

Department of Legislative Services
 Maryland General Assembly
 2012 Session

FISCAL AND POLICY NOTE

House Bill 1255 (Delegate McComas, *et al.*)
 Environmental Matters

Maryland Homeowners Association Act - Bylaws Filed in Land Records

This bill defines “bylaws” to mean the document that details and governs the internal organization and operation of a homeowners association (HOA), recorded among the land records of the county in which the development is located. By doing so, the bill requires that the bylaws of an HOA be recorded in a county’s land records.

The bill requires an HOA in existence on or before September 30, 2012, to record the HOA’s bylaws by December 31, 2012.

Fiscal Summary

State Effect: Special fund revenues increase minimally beginning in FY 2013 for the Circuit Court Real Property Records Improvement Fund to the extent that the bill’s requirement to record an HOA’s bylaws results in a greater number of bylaws being recorded. Potential minimal impact on general fund revenues due to the bill’s recordation requirement and repeal of the requirement to submit HOA bylaws to a depository. General fund expenditures increase by \$6,400 in FY 2013 to reprogram a circuit court’s land record office data system to track the recordation of HOA bylaws.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	-	-	-	-	-
GF Expenditure	\$6,400	\$0	\$0	\$0	\$0
Net Effect	(\$6,400)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill’s changes can be handled with existing budgeted resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill repeals the requirement that, if a purchaser has no intention of using or renting the lot for a residential purchase, a vendor of a lot in a development of any size must provide the purchaser a copy of the bylaws of the primary development. The bill also repeals the requirement that any HOA deposit a copy of the bylaws in a depository.

Current Law/Background: Under the Maryland Condominium Act, the administration of every condominium is governed by bylaws which are recorded with the declaration. There is no requirement under the Maryland Homeowners Association Act (MHAA) for an HOA to record the development's bylaws. However, it is common practice for HOAs to record the bylaws, as either a separate document or included with other governing documents.

Under MHAA, for the initial sale of a lot in a development containing more than 12 lots, the seller must provide the purchaser with specified disclosure documents within seven calendar days of entering into the contract. For the initial sale of a lot within a development containing 12 or fewer lots, or for the resale of a lot within any sized development, the seller must provide the purchaser with specified disclosure documents within 20 days of entering into the contract. In each circumstance, the vendor is required to provide the purchaser with a copy of the articles of incorporation, the declaration, all recorded covenants and restrictions, the bylaws, and rules of the primary development.

If a vendor sells a lot in a development of any size to a purchaser who has no intent to occupy or rent the lot for residential purposes, the vendor must provide specified disclosure documents, including a copy of the bylaws and rules of the primary development. The vendor must also provide a specified notice informing the purchaser of the right to receive the disclosure documents within seven days of entering into the contract. The vendor is not required to provide the purchaser with the articles of incorporation, the declaration, or all recorded covenants and restrictions of the primary development.

Every HOA must deposit the disclosure documents provided to the purchaser, except for specified documents such as the copy of the articles of incorporation, the declaration, and all recorded covenants and restrictions, in the circuit court depository. The disclosure documents that must be deposited include a copy of the bylaws and rules of the primary development. "Depository" means the document file created by the clerk of the court of each county and City of Baltimore.

State Fiscal Effect: Special fund revenues increase for the Circuit Court Real Property Records Improvement Fund to the extent that the bill's requirement to record an HOA's

bylaws results in a greater number of bylaws being recorded. Presumably, the majority of bylaws are currently recorded as it is to the benefit of the HOA to record its restrictions and covenants. Thus, any increase in special fund revenues is anticipated to be minimal.

Created by Chapter 327 of 1991, the Circuit Court Real Property Records Improvement Fund consists of surcharges assessed on instruments recorded in the land records and the financing statement records, document copying revenues, and accumulated interest revenue. The nonlapsing fund supports all personnel and operating costs within the land records offices of the clerks of the circuit court. It further supports the maintenance costs of the Electronic Land Records Online Imagery System and its website for making images accessible to the public. The Budget Reconciliation and Financing Act of 2011 (Chapter 397) increased the surcharge on all recordable instruments that support the fund, from \$20 to \$40, for fiscal 2012 through 2015.

The bill may have a potential minimal impact on general fund revenues. Any such impact cannot be reliably quantified due to the unavailability of data. The bill requires an HOA to record its bylaws among the land records of the county in which the development is located. Recording fees are generally based on the length of the instrument being recorded. The cost to record documents in land records is \$20 if the document is fewer than nine pages and \$75 if nine or more pages. Both the average number of pages in a typical HOA's bylaws and the number of HOAs in the State are unknown. Therefore, any increase in recording fees due to the bill's requirements is not quantifiable.

Additionally, under the bill, HOAs are no longer required to deposit bylaws in the county depository. The cost to deposit bylaws in a county depository is \$50 and any amendments to the deposited bylaws cost \$5 per page up to a maximum cost of \$25. Consequently, any potential increase in general fund revenues from recording fees due to the bill's requirements is offset by the loss of the fees charged for depositing the bylaws in a county depository.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Secretary of State, Department of Legislative Services

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