

**Department of Legislative Services**  
 Maryland General Assembly  
 2014 Session

**FISCAL AND POLICY NOTE**

Senate Bill 274 (Senator Kelley, *et al.*)  
 Judicial Proceedings

**Business Occupations - Common Ownership Community Managers - Registration**

This bill requires individuals providing common ownership community (COC) management services in the State to register biennially with the Department of Labor, Licensing, and Regulation (DLLR). The bill sets forth the requirements for the registration of COC managers. The bill requires DLLR to adopt regulations to implement the bill and develop a means for providing public access to COC management registration information. DLLR may investigate a complaint alleging a violation of the bill and refer any matter to the appropriate State’s Attorney’s Office for prosecution.

The bill requires DLLR to report to the Governor and the General Assembly by December 1, 2018, on the registration of COC managers including the number of managers registered, the number of COCs for which each registrant serves as manager, violations investigated, and recommendations on the need for additional oversight of COC managers.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$41,800 in FY 2015 to establish the program within DLLR. General fund revenues increase by \$55,000 in FY 2015 from registration fees. Out-year costs reflect annualization and elimination of contractual staff whereas illustrative revenues reflect staggered registration renewals. The bill’s criminal penalty provisions are not expected to have a material impact on State finances.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	\$55,000	\$2,500	\$57,500	\$5,000	\$60,000
GF Expenditure	\$41,800	\$46,100	\$10,200	\$1,000	\$1,000
Net Effect	\$13,200	(\$43,600)	\$47,300	\$4,000	\$59,000

*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 be subject to regulation at both the State and local levels.

**Small Business Effect:** Minimal.

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## Analysis

### Bill Summary:

#### *Defined Terms*

The bill defines a “common ownership community” as a condominium, a homeowners association (HOA), and a cooperative housing corporation. “Common ownership community” includes a residential and commercial mixed development.

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.

#### *Role of Department of Labor, Licensing, and Regulation*

DLLR must adopt regulations establishing any requirements and procedures necessary to implement the bill. Specifically, the department must establish a form for applications for and renewal of registration of COC managers and set the appropriate fees. The department must also provide for the assignment of a registration number and the issuance of a registration certificate to each registered COC manager.

Once registration activity begins, DLLR must develop a means for providing public access to relevant information relating to each registered COC manager.

### *Registration Requirements*

An individual may not provide management services to a COC in the State unless the individual is registered with DLLR and issued a registration certificate. An applicant must submit to DLLR:

- an application and an application fee;
- the names and address of all COCs for which the applicant provides management services; and
- a certification, as specified, that the applicant is currently covered by fidelity insurance as required under existing law.

If an applicant meets these requirements, DLLR must assign a registration number and issue a registration certificate to the applicant.

The term of a registration is two years. A registration may be renewed by submitting a renewal application, paying a renewal fee, and providing a certification of the required fidelity insurance to DLLR.

### *Penalties*

Violation of the bill's provisions is a misdemeanor and punishable by a fine of at least \$500 but no more than \$1,000 for the first violation and a fine of at least \$1,000 but no more than \$2,000 for each subsequent violation. Any fines collected are paid into the general fund of the State.

### **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 (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.

**Background:** According to the Community Associations Institute (CAI), currently 50,000 to 55,000 individuals and 7,000 to 8,000 businesses offer community association management 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. In 2013, CAI estimates approximately 1,100 professional property managers and 160 community management companies conduct business in Maryland.

### **State Fiscal Effect:**

#### *Staffing and Start-up Costs*

DLLR advises that one contractual administrative specialist on a two-year contract is needed to oversee program implementation. In addition to staffing costs, an additional \$10,000 is required in computer programming costs in each of the first two years to implement e-licensing/web portal registration. Prior to the completion of the web portal, DLLR advises that registrations will be handled via paper format. Other than altering the contractual position entry date to conform to the bill's October 1 effective date, the Department of Legislative Services (DLS) concurs with this assessment.

Accordingly, general fund expenditures increase by \$41,772 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$27,077
Computer Programming	10,000
Other Operating Expenses	<u>4,695</u>
<b>Total State FY 2015 Expenditures</b>	<b>\$41,772</b>

Future year expenditures reflect a full salary with annual increases and employee turnover, elimination of the contractual administrative specialist in October 2016, and minimal ongoing operating expenses. This estimate assumes any investigation required can be handled with existing staff. Moreover, it assumes automation of the registration in the out-years with existing staff handling any inquiries.

*Revenues from Registrations and Renewals*

The bill provides for two main revenue sources: application fees and renewal fees from COC managers. All revenue collection begins when the registration activity begins on October 1, 2014. The bill requires DLLR to set fees. As noted above, in 2013, CAI estimated that 1,100 individuals conducted business as property managers in Maryland. *For illustrative purposes only*, DLS assumes 1,100 individuals would initially register in Maryland. However, the actual number of individuals subject to registration may vary.

**Exhibit 1** shows the revenue pattern if 1,100 managers register in Maryland in fiscal 2015 and 50 additional COC managers register in each of the following years. DLLR advises that it anticipates setting a registration/application fee of \$50.

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**Exhibit 1**  
**Projected Revenues and Expenditures of the Program**  
**Fiscal 2015-2019**

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Total Costs	\$41,772	\$46,136	\$10,183	\$1,030	\$1,041
Anticipated Revenues	55,000	2,500	57,500	5,000	60,000
Annual Surplus	13,228	(43,636)	47,317	3,970	58,959
<b>Cumulative Surplus</b>	<b>\$13,228</b>	<b>(\$30,408)</b>	<b>\$16,909</b>	<b>\$20,879</b>	<b>\$79,838</b>

Source: Department of Legislative Services

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The criminal penalty provisions of the bill do not have a material impact on State revenues.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; State's Attorneys' Association; Secretary of State; Community Associations Institute; Department of Legislative Services

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mc/kdm

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Analysis by: Joshua A. Lowery

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

## Appendix – Common Ownership Communities

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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.