

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 107

(Senator Ellis)

Judicial Proceedings

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**Real Property - Common Ownership Communities - Payment of Fees**

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This bill alters the method by which common ownership community (COC) fees are paid in the State by requiring a mortgagor or grantor to pay the fees as part of the payments made under a mortgage or deed of trust. The bill also establishes notification requirements, requires mortgagees and grantees to forward fee payments to the governing body of the COC, and authorizes nominal fees to cover additional associated costs. The bill applies prospectively and only affects mortgages or deeds of trust signed on or after its October 1, 2020, effective date.

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**Fiscal Summary**

**State Effect:** Any change in State activities due to the bill can be absorbed within existing resources, as discussed below. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** A “common ownership community” is a condominium, homeowners association, or cooperative housing corporation, as defined in specified statutory provisions. A mortgagor or grantor must pay any fees imposed by a COC to the mortgagee or grantee as part of the payments made under the mortgage or deed of trust. A mortgagor or grantor must notify the mortgagee or grantee and the governing body of the COC of this payment arrangement and provide any information that is requested to facilitate the payment and transfer of these fees.

The bill requires the mortgagee or grantee to adjust payment obligations under the mortgage or deed of trust to include COC fees and clearly record these adjustments in the appropriate documents. The mortgagee or grantee must forward the fee payments to the governing body of the COC in the manner requested by the body. The governing body of a COC must (1) provide the mortgagee or grantee and mortgagor or grantor any information necessary for the transfer of the fee payments and (2) promptly notify these entities of any changes in COC fees. The mortgagee or grantee must pay any penalty assessed by the COC if fees are received but not transferred in a timely manner, as specified. The bill authorizes mortgagees and grantees to charge nominal fees to cover additional costs associated with processing COC fees as required by the bill.

**Current Law/Background:** Under the Real Property Article, a “condominium” is a property subject to the condominium regime established under the Real Property Article. A “homeowners association,” regardless of whether it is an incorporated or unincorporated association, is a person having the authority to enforce the provisions of a declaration, as specified. A “cooperative housing corporation” is a domestic or foreign corporation qualified in this State, whether stock or nonstock, having only one class of stock or membership, in which each stockholder or member, by virtue of such ownership or membership, has a cooperative interest in the corporation.

Statutory provisions authorize these entities to assess fees on households within these types of communities to cover shared costs. For more information about COCs generally, including the number of COCs in Maryland, see the **Appendix – Common Ownership Communities**.

**State Expenditures:** The Office of Financial Regulation within the Maryland Department of Labor advises that new procedures will need to be developed to adequately license and supervise third-party mortgage servicers and respond to a potential increase in complaints that may be generated as a result of the new responsibilities these servicers must undertake. However, this can be handled with existing resources.

**Small Business Effect:** The bill likely increases the overall complexity and costs associated with servicing loans secured by properties in COCs, as lenders and mortgage servicers will be responsible for collecting and transferring frequent payments to multiple COCs. Accordingly, the bill may result in fewer small businesses having the means and infrastructure to facilitate the fee payment method, even with the authorization to charge nominal fees to cover any increased additional costs.

The bill may also impact the operating costs of COCs, as some of them may need to upgrade their infrastructure to handle the changes in mandatory operating procedures.

## **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division);  
Judiciary (Administrative Office of the Courts); Maryland Department of Labor;  
Department of Legislative Services

**Fiscal Note History:** First Reader - January 14, 2020  
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## Appendix – Common Ownership Communities

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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.

### *Number of Common Ownership Communities in Maryland*

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). SOS registration records show that, as of December 2019, 2,713 condominium regimes have been registered with the State. The State Department of Assessments and Taxation, which maintains

assessment records based on class of property, reports there were 225,038 condominium units (both commercial and residential) in the State as of July 2019. The Foundation for Community Association Research estimated there were 1.0 million residents living in 6,775 community associations in the State in 2018.

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