experience providing community association management services;
- a PCAM designee as the company's senior manager;
- a staff of which 50% of managers hold a CAI professional designation (CMCA, AMS, PCAM);
- maintain fidelity, general liability, and workers' compensation insurance in addition to meeting federal, state, and local laws;
- have client verification;
- comply with CAI's professional manager code of ethics and enforcement procedures;
- complete and submit an AAMC application (\$300 to \$400);
- pay annual maintenance fees; (\$150 to \$325); and
- to retain the designation, all designated staff must complete 12 hours of continuing education every two years; (\$395 to \$595).

According to CAI, the organization has 66 management company members in the State. However, none of the 66 management company members in the State has an AAMC designation.

State Fiscal Effect: Despite the October 1, 2010 effective date of the bill, DLS assumes that licensing and permitting activity cannot begin until fiscal 2012 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 board to set fees by regulation, *but not until July 1, 2011* (fiscal 2012). If the board chooses to set fees, they must approximately cover the cost of maintaining the board as calculated by the Secretary.

Given the breadth of the regulatory program and its experience with other regulatory boards, the Department of Labor, Licensing, and Regulation (DLLR) advises that three and one-half staff are necessary to fully implement the program. DLS concurs.

However, DLS assumes that one and one-half staff are needed to begin the process of implementing the regulatory program *in fiscal 2011 with general fund support*. Thus, in the first year, DLS assumes that a full-time program manager and a part-time assistant Attorney General are hired to develop regulations, implement the electronic licensing program, and undertake other such preparatory activities. In fiscal 2012, 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 \$164,027 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date, and special fund expenditures increase by \$272,711 in fiscal 2012 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 2012.

	<u>GF</u>	<u>SF</u>
	<u>FY 2011</u>	<u>FY 2012</u>
Total Positions	1.5	3.5
Salaries and Fringe Benefits	\$87,646	\$215,716
One-time Start-up Costs (including electronic licensing)	58,130	7,180
Ongoing Operating Expenses (including indirect costs)	<u>18,251</u>	<u>49,815</u>
Total State Expenditures	\$164,027	\$272,711

Future year expenditures reflect full salaries with 4.4% annual increases, 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. However, as noted above, CAI estimates that 1,000 individuals may be subject to licensure and approximately 200 businesses may be subject to permitting. 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 the projected number of biennial licenses and projected out-year expenditures, DLLR would have to charge a \$350 fee for biennial licensure and \$1,200 for a biennial permit. DLS assumes the revenue pattern shown in **Exhibit 1**.

Exhibit 1
Anticipated Special Fund Revenue Collections for the
State Board of Community Association Managers
Fiscal 2012-2016

<u>Regulatory Activity</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>
Licenses Issued	667	333	667	333	667
Permits Issued	160	40	160	40	160
<u>Anticipated Revenue</u>					
Licenses @ \$350	\$233,450	\$116,550	\$233,450	\$116,550	\$233,450
Permits @ \$1,200	192,000	48,000	192,000	48,000	192,000
Total Revenue	\$425,450	\$164,550	\$425,450	\$164,550	\$425,450

Source: Department of Legislative Services

This estimate does not reflect any growth in regulatory activity, which is expected to be minimal. However, due to the economic integration of Maryland, the District of Columbia, and Virginia, it is possible that additional members of CAI would participate in the Maryland licensing program.

DLS advises that, over the five-year period shown, revenues are likely to be sufficient to cover all costs, by drawing down on the fund balance in certain years. However, due to the biennial nature of regulatory activity under the bill, fees may need to be raised in fiscal 2016 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.

Small Business Effect: As noted above, the bill requires a common interest community property management company to hold a permit issued by the board. The bill requires an applicant for a permit to hold an active CAI designation as AAMC. Although there are 66 property management company members of CAI doing business in the State, none of these 66 companies holds an active AAMC designation. To receive AAMC accreditation, each of the 200 community association management companies would need a minimum of three years' experience and must have workforces in which 50% of managers hold a CAI professional designation. The total application fees, educational requirements, and annual maintenance fees would likely total, at a minimum, a few thousand dollars per community association management company, per year.

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 2012, a preliminary evaluation must be conducted in 2013. Moreover, the termination and evaluation dates for the board are the same under the bill; typically, the evaluation date is one year earlier than the termination date.

Additional Information

Prior Introductions: A similar bill, SB 873 of 2009, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 1300 (Delegate Carr, *et al.*) - Economic Matters.

Information Source(s): Community Associations Institute; Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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Analysis by: Jason F. Weintraub

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