

2006

FINAL REPORT

TASK FORCE ON COMMON OWNERSHIP COMMUNITIES

Submitted to:

ROBERT L. EHRlich, JR.
Governor of Maryland

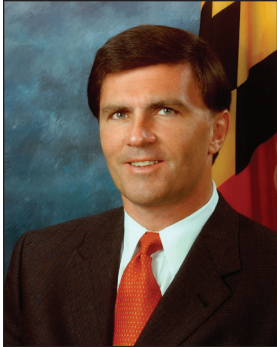
MICHAEL S. STEELE
Lt. Governor of Maryland

THOMAS V. MIKE MILLER, JR.
President, Senate of Maryland

MICHAEL E. BUSCH
Speaker, House of Delegates of Maryland

Pursuant to
2005 Laws of Maryland, Chapter 469

December 31, 2006



I want to thank the Task Force on Common Ownership Communities for its hard work in addressing the difficult issues surrounding your task. Your dedication and leadership have been exemplary and your recommendations will hopefully allow for the resolution of some of those difficult issues.

That you took a practical approach to the issues you were charged to address is evident in your recommendations and it is my hope that the General Assembly will also recognize this and implement them. Anyone who lives in a Common Ownership Community recognizes that it is sometimes not an easy burden to bear. It is also my hope that your recommendations will make it easier for neighbors to live with one another.

I congratulate the collaboration of the members of the Task Force with the organizations and individuals who participated in the work of the Task Force by submitting written recommendations, testifying at the public hearings, and being present at Task Force meetings. I also wish to thank those outside individuals brought in who shared their expertise with the Task Force. I am confident that, together, we will make a difference in the lives of Marylanders who live in Common Ownership Communities.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Ehrlich, Jr." The signature is written in a cursive, flowing style.

Robert L. Ehrlich, Jr.
Governor, State of Maryland

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Department of Housing and Community Development
Designee of the Secretary of DHCD

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Appointee of President, Senate of Maryland

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MESSAGE FROM THE SPONSOR



Thanks to all the Task Force members and staff who gave unselfishly of their time and expertise to:

- define the key issues which impact the health and viability of common ownership communities;
- analyze six areas of significant problems; and
- build consensus regarding balanced and affordable reforms for recommendation.

Thanks also to the hundreds of Marylanders who attended Task Force meetings and especially to those who offered testimony at the five hearings held around the State. Our work product is stronger because of your interest and input.

Sincerely,

A handwritten signature in black ink that reads "Delores G. Kelley". The signature is written in a cursive, flowing style.

Delores G. Kelley, Ph.D.
Senator, Senate of Maryland

**Subcommittee on
Education and Training and Alternative Dispute Resolution**

Louis G. Gieszl, Chair

Allegra B. Bennett
William B. Bergen, Jr.
Betsy G. Cunningham
Pat E. Huson
Julia Lucas

**Subcommittee on the
Uniform Common Interest Ownership Act**

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**Subcommittee on
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Roger W.L. Davis
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Derek Thompson

ACTING SECRETARY'S MESSAGE



The Maryland Department of Housing and Community Development (DHCD) was pleased to host the Task Force on Common Ownership Communities.

At DHCD we are dedicated to providing clean, safe, decent and workforce affordable housing opportunities for all Marylanders. We are also dedicated to building strong, healthy and viable communities Statewide.

Since September 2005 you have worked diligently to study various concerns, including education and training needs of both community boards of current and prospective homeowners, dispute resolution services, and the provisions of the Uniform Common Interest Ownership Act of 1994. Your dedication to addressing the unique challenges and difficulties experienced by some of these communities will help the legislature address these issues.

Thank you for your time and commitment toward helping to improve the quality of life in our Maryland common ownership communities.

Sincerely,

A handwritten signature in black ink that reads "Shawn S. Karimian". The signature is written in a cursive style.

Shawn S. Karimian
Acting Secretary, DHCD



I am proud to have chaired the Task Force on Common Ownership Communities and hope that our report will be the beginning of an ongoing dialogue regarding these often overlooked quasi-governmental entities. When one thinks about the functions they serve, it seems incongruous that their governing boards can wield so much power and, as the Task Force discovered through the course of public hearings, have so little oversight. Most of them work well and are run by well-meaning volunteers or competent property managers. However, there is a need for education of both homeowners and common ownership community board members, along with the aforementioned oversight.

While the mission of our Task Force is coming to a close, I would hope that our report is not the end of the discussion regarding common ownership communities. There are issues not addressed or not fully addressed by the report, and there remains to be sorted out the role of various government entities in establishing or continuing monitoring of the burgeoning number of common ownership communities, including what role the counties and municipalities of the State of Maryland should play in that monitoring. The issue of the Uniform Common Interest Ownership Act will need to be addressed when the Commissioners update the law. The issue of a homeowner's "Bill of Rights" will continue to be brought up by various interest groups. Future General Assemblies and future Governors will have to address these issues and others as the number of common ownership communities continues to increase across the State of Maryland.

I wish to thank all those people, groups, and associations who provided testimony to the Task Force and those who called or wrote me with thoughtful suggestions and remarks. Your input was invaluable.

Submitted

A handwritten signature in black ink that reads "Jacqueline L. Phillips". The signature is written in a cursive, flowing style.

Jacqueline Phillips
Chair, Task Force on Common Ownership Communities

A growing number of homes in Maryland are located in common ownership communities ("COCs") – that is, condominiums, cooperatives, and homeowners associations. COCs are designed to give homeowners control over services and amenities that might otherwise be provided (if at all) by local governments. However, these communities present unique problems and difficulties.

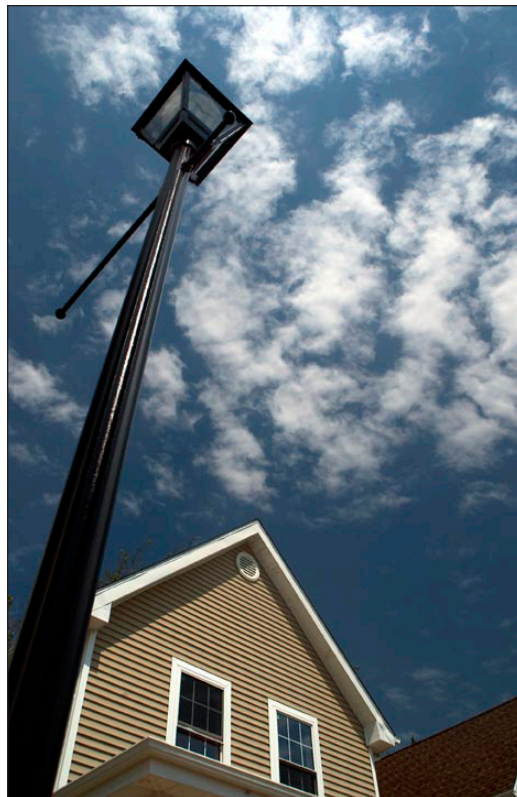
On May 26, 2005, Governor Robert L. Ehrlich, Jr. signed Senate Bill 229 (the "Act") into law as Chapter 469, 2005 Laws of Maryland. The Act established the Task Force on Common Ownership Communities (the "Task Force"). Jacqueline L. Phillips, the designee of the Secretary of Housing and Community Development, was elected as Chair of the Task Force; Senate President Thomas V. Mike Miller, Jr. appointed Senator Delores Kelley (the principal sponsor of the Act) to represent the Senate; and Speaker of the House Michael E. Busch appointed Delegates Tony McConkey and Joan Stern to represent the House of Delegates. Other members of the Task Force represent COC residents, members of COC governing boards, government officials, and businesses providing specialized services to COCs.

The Task Force was charged with studying the following issues:

- the education and training needs of common ownership community boards and new and prospective owners of homes and dwelling units in common ownership communities;
- alternative dispute resolution services for common ownership communities;
- the desirability of adopting provisions of the Uniform Common Interest Ownership Act (1994) promulgated by the National Conference of Commissioners on Uniform State Laws;

- issues facing aging common ownership communities;
- issues relating to the collection of assessments; and
- issues relating to the resale by owners of homes located in common ownership communities.

During its existence, the Task Force held ten full Task Force meetings and numerous meetings of the subcommittees formed to consider one or more of the issues outlined in the Act. It conducted five public hearings at locations throughout the State at which public comments were solicited. This final report is submitted to the Governor and the General Assembly in accordance with the requirements of the Act.



Issue A. Information

A state sponsored and approved website should be created regarding the rights and responsibilities of living in a COC. This website could be hosted by an appropriate State agency and would contain, among other items, information on the "best practices" in COC governing boards and links to appropriate websites. In addition, a brochure should be published containing substantially the same material as the website.

A growing number of the homes bought and sold in Maryland are located in COCs. Despite this, there is a dearth of information provided by the State of Maryland regarding COCs. There is no current user-friendly source of information regarding the rights and responsibilities of living in such communities. Given this dearth of information, the Task Force feels it is incumbent on the State of Maryland to attempt to fill this void.



Issue B. Education

- The Maryland Higher Education Commission should provide affordable educational materials and services on what it means to be a homeowner living in a COC and what it means to be a member of a board governing a COC; and
 - A brief "Be Aware" brochure should be printed for wide distribution regarding COCs and how living in one might affect one's rights and responsibilities.
-

A common theme in the testimony received by the Task Force was the belief that governing board members lack education in how to run a COC, and that homeowners are unaware or not fully aware of the obligations and rights that accompany the purchase of housing units in COCs. In addition, there was testimony that there is a lack of knowledge that some educational resources do exist. Unfortunately, the resources available through private associations (such as classes on how to conduct one's self as a COC governing board member) are only available in the metropolitan areas of Maryland. These resources are not available in more rural areas of the State.

The Task Force recommends that the Maryland Higher Education Commission be asked for its guidance on how to provide materials and services to residents and board members of COCs. Possible educational methods include: onsite or distance learning; educational seminars and/or classes provided by private trainers or organizations that already provide such education; or the development of a curriculum by the Commission. The education would be as widely available as funding allows.

A brief "Be Aware" brochure should also be distributed to real estate licensees, mortgage bankers, mortgage brokers, banks, and title companies, and the distribution of the brochure could be accompanied by public service announcements through various media outlets.

Issue A. ADR Recommendations

Local governments, either individually or through regional groupings, should be required to consider offering COC alternative dispute resolution services, including the use of ombuds programs, mediation, arbitration, and administrative hearings, in lieu of requiring COC disputes to be heard in courts in the first instance. Those local governments that already offer such services would be exempted from this requirement.

During the Task Force's public hearings, witnesses consistently recommended the use of mediation and other forms of alternative dispute resolution ("ADR") to address conflicts among COC residents, unit owners, governing boards, and property management companies. The court system should be the place of last resort for resolution of COC disputes. The vast majority of COC disputes should first be addressed through collaborative, consensus-based processes, and, if not satisfactorily resolved at that stage, could be referred to arbitration or administrative hearings in lieu of court.

Ombuds offices should be set up at the county or regional level to function as a first point of contact to receive and resolve complaints between conflicting parties. Persons with concerns about their COCs could call their local ombuds offices and obtain confidential conflict resolution advice and referrals. In addition, with the caller's consent, the ombuds offices could play a conciliatory role, intervening as a neutral in hopes of finding a resolution that meets everyone's needs.

Mediation should be recommended as an early step toward resolving COC disputes prior to litigation. Mediation services are available in the private sector and through many Circuit and District Courts. They can be obtained for free or on a sliding scale at community mediation programs (see www.marylandmediation.org). The mediators at these programs are highly trained volunteers who reflect the diversity of the community and hold mediation in the neighborhoods where disputes occur. Such programs generally claim agreement rates in the 70% range. Local courts, government agencies, common ownership commissions, and ombuds offices should all encourage the use of mediation and, where practical, set up formal mediation referral programs.



Montgomery County's Commission on Common Ownership Communities offers one example of a mediation system that works. The Commission receives complaints and investigates COCs if civil rights violations are alleged. Otherwise, complaints may be referred to the local community mediation program for resolution. (The Conflict Resolution Center of Montgomery County, a 501(c)(3) organization funded primarily by the Maryland Judiciary's Mediation and Conflict Resolution Office, provides mediation services at no cost to participants.) About two-thirds of the cases referred to community mediation are resolved at that stage. Montgomery County's program is among the most active community mediation centers in the State.

Arbitration is a quasi-judicial process in which one or more neutral people review evidence and make decisions. COC conflicts and complaints not resolved at an ombuds or mediation stage may be considered appropriate for arbitration. Arbitration decisions are generally binding on the parties by their joint agreement, and, as such, may not be appealed.

Administrative Hearings: Under the Montgomery County model, cases not resolved in mediation may be scheduled for an administrative hearing before a three-member panel acting for the Commission on Common Ownership Communities. Prior to 2006, the Commission required that incorporated COCs be represented by counsel, which created a perceived power imbalance unless the resident also had legal representation. State legislation passed in 2006, however, clarifies the law regarding representation clearing the way for elected COC leaders to represent their COCs in adversarial proceedings. Administrative hearing decisions may be appealed to the circuit court, but the court rarely overturns them.



Witnesses at the Task Force's public hearings expressed mixed feelings about the administrative process as it is structured in Montgomery County. Consumers also reported that the administrative process in Montgomery County can be time-

consuming. It can take anywhere from three months to a year for a case to proceed from filing of the original complaint to the holding of the administrative hearing.

Thus, local jurisdictions and/or associations should consider an administrative process (like that in Montgomery County) along with other arbitration processes, possibly using retired judges or neutrals approved by the American Arbitration Association. While each jurisdiction has unique needs, counties would be well-served to examine the Montgomery County model. Some counties, however, may not have the volunteer base to make this model work, and others still may have very few COCs and may be better served by regional programs.

Issue B. Enforcement of State COC Laws

Local governments should be required to coordinate the referral of disputes involving alleged violations of State COC laws to the Office of the Attorney General for review and appropriate enforcement action.

Witnesses at the Task Force public hearings expressed a desire for there to be government enforcement at the State level when disputes involving alleged violations of COC laws cannot be resolved through conciliation, mediation or arbitration at the local level. Witnesses testified that such disputes should be reviewed by the Office of the Attorney General and, where appropriate, enforcement action taken to enjoin actions taken by COC Boards that violate State law and/or to remove Board members who actively participate in the violations.

Some witnesses testified that Board members who violate COC laws should be individually subject to fines, while other witnesses expressed concerns that such penalties would become a major deterrent to unit/home owner participation on COC Boards. Still other witnesses testified that the Association itself be fined for violations committed by Board members even though units or homeowners who did not participate in the violation would ultimately pay the price of these fines. These witnesses testified that if unit owners had to pay a portion of these fines, they would put greater pressure on their Boards to comply with State law.

Ombuds offices set up by local governments could, in addition to conciliating and referring disputes to community mediation programs, coordinate the referral of appropriate cases to the Office of the Attorney General.

The Task Force recognizes that in order for the Attorney General to review and enforce COC law at an enhanced level, additional resources will be necessary for that purpose.

Issue C. COC Dispute Resolution Systems Design

COCs should consider dispute resolution systems design, in order to promote collaborative approaches to conflict resolution.

Dispute resolution systems design involves a complete review of an organization's structure, function, and operation, with particular attention paid to areas of recurring conflict and cost. Conflict management and prevention processes are then developed collaboratively for identified points of conflict.

The Task Force recommends that COCs consider examining collaborative approaches to conflict resolution. Interested COCs could receive guidance and support from the Maryland Judiciary's Mediation and Conflict Resolution Office ("MACRO"), an office that can make small grants and possibly support a small number of pilot conflict management systems design projects at the COC level. (For more information on MACRO, visit www.marylandmacro.org.) Participating COCs could hire experienced conflict management professionals to conduct consensus-building processes actively involving members and board leaders in reviewing bylaws, identifying recurring points of conflict, and developing integrated conflict management systems as needed. COCs could collect evaluation data and attempt to document cost savings as well as changes in their communities' conflict culture. Such an approach would promote self-determination at the community level, encourage the effective and customized use of conflict resolution processes, and have a strong prevention focus.

Issue A. Adoption of UCIOA

Further consideration of the Uniform Common Interest Ownership Act should be deferred until after a final revised version has been issued by the National Conference of Commissioners on Uniform State Laws.

The Uniform Common Interest Ownership Act ("UCIOA") is a comprehensive act that governs the formation, management, and termination of a common interest community (the term used in UCIOA to describe a COC). It was first promulgated in 1982 by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"), an organization which seeks to promote uniformity among the States in various areas of law through the drafting of uniform and model legislative proposals. The NCCUSL issued a revised version of UCIOA in 1994. Further amendments to UCIOA are currently being considered by the UCIOA Drafting Committee of NCCUSL. (See the Appendix for hyperlinks to the UCIOA and Drafting Committee website.)



Issue B. Adoption of "Homeowners' Bill of Rights"

Consideration of the adoption of a "homeowners' bill of rights" should be deferred pending consideration of the issue by the NCCUSL's UCIOA Drafting Committee.

The Task Force heard testimony in favor of passage of a "homeowners' bill of rights" to protect COC unit owners from laws which unfairly favor governing boards and/or management agents. (For example, according to witnesses, current laws allow boards to recover attorneys' fees in disputes against unit owners, but disallow the recovery of attorneys' fees by unit owners who prevail in suits against boards).

There has been a marked increase in interest across the country in examining the issue of unit owners' rights vis-à-vis their boards, and several groups have issued draft proposals in that regard. (See the Appendix for hyperlinks to websites containing representative samples of such draft proposals.). The NCCUSL's UCIOA Drafting Committee has recently undertaken the issue. It would be highly advisable to defer action on the subject until the UCIOA Drafting Committee issues a draft bill of rights reflecting their expertise and knowledge in this area of the law. Meanwhile, the Task Force strongly encourages that COC unit owners and prospective purchasers be given access to resources which can educate them about their rights as unit owners under existing laws, as discussed in the Education and Training section of this report (Topic 1, page 8).

Issue A. Transition from Developer Control

- Before transfer of the common elements of a homeowners association from the developer or the developer controlled board to the resident governing board, an independent reserve study should be required from, and paid for by, the developer, and, for condominiums and cooperatives, an independent reserve study, to be paid for by the developer, should be required at the time of, and included in, the public offering statement;
- From the results of that study, the proper amount of reserve funds the developer should transfer to the resident governing board should be determined based on the number of unsold units or lots retained by the developer;
- Notwithstanding any provision of the organizational documents, the developer may not pay less per unit or lot than other unit owners into the reserves;



- The developer and/or the developer controlled board should be required to supply the COC resident governing board with a list of all common elements and all contracts entered into by the developer and/or the developer controlled board that affect the COC;
 - Homeowners association resident governing boards should be given the right to reject the transfer of common elements if there remain any incomplete items (such as, but not limited to, clubhouses, swimming pools, landscaping, street paving, and sidewalks remaining to be built), or if the common elements proposed to be transferred are not reasonably useable by the community (such as small strips of land between two homes); and
 - An independent audit or accounting of funds/accounts to be transferred to the COC resident governing board should be conducted to ensure that the developer has contributed the proper amount.
-

The period of transition from developer control to resident member governing board control can be a difficult time for a homeowners association ("HOA"). The developer wishes to keep its expenses down, while the HOA is obligated to make sure there is adequate funding to operate and repair the common elements. The Task Force received testimony that many COCs are saddled with unusable common elements and had no way to reject the transfer of those unusable elements, and that their reserve accounts were inadequately funded from the formation of the COC.

Issue B. Reserves

- The governing board of a COC owning common capital elements should be required to conduct or commission a reserve study at least once every five years to determine the amount and necessity of reserves for anticipated capital replacements, repairs, and improvements;
 - The reserve study should be reviewed annually to determine the amount of reserves to be included in the budget for such replacements; and
 - Adjustment should be made annually to COC assessments to maintain adequate reserves for such replacements.
-

Over the course of the Task Force's public hearings, witnesses testified that some COCs faced financial difficulty in part because of the failure of current and past governing boards to collect adequate assessments to make repairs to capital components under common ownership. Additionally, COCs are often limited by the documents that create them in how much they may raise assessments. This limitation can lead to shortfalls in reserve funds. Any legislation as a result of the above recommendations should include language that overrides any such restriction in the governing documents of Maryland COCs.



Issue C. Changing of Governing Documents

- Maryland law should be amended to allow any COC to change its governing documents at least once every five years unless allowed more often under the governing documents, overriding any language in the governing documents to the contrary; and
- Unless current law requires a higher percentage, any changes to a COC's governing documents should require the approval of not more than 66-2/3% of the owners (or such lower percentage as may be set forth in the governing documents).

Many older HOAs are severely restricted in how often they may change their governing documents and/or in the percentage of unit owners required to approve such changes. The requirement of unanimous or near unanimous consent has proven burdensome. A bill was introduced in the 2006 session of the General Assembly to permit HOAs to amend their governing documents if the governing board and 80% of the residents approve the amendment. The General Assembly deferred action on the bill, and asked that the Task Force consider the issue.

The Task Force recommends that a law be passed to permit every COC to amend its governing documents at least once every five years, and to require approval of any amendment by the affirmative vote of not more than 66-2/3% of all unit owners (or such lesser majority of all unit owners as may be provided for in the COC's governing documents). To the extent that existing COC governing documents provide for less frequent amendment and/or a higher majority to approve amendments, the new law should override such provisions. However, to the extent that current statutes require unanimous consent for certain amendments (such as changes in unit boundaries or in the percentage interest charged or allocated to any given unit), or approval of more than 66-2/3%, those statutory requirements of unanimity or of a super-majority vote should continue in effect.

Issue D. Management Companies

COC management companies should be licensed by the State of Maryland and should be required to post a bond in order to obtain a license.

Currently, management companies are not required to post a bond even though they generally are responsible for collecting and disbursing large sums due to and owed by COCs. This requirement would protect COCs and their constituent owners by providing them recourse outside of the courts in order to recover losses caused by their management company.



Issue E. Receivership

The Maryland Cooperative Housing Act, the Maryland Condominium Act, and the Maryland Homeowners Association Act should be amended to specifically allow for receiverships for COCs and that any owner be allowed to petition for a receivership.

The Task Force received testimony about dysfunctional COC boards. Currently, cooperative members arguably have the right to apply for a receivership for their cooperative; however, the ability of condominium and HOA owners to apply to the courts for a receivership is murkier. If a COC becomes dysfunctional, it is important that there be recourse for the homeowners. A court must still agree with whoever is petitioning for receivership that it is indeed warranted, thus preventing abuse.



Issue F. Exemption

To the extent feasible, COCs currently exempt from any portion of the law governing them should be phased in so that current and future laws regarding COCs apply to them.

Certain COCs created prior to the enactment of the Maryland Condominium Act and/or the Maryland Homeowners Association Act are currently exempt from the operation of some aspects of those two statutes. The Task Force received testimony from residents of such COCs who believe that there is no logical basis to continue exemption of their COCs from the operation of those statutes.

Issue G. Insurance Deductible

The current \$1,000 cap on a condominium unit owner's responsibility in certain circumstances for the council of unit owners' property insurance policy deductible should be increased to \$10,000.

In 2001, the General Assembly amended the Maryland Condominium Act to permit a condominium, in its bylaws, to provide that, if the cause of any damage to or destruction of any portion of a condominium originates from a specific unit, the owner of that unit may be held responsible for the council of unit owners' property insurance policy deductible, subject to a cap of \$1,000. If the deductible exceeds \$1,000, such excess amount is a common expense of the condominium. Absent such a bylaws provision, the entire deductible is a common expense.

The 2001 legislation was enacted prior to the September 11 terrorist attacks. Those attacks have sparked substantial increases in property insurance premiums over the last five years. Many councils of unit owners have found it necessary to increase the deductibles on their master condominium policies in order to obtain more affordable insurance premium bills. A bill was introduced in the 2006 session of the General Assembly to eliminate the \$1,000 cap on the unit owner's responsibility for the deductible. The General Assembly deferred action on the bill, and asked that the Task Force consider the issue.

The Task Force believes that the current \$1,000 cap does not reflect the realities of the current insurance markets. Rather than eliminating the cap in its entirety, however, the Task Force recommends that the cap should be adjusted upwards to \$10,000. The revised cap should be sufficient to cover the deductible under most current master condominium policies.



Issue H. Amateur Radio Equipment and Antennas

The General Assembly should defer to the sound discretion of the Congress of the United States to determine whether or not to regulate COCs seeking to restrict or prohibit the placement or use of amateur radio equipment and antennas.

Two bills were introduced in the 2006 session of the General Assembly to prohibit homeowners associations from restricting or prohibiting the design, placement, screening, height, or use of amateur radio equipment and antennas. The General Assembly deferred action on the bills, and asked that the Task Force consider the issue.

As both of the 2006 bills recognized, the Federal Communications Commission regulates the field of amateur radio service. The Congress has not hesitated to enact legislation governing the ability of COCs to control activities subject to federal regulation and/or federal concern. For example, on July 24, 2006, President Bush signed into law the Freedom to Display the American Flag Act of 2005, Pub. L. 109-243 (H.R. 42), which prohibits COCs from banning the flag of the United States by COC residents on their own units (although a COC may impose reasonable restrictions on the time, place, or manner of displaying the flag if such restrictions are "necessary to protect a substantial interest" of the COC).

The Task Force believes that it would be appropriate to defer to the Congress to determine whether or not to impose restrictions, similar to those contained in the Freedom to Display the American Flag Act of 2005, on the ability of COCs to restrict or regulate the placement or use of amateur radio equipment or antennas. Accordingly, the Task Force recommends that the General Assembly defer to the Congress in this area.

Issue A. Priority of COC Assessment Lien

- COC assessments should be given lien priority as of the date of recording in the local Land Records of the declaration or other document that authorized the imposition and collection of assessments by the COC in the first place, which lien priority should be limited to an amount equal to six months' worth of delinquent assessments, plus any late fees, attorneys' fees, and costs of suit, if authorized under the declaration or other document; and
 - COC unit owners with a bona fide dispute should be given the right to file an assessment escrow action.
-

A COC imposes assessments on its unit owners to cover common expenses. While most owners pay their assessments on time, problems arise when some owners fail to pay assessments on time, or at all. Either the COC becomes unable to pay its bills on time, or it must resort to collecting additional assessments from the other owners to cover the shortfall, placing an unfair financial burden on the other owners.

A COC may have to go to court to establish a lien against the delinquent owner's unit under the Maryland Contract Lien Act. Any lien obtained by the COC will be junior in priority to previously recorded liens against the unit, such as mortgages, deeds of trust, and judgment liens. Moreover, if a delinquent owner files for bankruptcy, collection under a junior lien may become virtually impossible.

Most COC units are purchased with the aid of a loan secured by a mortgage. A mortgage lien is junior in priority to claims for unpaid State and local real property taxes. If the property taxes are not paid, the local government may sell the property

at tax sale, and the tax sale purchaser may be entitled to obtain title to the property free and clear of the mortgage lien. Lenders minimize the risk of having their mortgage lien wiped out by a tax sale through escrows and/or reserves. If a lender were to be subjected to the risk of having its mortgage lien wiped out by a COC's senior priority claim for unpaid assessments, the lender would likely seek to protect itself from that risk by requiring its borrower to make escrow and/or reserve payments to cover the assessments, which the lender would then remit on a periodic basis to the COC.



At the present time, 16 states and the District of Columbia have laws granting COCs priority over mortgage lien. The majority of those states limit the lien priority to six months' past due assessments. The Task Force believes that COC priority for six months' worth of assessments (usually equivalent to six monthly assessment payments) would be appropriate. To the extent that a unit has older unpaid assessments, the COC's lien priority for those older assessments would be junior to a mortgage lien.

Concerns have been raised that COCs would be given unfair leverage over unit owners with bona fide disputes as to which the unit owners choose to withhold payments of their assessments. The creation of a COC assessment escrow right of action to a unit owner (similar to the tenant rent escrow right of action under Maryland landlord-tenant law) would balance the equities as between a COC and a unit owner with a bona fide dispute.

Issue B. Suspension of Privileges of Delinquent Unit Owners

All COCs should be given the statutory authority to institute policies for the suspension of privileges of delinquent unit owners, provided, however, that a given COC shall be required to set forth such policies in a duly approved recorded Land Records document before that COC may enforce such policies. Any suspension of privileges should be confined to matters that do not directly implicate the health and/or safety of the delinquent unit owners.

Some COCs enforce the collection of assessments by suspending the privileges of delinquent unit owners in and to the use of common areas and/or common facilities of the COC (such as parking areas reserved for unit owners, community pools and tennis courts, and the like). The authority to act in this manner varies from COC to COC. Some COCs have reserved the right of suspension in recorded covenants, recorded bylaws, or other documents duly recorded in the Land Records. Other COCs may have imposed suspension policies through unrecorded rules and regulations, or by action of the COC's governing board.

Testimony at the Task Force public hearings indicated that suspension-of-privileges policies act as a powerful incentive for unit owners to make timely payments of assessments, thereby reducing substantially the need for the COC to pursue collection and/or lien imposition lawsuits against delinquent unit owners. The creation of a COC assessment escrow right of action (as recommended by the Task Force in the



discussion on assessment lien priority, above) would balance the equities as between a COC and a unit owner with a bona fide dispute. Any suspension-of-privileges policies should be set forth in the Land Records in recorded form, duly approved by the appropriate number of unit owners. The recorded documents evidencing such policies should also be included in the COC depository discussed under Topic 6.

The Task Force recognizes that COCs which lack significant common areas or common facilities will not be able to take advantage of a suspension of privileges policy. Such COCs may still pursue traditional enforcement devices, such as lawsuits and lien proceedings.

Issue A. Uniformity of Disclosure Requirements and Packages

Disclosure requirements should be made uniform, to the maximum possible extent, both with regard to time deadlines and with regard to the contents of disclosures, among different kinds of COCs. To that end, a one-page uniform checklist of documents to be disclosed in connection with the sale or resale of a COC unit should be developed (perhaps by or in consultation with the Maryland Real Estate Commission) and made available to interested parties. A copy of the checklist should be signed by the unit buyer at settlement.

The seller of a COC unit is subject to different requirements (depending on the nature and size of the COC) regarding the amount of information that must be disclosed to a prospective buyer. These varying requirements can cause confusion on the part of sellers and buyers.

If the unit is part of a condominium regime, the disclosures vary depending on whether the transaction is the initial sale of a unit (RP 11-126), or if the transaction is a resale of a unit in a condominium that has 7 or more units (RP 11-135(a)) or fewer than 7 units (RP 11-135(b)). No disclosures are required if the condominium unit is to be used for nonresidential purposes (RP 11-126(h), RP 11-135(i)).



If the unit is part of a cooperative housing corporation, the disclosures vary depending on whether the transaction is the initial sale of a unit for residential use (CA 5-6B-02). No disclosures are required if the transaction involves the resale of a cooperative unit, or if the transaction involves the sale or resale of a cooperative unit that is to be used for nonresidential purposes.

If the unit is part of a homeowners association regime, the disclosures vary depending on whether the transaction is the initial sale of a unit for residential purposes in an HOA that has 12 or more units (RP 11B-105(a)) or fewer than 12 units (RP 11B-106(a)), or if the transaction is the initial sale of a unit for nonresidential purposes (RP 11B-107), or if the transaction is a resale of a unit (RP 11B-106(a)). If the HOA unit is also subject to a condominium or cooperative regime, then the seller has to comply with two sets of disclosure requirements (if not more). There is no disclosure exception for the resale of an HOA unit that is to be used for nonresidential purposes.

The Task Force believes that the buyer of a residential unit in a small condominium or HOA is no less deserving of information disclosure and legal protection than the buyer of a residential unit in a larger community. Furthermore, uniform disclosure requirements, as embodied in a one-page uniform disclosure checklist, will enable both sellers and buyers to see that all disclosures are provided in a timely manner, thereby aiding the making of informed purchase decisions by buyers. To that end, the buyer of a unit in a COC should be required to sign a copy of the one-page uniform disclosure checklist at settlement.

The time deadlines for providing disclosure information also vary among different types of COCs. Some time deadlines are measured in terms of a number of days after a contract of sale has been signed, while other time deadlines are measured in terms of a number of days prior to closing on the sale. The latter deadlines, in particular, are confusing and do not promote the prompt making of disclosures. The Task Force believes that all disclosure time deadlines should be made uniform in length, and should be expressed in terms of a limited number of days from the signing of the contract. Moreover, given advances in technology, it should be easier for sellers to comply with shorter time deadlines for providing the disclosures.



Ideally, a COC should collect a copying charge that is substantially lower, on a per-page basis, than the \$0.50/page or \$1.00/page charge that the Circuit Court collects for copies of documents. Moreover, with the increasing popularity of the Internet, it may be more feasible for COCs to create online disclosure vehicles, such as, for example, password-protected web pages in which copies of the disclosure documents can be made available (in Adobe Acrobat PDF format or other tamper-proof formats) to prospective buyers who have been provided with special passwords for access purposes.

Issue B. Uniformity of COC Depository Requirements

The current HOA depository in each Circuit Court should be expanded to become a COC depository, in which each COC governing board should be required to maintain a set of current COC documents, updated on at least an annual basis. The COC governing board should also be required to keep a set of those documents readily available for copying for resale purposes.

Current law requires the clerk of each Circuit Court to maintain a homeowners association depository (Section 11B-113, Real Property Article, Annotated Code of Maryland), which is to contain a list of all HOAs in that clerk's county (or Baltimore City), as well as various documents required to be deposited in the depository by each HOA (Section 11B-112(c)). There are no equivalent document depository requirements for condominiums or for cooperatives.

The Task Force believes that owners and prospective purchasers of units in condominiums and cooperatives should be no less entitled to disclosure of information than their counterparts in HOAs. In the interest of uniformity, the HOA depository should be expanded to become a COC depository, covering condominiums and cooperatives as well as HOAs.

If HOAs can be required to comply with the current HOA depository requirements, there is no ostensible reason why other kinds of COCs cannot do likewise. (While HOA documents recorded in the Land Records, such as declarations and restrictive covenants, need not be re-recorded in the HOA depository, it would be advisable to include in a COC depository at least a list of documents recorded in the Land Records, together with recording references, so that the same may be easily located. Also,

while articles of incorporation for an HOA need not be recorded in the HOA depository under current law, it would be advisable to require that all COCs record incorporation or other organizational documents in the COC depository.)

The usefulness of any document depository is directly related to the quality of the filings made into the depository. The Task Force believes that all COCs should be required to update their depository filings on at least an annual basis. COCs could be required to file an annual update form with the local Circuit Court depository simultaneously with their making of an annual filing or report with the local COC dispute resolution commission. In the alternative, since most COCs are organized as corporations which must file annual personal property returns with the State Department of Assessments and Taxation of Maryland ("SDAT"), COCs could be required to file an annual update form with the local Circuit Court depository simultaneously with their filing of their annual personal property return with SDAT.



The following hyperlinks are provided as a convenience to those who wish to obtain additional information on certain subjects relevant to the Task Force. No endorsement of any materials should be inferred from their inclusion herein.

TASK FORCE ENABLING LEGISLATION:

Chapter 469, 2005 Laws of Maryland (Senate Bill 229):
<http://mlis.state.md.us/2005rs/billfile/sb0229.htm>

UNIFORM COMMON INTEREST OWNERSHIP ACT:

National Conference of Commissioners on Uniform State Laws:
<http://www.nccusl.org/>

1994 Version of UCIOA:
<http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ucioa94.htm>

NCCUSL's UCIOA Drafting Committee:
<http://www.nccusl.org/Update/CommitteeSearchResults.aspx?committee=244>

October 2006 Meeting Draft of Revised UCIOA:
http://www.law.upenn.edu/bll/ulc/ucioa/2006octobermeeting_draft.htm

PROPOSALS FOR A HOMEOWNERS' BILL OF RIGHTS:

AARP's Proposal:
http://www.aarp.org/research/legal/legalrights/2006_15_homeowner.html

Common Cause Texas's Proposal:
http://www.ccsi.com/~comcause/position/cc_homeown.html

Community Associations Institute's Proposal:
www.caionline.org/rightsandresponsibilities/index.cfm

Alex Hekimian's Proposal (Fundamental Rights of Property Owners):
http://www.abettercolumbia.com/Fundamental_rights_of_property_owners.html

Maryland Homeowners Association's Proposal:
<http://www.marylandhomeownersassociation.info/DesktopDefault.aspx?tabname=rights>

Don Nordeen's Proposal (Governance of Property Owners Associations blog):
http://swagman.typepad.com/poa_governance/2006/10/statement_of_ri.html

Lois and Samuel Pratt's Proposal (from "Concerned Homeowners" website):
<http://members.cox.net/concernedhomeowners/PrattBoR>

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