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House Bill 26
Regulation of Common Ownership Community Managers

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Position: Opposed

Summary
HB 26 (introduced as HB 367 in the 2021 session) seeks to create the State Board of Common Ownership Community Managers in the Department of Labor to license and regulate those who provide management services for a common ownership community (COC). It requires a common ownership community (i.e., homeowners association or condominium association) to register annually with the Board and to provide the Board with any information requested. HB 26 allows the Board, without exception, to share with law enforcement information collected from COCs and to assist COCs in their disputes with homeowners and others. *It authorizes the Board to require a registration fee of an unspecified amount from COCs to help fund the Board's operations. The registration fee will be determined (with input from the Department of Labor) after the bill is enacted.* The Board may increase the registration fee by a maximum of 12.5 % annually.

We strongly object to regulating and taxing common ownership communities in order to fund the licensing of community managers. Until recently, bills similar to HB26 seeking to regulate and tax COCs were rejected time and again over the past decade or more by this committee. We ask that you reject this effort.

Any reference to the registration, regulation, or taxation of Common Ownership Community associations should be stripped from the bill.
It is unprecedented to fund a regulatory board with a tax (i.e., a required registration fee) on a group of taxpayers (i.e., residents of common ownership communities) who are not being regulated. The stated purpose of the bill is to license managers of COCs, not the COCs or its members. We are not aware of another licensing board with the power to tax or regulate the clients or customers (i.e., the end users) of those being licensed and/or regulated (i.e., doctors, nurses, dentists, lawyers, realtors, certified public accountants, plumbers, home improvement contractors), whether or not those clients/customers actually use the services of the Board! *It appears that the only purpose of registering COCs is to tax them in order to fund the licensing of community managers.*

If there is an identifiable problem, it is not known to be a statewide problem. The regulation and management of COCs is an issue for local government, not the State. The diversity of COC communities is too great to attempt to resolve with state mandates what may be a local problem.

Large and small COC communities, older and newer developments, and those with and without collection and vacancy issues should not be treated similarly. COCs across the state from Western Maryland (Deep Creek) to Baltimore City, Charles County, the DC suburbs, and Ocean City face widely different issues that are best handled at the local level or by the criminal justice system. The need (and desire) to register COCs differs from county to county, and local governments should decide for themselves if a COC registry is necessary. In fact, Prince George's County and Montgomery County already regulate common ownership community managers and require COC registration; Columbia has sought exemption from proposals similar to HB 26 in previous years. COC associations across the state have not been adequately consulted on this bill and are largely unaware of it.

Implementation of HB 26 will be difficult and costly.
The 2021 fiscal note for HB 367 did not address specifically the cost of establishing and maintaining a COC registry. However, the 2017 fiscal note for a similar proposal filed that year in the House (HB 41) to require registration of common ownership communities with a Board within SDAT estimated implementation costs (beyond those of licensing) at more than $230,000 in out years. However, DLS did not address the cost of enforcement or the need to respond to requests for information from the registry throughout the year. **DLS admitted in 2017 (p. 4) "it is not possible to provide a specific estimate as to the cost of establishing the registry."**

HB 26 provides broad latitude for the Board to set its fees, only stating that it may set fees "so as to produce funds to approximate the cost of maintaining the Board" *with no limit on the initial fee* (i.e., tax). It does not limit the COC fee to the cost of the registry only; in fact, that fee is likely to help cover licensing costs as well. And no process for reviewing proposed fees is provided. It may set the COC fee without any input from COCs. HB 592's fiscal note's assumption in 2020 that no fee will be applied to COCs (p.10) was not realistic, just as a similar assumption of HB 367's fiscal note (p. 10) was not. In fact, HB 367's fiscal note admitted "additional support may be needed." (p. 9)

Consideration should also be given to the indirect costs that management companies and/or managers will pass on to their COCs in the form of increased management fees. Testimony on HB367 last year provided convincing examples of the types of costs that COCs will have to absorb. The conclusion was that these additional costs are a significant burden to COCs. Testimony also was convincing that licensure is ineffective in achieving the desired goals of this legislation (i.e., protecting COCs from embezzlement and fraud) and does little more than restrict competition and raise costs for management companies and COCs..

HB 26 allows the imposition of a new tax of an unspecified amount on homeowners in common ownership communities that may be increased by 12.5% annually.
The potential for 12.5% annual increases in any fee charged by the Board is outrageous given recent discussion of state budgetary surpluses in coming years and

likely tax decreases for various groups. Such fees and large annual increases have the potential to harm common ownership communities, especially small ones, struggling to maintain their annual association fees at a reasonable level and threatens to damage home resale values in these communities. *To expect common ownership communities, especially smaller communities, to carry this burden is unreasonable.*

HB 26 requires common ownership community associations to provide information the State already possesses.
Homeowner associations file an "Annual Report and Personal Property Return" with the Maryland Department of Assessment and Taxation to maintain their charter. That report requires the name of the association, its address, the type of "business (i.e., homeowners association, condominium association, etc.) it is, the names and addresses of its officers, and names of its directors. When COCs pay state taxes, they file form 500, which requires similar information. There is no reason that we need a new bureaucracy and expend hundreds of thousands of dollars to acquire the same information.

HB 26 provides the proposed State Board unlimited authority.
HB 26 requires common ownership communities to register annually with the proposed Board and permits the Board to demand of them "any other information" it requires. This requirement is a slippery slope posing a potential threat to privacy and imposes additional demands on the community associations' volunteers.

Furthermore, HB 26 specifically permits the State Board to establish the education and training of members of common ownership community association governing boards. This could quickly result in *required* training and education of governing board members as has been proposed in previous years. COCs are volunteer bodies and it is often difficult to persuade homeowners to serve. Adding a new burden and cost for association board members is unreasonable and is another example of the unrestrained power of the proposed Board and of how this bill threatens Maryland homeowners without giving them adequate representation**.**

There is inadequate representation of homeowners on the State Board
The proposed legislation calls for only three of the nine-member State Board to be homeowners. This small number cannot possibly be representative of common ownership communities in the state, given their diversity. Thus, those who are to be affected by this legislation will have little say in their regulation and taxation.

The fact that the interests of COCs are not the primary interest of HB 26 is reflected in the name of the proposed Board: "The State Board of Common Ownership Community Managers." The stated purpose of HB 26 is to regulate and license community managers, not common ownership community associations. *Therefore, any reference to the registration, regulation, or taxation of such associations should be stripped from the bill.*

What is the problem to be solved?
HB 26 is a solution in search of a problem. There is no identification of the problem that this bill is intended to solve. If community managers are committing financial fraud, misappropriation of funds, theft, or other criminal acts, common ownership communities should refer the cases to appropriate law enforcement agencies; the state legislature should not create an entire bureaucracy, with wide-ranging authority in response to a few instances of criminal activity.

A new bureaucracy will not stop dishonest people from stealing from COCs. If there is a need to license community managers, they or their employers (not homeowners) should cover the cost of licensing and enforcement, and only the associations using the services of the proposed regulatory Board should pay for the specific services they receive, not all community associations. Potential mandates directed at COCs by the proposed Board (i.e., registration, paying fees, providing information, training of COC officers) have nothing to do with protecting the COCs or stopping dishonest managers.

Recommendations
We are requesting that HB 26 be given an unfavorable report. *If that is not possible,* HB 26 *should relate only to the licensing of community managers, and the State Board of Common Ownership Community Managers should have no authority to regulate, collect information from, or tax the common ownership community associations of Maryland. Any reference to the registration, regulation, or taxation of such associations should be stripped from the bill.*

There should be no mandatory state-imposed fee (i.e., tax) assessed to the community associations. Such fees should be explicitly prohibited.

If HB 26 is to be reported favorably from committee with a potential registration fee imposed on COCs, an explicit limit should be imposed on the initial registration fee (such as $1 per unit or a maximum fee of $100 per association) and smaller communities (i.e., under 75 units) should be exempted to protect their financial solvency, to avoid raising annual homeowner association fees, and to protect the resale value of homes in common ownership communities.