

HB 1061

Department of Legislative Services

Maryland General Assembly

2022 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 1061 (Delegate Holmes)
Environment and Transportation

Local Government - Condominium and Homeowners Associations - Repair and Rehabilitation Funds

This bill authorizes counties and municipalities to establish a local trust fund or other appropriate fund for the purpose of repairing or rehabilitating infrastructure within communities that are subject to the Maryland Condominium Act or the Maryland Homeowners Association Act.

Fiscal Summary

State Effect: None.

Local Effect: The bill does not affect overall county and municipal property tax revenues but rather redirects property tax revenues to be used for specified purposes to the extent special funds are established. This diversion of property tax revenues may result in less funding for other local services, including education and public safety.

Small Business Effect: None.

Analysis

Bill Summary: A fund created may be used, at the discretion of a county or municipality, for the repair of infrastructure that is traditionally maintained by the county or municipality for the benefit of the public, including roads and stormwater management facilities and may not be used to repair or replace recreational facilities used for the exclusive use or benefit of the members of a condominium association or homeowners association or their guests.

A fund established by a county or municipality must consist of (1) property tax revenues paid to the county or municipality by unit owners in a condominium or lot owners in a homeowners association; (2) other appropriations made by the county or municipality for the benefit of the fund; (3) gifts or donations made to the fund; and (4) investment earnings of the fund.

A county or municipality must assign property tax revenues paid to the county or municipality by the unit owners in a condominium or the lot owners in a homeowners association to a fund that is established as follows: (1) 25% of the revenues per year for any condominium association or homeowners association that has not received support from the fund since the date on which the fund was established; and (2) between 10% and 25% of the revenues per year for any condominium association or homeowners association that has received support from the fund since the date on which the fund was established.

A county or a municipality may establish eligibility requirements for the award of funds to a condominium association or homeowners association. A county or municipality must prioritize support for condominiums and homeowners associations that exhibit the greatest need for infrastructure repair or rehabilitation. When evaluating the need for funding to support infrastructure repair, a county or municipality may consider the availability of other funds and resources on which a condominium association or homeowners association may rely.

Current Law: There are more than 225,000 condominium units in the State as of July 2021, and approximately 6,850 community associations with an estimated one million residents. For a discussion of common ownership communities, please see **Appendix – Common Ownership Communities.**

Local Fiscal Effect: The bill does not alter the overall amount of property taxes collected by local governments. The bill authorizes a local government to establish a fund to pay certain infrastructure costs for homeowners associations and condominium associations. To the extent these funds are established, local governments must direct up to 25% of property tax revenues collected from these various associations to the fund. As a result, local government general fund revenues will be diverted from other local services such as education and public safety. The amount of property tax revenue that may be diverted depends on the amount of property taxes collected from homeowners and condominium associations, which cannot be reliably estimated.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Charles, Montgomery, and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Department of Legislative Services

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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.