

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 820

(Senator Forehand, *et al.*)

Judicial Proceedings

Condominiums and Homeowners Associations - Sales - Disclosure and
Cancellation Requirements

This bill alters (1) the information that a purchaser must receive before a contract for the sale or resale of a unit in a condominium or a lot in a homeowners association (HOA) may be enforced by the vendor or seller; (2) the time period within which a purchaser may cancel a contract for the sale or resale of a unit or lot without stating a reason and without liability on the part of the purchaser; and (3) the time period within which a council of unit owners must furnish a certificate to a unit owner relating to disclosure requirements for the resale of a unit from 20 days to 7 days after a written request. The bill repeals a requirement that a purchaser of a unit provide specified information to the council of unit owners upon the sale of a unit.

The bill alters the standard for a vendor's fulfillment of specified requirements to provide information to a purchaser of a lot if the property is subject to a declaration by a person who is not affiliated with the vendor. The bill authorizes an HOA to direct a vendor to obtain information from a depository in specified circumstances.

The bill only applies prospectively and does not have any effect on a contract for sale made before the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: This bill does not directly affect State governmental operations or finances.

Local Effect: This bill does not directly affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: For a contract for the sale (or resale) of a condominium unit to be enforceable by the vendor (or seller), the bill requires the vendor (or seller) to provide notice to the purchaser of any changes in the mandatory fees and payments exceeding 10% of the amount previously stated to exist and any other substantial and material amendments to the public offering statement after they become known to the vendor. (A comparable requirement already exists for the sale or resale of a lot.) Within three calendar days of receipt of such notice, the purchaser may cancel the contract of sale without stating a reason and without liability on the part of the purchaser.

If a purchaser of a condominium unit or a lot in a development has not received all required disclosure information at least seven calendar days before the sales contract is entered into, the purchaser may rescind the contract without stating a reason and without liability and have any deposits made on account of the contract returned within seven calendar days following receipt of all the information.

The bill alters the notice required to be sent to a purchaser in the resale of a unit or the sale of any lot in an HOA by specifying that the notice must contain a statement that the purchaser may cancel the contract without penalty within seven days following delivery of disclosure information if the purchaser does not receive the necessary information at least seven calendar days before entering into the sales contract.

Disclosures Concerning a Person Not Affiliated with the Vendor

If any of the information required to be disclosed for the initial sale of a lot in a development containing more than 12 lots concerns property that is subject to a declaration by a person who is not affiliated with the vendor, the bill adjusts, from 20 days to 7 days, the time period an unaffiliated declarant has to notify a vendor of the information that is contained in the depository and to furnish the information necessary to enable the vendor to comply with the disclosure requirements. The bill establishes a parallel requirement for an unaffiliated declarant in the case of a resale of a lot or the initial sale of a lot in a development with 12 or fewer lots.

An unaffiliated declarant is not required to furnish information regarding an HOA over which the declarant has no control, or with respect to any declaration that the unaffiliated declarant did not file. Moreover, a vendor is not liable to the purchaser for any erroneous information provided by an unaffiliated declarant, so long as the vendor provides the purchaser with a certificate containing specified contact information of the declarant.

In satisfying a vendor's request for information in the case of a resale of a lot or the initial sale of a lot in a development with 12 or fewer lots, an HOA (1) is entitled to direct the

vendor to obtain the information from the depository for all disclosures contained in the depository after June 30, 1989, and (2) may not be required to supply a vendor with any information that is contained in the depository.

Current Law:

Condominiums: A contract for the resale of a unit in any condominium by a unit owner other than the developer is not enforceable unless the owner discloses specified information to the purchaser no later than 15 days prior to closing. The information required to be disclosed depends on the number of units within the condominium.

For the resale of a unit in a condominium of any size, the required disclosure must include a copy of the declaration, the bylaws, the rules or regulations of the condominium, and written notice of the unit owner's property insurance deductible responsibilities. While this information is required regardless of the size of the condominium, the owner must provide additional information if the condominium contains seven or more units. Generally, this additional information consists of more detailed financial data but also includes information regarding whether the council of unit owners or the unit owner has knowledge of violations of specified code provisions or condominium governing documents. If the condominium contains fewer than seven units, the accompanying information must include a statement by the unit owner of his or her expenses during the preceding 12 months relating to the condominium's common elements.

To collect the information needed to make the required disclosures, the unit owner may make a written request, accompanied by a reasonable fee, for the necessary information from the council of unit owners. The council of unit owners must provide this information within 20 days of receipt of the request and fee. The unit owner is not liable for any erroneous information provided by the council of unit owners and passed along to the buyer. However, the unit owner may be liable to the buyer in specified situations in which the owner provides erroneous information that was not provided by the council of unit owners.

The contract for the initial sale of a unit to a member of the public is not enforceable if it does not include a current public offering statement amended and registered with the Secretary of State. The contents of a current public offering statement are determined by the Maryland Condominium Act.

Homeowners Associations: For the resale of a lot within a development of any size, the seller must provide the purchaser with specified disclosure documents within 20 days of entering into the contract. These disclosures include information regarding past and present monthly fees or assessments, the existence of any delinquent charges against the

lot, the contact information of any HOA management agent, a statement as to the existence of any actions against the HOA or lot, and a copy of the HOA's governing documents. The above disclosures may be summarized or produced through any collection of documents but must be clear and concise and effectively convey the required information to the purchaser.

The required disclosure documents for a lot in a development containing 12 or fewer lots are the same as the required disclosure documents for a resale of a lot within a development of any size. If the development contains more than 12 lots, the vendor must provide the purchaser with different disclosure documents, specified in the Maryland Homeowners Association Act, within seven calendar days of entering into the contract.

Background: The Secretary of State reports that 2,549 condominiums are registered in Maryland with a total of 164,324 units. The Foundation for Community Association Research (FCAR) estimates that there were 6,400 community associations in the State in 2012. FCAR's definition of "community association" includes planned communities such as homeowners associations, condominium communities, and housing cooperatives. For more information on common ownership communities, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: HB 1080 (Delegate Gilchrist) - Environmental Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Secretary of State; Foundation for Community Association Research; Department of Legislative Services

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mc/kdm

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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. Collectively, these associations are often referred to as common ownership communities (COCs).

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent.

Many new housing developments are subject to governing documents that create a homeowners association (HOA) with the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the owners of lots, or the common areas.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws applicable to corporations.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees.

A growing number of homes are located in condominiums, HOAs, and cooperative housing corporations. The Secretary of State reports that there were more than 2,500 condominiums in the State of Maryland registered with the office in 2013. The Foundation for Community Association Research estimates that there were 6,400 community associations in the State in 2012.

Task Force on Common Ownership Communities

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 created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). 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 2013:

- 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);
- 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);
- eased restrictions on the ability of certain older HOAs to amend their governing documents by allowing an amendment at least once every five years by a specified percentage of votes (Chapters 144 and 145 of 2008);
- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);
- 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 and Chapter 615 of 2010);
- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);
- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapter 449 of 2013); and
- expanded the purposes for which a condominium's board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013).

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 HOAs, residential condominiums, and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs that predates the task force.

Finally, findings and recommendations of the report that 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.