

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 162

(Senators Kelley and Miller)

Judicial Proceedings

Environmental Matters

Condominiums and Homeowners Associations - Transition of Control -
Termination of Contracts

This bill alters the circumstances in which a newly elected board of directors of a condominium or a governing body of a homeowners association (HOA) may terminate a specified contract at the discretion of the board or governing body, without liability for the termination.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill applies only to contracts with a company or individual to handle financial matters, maintenance, or services for the condominium or HOA. It does not apply to an agreement relating to the provision of utility, telecommunications, Internet, cable, or other video services or communication systems.

Condominium: The bill authorizes the board of directors of a condominium, within 180 days after a meeting at which the unit owners elect a majority of the board of directors composed of members unaffiliated with the developer, to terminate a contract entered into by the developer, officers, or previous board of directors of the condominium

before the meeting, at the discretion of the board of directors and without liability for termination, upon 30 days' notice to the contractor.

HOA: The bill also authorizes the governing body of an HOA, within 180 days, after a meeting at which the lot owners elect a majority of the board of directors composed of members unaffiliated with the declarant, to terminate a contract entered into by the declarant or the previous governing body before the meeting, at the discretion of the governing body and without liability for termination, upon 30 days' notice to the contractor.

Current Law: The current law below applies only to contracts with a company or individual to handle financial matters, maintenance, or services for the condominium or HOA. It does not apply to an agreement relating to the provision of utility or communication systems.

Condominium: A meeting of the council of unit owners to elect a board of directors must be held within 60 days from the date that units representing at least 50% of the votes in the condominium, or a lesser percentage specified in the declaration or bylaws, have been conveyed by the developer to members of the public for residential purposes. The developer must provide appropriate notice specifying the date, time, and place of the meeting.

Within 30 days after the transitional meeting, the developer must deliver specified documents, including a copy of all contracts to which the condominium is a party, to the officers or boards of directors.

Until all members of the board of directors are elected by the unit owners at the transitional meeting, a contract entered into by the officers or board of directors may be terminated, at the discretion of the board and without liability for the termination, up to 30 days after notice.

HOA: A meeting of the members of an HOA to elect a governing body must be held within 60 days from the date that at least 75% of the total number of lots, or a lesser percentage specified in the HOA's governing documents, that may be part of a completed development are sold to members of the public for residential purposes. The declarant must provide appropriate notice specifying the date, time, and place of the meeting.

Within 30 days after the transitional meeting, the declarant must deliver specified documents, including a copy of all contracts to which the HOA is a party, to the governing body.

Until all members of the governing body are elected by the lot owners at the transitional meeting, a contract entered into by the governing body may be terminated, at the discretion of the governing body and without liability for the termination, up to 30 days after notice.

Background: The Secretary of State reports that 2,559 condominiums are registered in Maryland with a total of 165,437 units. No State office tracks the number of HOAs in Maryland; however, Montgomery County reports there are 649 HOAs in that county. Additional information regarding condominiums and HOAs, including the transition of control from developer or declarant to governing body, can be found in the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: SB 183 of 2012, as amended, passed the Senate but received an unfavorable report from the House Environmental Matters Committee.

Cross File: None.

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

Fiscal Note History: First Reader - January 29, 2013
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Appendix – Common Ownership Communities

When a person purchases a house, condominium, or an interest in a cooperative housing arrangement, he or she may also be required to join an association of owners which is intended to act in the common interests of the homeowners, condominium owners, or co-op owners in the community. These associations assess dues to property owners to achieve their goals and address community problems. Collectively, these associations are often referred to as common ownership communities (COCs). The Secretary of State reports that there were over 2,500 condominiums in the State of Maryland registered with the office in 2012. It is unclear how many homeowners associations (HOAs) and cooperatives are currently operating in the State, but the number is substantial.

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly authorized the Task Force on Common Ownership Communities in June 2005 (Chapter 469 of 2005, SB 229). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held 5 public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation, intended to improve the operation of COCs. This legislation, enacted from 2007 through 2011:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007, SB 287);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007, HB 183);
- eased restrictions on the ability of a COC to amend its governing documents by allowing an amendment at least once every five years (Chapters 144 and 145 of 2008, SB 101/HB 1129);
- strengthened the transition process from developer to COC governing body by allowing the governing body to terminate specified contracts and requiring the

developer to provide specified documents (Chapters 95 and 96 of 2009, SB 742/HB 667);

- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009, SB 541/HB 687 and Chapter 615 of 2010, HB 702); and
- granted a condominium or HOA priority over a specified portion of a lien in the event of a foreclosure of a mortgage or deed of trust on a unit or lot (Chapter 387 of 2011, HB 1246).

The task force's report also featured findings and recommendations relating to alternative dispute resolutions and the creation of an ombudsman in local governments. Montgomery County's Commission on Common Ownership Communities was referenced as an alternative dispute resolution model for future local offices. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of homeowners' residential condominiums and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs which predates the task force.

Finally, findings and recommendations of the report which have not been codified in statute concern reserves of COCs, an insurance deductible cap for unit owners, the suspension of privileges of delinquent unit owners, uniformity of disclosure requirements and packages, and uniformity of COC depository requirements.