

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1060 (Delegate Holmes)
 Environment and Transportation

Residential Owners in Common Ownership Communities Bill of Rights

This bill creates a bill of rights for residential owners in a common ownership community (COC), applicable to members of cooperative housing communities, unit owners of condominiums, and lot owners in homeowners associations (HOA).

Fiscal Summary

State Effect: General fund expenditures for the Office of the Attorney General (OAG) increase by a minimum of \$172,900 in FY 2023 for staff; future years reflect annualization. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	172,900	207,500	213,300	218,900	224,700
Net Effect	(\$172,900)	(\$207,500)	(\$213,300)	(\$218,900)	(\$224,700)

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

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill establishes a bill of rights for residential owners in a COC. The rights are subject to the provisions of all applicable laws governing COCs established in the State, and, among others, include the right to:

- be designated as a member of a COC when the community makes the residential owner subject to a lien and to a mandatory assessment and participate in meetings on community issues with other members;

- be represented by the governing body of the COC and to have the governing body consider the priorities of all residential owners when approving a budget and managing the community's facilities and open space;
- vote (1) by secret ballot to elect the membership of the governing body for the COC and to be a candidate in fair elections administered by neutral parties, with results that can be verified by an audit on request; (2) to recall an incumbent member of the governing body; (3) on specific financial matters, if permitted in the governing documents of a COC; and (4) on new capital projects proposed by the governing body if permitted in the governing documents of a COC and by referendum;
- use all facilities and services of the COC at a reasonable cost that does not exceed half the cost charged to eligible users who are not residential owners in the COC;
- have a COC governing body and community manager that (1) are properly trained and indemnified; (2) are stewards of the COC's interests; (3) are protective of the rights of residential owners in the community; (4) provide residential owners due process and equal protection; and (5) comply and function in accordance with State law and governing documents;
- fair treatment if charged with a violation of the governing documents, including the opportunity to (1) be notified in writing about the nature of the violation; (2) present evidence and cross-examine witnesses at proper hearings; and (3) abate the violation within a reasonable period;
- receive timely access to documents of the COC, including the ability to inspect and copy such documents;
- receive prompt and nondiscriminatory service from the staff and governing body of the COC;
- individual privacy by the governance and management of the COC; and
- have the Consumer Protection Division (CPD) of OAG (1) review an alleged violation of State laws that govern COCs and (2) take direct enforcement action on behalf of a residential owner, including by acting to receive an adjudication of the matter before a court or the imposition of penalties by OAG.

The rights established under the bill may not be construed to deny or detract from other rights that may be retained by residential owners in a COC.

Current Law: Generally, current law does not specifically enumerate explicit *rights* to residential property owners of COCs. Condominiums, HOAs, and cooperative housing communities are typically operated in accordance with their respective governing documents (bylaws, declarations, *etc.*). However, existing statutory provisions do set forth procedures, authorizations, and requirements regarding the operation of a COC that impact owners in such communities, including those related to (1) meeting requirements; (2) fidelity insurance requirements; (3) notice requirements for specific meetings;

(4) warranties; (5) requirements related to bookkeeping and access to specific records; and (6) procedures for specific dispute resolution.

For more information on condominiums, cooperative housing corporations, and HOAs, commonly known as COCs, see the **Appendix – Common Ownership Communities**.

State Fiscal Effect: The bill establishes a right for each residential owner in a COC to have OAG (through its CPD) review alleged violations of State law that govern COCs and take direct enforcement action. OAG advises that given the additional responsibility of reviewing complaints and potential enforcement, it requires additional staff. Although without experience under the bill, the Department of Legislative Services is unable to precisely quantify the need for staff, it generally assumes that due to the number of individuals in the State who live in COCs, the bill likely generates a volume of complaints that supports the need for at least one assistant Attorney General and a part-time investigator. Accordingly, OAG general fund expenditures increase by a minimum of \$172,890 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring an assistant Attorney General and a part-time investigator to assist in the review of complaints and enforcement of violations of State law regarding COCs. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.5
Salaries and Fringe Benefits	\$158,601
Operating Costs	<u>14,289</u>
Minimum 2023 State Expenditures	\$172,890

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that a significant volume of complaints is received, additional staff may be needed in future years.

Small Business Effect: Potential meaningful, particularly to the extent that complaints regarding COCs are reviewed and enforced by OAG.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - February 27, 2022
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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 2021, 2,768 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 more than 225,000 condominium units in the State as of July 2021. The Foundation for Community

Association Research estimated that there were 6,850 community associations with an estimated 1 million residents in these associations in the State in 2020, 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 2021:

- 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);
- 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); and
- established that specified COCs in Montgomery and Prince George's counties generally conduct a reserve study every five years to determine the amount and necessity of reserves for anticipated capital replacements, repairs, and improvements. COCs must also adequately fund the recommended reserves, as specified (Chapter 138 of 2020 and Chapter 433 of 2021).

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 statewide requirements for reserves of COCs and the uniformity of COC depository requirements.