

MICHAEL D. BERMAN
3 Halston Court
Baltimore, MD 21209
February 25, 2022

The Hon. Kumar P. Barve, Chair
Environment and Transportation Committee
House of Delegates
Room 251, House Office Building
Annapolis, MD 21401

Re: Written Testimony in Support of HB 1060 -
“Residential Owners in Common Ownership Communities Bill of Rights

Dear Del. Barve:

I am a homeowner in an HOA. I write in support of HB 1060, the Residential Owners in Common Ownership Communities Bill of Rights legislation, and to request an amendment adding to those rights.

The need for a bill of rights is illustrated by a February 18, 2022, email from the HOA management company, to all homeowners. That email states in part:

“[I]t's become evident that a number of homeowners have been **contacting government agencies**, utility representatives and vendors **regarding Association business** — specifically forest buffer management, tree care, common area and easement landscaping. The common property is owned by the Association and the Board of Directors is responsible for maintaining it. Accordingly, absent an emergency situation, **any contact with a government, utility or other entities' representatives regarding the common property, easements within it, or other Association business is restricted** to the officers of the Association or their appointees.” [emphasis added].

Last year, in response to a policy on basketball hoops, the General Assembly passed Del. Barve’s bill protecting the right to have a portable basketball hoop. Real Prop. Art. §2-124 (portable basketball apparatus bill).

This year, the General Assembly should enact a homeowners’ bill of rights to protect the right of speech and the right to petition the government. I propose adding a provision to the Bill of Rights stating that: “No Common Ownership Community shall abridge the right of a

resident to any right protected by the federal or Maryland Constitutions, statutes, regulations, or other applicable laws of any applicable jurisdiction.”¹

I served in the U.S. Army in Korea in 1974-75. Basic rights, such as freedom of speech and the right to petition the government for redress of grievances deserve protection. The right to, for example, send requests to the government under the Maryland Public Information Act, should not, and cannot, be infringed. While there would be a number of defenses to any enforcement action, including the Strategic Lawsuit Against Public Participation (“SLAPP”) act, Cts. & Jud. Proc. §5-807, defending any lawsuit is costly. Thus, speech may be chilled, and there should be an affirmative statement protecting basic rights.

The homeowners’ bill of rights is needed to help correct the substantial imbalance of power between homeowners, on the one hand, and common ownership communities represented by management companies and retained counsel, on the other. HOA Boards combine “legislative,” executive, and “judicial” powers in one entity. Boards make the rules, administer them, and adjudicate issues regarding them, and that is a combination that is open to abuse. That imbalance was referred to constantly by homeowners who took part in Del. Holmes’ Task Force.

In virtual meetings, for example, the HOA’s heavy hand on the mute button is common. Although more is needed, the proposed right to due process and equal protection will be a substantial improvement.

One of many needed features in the bill is the requirement of an agenda, *with supporting information*, for all HOA meetings. For example, in my HOA, the Architectural Review Committee (“ARC”) has stopped circulating meeting agendas, so homeowners do not know what *will be* discussed at an upcoming meeting. Post-meeting minutes are often months late, so owners do not know what *was* discussed. Requests for access to the HOA’s website containing applications for ARC approval are *not approved*, so owners cannot *timely* see the applications. In my opinion, this renders the right to attend “open meetings” virtually meaningless.

There is a need for legislative action.

Respectfully submitted,

Michael Berman

Michael D. Berman

cc: Del. Marvin Holmes (via email)

¹ After being contacted by the Office of the Attorney General of Maryland, see attached, the HOA responded that its policy was inartfully worded and it will meet with its counsel to revise it. However, the original email from the management company “said what it said” and a proposed revision does not diminish the need for statutory protection of basic rights.

RE: MU-341257 - New [REDACTED] HOA Restriction Against Contacting Government Officials



Straughn, Karen <kstraughn@oag.state.md.us>
To: Michael Berman

Reply Reply All Forward

Thu 2/24/2022 12:59 PM

Hot
You replied to this message on 2/24/2022 1:10 PM.

I have spoken to the property manager and they acknowledge that this email was not well worded with respect to this concern. They are having a meeting on 3/1/22 in which they intend to discuss what was meant and then will be sending out a revised notice and will be providing me with a copy of that notice. Essentially what was intended and, what the revised notice will advise, is that owners may contact whomever they choose, however, they cannot direct a government agency or a utility with respect to common property.

Please let me know if you have further questions or concerns with regard to this issue.

Karen S. Straughn
Assistant Attorney General
Director, Mediation Unit
Consumer Protection Division
200 St. Paul Place
Baltimore, MD 21202
410-576-7942
Cell: [REDACTED]
Fax: 410-576-7040
kstraughn@oag.state.md.us

Please consider the environment before printing this email.
LEGAL DISCLAIMER - The information contained in this communication (including any attachments) may be confidential and legally privileged. This email may not serve as a contractual agreement unless explicit written agreement for this purpose has been made. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or any of its contents is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender indicating that it was received in error and delete the original message and any copy of it from your computer system.