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The Legislative Voice of Maryland Community Association Homeowners

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March 25, 2024

will.smith@senate.state.md.us
jeff.waldstreicher@senate.state.md.us

Senator William C. Smith, Jr., Chair
Senator Jeff Waldstreicher, Vice-Chair
Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: House Bill 281
Cooperative Housing Corporations, Condominiums and Homeowners Associations –
Funding of Reserve Accounts
Hearing Date: March 26, 2024
Position: Support with Amendment

Dear Chairman Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee:

We write on behalf of the Maryland residents statewide who reside in common ownership communities to offer our support for the above-referenced legislation, with further amendments, as discussed below. The bill, which has already passed the House with significant amendments, and it is scheduled for hearing before your Committee on March 26, 2024.

In the time that's passed since the passage of legislation mandating the funding of replacement reserve accounts statewide, we have had many interactions with community association board members and professional managers regarding the intricacies of compliance with the new law. In the course of our conversations, several important concerns emerged, some of which are addressed by the proposed HB 281, while the bill, as amended in the House, adds provisions to the proposed legislation which are, in our view, not necessarily calculated to advance the objectives we have sought to accomplish by the passage of this bill.

The first concern, which has been addressed adequately in the proposed HB 281, has been that those communities obtaining initial reserve studies have found themselves confronted with the urgent need to increase assessments precipitously in order to meet the funding requirements recommended by their reserve specialists. Those increases, when combined with current inflationary pressure, have prompted our constituents to ask if the 3-year grace period in the current statute might be expanded to 5 years. HB 281 does, in fact, incorporate a new provision extending the "grace period" to 5 years. In so doing, the proposed legislation will blunt negative fiscal impact, as well as enhance the opportunity for compliance.

The second concern, which HB 281, as amended, also addresses to our satisfaction, is one raised by professional managers, accountants, auditors and attorneys. The current statewide mandatory replacement reserve laws requires only that a community association's annual budget includes reserve account contributions. *However, existing law lacks any requirement that such contributions actually be made*. This is a significant issue during years when operating expenses in excess of those projected would cause a budgeted reserve contribution to become impossible to make without requiring owners to pay a special assessment or to forgo services. Because the current statute allows a board of directors to budget for reserves, and to increase assessments as needed without having to obtain owner approval, there is no reason not to require also—as does HB 281—that amounts budgeted to be contributed to reserves *actually be deposited* into the community association's reserve accounts.

However, following HB 281`s February 6th hearing before the House Environment & Transportation Committee, prior to crossover, significant amendments to HB 281 were made in the House.

1. There is a new definition for an "updated reserve study", pursuant to which any such document would be required to include:
    a. an analysis of work performed since the issuance of the previous reserve study;
    b. revised estimates of replacement cost, remaining life and useful life; and,
    c. identification of work performed and amounts spent and whether maintenance contracts are in place.

2. There is a provision that would limit the obligation to obtain a reserve study or updated reserve study to condominium and cooperative communities for which total estimated replacement cost exceeds $10,000. This change is, presumably, intended to achieve

parity with the laws governing homeowners associations, in which a $10,000 threshold already exists.

3. There is a new provision that would require, in addition to obtaining a reserve study (or update), that the governing body of the community association work with the reserve specialist to develop a "funding plan". As amended, the statute does not require that the funding plan utilize a specific method, but rather allows for utilization of any method accepted by GAAP. Furthermore, once developed, the funding plan is required to be reviewed annually, for progress, at the association's annual meeting; and, notably, the requirement to do so is ***in addition to*** the requirement that the association's governing body review its reserve study, annually, for accuracy.

While we cannot disagree with the effort to make updated reserve studies more informative, the expanded definition of an updated reserve study will almost certainly increase their cost, such that it will soon approach the cost of an initial reserve study. The Committee should keep that in mind when considering the bill as amended in the House.

The new explicit requirement to develop a funding plan represents, in our view, nothing more than an express articulation of what was presumed to have been implied in the pre-amendment proposed HB 281. Although we are concerned by the apparent disinclination to prescribe a specific method of funding reserve accounts, it is anticipated that most associations and reserve specialists will discern whether the cash-flow or component (or other) method is best. However, the requirement to review annually the association's progress toward achieving the funding plan is not accompanied by any requirement to confirm progress via a vote of the owners or Board, nor is there any mention of what happens if it's determined that progress has not been sufficient. Furthermore, there appears in HB 281, as amended, a new requirement to "review the study annually for accuracy". Although the intended language would achieve parity with Section 5-6B-26.1 of the Maryland Cooperative Housing Act, which already includes the same language, we are concerned that a community association, which is governed by lay volunteers, would not possess the capability to determine whether a replacement reserve study prepared by a qualified professional, as required by current law, was accurate. Moreover, the introduction of an undefined standard of accuracy is problematic and opens up new possibilities for liability that are unintended in the context of a statute aimed at requiring community associations to do the right thing, unlike what happened in Florida when there was no such requirement. Alternatively**, we propose that HB 281 be amended further to omit the undefined term "accuracy" in favor of language that would require only that community associations "cause the reserve study to be reviewed annually."** This language would alleviate any burden on lay volunteers by allowing them the option to retain a third party to conduct the required annual review for accuracy, or to delegate that function to a professional management agent.

Provided that the revisions referenced herein are made, we request a **favorable** recommendation by this Committee. Thank you for your time and attention to this important legislation.

We are available to answer any questions the Committee Members may have. Please feel free to contact Lisa Harris Jones (410-366-1500 or lisa.jones@mdlobbyist.com) or Grason Wiggins (912-687-5745 or Grason.wiggins@mdlobbyist.com), lobbyists for the MD-LAC, or Scott Silverman (410-707-6363 or ssilverman@schildlaw.com) or Vicki Caine (vcaine1@gmail.com) of the MD-LAC.

Sincerely,

Scott J. Silverman *Vicki Caine*

Scott J. Silverman, Esq.
Member, CAI MD-LAC

Vicki Caine
Chair, CAI MD-LAC