

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 202 (Senator Kelley, *et al.*)
Judicial Proceedings

Real Property - Condominiums and Homeowners Associations - Governing Bodies

This bill amends various provisions of the Maryland Condominium Act (MCA) and the Maryland Homeowners Association Act (MHAA) relating to the governing body of a condominium or a homeowners association (HOA).

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. No effect on revenues.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Meetings

The bill requires the governing body of a condominium or an HOA to convene a meeting at least twice a year.

The Developer/Declarant

In the event that a developer or declarant has already established a governing body for a condominium or an HOA, the bill requires the developer or declarant to appoint at least one unit or lot owner who is not otherwise affiliated with the developer or declarant within 30 days from the date that units or lots representing 25% of the votes in the condominium or HOA have been conveyed by the developer or declarant to members of the public for residential purposes.

Additionally, the bill requires a developer or declarant to provide each member of the governing body with notice of any bond provided by the developer or declarant to a governmental unit in connection with the development, as well as the contact information of the person through which a claim against the bond may be asserted. The developer or declarant must deliver this notice within 15 days of the meeting to elect the governing body's board of directors. If the developer or declarant requests to be released from such a bond, the developer or declarant must provide each member of the governing body with notice, within 30 days of the request, of the intention to be released from the bond and the contact information of the person through which a claim against the bond may be asserted.

Books, Records, and Accounts

The bill amends MCA and MHAA recordkeeping requirements for books and records to also include accounts and to require that the recordkeeping begin on the date the governing body is established. The bill also requires that all books, records, and accounts kept by the governing body must be maintained separate and apart from those of the developer, declarant, or any other person.

Current Law: The governing body of a condominium must convene at least one meeting each year at which the agenda is open to any matter relating to the condominium. Unless held for specified reasons of confidentiality, such as discussion of legal matters or individual owner assessment accounts, each meeting of the governing body must be open and held at a time and location as specified in the notice or the bylaws.

A meeting of a condominium council of unit owners to elect a board of directors must be held within 60 days from the date that units representing 50%, or a lesser amount if specified by the condominium's governing documents, of the votes in the condominium have been conveyed by the developer to members of the public for residential purposes. A meeting of the members of an HOA to elect the HOA's governing body must be held within 60 days from the date that at least 75%, or a lesser amount if specified by the HOA's governing documents, of the total number of lots that may be part of the

development after all phases are complete are sold to members of the public for residential purposes. Before the date of the election meeting, the developer or declarant must deliver to each unit or lot owner notice that the applicable number of units or lots has been conveyed and the date, time, and place of the election meeting.

Within 30 days after the election meeting, the developer or declarant must deliver to the governing body specified information. The type of required information differs depending on whether the development is a condominium or an HOA. If the developer or declarant fails to provide the appropriate information, an aggrieved unit or lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General.

The statutory requirements regarding a development's books and records are more extensive for a condominium than for an HOA. For example, a condominium's governing body must hire an independent certified public accountant to perform an audit of the books and records if unit owners representing at least 5% of the condominium units make such a request. MHAA is silent as to any audit requirement. However, despite these differences, multiple requirements apply to both a condominium and an HOA.

Generally, the books and records of a condominium or an HOA must be available for examination or copying, or both, by any unit or lot owner, the owner's mortgagee, or their respective agents or attorneys during normal business hours and after reasonable notice. The governing body's books and records must first be made available to an owner within 15 days after a unit or lot is conveyed and the owner makes a request to examine or copy the books and records. However, if the books and records contain specified private records, the governing body may withhold them from public inspection, except for inspection by the person who is the subject of the record. The governing body may not impose any charges for copying or delivering records other than a reasonable charge which may not exceed the limits authorized under Title 7, Subtitle 2 of the Courts and Judicial Proceedings Article.

Background: The Consumer Protection Division of the Office of the Attorney General reports that the office has received numerous complaints that a developer or declarant has abandoned a condominium or an HOA prior to its completion. This leaves the residents to complete the development without the necessary funds.

The Secretary of State reports that 2,544 total condominiums are registered in Maryland. The office estimates that approximately 2,000 of these registrations are active. There is currently no State office which tracks the number of HOAs in Maryland.

Additional Information

Prior Introductions: SB 995 of 2011 did not receive a hearing by the Senate Judicial Proceedings Committee.

Cross File: HB 79 (Delegate Braveboy) - Environmental Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Secretary of State, Department of Legislative Services

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ncs/kdm

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