

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 816

(Senator Muse)

Judicial Proceedings

Rules and Executive Nominations

**Real Property - Condominiums and Homeowners Associations - Resales -
Disclosures and Fees**

This bill alters the contents of a required disclosure, authorizes additional fees, and sets limits on the fees that may be charged to a unit owner by a condominium council of unit owners for providing specified information necessary to comply with required disclosures to purchasers on the resale of the unit and for specified inspections. The bill also authorizes fees, subject to specified limits, that a homeowners association (HOA), the management agent of the HOA, or any other authorized officer or agent of the HOA may charge a lot owner for providing specified information necessary to comply with required disclosures to purchasers on the resale of the lot or the initial sale of a lot in a development containing 12 or fewer lots. Finally, the bill requires the Department of Housing and Community Development (DHCD) to adjust the maximum fees that a council of unit owners, an HOA, a management agent of an HOA, or an authorized officer or agent of an HOA may charge every two years.

Fiscal Summary

State Effect: DHCD can handle the bill's requirements with existing resources.

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

Small Business Effect: Minimal.

Analysis

Bill Summary:

Condominiums

Contents of Required Disclosure: The bill makes multiple changes to the required contents of a disclosure that a unit owner must provide to a purchaser, as well as other stylistic changes. The bill repeals the requirements that the disclosure include (1) a statement as to whether the council of unit owners knows that any alteration to the unit violates any provision of specified rules or regulations and (2) a statement of the remaining term of any leasehold estate in the condominium and any provisions governing any extension or renewal. The bill clarifies that the disclosure must (1) include the current operating budget of the condominium, including the current *reserve study report* or a summary, a statement of the status of any reserve or replacement fund, or a statement that there is no reserve fund and (2) a statement of any *unsatisfied* judgments or pending lawsuits to which the council of unit owners is a party, *excluding assessment collection suits*. The bill clarifies the standard of knowledge in a statement as to whether the council of unit owners has *actual* knowledge of any violation of the health or building codes with respect to the common elements of the condominium, and it requires the disclosure to contain a statement of the common expense assessment and any unpaid common expense or special assessment *adopted by the council of unit owners* that is due from the selling unit owner.

Fees and Limitations on Them: A council of unit owners may charge a unit owner a reasonable fee, not exceeding the actual cost to the council of unit owners and up to a maximum of \$250, for providing specified information in the form of a certificate within 20 days after receiving a written request from a unit owner. A council of unit owners may also charge a reasonable fee of up to \$100 for an inspection of the unit owner's unit, if an inspection is required. Finally, a council of unit owners may also charge a reasonable fee of up to \$50 for delivery of the certificate within 14 days after a written request by a unit owner, or a fee of up to \$100 for delivery of the certificate within 7 days.

Biennial Calculation of Maximum Fees: The bill requires DHCD to adjust the maximum fee that a council of unit owners may charge a unit owner to provide specified information in the form of a certificate. DHCD must adjust the fee every two years, beginning October 1, 2018, to reflect any aggregate increase in the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, for the two previous years. DHCD must list the current maximum fees on its website.

Homeowners Associations

Fees and Limitations on Them: An HOA, a management agent of an HOA, or an authorized officer or agent of an HOA must provide specified information to a lot owner within 20 days after receiving a written request from a lot owner. That written request must be accompanied by a reasonable fee, not exceeding the actual cost to the HOA and up to a maximum of \$250, for providing the information. An HOA may also charge a reasonable fee of up to \$50 for delivery of the information within 14 days after a written request by a lot owner, or a fee of up to \$100 for delivery of the information within 7 days.

Biennial Calculation of Maximum Fees: The bill requires DHCD to adjust the maximum fee that an HOA may charge a lot owner to provide specified information. DHCD must adjust the fee every two years, beginning October 1, 2018, to reflect any aggregate increase in the CPI-U for Washington-Baltimore, for the two previous years. DHCD must list the current maximum fees on its website.

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 and regulations of the condominium, and written notice of the unit owner's property insurance deductible responsibilities. For a unit in a condominium with fewer than seven units, the unit owner must also provide a statement of the unit owner's expenses during the preceding 12 months relating to the common elements.

However, for a condominium with seven or more units, the unit owner must also provide a statement as to whether the unit owner has knowledge (1) that any alteration to the unit or to the limited common elements assigned to it violates any provision of the declaration, bylaws, or rules and regulations; (2) of any violation of the health or building codes with respect to the unit or the limited common elements assigned to the unit; and (3) that the unit is subject to an extended lease, and if so, a copy of the lease must be provided. In addition, the unit owner must provide a certificate containing:

- a statement disclosing the effect on the proposed sale of any right of first refusal or other restraint, other than any restraint created by the unit owner;

- a statement detailing the monthly common expense assessment and any unpaid common expense or special assessment currently due;
- a statement of any other fees payable by the unit owners to the council of unit owners;
- a statement of any capital expenditures approved by the council of unit owners which are not reflected in the current operating budget;
- the most recent regularly prepared balance sheet and income expense statement, if any, of the condominium;
- the current operating budget of the condominium including details of the reserve fund for repair and replacement and its intended use, or a statement that there is no reserve fund;
- a statement of any judgments against the condominium and the existence of any pending suits to which the council of unit owners is a party;
- a statement describing any insurance policies provided for the benefit of unit owners, a notice that copies of the policies are available and where to view them, and a notice that the terms of the policy prevail over the description;
- a statement as to whether the council of unit owners has knowledge that any alteration to the unit or to the limited common elements assigned to the unit violates any provision of the declaration, bylaws, or rules or regulations;
- a statement as to whether the council of unit owners has knowledge of any violation of the health or building codes with respect to the unit, the limited common elements assigned to the unit, or any other area of the condominium;
- a statement of the remaining term of any lease affecting the condominium and the provisions governing any extension or renewal thereof; and
- a description of any recreational or other facilities that may be used by the unit owners, whether they are maintained by the unit owners or the council of unit owners, and a statement as to whether the facilities are to be a part of the common elements of the condominium.

To collect the information needed to make the required disclosures, the unit owner may make a written request, accompanied by a reasonable fee, to the council of unit owners to provide a certificate containing the necessary information. The council of unit owners must provide this certificate 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 purchaser. However, the unit owner may be liable to the purchaser in specified situations in which the owner provides erroneous information that was not provided by the council of unit owners.

Homeowners Associations: For the resale of a lot within a development of any size or the initial sale of a lot in a development containing 12 or fewer lots, 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 unsatisfied judgments or pending 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.

Background: The Secretary of State advises that, in 2015, there were 2,619 condominium regimes in the State, and the State Department of Assessments and Taxation reports that there were 206,180 condominium units. The Foundation for Community Association Research estimated that there were 6,575 community associations in the State in 2014. For more information on condominiums and homeowners associations, which are also known as common ownership communities, see the **Appendix – Common Ownership Communities**.

The CPI-U program within the U.S. Bureau of Labor and Statistics produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. Between January 2014 and January 2016, the most recent two-year period for which complete data is available, the CPI-U for the Washington-Baltimore region increased 1.2%.

Additional Information

Prior Introductions: HB 1107 of 2015, a similar bill, passed both the House and the Senate, with amendments, but was never returned to the house of origin. Similar legislation was also considered in 2014. HB 412 of 2014 passed the House as amended and was referred to the Senate Rules Committee, where no further action was taken. Its cross file,

SB 229, passed the Senate as amended and passed the House as amended. Although a conference committee was appointed, the differences were not reconciled.

Cross File: HB 1192 (Delegate McMillan, *et al.*) - Environment and Transportation.

Information Source(s): Department of Housing and Community Development, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), Secretary of State, State Department of Assessments and Taxation, Foundation for Community Association Research, U.S. Bureau of Labor and Statistics, Department of Legislative Services

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Appendix – Common Ownership Communities

When a person purchases a single-family home, condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of a COC.

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. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has 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 lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

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 in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for unpaid fees are generally pursued by way of a landlord-tenant action.

Since registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, public offering statements for condominium regimes are required by law to be registered with the Secretary of State (SOS). Statewide for 2015, the SOS registration records show that there are 2,619 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 206,180 condominium units. The Foundation for Community Association Research estimated that there were 6,575 community associations in the State in 2014.

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 five 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 (Chapters 448 and 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 under specified circumstances (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.