

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 741 (Delegate Hayes, *et al.*)
Environment and Transportation

Maryland Cooperative Housing Corporation Act - Delinquency Period for
Purpose of Eviction Action

This bill repeals the requirement that a member of a cooperative housing corporation must have been delinquent in paying assessments for three months before the governing body of the cooperative housing corporation may bring an action in court to evict the member based solely on the failure of the member to pay assessments owed. Statutory requirements for notice and hearing for members subject to an eviction action remain unchanged.

Fiscal Summary

State Effect: Any increase in the workload of the District Court as a result of an increase in the number of eviction proceedings is expected to be minimal and can likely be handled with existing resources. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill.

Local Effect: None.

Small Business Effect: Potential meaningful impact for small cooperative housing corporations which may be able to evict members before they are three months delinquent in paying assessments.

Analysis

Current Law: A cooperative project that is no longer subject to a mortgage or deed of trust is subject to eviction restrictions. Notwithstanding the articles of incorporation, bylaws, or regulations of a cooperative housing corporation, or the proprietary lease of any

member, a governing body may not bring an action to evict a member based solely on the failure of the member to pay assessments owed to the cooperative housing corporation unless (1) the member has been delinquent in paying assessments for a period of three months or more; (2) the governing body has given the member notice and an opportunity to be heard regarding the delinquency and opportunity to cure the delinquency; and (3) the member has failed to cure the delinquency.

Background: For more information on common ownership communities, see the **Appendix – Common Ownership Communities.**

Additional Information

Prior Introductions: None.

Cross File: None.

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

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md/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 6,500 community associations in the State in 2013.

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 2014:

- 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);
- 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); and

- established meeting standards and standards for late charges for delinquent payments, eviction restrictions, an auditing process for books and records, and a dispute settlement mechanism for cooperatives (Chapter 567 of 2014).

The task force's report also featured findings and recommendations relating to the creation of an ombudsman in local governments. 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 and Montgomery County have offices dedicated to COCs that predate 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, and the uniformity of COC depository requirements.