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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 63

(Senator Muse)

Judicial Proceedings

Environment and Transportation

**Cooperative Housing Corporations, Condominiums, and Homeowners
Associations – Funding of Reserve Accounts and Preparation of Funding Plans**

This bill makes various changes related to the requirements for cooperative housing corporations, condominiums, and homeowners associations (HOAs), collectively known as common ownership communities (COCs), to fund reserve accounts. Among other provisions, the bill (1) requires the governing body to prepare a specified funding plan; (2) extends, from three years to five years, the amount of time after an initial reserve study that such entities have to attain the recommended annual reserve funding level; and (3) authorizes COCs to declare financial hardship and deviate from existing funding requirements under certain conditions.

Fiscal Summary

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

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: Pursuant to legislation enacted over the last several years, subject to limited exception, COCs in the State are required to conduct reserve studies; statutory provisions specify the time by which initial and updated reserve studies must be completed. The bill makes numerous changes to these requirements, some of which are described in additional detail below.

Definitions

Under current law, a “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 COC 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.

The bill further specifies that a reserve study, *using an itemized list*, must identify each structural, mechanical, electrical, and plumbing component of the common elements/areas and any other components that (1) are the responsibility of the COC to repair and replace; *and (2) if applicable, meet a minimum cost of repair or replacement, as determined by the governing body, that is reasonably based on the expenses of the COC and is not a minor expense otherwise addressed by the budget*. The bill also adds that the reserve study must state the quantity or size of each identified component, utilizing the appropriate unit of measurement.

The bill establishes that an “updated reserve study” means, for the common elements/areas since the prior reserve study was completed within the previous five years, a study that:

- revises replacement cost, remaining life, and useful life estimates;
- analyzes work performed and amounts spent; and
- identifies whether any maintenance contracts are in place.

Reserve Study and Funding Requirements

Under current law, in addition to being prepared by an individual who meets specified experience and licensure requirements, a reserve study must:

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

The bill applies these requirements to updated reserve studies.

Under current law, the governing body of a COC must generally provide funds to the reserve in accordance with the most recent reserve study and 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. If the most recent reserve study was an initial reserve study, the governing body must attain the annual reserve funding level recommended by the reserve study within *three* fiscal years following the fiscal year in which the initial reserve study was completed; under the bill, the recommended funding level must be attained within *five* years, in accordance with the funding plan, as further specified.

Among other alterations, the bill generally specifies that the governing body must *deposit* funds to the reserve account, as specified, *on or before the last day of each fiscal year*.

The bill explicitly requires COCs to review the reserves and the most recent reserve study or updated reserve study annually to determine whether there is adequate funding in accordance with the funding plan. The bill also specifies that the annual review does not require an additional reserve study or updated reserve study.

Financial Hardship Exemption

The bill authorizes the governing body of a COC to determine by a two-thirds majority vote that the COC and the owners/members are experiencing a financial hardship that limits the ability to fund the required reserves. If a governing body makes a financial hardship determination, a COC may reasonably deviate from the reserve funding requirement but must meet the funding amount necessary for the considerations listed below when drafting the funding plan.

A COC may not deviate from the reserve funding requirement for more than one fiscal year following the financial hardship determination. However, a COC may renew this determination for one fiscal year by a two-thirds majority vote. During this period of hardship the governing body must (1) make good faith efforts to resolve the financial hardship and resume funding reserves; (2) maintain detailed documents of the efforts made; and (3) allow documents and records to be examined and copied as required under existing State statute.

Members/owners must be given reasonable advance notice of any vote to make or renew the financial hardship determination and any voting must be held during a regular or special meeting of the COC.

Funding Plans

Under the bill, the governing body of a COC must develop a funding plan to fund the necessary reserves, in consultation with a person that satisfies the requirements to conduct a reserve study. In developing the funding plan, the governing body must select one of the following methods to achieve the reserve funding:

- component method;
- cash flow method;
- baseline funding method;
- threshold cash flow method; or
- any other funding method consistent with generally accepted accounting principles.

A funding plan developed under the bill must prioritize adequate amounts for the repair and replacement of common elements/areas necessary for (1) the health, safety, and well-being of the occupants; (2) ensuring structural integrity, such as roofing replacements and maintaining structural systems; (3) essential functioning, such as plumbing, sewer, heating, cooling, and electrical infrastructure; and (4) any other essential or critical purpose, as determined by the governing body. Reserves may be used for purposes other than those specified in the funding plan if the funds are repaid to the reserve fund within five years after their use.

Progress toward compliance with the funding plan must be reviewed at each annual meeting.

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

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 1157 and HB 281 of 2024 and HB 534 of 2023.

Designated Cross File: HB 292 (Delegate Holmes, *et al.*) - Environment and Transportation.

Information Source(s): Office of the Attorney General (Consumer Protection Division); 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, the person 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 (COC). 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 1.0 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 homeowner's 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 an individual 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. While a small number of local governments (Charles and Montgomery counties) created such offices before the report's publication, some local jurisdictions have since created programs to regulate or provide oversight of COCs. For example, Prince George's County created its Common Ownership Communities Program in 2007 to assist governing bodies, as well as owners and residents of HOAs, residential condominiums, and cooperative housing corporations, with education, training, and alternative dispute resolution.