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FISCAL AND POLICY NOTE
First Reader

House Bill 558 (Delegate Holmes)
Environment and Transportation

Common Ownership Communities - Local Commissions

This bill establishes specific requirements for local common ownership commissions created by local governments, including requirements related to membership, fees, coordination with other local government agencies, and the registration of common ownership communities (COCs). The bill also establishes procedures and requirements for dispute resolution. The provisions established under the bill supersede any inconsistent provisions of local law that conflict with the bill to the extent of the conflict.

Fiscal Summary

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

Local Effect: Local government expenditures increase to the extent local governments utilize their authority under the bill to establish local common ownership commissions or incur costs to conform operations of existing commissions to the bill's requirements. Local government revenues increase if local governments establish fees, as authorized under the bill. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

A “common ownership community” means a condominium; cooperative housing corporation; and a homeowners association (HOA), as those terms are defined in applicable statute, as specified. It does not include a time-share project as defined in § 11A-101 of the Real Property Article.

A “dispute” means a disagreement between at least two parties that involves:

- the authority of a governing body of a COC to (1) require or prohibit any action involving a unit or common element; (2) require any person to pay a fee, a fine, or an assessment; (3) spend COC funds; or (4) alter or add to a common element; or
- the failure of a governing body of a COC to (1) properly conduct an election; (2) give adequate notice of a meeting or other action; (3) properly conduct a meeting; (4) properly adopt a budget or rules; (5) maintain or audit books and records; (6) allow inspection of books and records; (7) maintain or repair a common element if the failure results in significant personal injury or property damage; or (8) exercise its judgment in good faith concerning the enforcement of the association documents against any person that is subject to those documents.

However, a dispute does not include a disagreement that involves title to any unit or common element; the percentage interest or vote allocable to a unit; the interpretation or enforcement of any warranty; the collection of an assessment validly levied against a party; or the exercise of the judgment or discretion of a governing body of a COC regarding any legally authorized action.

Local Government Commissions – In General

Membership: If a local government establishes a local commission on common ownership communities, the commission must include members (1) who are owners in a COC and (2) represent certain professions, as specified. Each local government must also determine the total number of members of the local commission.

In addition, a designee of the local government and a designee of a county agency dealing with planning, environment, permitting, transportation, or housing and community affairs must serve as nonvoting members.

The chair and vice chair of a local commission must be elected from among the voting membership of the local commission. A local government establishing a commission must adopt procedures for the appointment and terms of members; however, a member of a local commission may not serve more than two consecutive terms.

Operating Requirements and Procedures: A local commission must meet at least monthly. A member of a local commission may not receive compensation as a member but is entitled to reimbursement for expenses under the standard county travel regulations. A local commission must:

- adopt rules of professional conduct as appropriate for members and staff;
- keep a record of its proceedings;
- examine the needs of COCs in the county;
- advise county government and appropriate State and federal agencies on matters relating to COCs; and
- provide training on the responsibilities of a local commission's members to the governing body of a COC by (1) developing an educational curriculum for new members and (2) approving an alternative educational curriculum for new members.

A local commission may:

- employ staff as authorized by a local government;
- establish a process for resolving disciplinary matters pending before the local commission through nonjudicial dispute resolution processes;
- develop educational and training opportunities for governing bodies;
- adopt additional bylaws necessary to carry out the business of the local commission; and;
- adopt any additional regulations, procedures, or standards consistent with the mission of the local commission and to carry out the requirements of the bill.

If a local government establishes a local commission, the local government must designate a county agency or office to, among other responsibilities:

- disseminate educational materials regarding programs that assist COCs;
- conduct educational programs to promote the operation of COCs;
- maintain information and a referral system for all county services related to COCs;
- provide technical assistance to governing bodies on specified matters;
- advise COCs and professional association managers of changes in the laws and regulations that affect their communities or operations; and

- operate a dispute resolution process to furnish mediation and administrative hearings.

When establishing a local common ownership commission, the local government must require COCs in the county to register with the local commission annually, using a form meeting specified requirements. If a COC fails to register or makes a false statement on the registration form, the entity becomes ineligible to file a dispute.

Authorized Fees: A local government that establishes a local common ownership commission may authorize the collection of a reasonable fee for services provided by the commission. Any authorized fee must be used to cover the cost of maintaining the local commission, as specified. If collection of a fee by a local commission is authorized, the local commission must publish the fee schedule.

Local Government Commission – Dispute Resolution

In General: A local commission may hear any dispute between parties. However, a party may not file a dispute with a local commission until the party has made a good faith effort to exhaust all procedures and remedies provided by the governing documents of the COC. A party may file a dispute with a local commission at least 60 days after a procedure or remedy has been initiated with the governing body of a COC.

If the governing body of a COC determines that a dispute exists, it must notify the other parties of the option to file the dispute with a local commission. The governing body of a COC is prohibited from taking action to enforce or implement the decision of the governing body for 14 days following notification of the other parties.

Stays: Unless specified otherwise, on the filing of a dispute with a local commission, the decision of the governing body of a COC must be stayed and may not be enforced or implemented, other than by filing a civil action, until the completion of the dispute process.

The bill authorizes the governing body of a COC to submit a request to lift an automatic stay under the bill and establishes related procedures, including those governing service and the formation of a panel to consider requests for relief from stays (and grant requests, as appropriate and specified in the bill).

Procedures: Following the filing of a dispute with a local commission, the designated local coordinating agency may investigate facts and assemble documents relevant to the dispute and may prepare a summary of the issues in the dispute for use by the local commission. The designated agency may (1) notify a party if it finds that a dispute was not properly filed and (2) notify each party of the dispute regarding possible sanctions.

If the designated agency finds that (assuming all facts alleged by the party that filed the dispute are true) there are no reasonable grounds to conclude that a violation of applicable law or any governing document has occurred, it must inform the local commission.

On receipt of the results of an investigation by a designated agency, a local commission may (1) if it finds that there are no reasonable grounds to conclude that a violation of applicable law or any governing document has occurred, dismiss the dispute; (2) request additional investigation by the designated agency; or (3) schedule a hearing on the dispute. A local commission may reconsider the dismissal of a dispute if any party files a motion to reconsider, as specified.

Mediation: Any party in a dispute may request mediation. If a party requests mediation, the local commission must notify all parties of the request and of the mediation session. A local commission must provide a qualified mediator to meet with the parties within 30 days after a party requests mediation to attempt to settle the dispute.

However, if a party refuses to attend a mediation session, or if mediation does not successfully resolve the dispute within 10 days after the first mediation session is held, the local commission must promptly schedule a hearing.

Hearings: If a hearing is scheduled, the chair of the local commission must convene a panel to hear the dispute. The bill specifies requirements for membership of the panel. A hearing panel must hold a hearing on each dispute that is not resolved through mediation under the bill unless the local commission determines that the dispute is identical to another dispute between the same parties on which a hearing has already been held under the bill's provisions or is clearly not within the jurisdiction of the local commission.

A local commission must provide specified notice of a hearing to all parties. A party or witness may be advised by counsel at a hearing. If a party, after proper notice, does not appear at the scheduled hearing, the hearing panel may order any relief for another party that the facts on record warrant.

The hearing panel must apply State and county laws and all relevant case law to the facts of the dispute. A decision of the hearing panel is binding on the parties. A local commission may enforce a decision of the hearing panel by appropriate legal action. In addition to any other enforcement action, a local commission may (1) file for injunctive relief to enforce or correct any violation and (2) file to recover damages for a loss sustained as a result of a violation.

A hearing panel may award costs, including reasonable attorney's fees, to any party if any other party (1) filed or maintained a frivolous dispute, or filed or maintained a dispute in bad faith; (2) refused to participate in mediation of a dispute; or (3) substantially delayed

or hindered the dispute resolution process without good cause. In addition, a hearing panel may require a losing party in a dispute to pay all or part of any filing fee. A local government may establish additional hearing procedures and requirements, as specified.

Appeals: Any party may appeal a hearing panel decision to a court with proper jurisdiction. An appeal of a decision must be consolidated with any case arising from the same facts. The court hearing an appeal must sustain the decision of the hearing panel unless the decision is either inconsistent with applicable law; lacking substantial evidence; or arbitrary and capricious.

Civil Cause of Action: A party may file a civil action arising from a governing document or a law regulating the powers of a governing body of a COC. If the court is notified that a dispute has been filed with a local commission in accordance with the bill, the court may postpone a proceeding for at least 90 days. The court may hear the action *de novo* if a hearing panel assigned to the dispute has not issued a decision on the bill.

Current Law: Generally, State statute includes the Maryland Condominium Act, the Maryland Homeowners Association Act, and the Maryland Cooperative Housing Corporation Act, all of which regulate various aspects of COC operations.

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

Local Fiscal Effect: The bill does not require local governments to establish local commissions on COCs. To the extent that a local government elects to establish such a commission, local government expenditures likely increase. The bill's impact on local government revenues depends upon whether a county establishes fees in accordance with the bill's provisions; depending on the amount of any potential fees charged, such fees may partially, if not fully, cover operating costs.

Counties that have already elected to establish local commissions are, however, subject to the bill's requirements and *may* incur associated costs to conform current commission operations to the requirements under the bill. For example, according to Charles County, the bill's requirements expand the mandated responsibilities of the county's HOA Dispute Review Board and necessitate additional staffing costs of at least \$287,100 on an annual basis. These costs may be offset to the extent the county alters its current fee structure to cover the additional expenses.

The Maryland Association of Counties generally advises that establishing a commission may result in increased expenditures and operational impacts for local jurisdictions.

Small Business Effect: The impact is potentially meaningful if local governments establish commissions and COCs are subject to more fees and costs related to the dispute resolution process as specified under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 279 of 2024.

Designated Cross File: None.

Information Source(s): Charles, Montgomery, and Prince George's counties; Maryland Association of Counties; 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, 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.