

**Department of Legislative Services**  
 Maryland General Assembly  
 2017 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 1156

(Delegate Stein)

Environment and Transportation

Judicial Proceedings

**Residential Property - Foreclosed Property Registry - Notice of Registration**

This bill expands access to the Foreclosed Property Registry (FPR) to homeowners associations (HOAs) and condominiums by requiring the Department of Labor, Licensing, and Regulation (DLLR) to promptly provide written notice of an initial registration of a foreclosure property to a specified HOA or condominium. The notice must be sent by first-class mail to the address of the principal office of the HOA or condominium, or by email to the address authorized by the HOA or council of unit owners. The notice must include the street address of the property that is the subject of the initial registration and the name and address of the foreclosure purchaser.

**Fiscal Summary**

**State Effect:** Special fund expenditures for DLLR increase by \$271,500 in FY 2018 for additional staff and to upgrade required software to implement the bill’s requirements, as discussed below. Out-year expenditures reflect annualization, elimination of one-time costs, and ongoing personnel and software maintenance costs. Revenues are not affected.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	271,500	66,000	69,000	72,100	75,400
Net Effect	(\$271,500)	(\$66,000)	(\$69,000)	(\$72,100)	(\$75,400)

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

**Local Effect:** None.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** The bill authorizes an HOA or a condominium to request written notification when FPR receives an initial registration of a foreclosure property that is located within the HOA or condominium.

The request for notice submitted by an HOA must include (1) the name and address of the principal office of the HOA; (2) a legal description of the boundaries of the development or a copy of the declaration and plat for the HOA; and (3) the street addresses of the individual lots located within the development.

The request for notice submitted by a condominium must include (1) the name and address of the principal office of the condominium and (2) the street addresses of the individual units of the condominium.

**Current Law:** Chapter 155 of 2012 required DLLR to establish and maintain an Internet-based FPR for information relating to foreclosure sales of residential property. The law requires a foreclosure purchaser to submit an initial registration form to DLLR within 30 days of the sale and a final registration form within 30 days after a deed transferring title to the property has been recorded. The initial registration form requires the foreclosure purchaser to provide specified information including (1) the contact information of the purchaser; (2) the street address of the foreclosed property; (3) whether the property is a single-family or multifamily property; (4) to the best of the purchaser's knowledge, whether the property is vacant; and (5) whether the purchaser has possession of the property. A local jurisdiction may enact a local law that imposes a fine of up to \$1,000 for failure to register, and a local government that abates a nuisance on or maintains a registered property may collect any incurred costs as a charge included on the property's tax bill, as long as specified notice requirements are met.

The registry is supported by a special nonlapsing fund administered by DLLR. The fund consists of filing fee revenue collected by DLLR for registrations, the fund's investment earnings, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The purpose of the fund is to support the development, administration, and maintenance of the registry.

DLLR is prohibited from granting access to the registry to any person or entity other than a local jurisdiction, its agencies or representatives, or a State agency. FPR is not a public record as defined by the State Government Article and is, therefore, exempt from public access requirements. However, DLLR or a local jurisdiction may provide information for a specific property in the registry to a person who owns property on the same block or an HOA or condominium in which the property is located.

Only the State may enact a law requiring a notice to be filed with a governmental unit relating to residential properties that are subject to foreclosure. However, another unit of government may require a registration or notice to be filed for a purpose other than one relating to foreclosure, even if a property to be identified in the registration or notice is subject to foreclosure.

**Background:** DLLR advises that FPR received 13,274 initial registrations in 2016, averaging 1,106 per month.

The Secretary of State advises that, in 2016, there were 2,859 condominium regimes in the State, and the State Department of Assessments and Taxation reports that there were 222,664 condominium units. The Foundation for Community Association Research estimated that there were 6,600 community associations in the State in 2015. For more information on condominiums and HOAs (commonly known as common ownership communities), see the **Appendix – Common Ownership Communities**.

**State Expenditures:** Special fund expenditures for DLLR increase by \$271,516 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate includes \$219,554 for software upgrades necessary to implement the bill's requirements, \$2,789 in software training, and the cost of hiring one office clerk responsible for receiving requests for notice from HOAs and condominiums, entering addresses of HOAs and condominiums into a new database, and overseeing the distribution of required notices. Thus, the estimate also includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Regular Salary and Fringe Benefits	\$44,064
One-time Start-up Costs	4,640
Computer Programing and Training Costs	222,343
Operating Expenses	<u>469</u>
<b>Total FY 2018 Special Fund Expenditures</b>	<b>\$271,516</b>

Future year expenditures reflect a full salary with annual increases and employee turnover, ongoing operating expenses, and software maintenance costs. This analysis does not include a specific estimate of the cost to mail the required notices. However, since DLLR may notify by email or postal mail, any such costs are likely to be minimal. Thus, it is assumed that they can be absorbed with existing resources.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Secretary of State; State Department of Assessments and Taxation; Foundation for Community Association Research; Department of Legislative Services

**Fiscal Note History:** First Reader - February 26, 2017  
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## Appendix – Common Ownership Communities

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When a person purchases a single-family home, a 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 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 2016, the SOS registration records show that there are 2,859 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 222,664 condominium units. The Foundation for Community Association Research estimated that there were 6,600 community associations in the State in 2015.

### *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 2016, accomplished the following:

- 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);
- 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); and
- altered the contents of a required disclosure for the resale of a condominium unit, authorized the assessment of specified fees by a condominium council of unit owners or an HOA for providing specified information, set limits on those fees, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016).

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 and Montgomery counties have offices dedicated to COCs that predate the task force.

Finally, findings and recommendations of the report that have not been codified in statute include reserves of COCs, an insurance deductible cap for unit owners, and the uniformity of COC depository requirements.