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January 23, 2023

Chair Kumar P. Barve
Environmental and Transportation Committee
251 Taylor House Office Building
6 Bladen Street
Annapolis, MD 21401
kumar.barve@house.state.md.us

RE: HB29 - Residential Owners in Common Ownership Communities Bill of Rights

Position: Oppose

Dear Del. Barve and Members of the Environment & Transportation Committee:

The Community Associations Institute's Maryland Legislative Action Committee (CAI MD LAC) has reviewed HB29 and finds it to be unnecessary, ambiguous and in parts overly burdensome. Many of the rights noted in general terms already exist in specific terms in the Maryland Condominium Act (MCA), the Maryland Homeowners Association Act (MHAA) and in many of the governing documents that govern condominium, homeowners associations and cooperatives in the State of Maryland. The Bill may be erroneously interpreted to change already codified (statute) and contracted (governing documents) "rights," provisions, or processes. Note too, that many communities have already created their own bill of rights and responsibilities that apply to the owners, the Board of Directors, committees, and all of the residents in the community, whereas this Bill of Rights applies solely to owners. Although HB29 states that it is subject to all applicable laws, it does not generally state that it is subject to rights, rules, procedures or processes set forth in the governing documents. Thus, in a conflict

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between the governing documents and HB29, the law would prevail. The law would then trounce some rights, rules, procedures and processes that have been in place for decades. Although HB29 states that it is subject to all applicable laws, most lay residential owners would not be skilled in the practice of toggling between this Bill of Rights and existing applicable law. Allow us to illustrate these concerns with specifics:

Homeowners have the right to Participate in Meetings on Community Issues with other members (B) (1)(I)

Homeowners have the right to participate, either in person or by remote access, in open meetings that are easily accessible to the residential owners (B) (8) (II)

Homeowners have a right to a reasonable opportunity to speak during a timely period when matters are discussed or voted on by the governing body or committee (B) (8) (III)

The foregoing rights to attend open meetings and to participate already exist in the MCA and MHAA. These general statements could be construed as expanding those rights. Some of the terms are without definitions such as “participate.” Owners already have the right to participate by attending the open meetings and listening to the Board conduct the business of the community association and by speaking during open forum. “Meetings that are easily accessible” - this phrase is unclear. Does this phrase mean the communities have to have their meetings onsite or they have to train their owners as to how to remotely access a meeting? “Reasonable opportunity to speak during a timely period” - this phrase is also unclear. The right to speak during open forum already exists and the conduct of open forum is subject to reasonable rules to maintain order and decorum. Who will decide what is a reasonable opportunity or a timely period?

Homeowners have the right to be represented by the governing body of the community and to have the governing body consider the priorities of all owners when approving a budget and managing the facilities and open space.

What does this mean and does this “right” expand those that already exist? Homeowners already have the right to vote for members of the governing body (the Board of Directors). The governing body has a fiduciary duty to act in the best interests of the community. Considering the priorities of “all owners” could be construed to mean *accepting* the priorities of all which would clearly be in conflict with the concept of fiduciary duty. Does consideration of the priorities of all owners may mean that if one owner cannot afford an increase in assessments, there can be no increase?

Homeowners have the right to an annual budget . . . to be delivered

In condominiums and homeowners associations there is already an obligation to send the proposed budget and to allow comment before adoption. Could this restated “right” mean that the adoption of a budget is ineffective if the owner claims that it was not delivered? Since there is already statutory and contractual regulations and procedures in place for the budget process, we do not see the need for this restatement.

Homeowners have the right to use of all facilities and services at a reasonable cost that does not exceed one half the costs charged to eligible users who are not residential owners. This “right” could easily be misconstrued. Many associations charge a guest fee for non owners or a rental fee for the amenities but the fee may not relate to the reasonable cost of the facilities and services. Who is going to determine this “reasonable cost”?

The right to be a member of the class of sole or primary users of the common ownership community's facilities and services if there is scarce available capacity of these facilities and services and to be provided with additional capacity, to the extent possible, so that the class is not denied the opportunity to use those facilities and services. This provision is entirely ambiguous as to the meaning of "the class of sole or primary users" and "to be provided with additional capacity so that the class is not denied. . . ." This phrasing could also violate the principles established by the Maryland Courts - specifically that unless otherwise provided in the documents, general common elements are subject to mutual, non exclusive use by all unit owners in the Condominium. That being said of course some facilities and services must be limited due to limited capacity. But it is very difficult to discern what this "right" means.

Homeowners have the right to fair treatment in the repayment of debt so that present and future owners share in repayment.

Fair treatment is undefined but is a concept already existing in law. However, who decides when debt is incurred and debt is repaid, what is fair treatment. Can an owner argue that he or she should not have to pay the adopted and due and owing special assessment for the roof because it is a twenty year roof and s/he intends to sell next year? This "right" could also wreak havoc with financing decisions. We are particularly concerned that this provision hints that future owners must share in debt repayment. Does this preclude a special assessment to payoff a loan taken by current owners? Requiring out of fairness that debt be passed onto to future owners is not within the scheme of every present owner paying their share of the common expenses as assessed, in full, and on time, without set off.

The Bill requires secret ballots and "fair elections administered by neutral parties" (cost) subject to audit. Not all governing documents require secret ballots. When secret balloting is required, there are significant costs associated with either paper ballot package or electronic voting systems. Administration of the election process by neutral parties and subject to audit will undoubtedly add costs... costs that would most often be unwarranted.

Homeowners have the right to recall incumbent members of the Board

Many governing documents already set a process for removal of a Board member. The Bill does not say how this recall should occur.

Homeowners have the right to vote on certain financial matters "if permitted in the governing documents"

Homeowners have the right to vote on new capital projects, "if permitted in the governing documents"

Here are the examples of provisions that are unnecessary as well as ambiguous. What "certain" financial matters"? Clearly, the intent cannot be to have homeowners vote on every financial matter. The bill makes this right subject to governing documents where some associations homeowner already have the right to vote on certain assessment increases or expenditures or even capital expenditures. In many cases, associations do take decisions to the members and they find the members favor projects like new carpet, lobby furniture and beautification, but that they fail to understand the gravity of boiler renovations, structural enhancements and elevator

modernizations. If the rights are already present in the documents and the law would defer to the documents, why is there a need for this restatement?

Homeowners have the right to receive reasonable advance notice of meetings, agenda and supporting information.

There are existing laws with respect to giving notice of meetings and most governing documents set out the notice requirements in detail. Does this restated right expand that obligation by requiring that the owner “receive” the notice? In this provision, the terms “agenda” and “supporting information” are not defined. Could this restated right require that members be provided with all bids, proposals, financial reports, engineering studies, correspondence and the like, in addition to the agenda. Mandating that this information be provided and/or received would entail a substantial cost to many associations.

Homeowners have the right to have a governing body and manager that are:

Properly trained and indemnified

This is too broad and undefined to have meaning.

Stewards of the community's interests

This is subject to interpretation and will certainly test the limits of indemnification, above.

Protective of the rights of owners

This is too broad and undefined to have meaning.

Provide due process & equal protection

Due process is already required in the MCA and HHAA and equal protection is undefined and unreasonably broad. In addition, Maryland courts have ruled that community associations are not the “government” or “arms of the government” and therefore constitutional mandates such as equal protection do not apply.

Comply and function in accordance with State law and the governing documents

The law and the documents already require that the board and management comply with the law and the documents.

Homeowners have the right to receive timely access to documents

“Timely” is undefined. Access is already required by law.

Homeowners have the right to receive prompt and nondiscriminatory service

“Prompt” is undefined. Non discriminatory service is already required by law.

Homeowners have the right to privacy by the governance and management

“Right to privacy” is undefined and overly broad and, in some cases, may not be able to exist in an open and transparent community association.

Homeowners have the right to fair treatment on violations

“Fair treatment” is undefined but the violation enforcement process is already in the law.

Homeowners have the right to be informed of changes to governing documents and policies and the right to vote on changes and to have those change properly adopted and published

The amendment and approval process for changes to governing documents is already a requirement of every set of governing documents. Not all governing documents require a “vote”

by the owners, so if the adoption/approval process does not require a vote by the owners will the statement of this right now impose that requirement? Also the terms “policies” and “published” are not defined and are capable of several different meanings.

Homeowners have the right to have Consumer Protection Division of the Maryland Attorney General (AG) review alleged violations of state law and right to have the AG take direct enforcement action on behalf of the owner

Assuming the AG would be willing to take on such a broad jurisdiction, disgruntled homeowners will use the AG as their private attorney and will engage the office in every perceived violation of this Bill of Rights. If an owner only reads this Bill of Rights, without regard to the documents or to applicable law, due to undefined terms and ambiguous provisions, the owner may easily be able to argue that the owner has been aggrieved. In many instances, the AG Consumer Protection Division will become a complaint department. This kind of broad mandate to the AG would also circumvent the civil and criminal court system and place massive time and resource burdens and potential financial liabilities on volunteers and managers.

For these reasons, we oppose HB29 in its entirety. We are available to answer any questions the Committee Members may have. Please do not hesitate to contact Lisa Harris Jones, CAI MD LAC lobbyist, at 410 366 1500 or by email at lisa.jones@mdlobbyist.com or Steve Randol, CAI MD LAC Chair, by email at srandol@pineyorchard.com. Despite our opposition to this particular bill, we thank you for your efforts on behalf of community associations and your time in this matter.

Sincerely,

Steven Randol

Chair, CAI MD-LAC

Cynthia Hitt Kent

Member, CAI MD-LAC

cc:

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