

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 567

(Montgomery County Delegation)

Environment and Transportation

Judicial Proceedings

**Montgomery County - Cooperative Housing Corporations, Condominiums, and
Homeowners Associations - Reserve Studies**
MC 3-21

This bill requires a study every five years of the reserves needed for future major repairs and replacement of the common elements of a cooperative housing corporation or condominium, or the common areas of a homeowners association (HOA), in Montgomery County. Furthermore, the governing body of a cooperative housing corporation, condominium, or HOA in Montgomery County must provide funds to the reserve in accordance with the most recent reserve study, must review the reserve study annually, and has the authority to increase an assessment levied to cover the reserve funding amount required – despite any applicable provision restricting assessment increases or capping the assessment that may be levied in a fiscal year. The bill does not apply to an HOA that issues bonds to meet capital expenditures.

Fiscal Summary

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

Local Effect: The bill does not materially affect Montgomery County operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill generally extends existing statutory provisions regarding reserve studies that are applicable only in Prince George’s County to Montgomery County.

“Reserve study” means a study of the reserves required for future major repairs and replacement of the common elements of a cooperative or condominium, or the common areas of an HOA, that:

- identifies each structural, mechanical, electrical, and plumbing component of the common elements or common areas and any other components that are the responsibility of the cooperative, condominium, or HOA to repair and replace;
- states the normal useful life (for cooperatives and condominiums) and the estimated remaining useful life of each identified component;
- states the estimated cost of repair or replacement of each identified component; and
- states the estimated annual reserve amount necessary to accomplish any identified future repair or replacement

Cooperatives, Condominiums, and Homeowners Associations Established on or After the Effective Date of the Bill

If a cooperative or condominium in Montgomery County is established on or after October 1, 2021, the governing body of the cooperative or condominium must have an independent reserve study completed at least 30 days prior to the first meeting of (1) the cooperative at which members other than the owner have a majority of votes in the cooperative or (2) the council of unit owners of a condominium to elect a board of directors, as specified. For HOAs established on or after the date specified above, the governing body must have the study conducted at least 30 days, but no more than 90 days, prior to the first meeting of the HOA to elect a governing body, as specified.

Within five years after this first required reserve study, and at least every five years thereafter, the governing body of a cooperative, condominium, or HOA in Montgomery County must have an updated reserve study completed.

Cooperatives, Condominiums, and Homeowners Associations Established Before the Effective Date of the Bill

If a cooperative, condominium, or HOA in Montgomery County is established before October 1, 2021, the governing body of the cooperative, condominium, or HOA must have a reserve study conducted by October 1, 2022, unless the cooperative, condominium, or HOA had a reserve study conducted within the past five years, as specified. Within five years after this first required (or most recent) reserve study, and at least every five years thereafter, the governing body of a cooperative, condominium, or HOA in Montgomery County must have an updated reserve study completed.

Additional Requirements of the Reserve Study

Each reserve study must be prepared by an individual who:

- has prepared at least 30 reserve studies for the applicable type of community within the prior three calendar years;
- holds a bachelor's degree in construction management, architecture, or engineering, or has equivalent experience and education;
- holds a current license from the State Board of Architects or the State Board for Professional Engineers; or
- is currently designated as a reserve specialist by the Community Association Institute or a professional reserve analyst by the Association of Professional Reserve Analysts.

Each reserve study must:

- be available for inspection and copying by any unit owner or lot owner;
- be reviewed by the governing body of the cooperative, condominium, or HOA in connection with preparing the annual budget; and
- be summarized for submission with the annual proposed budget to the unit owners or lot owners.

For newly established condominiums and HOAs, the condominium developer or HOA declarant must deliver to the condominium or HOA reserves equal to at least the reserve funding amount recommended in the initial reserve study. This must be done within 30 days after (1) the meeting held to elect a board of directors for the council of unit owners or (2) the meeting held to elect a governing body of the HOA.

To the extent that a reserve study conducted for a cooperative indicates a need to budget for reserves, the budget must meet specified requirements, including the inclusion of a statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves. The governing body of a cooperative must provide funds to the reserve in accordance with the most recent reserve study and review the reserve study annually for accuracy.

The annual budget of every condominium or HOA must include reserves equal to the funding amount recommended in the most recent reserve study.

The governing body of a cooperative, board of directors of the condominium, or governing body of the HOA has the authority to increase an assessment levied to cover the reserve funding amount required, despite any provision of the articles of incorporation, declaration,

bylaws, or proprietary lease, as applicable, restricting assessment increases or capping the assessment that may be levied in a fiscal year.

Current Law: In general, the annual budget of a condominium or an HOA must allocate funds for reserves, capital items, and general expenses of the condominium or HOA. In a condominium, unit owners must be assessed for current common expenses and reserves for future expenses in proportion to their percentage interests in the common expenses and common profits. The public offering statement for a cooperative must contain specified information including a copy of the projected annual budget, including reserves.

Statutory provisions that require a reserve study (and those related to funding/budget requirements and authorizations) are applicable only to cooperatives, condominiums, and HOAs in Prince George’s County.

For more information on cooperatives, condominiums, and HOAs (commonly known as common ownership communities or COCs), see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Montgomery County; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2021
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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.