

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 74 (Senator Kelley)
Judicial Proceedings

Common Ownership Communities - Fidelity Insurance - Indemnification

This bill repeals a requirement that a common ownership community (COC) purchase fidelity insurance covering a management company and instead requires a management company contracted to provide services to the COC to purchase fidelity insurance. The fidelity insurance must indemnify the COC against loss resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by the management company's agents or employees who are charged with the operation or maintenance of the COC and control or disburse funds. The bill also alters the scope of indemnification that the governing body of a COC must still provide to only include acts by officers, directors, employees, or agents of the COC who control or disburse funds *and* are under the direct supervision of the governing body.

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 meaningful.

Analysis

Current Law: The board of directors, council of owners, or other governing body of a cooperative housing corporation, condominium, or homeowners association (collectively referred to as COCs) must purchase fidelity insurance, which is defined to include a fidelity bond, not later than the time of the first conveyance of a cooperative interest, unit,

or lot to a person other than the developer, and must keep the insurance in place every year thereafter. The insurance must provide for the indemnification of the COC against loss resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by (1) any officer, director, managing agent, or other agent or employee charged with the operation or maintenance of the COC who controls or disburses funds; and (2) any management company employing a managing agent or other employee charged with the operation or maintenance of the COC who controls or disburses funds.

A copy of the fidelity insurance policy or fidelity bond must be included in the COC's records. The copy must be made available by or on behalf of the COC as required by law. The amount of the fidelity insurance must equal the lesser of *either* three months' worth of gross common charges or annual assessments or fees and the total amount held in all investment accounts at the time the fidelity insurance is issued *or* \$3 million. The total liability of the insurance to all insured persons under the fidelity insurance may not exceed the sum of the fidelity insurance.

If a member, unit owner, or lot owner believes that the board of directors, council of unit owners, or other governing body of the COC has failed to comply with these requirements, the aggrieved owner may submit the dispute to the Consumer Protection Division of the Office of the Attorney General.

Background: Many COCs hire professional management companies to provide administrative services such as payment collection, financial management, grounds keeping, and other maintenance. These companies are responsible for managing large sums of money due to and owned by COCs but are not currently required to post any type of security bond or purchase any type of fidelity insurance that protects owners in the event of losses caused by management companies.

Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The full task force met 10 times during 2006 and conducted five public hearings, at which public comments were solicited. In addition, subcommittees comprising task force members met several times. The task force made several recommendations on various topics, including the bonding of COC management. Chapters 77 and 78 of 2009 were a reflection of the recommendation to require the bonding of COC management but did not require management companies to purchase fidelity insurance.

Small Business Effect: The amount of a fidelity insurance premium or fidelity bond depends on numerous factors, including a management company's credit rating and number of employees. While the amount may not be prohibitive, the bill does impose a new cost on management companies.

Additional Information

Prior Introductions: SB 264 of 2011 passed the Senate and received a hearing in the House Environmental Matters Committee. The bill was referred to an interim study by the House Environmental Matters Committee.

Cross File: None.

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

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mlm/kdm

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