

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 616

(Delegates Healey and Holmes)

Environment and Transportation

Judicial Proceedings

Cooperative Housing Corporations - Dispute Settlement and Eviction Procedures

This bill (1) alters the dispute settlement mechanism under the Maryland Cooperative Housing Corporation Act; (2) repeals the general prohibition against a governing body of a cooperative housing corporation bringing an action to evict a member solely based on the member's failure to pay specified assessments (unless certain circumstances exist); and (3) makes other technical and clarifying changes. The bill applies prospectively and may not be interpreted to have any effect on or application to any complaint or demand formally arising under the rules of a cooperative housing corporation or the provisions of a member's proprietary lease before its October 1, 2022 effective date, unless the bylaws of the cooperative housing corporation or the proprietary lease of the member states otherwise.

Fiscal Summary

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

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

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill specifies that the dispute settlement mechanism set forth does not apply to complaints or demands related to a member's failure to pay assessments owed to

the cooperative housing corporation. The bill makes several other changes to the notice and procedural requirements of the dispute settlement mechanism, including:

- the written cease and desist demand for the alleged violation must specify, among other existing provisions, a time period of at least 15 days (rather than 10 days) to abate the alleged (continuing) violation without further sanction;
- the governing body of a cooperative housing corporation must *provide*, rather than *serve*, a member with specified notices to the member's address of record;
- a member of a cooperative housing corporation has a right to *request* a hearing to be held by the governing body;
- notice advising a member of his or her right to request a hearing must specify the procedure for requesting a hearing and the timeframe for submitting the request, which may not be less than 10 days beginning on the date of the notice; and
- the governing body must give a member at least 10 days' written notice of the time and place of any hearing.

If the member does not request a hearing within the timeframe specified in the notice, the governing body, at the next meeting, must deliberate as to whether the violation occurred and decide whether a sanction is appropriate for the violation.

Current Law:

Dispute Settlement Mechanism for Cooperative Housing Corporations

Statutory provisions set forth a mechanism to be used for any complaint or demand formally arising on or after January 1, 2015, unless the bylaws of a cooperative housing corporation or the proprietary lease of the member who is a party to the dispute state otherwise. Pursuant to the provisions, the governing body may not impose a fine, suspend voting, bring an action to evict, or infringe upon the rights of a member for a violation of the rules of the cooperative housing corporation or the provisions of the member's proprietary lease without first taking specified actions. The governing body must serve the member with a written demand to cease and desist that specifies (1) the alleged violation; (2) the action required to abate the violation; and (3) a time period of at least 10 days during which an ongoing violation may be abated without further penalty *or*, in regard to noncontinuing violations, a statement that any further violation of the same rule may result in the imposition of sanction after notice and a hearing.

If a violation continues beyond the abatement period, or if the same rule is subsequently violated, the member must be served with written notice of a hearing. The notice must (1) contain a description of the alleged violation and proposed sanction and (2) inform the member of the opportunity to produce any statement, evidence, and witnesses on his or her

behalf. The notice must specify the time and place of the hearing, which may not be less than 10 days from the giving of the notice.

The hearing must be held in an executive session of the governing body and provide the member with the right to present evidence and to present and cross-examine witnesses. Prior to imposing any sanction, the governing body must place in the minutes of the meeting proof of the notice provided to the member. The meeting minutes must also contain the results of the hearing and the details of any sanction imposed. A member may appeal a decision of the governing body in court.

If a member fails to comply with the provisions of the Maryland Cooperative Housing Act, the cooperative housing corporation's bylaws, or a governing body's decision made pursuant to the dispute settlement procedures, the member may be sued for damages or injunctive relief by the governing body or any other member. Reasonable attorney's fees may be awarded by the court to the prevailing party.

Eviction Restrictions

A cooperative project that is no longer subject to a mortgage or deed of trust is subject to eviction restrictions. Notwithstanding the articles of incorporation, bylaws, or regulations of a cooperative housing corporation, or the proprietary lease of any member, a governing body may not bring an action to evict a member based solely on the failure of the member to pay assessments owed to the cooperative housing corporation unless (1) the member has been delinquent in paying assessments for a period of three months or more; (2) the governing body has given the member notice and an opportunity to be heard regarding the delinquency and opportunity to cure the delinquency; and (3) the member has failed to cure the delinquency.

For more information on common ownership communities (which include cooperative housing corporations), see the **Appendix – Common Ownership Communities**.

Small Business Effect: Small cooperative housing corporations may realize administrative efficiencies related to dispute settlement procedures and may be able to evict members before they are three months delinquent in paying assessments.

Additional Information

Prior Introductions: HB 825 of 2021, a nearly identical bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. HB 414 of 2019, as amended, passed the House and was referred to the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, SB 724, received an unfavorable report from the Senate Judicial Proceedings Committee. Similar bills were also introduced in 2018.

Designated Cross File: None.

Information Source(s): Charles, Montgomery, and Prince George's counties; Secretary of State; Judiciary (Administrative Office of the Courts); 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.