

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 361 (Delegate Holmes)
Environment and Transportation

**Real Property - Governing Bodies of Common Ownership Communities -
Member Training**

This bill requires each member of a board of directors or officer of a council of unit owners of a condominium and each member of a governing body of a homeowners association (HOA) to successfully complete a training curriculum on the responsibilities of being a member or an officer within specified timeframes.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The required training must have been developed by a common ownership commission recognized by the State or a local government or an organization approved to administer the training curriculum by a recognized common ownership commission. Officers and members must successfully complete the training within 90 days after first being elected or appointed to the office. Individuals who are in office as of the bill's effective date of October 1, 2021, must successfully complete the training within 90 days after beginning a subsequent term.

The board of directors, officers of the council of unit owners, or governing body of an HOA, as appropriate, must (1) certify that each member or officer successfully completed the training requirements; (2) retain a copy of the certificate of completion for each member

or officer; and (3) within 90 days after the certification of the member or officer, report to the common ownership commission. Certificates are valid for three years and require renewal upon expiration. Failure to comply with the training requirement authorizes the relevant body to remove the individual from office or invalidate a vote of the individual.

Current Law: Statutory provisions do not address such training requirements for the governing entity of a condominium or an HOA.

For more information on condominiums and HOAs, which are commonly referred to as ownership communities, see the **Appendix – Common Ownership Communities**.

Additional Comments: The Department of Legislative Services advises that implementation in Montgomery County is not problematic (as the county’s Commission on Common Ownership Communities already requires such training) and can likely be handled in both Charles and Prince George’s counties as well (which both have offices that assist common ownership communities). However, it is unclear what entity would be responsible for approving such training for the remainder of the State.

Additional Information

Prior Introductions: HB 1054 of 2020 received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Montgomery and Prince George’s counties; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Legislative Services

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rh/jkb

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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). SOS registration records show that, as of December 2020, 2,739 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 that there are 221,999 condominium units in the State as of July 2020. The Foundation for Community Association Research

estimated that there were 6,785 community associations with an estimated 1 million residents in these associations in the State in 2019, the most recent information available.

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 2020:

- 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);
- 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); and
- increased to \$10,000 the maximum amount of the council of unit owners' property insurance deductible for which a specific unit owner is responsible if the cause of any damage to or destruction of the common elements or units of a condominium originates from an event inside that owner's unit (Chapters 56 and 57 of 2020).

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 and the uniformity of COC depository requirements.