

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 794 (Senators Kelley and Forehand)
 Judicial Proceedings

Real Property - Regulation of Common Ownership Community Managers

This bill creates the State Board of Common Ownership Community Managers to regulate the provision of common ownership community (COC) property management services in the State. The board is appointed by the Governor and operates under the authority of the Secretary of Labor, Licensing, and Regulation. The bill sets forth the qualifications for licensing and certification of COC managers. The board may discipline a licensee and deny a license to an applicant under specified circumstances. The bill also requires specified COCs to register with the board and pay a per-unit or lot fee.

The board is subject to reestablishment and periodic evaluation under the Maryland Program Evaluation Act, with a termination date of July 1, 2018.

Fiscal Summary

State Effect: General fund expenditures increase by \$222,800 in FY 2014 to establish the board within the Department of Labor, Licensing, and Regulation (DLLR). The board becomes operational as a special-fund entity in FY 2015 and collects biennial licensing and certification fees, application fees, and annual registration fees to cover direct and indirect costs. Out-years reflect annualization and staggered license renewals. Potential minimal general fund revenue increases due to the bill’s administrative penalty provisions.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$0	\$630,000	\$307,500	\$630,000	\$307,500
GF Expenditure	\$222,800	\$0	\$0	\$0	\$0
SF Expenditure	\$0	\$406,900	\$438,500	\$457,100	\$475,600
Net Effect	(\$222,800)	\$223,100	(\$131,000)	\$172,900	(\$168,100)

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

Local Effect: None; however, COCs and COC managers in Montgomery and Prince George’s counties will now be subject to regulation at both the State and local levels.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Defined Terms

The bill defines a “common ownership community” as a condominium 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.

The Columbia Association, the Village of Associations in Howard County, and the associations’ employees are exempted from the bill.

“Certificate” or “license” generally means a certificate or a license issued by the board that allows an individual to either provide management services under supervision or provide management services independently for a COC.

Providing management services for a COC means:

- acting with the authority of the COC in its business, legal, financial, or other transactions with COC members and nonmembers;
- executing the resolutions and decisions of a COC or, with the authority of the COC, enforcing the rights of the COC secured by statute, contract, covenant, rule, or bylaw;
- negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of a COC;
- collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to a COC;
- preparing budgets, financial statements, or other financial reports for a COC;
- arranging, conducting, or coordinating meetings of a COC or the governing body of a COC; or
- offering or soliciting to perform any of the above-mentioned acts or services on behalf of a COC.

State Board of Common Ownership Community Managers

The board consists of nine members who serve for a term of four years. A board member may not serve more than two consecutive terms, and the terms of the members are staggered. Board members may not be compensated but are entitled to reimbursement for expenses as provided for in the State budget.

To administer and enforce the bill, the board is required to:

- adopt rules of professional conduct as appropriate for licensed COC managers and certified COC managers;
- establish criteria and a process for certification of a variety of educational offerings and training programs for licensing and certification; and
- keep a record of its proceedings.

The board may establish, by regulation, a nonjudicial dispute resolution process to resolve any disciplinary matter, the continuing education requirements for licensees and certificate holders, education and training opportunities for governing bodies of associations, and any other procedures or standards consistent with its mission.

Once licensing activity begins, the board must maintain a public list of the names and mailing addresses of all licensees and certificate holders.

The board must charge fees that cover both the direct and indirect costs of fulfilling its statutory and regulatory duties and may set those fees by regulation. To inform the fee-setting decision, the Secretary of Labor, Licensing, and Regulation, in consultation with the board, must annually calculate the direct and indirect costs attributable to the board. The board must publish its fee schedule. Each fee established by the board may not be increased annually by more than 12.5% of the existing and corresponding fee. All fee revenue is deposited into a newly created State Board of Common Ownership Community Managers Fund, a special, nonlapsing fund administered by the Secretary. Expenditures from the fund may only be made in accordance with the State budget.

The Department of Budget and Management (DBM), by budget amendment, may advance sufficient funds to the board to allow operations to commence on October 1, 2013, so that licensing, certification, and registration functions may be in place by October 1, 2014.

Licensing Requirements

An individual acting as a COC manager in the State must be licensed by the board prior to providing management services and may only provide management services in

fulfillment of a contract with the COC. An applicant must be a certified COC manager and:

- complete a board-approved training program;
- pass a board-approved examination; and
- have been actively engaged in providing management services for at least 12 months before applying for a license or hold an active board-approved professional designation.

Until the board adopts regulations concerning examination requirements, license applicants may take a nationally prepared and administered standardized examination for the COC management profession that is developed in a specified manner. Additionally, the board may grant a waiver of the license training and examination requirements to any applicant who presents to the board satisfactory evidence, by October 1, 2014, that the applicant provided managements services in the State for the five years immediately preceding the application.

An applicant must submit an application to the board and pay an application fee. If an applicant qualifies for a license, the board must send the applicant a notice stating that the applicant has qualified for a license and, on receipt of a \$200 license fee, the board will issue a license to the applicant. Upon payment of a license fee, a qualified applicant must be issued a license by the board.

The term of a license is two years. The board must renew and issue a renewal certificate to each qualified holder. The board must provide a renewal application form and notice to the licensee, at least two months before the license expires, stating the license's expiration date, the renewal fee's due date, and the amount of the renewal fee. Each renewal certificate issued by the board must include the current license's expiration date.

The board is required to reinstate the license of an individual who has failed to renew his or her license if the individual applies for reinstatement within two years of the license expiration, pays a reinstatement fee set by the board, and meets the aforementioned renewal requirements. If an applicant applies for reinstatement after the two-year period, the board may either treat the application the same as an initial application or reinstate the license if specific requirements are met.

The board may also grant reciprocity to an individual who is a licensed COC manager in another U.S. state or territory. The board may issue the license by reciprocity only if the applicant pays a license fee set by the board and provides adequate evidence that the applicant has met substantially equivalent requirements as those in the State.

If a COC contracts with a licensed COC manager to provide management services, the contract must identify the responsible manager for the COC. If a COC contracts with a person other than licensed COC manager to provide management services, the contract must require that only a licensed COC manager provide the COC with management services.

Grounds for Denying, Suspending, or Revoking a License

Subject to specified notice and hearing requirements and after considering specified factors, the board may deny a license to an applicant, reprimand a licensee, suspend or revoke a license, and/or impose a penalty against a licensee of up to \$5,000 if the licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- fraudulently or deceptively uses a license;
- is convicted of a felony or a misdemeanor that relates to the applicant's or licensee's fitness and qualifications to provide management services;
- engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
- fails to properly handle the funds of a COC in accordance with this bill's provisions;
- fails to account in a timely manner for all money and property received on behalf of a COC;
- fails to disclose to a COC relevant material facts of which the licensee has actual knowledge;
- fails to register one or more COCs for which a licensee provides management services and to pay appropriate fees on behalf of those COCs;
- is guilty of gross negligence, incompetence, or misconduct in providing management services;
- has been sanctioned in another state in a matter relating to providing management services;
- violates any of the bill's provisions; or
- violates any regulations adopted by the board.

Before the board takes any of these actions against a licensee, it must give the individual notice and an opportunity for a hearing before the board. If the individual does not appear after due notice has been given, the board may hear and determine the matter. The board may issue a subpoena for the attendance of a witness to testify or the production of evidence in connection with any such proceeding. A circuit court may

compel compliance with the subpoena upon petition by the board. An individual who contests a final decision of the board is entitled to judicial review under the Administrative Procedure Act.

The board may reinstate a revoked license or, before fulfillment of the conditions of the suspension, any suspended license if a majority of the board members vote to reinstate the license after the individual makes a written reinstatement request and the board holds a hearing. The individual must pay to the board a reinstatement fee set by the board.

Certification

An individual must be certified by the board before an individual may provide management services for a COC in the State. A certificate holder may provide management services only while under the general supervision of a license holder.

An applicant for a certificate must be at least age 18, submit an application on a board-approved form, and pay an application fee. In addition, the applicant must complete a board-approved training program and pass a board-approved examination. If an applicant qualifies for a certificate, the board must send the applicant a notice stating that the applicant has qualified for a certificate and, on receipt of a \$100 fee, the board will issue a certificate to the applicant.

The term of a certificate is two years. The board must renew and issue a renewal certificate to each qualified certificate holder. The board must provide a renewal application form and notice to the certificate holder, at least two months before the certificate expires, stating the certificate's expiration date, the renewal fee's due date, and the amount of the renewal fee. Each renewal certificate issued by the board must include the current certificate's expiration date.

The board is required to reinstate the certificate of an individual who has failed to renew his or her certificate if the individual applies for reinstatement within two years of the certificate's expiration, pays a reinstatement fee set by the board, and meets the aforementioned renewal requirements. If an applicant applies for reinstatement after the two-year period, the board may either treat the application the same as an initial application or reinstate the certificate if specific requirements are met.

Registration

A COC manager of the following COCs must register the COC with the board on or before January 1 of each year:

- a condominium with 11 or more units;

- an HOA with 31 or more lots; and
- a cooperative housing corporation with 11 or more units.

Each COC required to register must provide the board with specified identifying information and any other information required by the board.

Each COC must pay the board \$1 per unit or lot in registration fees, but the total fee may not be any less than \$25 or more than \$250 per year. A COC subject to more than one declaration is required to pay only a single registration fee. Before a developer or declarant relinquishes control of the COC's governing body, the developer or declarant must pay a registration fee only for the units or lots that have been conveyed to members of the public.

Miscellaneous Provisions

A licensee must file with the Secretary proof of either (1) a fidelity bond or theft insurance that provides coverage of a specified amount for the licensee, any responsible manager, any employees or contractors of the licensee or (2) other board-required comparable written insurance. In the event the fidelity bond or insurance is cancelled, forfeited, or terminated by the surety, the licensee must immediately notify the Secretary and the Secretary must suspend the license until the licensee submits proof of compliance.

A licensee must deposit all money received in connection with the provision of management services in one or more of the financial institution accounts of a COC. A licensee who provides management services for more than one COC must maintain separate bank accounts for each COC and may not commingle accounts. Each bank account maintained by the licensee must be in the name of the COC. A licensee who willfully violates the bill's provisions relating to the handling of COC financial institution accounts is guilty of a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment for up to five years.

Penalties

A person who is not licensed or certified as required but, nonetheless, acts as a licensed or certified COC manager is in violation of the bill. In addition, a person may not represent that he or she is authorized to provide COC management services or give false information to the board in an attempt to obtain a license or certificate. A person whose license or certificate has been suspended or revoked may not provide management services to a COC as an associate, agent, employee, or other subordinate of either a licensed COC manager or a business entity that provides management services. Violation of the bill's provisions is a misdemeanor and punishable by a fine up to \$5,000

and/or imprisonment for up to three years. The board may also impose a fine of up to \$5,000 for each violation after consideration of specified factors.

Current Law:

Regulation of Management Services

State law does not designate a statewide office to regulate COC management services. As of January 1, 2011, however, all COC management entities in Prince George's County must 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 have been required to register since the county created a 15-member volunteer Commission on Common Ownership Communities in 1991.

Fidelity Insurance Requirements for COCs

State law requires that the board of directors, council of unit owners, or other governing body of a COC 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 subsequent year. 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 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 also applies to any management company employing a managing agent or other employee charged with the operation or maintenance of the COC who controls or disburses funds.

Maryland Program Evaluation Act

Approximately 70 regulatory entities and activities are currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as "sunset review" as most entities evaluated are also subject to termination. The sunset review process begins with a preliminary evaluation conducted by the Department of Legislative Services (DLS) on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an entity from further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise, a full evaluation usually is undertaken the following year. The evaluation year in statute is typically one year before the termination date of the regulatory entity.

Background: According to the Community Associations Institute (CAI), currently 60,000 individuals and 10,000 businesses offer community association services in the United States. CAI is a national organization with approximately 60 state, regional, and local chapters comprising residential community association members, property managers, community management firms, and other related professionals and companies that provide products or services to associations. As of February 2012, CAI estimates approximately 1,000 to 1,500 professional property managers conduct business in Maryland. Each of the 368 CAI individual manager members in Maryland holds at least one CAI designation. Several CAI members have multiple designations.

The Institute of Real Estate Management (IREM) is a real estate management association with more than 18,000 individual members and more than 530 corporate members. Its credentialed membership program offers the following designations: Certified Property Manager (CPM), Accredited Residential Manager, Accredited Commercial Manager, and the Accredited Management Organization. IREM has members in both the multi-family and commercial real estate sectors. There are 546 individuals operating as a property manager with IREM membership in the State. CPM designation requires specified education levels, the completion of professional competency and ethics examinations, experience in the field of real estate management, and an application fee.

The bill requires applicants to complete a board-approved training program and pass an examination and to have been actively engaged in providing management services for at least 12 months before applying for a license *or* hold a board-approved active professional designation. CAI and IREM both offer nationally recognized accreditation programs.

State Fiscal Effect:

Staffing Needs

Despite the bill's October 1, 2013 effective date, DLS assumes that licensing, certification, and registration activity cannot begin until fiscal 2015 at the earliest. Given the breadth of the regulatory program and its experience with other regulatory boards, DLLR advises that three and one-half staff are necessary to fully implement the program in fiscal 2014 with an additional two staff in fiscal 2015. DLS concurs with both the total number of staff and the timing.

DLLR advises that three and one-half staff are needed to begin the process of implementing the regulatory program in fiscal 2014 with general fund support. Ordinarily, fewer staff would be hired during the start-up period. However, given that the bill requires a "grandfathering" period prior to the start of licensing and certification activities, administrative, executive, and clerical staff are needed as soon as possible.

Thus, an executive director, administrative specialist, office secretary, and part-time assistant Attorney General are needed to develop regulations; implement the licensing, certification, and registration program; process applications and review evidence related to the grandfather exception; and undertake other such preparatory activities. In fiscal 2015, as licensing, certification, and registration activity begins on October 1, 2014, two licensing and registration investigators are assumed to be covered by special funds.

Accordingly, general fund expenditures increase by \$222,758 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. Special fund expenditures increase by \$406,864 in fiscal 2015 as shown below. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses – including indirect cost allocation beginning in fiscal 2015.

	GF	SF
	<u>FY 2014</u>	<u>FY 2015</u>
Positions	3.5	5.5
Salaries and Fringe Benefits	\$114,357	\$318,198
Other Operating Expenses	<u>108,401</u>	<u>88,666</u>
Total State Expenditures	\$222,758	\$406,864

Future year expenditures reflect full salaries with annual increases and employee turnover, as well as annual increases in ongoing operating expenses. The estimate does not include any reimbursement for board members.

Direct and Indirect Expenditures

The above expenditures reflect the direct costs of regulating COC managers and the indirect costs that DLLR attributes to each regulatory program within the Division of Occupational and Professional Licensing for the use of division and departmental resources.

Direct costs include necessary expenditures for personnel, equipment and supplies, contractual services, and fixed charges. Indirect costs – such as usage of the central licensing system, general services offices, and a portion of the salaries of some senior staff – are allocated to each program by a formula based on the program's usage of these services. Thus, special fund expenditures for indirect costs under the bill are anticipated to be approximately \$25,000 in fiscal 2015 and \$35,000 annually in future years. The indirect costs associated with regulating COC managers are addressed further below.

Revenue Stream for the New Board

The bill provides for four main revenue sources for the fund: licensing fees, certification fees, and application fees from COC managers as well as registration fees from the various types of COCs. Although registration fees could be collected as soon as January 2014, given the bill's October 1, 2013 effective date, this estimate assumes that DLLR would not be able to begin collection of registration fees until January 2015, after the licensing and certification program has been implemented. Accordingly, all revenue collection would begin in fiscal 2015.

The bill authorizes the board to set the application fee for a license and certificate. The bill also explicitly states that the biennial licensure fee is \$200 and the biennial certification fee is \$100. To cover costs, the board must collect at least \$406,864 in special fund fee revenue in fiscal 2015. This amount must increase because of out-year expenditures. The ability of the board to set application fees by regulation should assist the board in covering its costs.

Exhibit 1 shows the revenue pattern for all sources. According to the Secretary of State, there are approximately 2,000 active condominiums in the State. The number of HOAs is not known; however, DLS assumes, for purposes of this estimate, that the number of HOAs is approximate to the number of condominiums. Although the bill implements a \$1 fee for each unit in a COC, the bill also applies a floor of \$25 and ceiling of \$250 to the amount of registration fees each COC must pay. Because both the number of COCs and how the floor and ceiling restrictions will affect the amount each COC is required to pay are unknown, the amount of revenues the fund will receive in registration fees is not quantifiable. If at least 4,000 COCs are subject to the bill in the State, it is reasonable to assume the board will collect *at least* \$200,000 in annual registration fees starting in fiscal 2015. It is possible this number will inflate in future years, but any increase cannot be estimated.

As noted above, CAI estimates that 1,000 to 1,500 individuals may be subject to licensure or certification in 2012. It is likely this number is closer to 1,500 because of the possibility that additional members of CAI would participate in the Maryland licensing program due to the increased economic integration of Maryland, Virginia, and the District of Columbia. The bill requires that any applicant for a license also hold a certificate issued by the board. This may significantly delay the licensing of applicants; however, DLS assumes that the majority of eligible individuals will be licensed and/or certified in fiscal 2015 because the bill prohibits the unlicensed management of a COC. As the board ages, the number of certificates issued may increase as individuals enter the industry through this lower status and gain the experience needed for licensure. This estimate does not reflect any other growth in regulatory activity, which is expected to be minimal.

In addition to the licensure and certification fees, the board may collect an application fee for both. Based on the projected number of licenses, certifications, projected out-year expenditures, and potential registration revenue, DLLR would have to charge a \$50 fee for each license and certificate application to cover expenditures over the first four fiscal special-funded years of the board. Additionally, the bill requires the board to reimburse any funds that have been advanced after the license, certificate, and registration fees have been received and deposited in the fund. The bill does not set a timetable for reimbursement. While an advance of general funds is not required by the bill, for purposes of this estimate, it is assumed that DBM advances the necessary general funds for the board to begin implementation and that those funds will be repaid on a reasonable schedule that is not specified.

Exhibit 1 shows the revenue pattern if 1,000 licenses and 1,200 certificates are issued in the first year of activity and 250 licenses and 300 certificates in the following year. This assumes that all license holders also hold a certificate, as the bill appears to require, and that a smaller number of individuals only become certified as they enter the profession and work under the supervision of a license holder. DLS advises that revenues are likely to be sufficient to cover all costs beginning in fiscal 2015, by drawing down on the fund balance in certain years, and to reimburse any advanced funds over a reasonable timetable.

Exhibit 1
Projected Revenues and Expenditures of the Program
Fiscal 2014-2018

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
Total Costs	\$222,758	\$406,864	\$438,492	\$457,130	\$475,608
Direct Costs	222,758	381,864	403,492	422,130	440,608
Indirect Costs	0	25,000	35,000	35,000	35,000
Anticipated Revenues	0	630,000	307,500	630,000	307,500
Licensing Fees	0	200,000	50,000	200,000	50,000
Certification Fees	0	120,000	30,000	120,000	30,000
Application Fees	0	110,000	27,500	110,000	27,500
Registration Fees	0	200,000	200,000	200,000	200,000
Annual Surplus	0	223,136	(130,992)	172,870	(168,108)
Cumulative Surplus	0	223,136	92,144	265,014	96,906

Note: In fiscal 2014, the board's expenditures are assumed to be covered by general funds, resulting in no surplus at year-end. The \$222,758 in expenditures for that year could be repaid over several years from excess revenues in the fund balance. However, as illustrated above, revenues in the first year of each licensing cycle must be used to help cover costs in the second year.

Source: Department of Legislative Services

It should be noted that the bill also authorizes the board to set a reinstatement fee as well as a fee for the granting of reciprocity to an out-of-state COC manager. However, any revenue attained from these fees is expected to be minimal.

Small Business Effect: As noted above, small business expenditures increase by at least \$200 for a license, \$100 for a certificate, and \$50 for each application, as well as potentially significant costs associated with board-approved training and required exams or attaining specified professional credentialing.

Additional Comments: The bill subjects the new board to periodic evaluation under the Maryland Program Evaluation Act. The termination and evaluation dates for the board are the same under the bill; typically, the evaluation date is one year earlier than the termination date. Moreover, given the termination date of July 1, 2018, a preliminary evaluation would be conducted in 2015, very soon after implementation.

The bill specifies that investment earnings of the fund must be credited to the new special fund. However, the bill does not amend § 6-226 of the State Finance and Procurement Article to exempt the fund from existing law that requires all investment earnings and interest from special funds to accrue to the general fund.

Additional Information

Prior Introductions: SB 372 of 2012, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 433, was heard by the House Environmental Matters Committee but was then withdrawn. Other legislation regulating COCs managers by a board has been considered in prior sessions.

Cross File: HB 576 (Delegate Beidle, *et al.*) - Environmental Matters.

Information Source(s): Prince George's County; Department of Labor, Licensing, and Regulation; Montgomery County; Secretary of State; Community Associations Institute; Institute of Real Estate Management; Department of Legislative Services (Office of Legislative Audits)

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