

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 273 (Delegate Holmes)
 Environment and Transportation

Real Property - Regulation of Common Ownership Community Managers

This bill establishes the State Board of Common Ownership Community Managers to regulate the provision of common ownership community (COC) property management services in Maryland. Appointed by the Governor, the board operates under the authority of the Secretary of Labor. The board is subject to reestablishment and periodic evaluation under the Maryland Program Evaluation Act (MPEA), with a termination date of July 1, 2030.

Fiscal Summary

State Effect: General fund expenditures increase by \$100,000 in FY 2025 to establish the board. The board becomes operational as a special fund entity in FY 2026. Out-year costs reflect annualization and annual increases; revenues reflect staggered license renewals and growth in the number of licensees under the assumptions discussed below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$0	\$935,000	\$11,100	\$946,100	\$23,000
GF Expenditure	\$100,000	\$0	\$0	\$0	\$0
SF Expenditure	\$0	\$473,000	\$406,700	\$424,100	\$442,300
Net Effect	(\$100,000)	\$462,000	(\$395,600)	\$522,000	(\$419,300)

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

Local Effect: None; however, COCs and COC managers in Montgomery and Prince George’s counties become subject to regulation at both the State and local levels.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Defined Terms

The bill defines a “common ownership community” as a condominium organized under the Maryland Condominium Act that is used for residential purposes, a homeowners association (HOA) organized under the Maryland Homeowners Association Act, and a cooperative housing corporation organized under the Maryland Cooperative Housing Corporation Act.

“License” generally means a license issued by the board that allows an individual to provide management services for a COC.

“Limited license” generally means a limited license issued by the board that allows an individual to provide management services for a COC under the supervision of a licensed community manager.

“Providing management services” for a COC means:

- acting with the authority of the COC in its business, legal, financial, or other transactions with COC members and nonmembers;
- executing the resolutions and decisions of a COC;
- enforcing the rights of the COC secured by statute, contract, covenant, rule, or bylaw with the authority of the COC;
- negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of a COC;
- collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to a COC;
- preparing budgets, financial statements, or other financial reports for a COC;
- arranging, conducting, or coordinating meetings of a COC or the governing body of a COC; or
- offering or soliciting to perform any of the above-mentioned acts or services on behalf of a COC.

State Board of Common Ownership Community Managers

The board consists of nine members who serve for a term of four years. A board member may not serve more than two consecutive terms, and the terms of the members are staggered. Board members may not be compensated but are entitled to reimbursement for

expenses as provided for in the State budget. Members are appointed by the Governor with the advice of the Secretary of Labor and the advice and consent of the Senate. The bill specifies additional criteria for board members.

To administer and enforce the bill, the board is required to:

- adopt rules of professional conduct as appropriate for individuals issued a license or a limited license;
- establish criteria and a process for certification of a variety of educational offerings and training programs for issuing licenses or limited licenses;
- establish continuing education requirements for individuals who have been issued a license or a limited license; and
- keep a record of its proceedings.

The board may establish, by regulation, a nonjudicial dispute resolution process to resolve any disciplinary matter, education and training opportunities for governing bodies of COCs, and any other procedures or standards consistent with its mission. The board may also take appropriate actions to enter into a cooperative and information-sharing agreement with any unit of law enforcement as authorized by law, as well as assist a COC in exercising any other rights granted by the bill.

Uncodified language authorizes the board, when adopting regulations concerning the training and examination requirements for an applicant for a license or limited license, to take into consideration specified training and examination standards.

Once licensing activity begins, the board must maintain a public list of the names and mailing addresses of all individuals issued a license or a limited license.

Funding of the Board

The board must charge fees set to approximately cover both the direct and indirect costs of fulfilling its statutory and regulatory duties and may set those fees by regulation. To inform the fee-setting decision, the Secretary of Labor, in consultation with the board, must annually calculate the direct and indirect costs attributable to the board. The fees charged must be consistent with other fees for comparable licenses issued by other boards and commissions in the State. The board must publish its fee schedule. Each fee established by the board may not be increased annually by more than 12.5% of the existing and corresponding fee. All fee revenue is deposited into a newly created State Board of Common Ownership Community Managers Fund, a special, nonlapsing fund administered by the Secretary. Interest earnings accrue to the new fund. Expenditures from the fund may

only be made in accordance with the State budget. The Office of Legislative Audits (OLA) must audit the accounts and transactions of the fund.

The Department of Budget and Management, by budget amendment, may advance sufficient funds to the board to allow operations to commence on October 1, 2024, so that licensing and registration functions may be in place by October 1, 2025. For fiscal 2024, the “department” (meaning the Maryland Department of Labor (MDL)) is prohibited from allocating more than \$100,000 for the establishment of the board, including personnel expenses.

Licensed Community Managers

An individual acting as a COC manager in the State must be issued a license by the board prior to providing management services and may only provide management services in fulfillment of a contract with the COC, as specified. An applicant must already be a licensed associate community manager who holds a limited license and:

- completes a board-approved training program;
- passes a board-approved examination; and
- has been actively engaged in providing management services as a licensed associate community manager for at least five years before applying for a license or holds an active board-approved professional designation.

Until the board adopts regulations concerning training examination requirements, license applicants may take a nationally prepared and administered standardized examination for the COC management profession that is developed in a specified manner. Additionally, the board must grant a waiver of the license or limited license training and examination requirements to any applicant who presents to the board satisfactory evidence, by October 1, 2026, that the applicant provided management services in the State for the two years immediately preceding the application.

An applicant must submit an application to the board and pay the application fee set by the board. Upon payment of a license fee, a qualified applicant must be issued a license by the board. The term of a license is two years. The board must issue a renewal certificate and renew the license of each qualified holder. The board must provide a renewal application form and notice to the licensee, at least two months before the license expires, as specified.

The board is required to reinstate the license of an individual who has failed to renew his or her license if the individual applies for reinstatement within two years of the license expiration, pays a reinstatement fee set by the board, and meets the aforementioned renewal requirements. If an applicant applies for reinstatement after the two-year period, the board

may either treat the application the same as an initial application or reinstate the license if specific requirements are met.

The board may also grant reciprocity to an individual who has an equivalent license in another U.S. state or territory. The board may issue the license by reciprocity only if the applicant pays a license fee set by the board and provides adequate evidence that the applicant has met substantially equivalent requirements as those in the State. The board must establish standards for the issuance of a license to an individual licensed in another state.

If a COC contracts with a person other than a licensed community manager to provide management services, the contract must require that only a licensed community manager provide the COC with management services.

Licensed Associate Community Managers

An individual must be issued a limited license by the board before an individual may provide management services as a licensed associate community manager for a COC in the State. A licensed associate community manager may provide management services only while under the general supervision of a licensed community manager.

An applicant for a limited license must be at least age 18, submit an application on a board-approved form, and pay an application fee. In addition, the applicant must complete a board-approved training program and pass a board-approved examination. If an applicant qualifies for a limited license, the board must send the applicant a notice stating that the applicant has qualified for a limited license and, on receipt of a fee, the board will issue a limited license in the name of the applicant. The board must deliver a limited license to the licensed community manager who will be supervising the licensed associate community manager, as specified. Provisions regarding the renewal and reinstatement of a limited license align with those set forth for a licensed community manager.

Grounds for Denying, Reprimanding, Suspending, or Revoking a License or Limited License

Subject to specified notice and hearing requirements and after considering specified factors, the board may deny a license (or limited license) to an applicant, reprimand a licensee, suspend or revoke a license (or limited license), and/or impose a penalty against a licensee of up to \$5,000 (which is paid to the general fund) if the licensee:

- fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- fraudulently or deceptively uses a license;

- is convicted of (1) a felony or (2) a misdemeanor that directly relates to the applicant's or licensee's fitness and qualifications to provide management services;
- engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings;
- fails to handle the funds of a COC in accordance with the bill's provisions;
- fails to account in a timely manner for all money and property received on behalf of a COC;
- willfully fails to disclose to a COC relevant material facts of which the licensee has actual knowledge;
- is guilty of gross negligence, incompetence that is proven to have been detrimental to a COC, or misconduct in providing management services;
- has been sanctioned in another state in a matter relating to providing management services;
- violates any of the bill's provisions; or
- violates any regulations adopted by the board.

Before the board takes any of these actions against a licensee, it must give the individual notice and an opportunity for a hearing before the board. If the individual does not appear after due notice has been given, the board may hear and determine the matter. The board may issue a subpoena for the attendance of a witness to testify or the production of evidence in connection with any such proceeding. A circuit court may compel compliance with the subpoena upon petition by the board. An individual who contests a final decision of the board is entitled to judicial review under the Administrative Procedure Act.

The board may reinstate, in accordance with board procedures, a revoked license or, before fulfillment of the conditions of the suspension, any suspended license.

Registration

Each COC must register with the board on or before January 1 of each year and provide the board with specified identifying information and any other information required by the board. If a COC contracts for management services, that manager is responsible for the registration. MDL must report to the General Assembly by December 1, 2024, on the imposition of a COC registration fee in relation to the bill's license and limited license fees as well as the size of a COC to which a registration fee would apply.

Miscellaneous Provisions

A contracting party must file with the Secretary proof, as required by the board, of a fidelity bond or theft insurance of a specified amount, or other board-required comparable written insurance, that covers (1) any person that provides management services for a COC under

the terms of a contract and (2) any individual working under the direction of such a person. The Secretary, or the Secretary's designee, must be named as a certificate holder for any fidelity bond or required insurance. In the event the fidelity bond or insurance is canceled, forfeited, or terminated or the contracting party fails to notify the Secretary of any change to the fidelity bond or insurance, the Secretary must suspend any license of any individual providing management services, until proof of compliance is submitted.

A licensed community manager must deposit all money received in connection with the provision of management services in one or more of the financial institution accounts of a COC. A licensed community manager who provides management services for more than one COC must maintain separate bank accounts for each COC and may not commingle accounts. Each bank account maintained by the licensed community manager must be in the name of the COC. A licensed community manager who willfully violates the bill's provisions relating to the handling of COC financial institution accounts is guilty of a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment for up to five years.

Additional Enforcement and Penalty Provisions

A person who is not a licensed community manager or licensed associate community manager but, nonetheless, acts as a licensed COC manager, is in violation of the bill. In addition, a person may not represent that he or she is authorized to provide COC management services or give false information to the board in an attempt to obtain a license or limited license. A person whose license or limited license has been suspended or revoked may not provide management services to a COC as an associate, agent, employee, or other subordinate of either a licensed community manager or a business entity that provides management services. The board, with the approval of the Attorney General, may sue in the name of the State to enjoin any prohibited activity. Violation of such provisions is a misdemeanor and punishable by a fine of up to \$5,000 and/or imprisonment for up to three years. The board may also impose a fine of up to \$5,000 for each violation after consideration of specified factors.

Current Law:

Regulation of Management Services

State law does not designate a statewide office to regulate COC management services. Among local governments, only Montgomery and Prince George's counties require some form of COC registration.

Fidelity Insurance Requirements for Common Ownership Communities

State law requires that the board of directors, council of unit owners, or other governing body of a COC purchase fidelity insurance, which is defined to include a fidelity bond, no later than the time of the first conveyance of a cooperative interest, unit, or lot to a person other than the developer and must keep the insurance in place every subsequent year. The insurance must provide for the indemnification of the COC against loss resulting from acts or omissions arising from fraud, dishonesty, or criminal acts by any officer, director, managing agent, or other agent or employee charged with the operation or maintenance of the COC who controls or disburses funds and also applies to any management company employing a managing agent or other employee charged with the operation or maintenance of the COC who controls or disburses funds.

For more information on COCs generally, see the **Appendix – Common Ownership Communities**.

Maryland Program Evaluation Act

Pursuant to statutory provisions, approximately 60 regulatory entities and activities are subject to termination unless reauthorized periodically through statute. Under MPEA, these entities may also be subject to an evaluation by the Office of Program Evaluation and Government Accountability (OPEGA) within the Department of Legislative Services (DLS) prior to their termination. However, OPEGA may conduct an evaluation only if directed by specified entities or by legislation.

State Fiscal Effect:

Staffing Needs

Despite the bill's October 1, 2024 effective date, DLS assumes that licensing and registration activity cannot feasibly begin until fiscal 2026 at the earliest, particularly considering the restriction on funding in fiscal 2025. Given the breadth of the regulatory program and its experience with other regulatory boards, a *minimum* of 4.5 staff are necessary to fully implement the program. Considering that the bill essentially establishes a “grandfathering” period applicable to managers who have been practicing prior to the requirement for licensure, administrative, executive, and clerical staff are needed as soon as possible.

Specifically, it is assumed that an executive director, an administrative support specialist, a licensing and education administrator, a licensing and regulatory investigator, and a part-time assistant Attorney General are needed to develop regulations and procedures, including investigatory procedures; implement the licensing, limited licensing, and registration program; process applications and review and investigate evidence related to

the grandfather exception; and undertake other such preparatory activities. However, due to the bill’s limitation on funding in fiscal 2025, it is assumed that only the executive director begins October 1, 2024.

Accordingly, general fund expenditures increase by \$100,000 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date, the bill’s limitation on expenditures, and costs necessary for the implementation of the program by fiscal 2026. Annually thereafter, special fund expenditures are assumed to cover costs, as shown below. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses – including an indirect cost allocation beginning in fiscal 2026.

	<u>GF</u> <u>FY 2025</u>	<u>SF</u> <u>FY 2026</u>
New Positions	1.0	3.5
Salaries and Fringe Benefits	\$79,227	\$374,754
One-time Start-up Costs	13,517	23,316
Other Operating Expenses	7,256	4,909
Indirect Costs	<u>0</u>	<u>70,000</u>
Total State Expenditures	\$100,000	\$472,979

Future year expenditures reflect full salaries with annual increases and employee turnover, as well as annual increases in ongoing operating expenses. The estimate does not include any reimbursement for board members.

This estimate represents the *minimal* costs to implement the bill, is consistent with the restrictions imposed on funding in the bill and takes into account information provided by MDL modeled after the operational and fiscal requirements of the Maryland Real Estate Commission. MDL advises that it would require 13 staff and other operating expenses totaling up to \$1.5 million annually by fiscal 2029. As reflected above, DLS agrees that additional staff are necessary for MDL to conduct the licensing and registration requirements of the bill. However, due in part to unverifiable estimates of the number of community managers that would require licensing, DLS is unable to independently verify to what extent, if any, the higher level of staffing and associated costs are necessitated. Nevertheless, additional support may be needed, particularly in the first couple years of implementation.

Direct and Indirect Costs

The above expenditures reflect the direct costs of regulating COC managers and the indirect costs that MDL attributes to each regulatory program within the Division of Occupational and Professional Licensing for the use of division and departmental resources.

Direct costs include necessary expenditures for personnel, equipment and supplies, travel expenses, and fixed charges. Indirect costs – such as usage of the central licensing system, general services offices, and a portion of the salaries of some senior staff – are allocated to each program by a formula based on the program’s usage of these services. Thus, MDL advises that indirect costs under the bill are anticipated to be approximately \$70,000 for the initial set up of the licensing application and \$10,000 annually thereafter. That estimate is reflected in this fiscal and policy note.

Revenues

The bill provides for three main revenue sources for the fund: license fees; limited license fees; and application fees from COC managers. Although registration fees could be collected pursuant to a determination by the report submitted by MDL, this estimate does not assume that a positive determination of the need for registration fees will be made. Therefore, all revenue collection begins when the licensing activity begins on October 1, 2025.

The bill requires the board to set reasonable fees that approximate the costs of its services. The bill also limits the ability of the board to raise fees if they are not set at a level to initially cover all costs (with the 12.5% limitation on raising fees each year). Due to the biennial licensing period and because most licensing activity will occur in even-numbered fiscal years, the board must set its fees high enough to collect sufficient fee revenue in fiscal 2026 to allow it to cover its expenditures in both fiscal 2026 and 2027 – generally by carrying over a balance from the first year to the second year. Moreover, the board must generate sufficient revenue to also reimburse the general fund, over a period of time, for the \$100,000 in start-up costs incurred in fiscal 2025. The ability of the board to set application fees by regulation should assist in covering ongoing costs and being able to reimburse the general fund; nevertheless, this analysis does not account for any such revenue or repayment, as the bill does not specify a repayment schedule.

Due to the absence of more specific data, for purposes of this revenue estimate, DLS accepts MDL’s estimate that 1,100 individuals initially participate in the Maryland licensing program. However, the actual number of individuals subject to licensure may vary. MDL advises that the fee assessed by the board will need to reflect what is needed to support the board. Consequently, the fee assessed by the board must be at least \$850. This estimated fee may change as needed to fund the board appropriately. Thus, revenues in fiscal 2026 total approximately \$935,000. MDL advises that it anticipates 1.2% annual growth in licensees, reflecting additional licenses being issued in other than renewal years – such that 1,100 licenses are issued in fiscal 2026, 13 licenses are issued in fiscal 2027; 1,100 licenses are renewed and 13 additional licenses are issued in fiscal 2028; and 13 licenses are renewed and 14 additional licenses are issued in fiscal 2029. DLS notes that, although the bill requires the fees charged to be consistent with other fees for

comparable licenses issued by other boards and commissions in the State, MDL does not regulate a similar industry or issue a comparable license.

Exhibit 1 shows projected revenues and expenditures through fiscal 2029. This estimate also assumes, at least initially, that an individual seeking a license will not be required to pay the license fee twice, once for the limited license, and again for the full license. (The bill requires that any applicant for a license also hold a limited license issued by the board. DLS assumes that the majority of eligible individuals will be licensed, both as licensed community managers and licensed associate community managers in fiscal 2026, because the bill prohibits the unlicensed management of a COC.) In subsequent years, because an applicant for license renewal is not required to maintain that limited license, DLS assumes that the requirement is intended to apply to applicants who progress from holding a limited license to holding a “full” license after meeting other experience, educational, and examination requirements. Accordingly, DLS assumes that MDL waives the fee for a limited license in the first licensing cycle for individuals who are required to hold both types of licenses in order to comply with the bill’s licensing requirement.

Based on the bill’s requirements, the board’s fund balance will be sufficient to sustain the board through at least fiscal 2029 as shown below, likely with enough revenue to reimburse the general fund \$100,000 for expenditures by fiscal 2030 – if the estimated population subject to licensure is realized and increases in accordance with the projection in this fiscal estimate.

Exhibit 1
Projected Revenues and Expenditures of the Program
Fiscal 2025-2029

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>	<u>FY 2029</u>
Total Costs	\$100,000	\$472,979	\$406,653	\$424,055	\$442,267
Direct Costs	100,000	402,979	396,653	414,055	432,267
Indirect Costs	0	70,000	10,000	10,000	10,000
Anticipated Revenues	\$0	\$935,000	\$11,050	\$946,050	\$22,950
Annual Surplus	\$0	\$462,021	(\$395,603)	\$521,995	(\$419,317)
Cumulative Surplus	\$0	\$462,021	\$66,418	\$588,413	\$169,096

Note: In fiscal 2025, the board’s expenditures are assumed to be covered by general funds, resulting in no surplus at year-end. The \$100,000 in expenditures for that year could be repaid over several years from excess revenues in the fund balance. However, as illustrated above, revenues in the first year of each licensing cycle must be used to help cover costs in the second year.

Source: Department of Legislative Services

The bill also authorizes the board to set a reinstatement fee as well as a fee for the granting of reciprocity to an out-of-state COC manager. However, any revenue attained from these fees is expected to be minimal and is not included in this analysis.

Office of Legislative Audits

OLA advises that the bill has an operational impact, as audit efforts for other funds within MDL may have to be reduced in order to accommodate the required audit of the fund established in the bill.

Small Business Effect: As noted above, small business expenditures increase by at least \$850 for required licenses, as well as potentially significant costs associated with board-approved training and required exams or attaining specified professional credentialing.

Furthermore, as referenced above, Montgomery County has required COCs to register since the county created a 15-member volunteer Commission on Common Ownership Communities in 1991. Prince George's County has also required COC *management entities* to register with the county's Office of Community Relations since January 1, 2011. COCs and COC managers in these jurisdictions will, therefore, be subject to regulation at both the State and local levels.

Additional Comments: DLS notes that language of the bill related to budgetary expense limitations in fiscal 2025 may inadvertently conflict with practical implementation of the bill and uncodified language requiring the State Board of Common Ownership Community Managers to commence specified licensing and registration duties prior to October 1, 2025.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 80 of 2023; HB 26 of 2022; and HB 367 of 2021.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Budget and Management; Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2024
km/jkb

Analysis by: Donovan A. Ham

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

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. Because registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, the Foundation for Community Association Research estimated that there were 7,100 community associations with an estimated 1 million residents in these associations in the State in 2023.

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 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; instead, 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 outstanding fees are generally pursued by way of a landlord-tenant action.

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 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.

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.