

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 472 (Delegates Stein and Beidle)  
Environmental Matters

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**Common Ownership Communities - Amendment to Declaration or Bylaws**

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This bill authorizes a governing body of a common ownership community (COC) to execute and record an amendment to correct the community's declaration or bylaws to comply with a law that invalidates a provision of the documents, subject to the inclusion of specified information with the amendment.

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**Fiscal Summary**

**State Effect:** The Secretary of State regularly receives amendments of a COC's declarations or bylaws. Any amendments received as a result of the bill can be handled within existing resources. 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:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill applies to the declaration or bylaws of a condominium or a homeowners association (HOA) and to the bylaws of a cooperative housing corporation (collectively referred to as COCs). Unless the declaration or bylaws provide otherwise, a governing body of a COC may record and execute a corrective amendment. However, the governing body has to record along with the amendment (1) the consent of any developer with an interest or a specified affidavit that the developer does not object to the amendment; and (2) an affidavit stating that a copy of the amendment was sent by first-class mail to the last known address of each unit owner, lot owner, or member at

least 30 days before the amendment's recordation. The affidavit concerning a developer's failure to object to the amendment must state that the developer has been provided with a copy of the amendment; and a notice of the right to object in writing within 30 days of their receipt and that the developer did not provide written objection within those 30 days.

A corrective amendment executed and recorded by a condominium's governing body is effective upon recordation if accompanied with the required supporting documents. A corrective amendment to the declarations of an HOA is also effective upon recordation if accompanied with the required supporting documents. However, a corrective amendment to an HOA's bylaws is entitled to be deposited in the HOA's depository and is effective upon deposit in the HOA's depository if accompanied with the required supporting documents. The bill is silent as to the effective date of a cooperative housing corporation's corrective amendment to comply with a law invalidating a provision in its bylaws.

**Current Law/Background:** There is no statutory provision authorizing the governing body of a COC to execute and record an amendment to its bylaws or declaration to comply with a law which invalidates a provision of the bylaws or declaration. However, a council of unit owners or board of directors of a condominium may execute and record a corrective amendment for a specified typographical error in the bylaws, declaration, or plat. The council of unit owners or board of directors has to also record along with the amendment: (1) the consent of any developer with an interest or a specified affidavit that the developer does not object to the amendment; and (2) an affidavit stating a copy of the amendment was sent by first-class mail to the last known address of each unit at least 30 days before the amendment's recordation. The affidavit concerning a developer's failure to object to the amendment must state that the developer (1) has been provided with a copy of the amendment; (2) received notification that the developer has 30 days to object in writing within receipt of the notice and the amendment; and (3) did not object in writing within those 30 days.

Otherwise, the declaration of a condominium may be amended in specified circumstances only with the written consent of 80% of the unit owners listed on the current roster. A council of unit owners may petition the circuit court in equity for the county in which the condominium is located to correct an improper description of the units or common elements or an improper assignment of the percentage interests in the common elements, common expenses, and common profits. The court may reform the declaration to correct the error or omission as the court considers appropriate if specified conditions are met by the council of unit owners. Unless a higher percentage is required in the bylaws, the bylaws of a condominium may be amended by the affirmative vote of unit owners having at least two-thirds of the votes in the council of unit owners.

Notwithstanding the provisions of a governing document, an HOA created before January 1, 1960, may amend the governing document once every five years, or more frequently if allowed by the governing document, by the affirmative vote of lot owners having at least two-thirds of the votes in the development, or by a lower percentage if required in the governing document.

There is no statutory provision to amend a cooperative housing corporation's bylaws.

Generally, provisions of a COC's declaration or bylaws which are inconsistent with State law are superseded by State law. A COC's declaration identifies the property subject to the developer's restrictions, while bylaws set up the governing body and regulate how it is to be run.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Maryland Homeowners' Association, Inc.; Secretary of State; Department of Legislative Services

**Fiscal Note History:** First Reader - February 23, 2011  
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Analysis by: Michael F. Bender

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