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**To:** Members of The House Environment and Transportation Committee

**From:** William A. O’Connell, Real Property Section Legislative Chair

**Date:** February 11, 2020

**Subject:** HB444 - Homeowners Associations - Powers, Boards of Directors, Voting, Meetings, and Rules

**Position:** Technical Comments

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The Maryland State Bar Association (MSBA) Real Property Section Council offers technical comments in connection with **House Bill #444 - Homeowners Associations - Powers, Boards of Directors, Voting, Meetings, and Rules.**

HB444 appears to be identical to HB709 that was introduced during the 2019 legislative session, for which the MSBA RP Legislative Committee provided the comments below. HB444 seeks to incorporate numerous provisions from the Maryland Condominium Act into the Maryland Homeowners Association Act. While this may generally be a worthwhile goal, before any such final bill should be passed more attention needs to be paid to the specific provisions and how they should fit in the context of a homeowner’s association. The drafters appeared to simply write the bill by copying large sections of the Condominium Act with only slight changes to nomenclature in order to “fit” the Homeowners Association Act.

Some examples of problems with this approach are the following:

- Proposed Section 11B-106.3(3) on page 3 provides that an HOA has the power to sue and be sued, complain and defend, or intervene in litigation or administrative proceedings on behalf of the HOA as well as on behalf of two or more homeowners. In the context of a condominium, providing a condominium association such power to sue, etc., on behalf of two or more condominium unit owners is logical given the nature of condominium ownership—i.e., each unit owner is both the owner of its unit as well as a joint owner of the common elements of the condominium as a tenant in common with the other unit owners. There is no such joint tenant-in-common ownership interest among homeowners in an HOA. Therefore, an HOA should not have the power to bring lawsuits or other actions on behalf of two or more homeowners, but such power should be limited to the HOA bringing such actions in its own name only. As most HOAs are nonstock corporations, this a general power that HOAs already have regardless of this proposed change in the law.
- Proposed Section 11B-106.3(10) on page 4 would give an HOA the power to “lend money in any manner appropriate” to allow the HOA Board to fulfill its functions. It seems logical that this

is meant to provide that the HOA may borrow money to further its functions, not to lend money in furtherance of the HOA's responsibilities.

- Proposed Section 11B-111(D)(2) on pages 8 & 9, based on a similar provision under 11-109(c) of the Condominium Act, provides for proxies to be limited to 180 days. As nonstock corporations, the bylaws of many HOAs follow Maryland General Corporation Law which provides for proxies to be limited to 11 months.
- Proposed Section 11B-111(I) (line 32 on page 9 and lines 1 - 31 on page 10) regarding the initial homeowner election of the HOA's board of directors is currently addressed in Section 11B-106.1 of the Maryland Homeowners Association Act. If adopted as drafted, HB444 would create conflict between these two sections. Current Section 11B-106.1 provides that the first meeting of homeowners to elect the HOA's board shall be held within 60 days from the date that at least 75% of the total number of lots that may be part of the development after all phases are complete are sold to members of the public for residential purposes. This is consistent with long-standing secondary mortgage agency requirements and the manner in which substantial numbers of existing HOA governing documents are drafted. To change this board election provision to mirror the Condominium Act would undermine the current long-standing approach and law for HOAs.
- Proposed Section 11B-112(D), pages 12 & 13, is largely based on 11-102(b) of the Condominium Act, which deals with condominium covenants recorded in the land records of multiple counties. As drafted, it does not fit well in the context of HOAs. Proposed Section 11B-112(D)(1) addresses disclosures filed in a County's HOA Depository--i.e., it does not address covenants recorded in the land records. Proposed Section 11B-112(D)(1) addresses HOA depository filings (which are not land records documents) and proposed Section 11B-112(D)(2) references "subsequent instruments affecting title to a lot" as though the HOA depository were the land records.
- Some technical drafting issues with HB444 include the following:
  - o The reference to "SUBSECTION (B)(2)" in line 13 on page 8 should be "SUBSECTION (B)(1)".
  - o The reference to "§11B-113.1" in line 11 on page 9 should be "§11B-113.2".
  - o Proposed Section 11B-116(D), on page 14, provides a procedure for notification and approval of amendments to HOA Bylaws by mortgagees. This Section should include amendments to the Declaration and other governing documents of the HOA, not be limited only to amendments to the Bylaws. (NOTE: this is related to the comments to SB293/HB25 above).

These comments are not intended to be all-inclusive but are examples of some key problems with HB444 as currently drafted. We believe that a summer study of the bill would be appropriate given the complexity of the proposed bill.

The MSBA RP Legislative Committee recognized that HB444 is complex legislation for which the Committee is not taking a position other than to offer comments as to the limited technical edits noted.



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