

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 352 (Delegates Holmes and Weir)
Environmental Matters

Common Interest Communities - Management Services - Required Contract

This bill requires a service provider that assists in providing management services to a common interest community (CIC) under the direction of a governing body to enter into a written contract with the CIC before providing the management services. The written contract must be made in the name of the CIC and executed by one or more members of the governing body. If a service provider does not enter into a written contract with the CIC prior to providing management services, the CIC may terminate the management service without penalty or obligation if it provides 10 days' written notice.

The bill takes effect January 1, 2013.

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. Revenues are not affected.

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

Small Business Effect: Minimal. Small business management service providers may have to alter their standard management contract to meet the bill's requirements, as well as obtain the required insurance coverage.

Analysis

Bill Summary: The bill defines a "common interest community" as a condominium council of unit owners organized under the Maryland Condominium Act, a homeowners

association (HOA) organized under the Maryland Homeowners Association Act, and a cooperative housing corporation organized under the Maryland Cooperative Housing Corporation Act.

“Management services” means the managing of the common property and services of a CIC with the authority of the governing body in its business, legal, financial, or other transactions with members of the CIC and nonmembers for a fee, commission, or other valuable consideration.

A “service provider” means a business entity, including a sole proprietorship, that assists the governing body in providing management services to a CIC by providing administrative, contract management, and other services under the direction of the governing body for a fee, commission, or other valuable consideration.

Either party to the written contract to provide management services may terminate the contract at any time for cause with 30 days’ written notice or during the term of the contract with 60 days’ written notice. The bill defines “cause” as (1) either party does not maintain insurance coverage as required by law or allows the insurance to lapse; (2) either party fails to comply with or is in violation of a provision of the United States or Maryland Constitution, federal or State law or regulation, or a local ordinance or law; or (3) a court finds either party has committed a material breach of the contract.

The contract may not (1) waive any right or remedy provided by law; (2) provide authority to the service provider to perform a management service unless directed and authorized by the governing body; (3) require the CIC to pay a late payment fee greater than 10% of the amount due or assess a late fee until at least 15 days after the payment is due; or (4) authorize the service provider to take possession of any CIC property without the use of formal legal process.

The written contract may not contain an automatic renewal provision of more than one month unless the automatic renewal provision is distinctly and prominently set apart in the contract and a member of the governing body initials the provision to indicate agreement of the CIC.

Before entering into the written contract, a service provider must provide the CIC with evidence that the service provider has in place specified appropriate amounts of commercial property and liability insurance, worker’s compensation insurance, and fidelity insurance.

A written contract must contain a provision that the CIC will name the service provider as a named insured under any policy maintained by the CIC and defend the service provider in any claim against the CIC or service provider as long as the service provider

acted under the express or implied authority of the governing body and did not act with willful or gross negligence.

A written contract that includes accounting services must require the service provider to issue a written report to the governing body of all accounting activity within 30 days following the end of a month. The report may be provided electronically and must include specified information. A contract that includes either accounting or debt collection services must specify that funds received by the service provider be placed into an account identified as an account of the CIC by name and federal identification number and may not be comingled with the funds of the service provider. A contract including either accounting or debt collection services must also specify that all funds belonging to the CIC be returned to the CIC within 15 days following the final report of monthly accounting services or within 30 days of the termination of debt collection services.

A written contract must provide that all records and documents of the CIC relating to the work of the service provider:

- remain the property of the CIC;
- may be held by the service provider during the normal course of business;
- must be made available for inspection by the CIC during the term of the contract during the service provider's normal business hours; and
- must be returned to the CIC within 30 days of the contract's termination.

A written contract to provide management services to a CIC is unenforceable if it contains a provision prohibited by the bill.

Current Law/Background: State law does not place specific restrictions on management services contracts for CICs.

Since January 1, 2011, State law requires that all common ownership community (COC) management entities in Prince George's County register with that county's Office of Community Relations (OCR). The registration form provided by OCR must include specified identifying information and request a listing of all associations that received management services from the registering entity in the previous year. The management entity must register and renew by January 31 of each year and pay an annual fee of \$100.

Also, in Montgomery County, COCs 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, must:

- prepare and distribute specified educational materials about COCs;

- maintain a master roster of COCs;
- develop an information and referral system for county services related to COCs;
- maintain a collection of COC documents to use as a model and for reference;
- provide technical assistance to COC governing bodies;
- develop and maintain a manual for COCs and government agencies;
- develop and maintain an operations manual to serve as a guide for COC leadership;
- advise COCs and professional association managers of applicable statutory and regulatory changes;
- operate a dispute resolution process; and
- assist the commission in carrying out its duties.

The commission is required to advise county residents and the county government about COC issues, maintain records, and adopt rules and procedures, among other specified duties.

According to the Community Associations Institute, there are currently 60,000 individuals and 10,000 businesses offering community association services in the United States.

Additional Information

Prior Introductions: HB 722 of 2011, a similar bill, was heard by the House Environmental Matters Committee and then referred for interim study.

Cross File: None.

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

Fiscal Note History: First Reader - February 15, 2012
ncs/kdm

Analysis by: Michael F. Bender

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