

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 564 (Delegate Holmes)
Environment and Transportation

Real Property - Condominiums and Homeowners Associations - Governing
Bodies

This bill amends various provisions of the Maryland Condominium Act (MCA) and the Maryland Homeowners Association Act (MHAA) relating to the governing body of a condominium or a homeowners association (HOA).

Fiscal Summary

State Effect: The bill is not anticipated to impact State finances or operations.

Local Effect: The bill is not anticipated to impact local government finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary:

Meetings

The bill requires the governing body of a condominium or an HOA to convene a meeting at least twice a year.

The Developer/Declarant

Within 30 days from the date that units representing 25% of the votes in the condominium have been sold to members of the public for residential purposes, the developer must appoint a board of directors for the council of unit owners that includes at least one member

who is a unit owner and who is not otherwise affiliated with the developer. Similarly, within 30 days from the date that lots representing at least 25% of the total number of lots that may be part of the development after all phases are complete have been sold to members of the public for residential purposes, the declarant must appoint a governing body for the HOA that includes at least one member who is a lot owner and who is not otherwise affiliated with the declarant or a vendor of lots in the development.

A developer or declarant must provide each member of the governing body of a condominium or HOA with notice of any bond provided by the developer or declarant to a governmental unit in connection with the development, as well as the contact information of the person through which a claim against the bond may be asserted. The developer or declarant must deliver this notice within 15 days of the meeting to elect the governing body's board of directors. If the developer or declarant requests to be released from such a bond, the developer or declarant must provide each member of the governing body with notice, within 30 days of the request, of the intention to be released from the bond and the contact information of the person through which a claim against the bond may be asserted.

Books, Records, and Accounts

Condominium and HOA recordkeeping requirements for books and records are expanded to apply to accounts. Recordkeeping is required to begin on the date the governing body of the condominium or HOA is established. All books, records, and accounts kept by the governing body must be maintained separate and apart from those of the developer, declarant, or any other person.

Current Law:

Meetings

The governing body of a condominium must convene at least one meeting each year at which the agenda is open to any matter relating to the condominium. Unless held for specified reasons of confidentiality, such as discussion of legal matters or individual owner assessment accounts, each meeting of the governing body must be open and held at a time and location as specified in the notice or the bylaws.

A meeting of a condominium council of unit owners to elect a board of directors must be held within 60 days from the date that units representing 50%, or a lesser amount if specified by the condominium's governing documents, of the votes in the condominium have been conveyed by the developer to members of the public for residential purposes. A meeting of the members of an HOA to elect the HOA's governing body must be held within 60 days from the date that at least 75%, or a lesser amount if specified by the HOA's governing documents, of the total number of lots that may be part of the development after

all phases are complete are sold to members of the public for residential purposes. Before the date of the election meeting, the developer or declarant must deliver to each unit or lot owner notice that the applicable number of units or lots has been conveyed and the date, time, and place of the election meeting.

The Developer/Declarant

Within 30 days after the election meeting, the developer or declarant must deliver to the governing body specified information. The type of required information differs depending on whether the development is a condominium or an HOA. If the developer or declarant fails to provide the appropriate information, an aggrieved unit or lot owner may submit the dispute to the Division of Consumer Protection of the Office of the Attorney General.

Books, Records, and Accounts

The statutory requirements regarding a development's books and records are more extensive for a condominium than for an HOA. For example, under MCA, a condominium's governing body must hire an independent certified public accountant to perform an audit of the books and records if unit owners representing at least 5% of the condominium units make such a request. MHAA is silent as to any audit requirement. However, despite these differences, multiple requirements apply to both a condominium and an HOA.

Generally, the books and records of a condominium or an HOA must be available for examination or copying, or both, by any unit or lot owner, the owner's mortgagee, or their respective agents or attorneys during normal business hours and after reasonable notice. The governing body's books and records must first be made available to an owner within 15 days after a unit or lot is conveyed and the owner makes a request to examine or copy the books and records. However, if the books and records contain specified private records, the governing body may withhold them from public inspection, except for inspection by the person who is the subject of the record. The governing body may not impose any charges for copying or delivering records other than a reasonable charge which may not exceed the limits authorized under the Courts and Judicial Proceedings Article.

Background: For 2017, Secretary of State registration records show that there are 2,875 condominium regimes statewide, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 225,947 condominium units. The Foundation for Community Association Research estimated that there were 6,700 community associations in the State in 2016. For more information about condominiums and HOAs, which are broadly referred to as common ownership communities, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: HB 79 of 2012, a similar bill, received an unfavorable report from the House Environmental Matters Committee. Its cross file, SB 202, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 432 (Senator Kelley) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 9, 2018
mm/kdm

Analysis by: Nathan W. McCurdy

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

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 2017, the SOS registration records show that there are 2,875 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 225,947 condominium units. The Foundation for Community Association Research estimated that there were 6,700 community associations in the State in 2016.

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 2017:

- 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 condominiums and HOAs to amend their governing documents (Chapters 144 and 145 of 2008 and Chapter 480 of 2017);
- 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, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016 and Chapter 817 of 2017).

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 pertain to reserves of COCs, an insurance deductible cap for unit owners, and the uniformity of COC depository requirements.