

House Bill 558 – Common Ownership Communities – Local Commissions

STRONGLY OPPOSE:

IT OBSTRUCTS ALL COMPLAINTS AGAINST A COMMON OWNERSHIP COMMUNITY: This act creates local common ownership commissions and gives the local commission the authority to adjudicate all complaints against a common ownership community, including complaints about violations of fire and safety codes, and violations of state and federal civil rights laws. Because of the excessive time and money involved, the Local Commissions have the effect of preventing an individual from prevailing in any action against a governing body or an association whatever the merits of their case.

Any individual in Maryland has a right to bring a complaint to the proper authorities about a violation of fair housing laws or fire safety codes, unless they live in a common ownership community. A complaint for violations of law in a condominium or a homeowner's association must be made against the governing body. This act would deny every person who lives in a common ownership community access to the state agencies who enforce the laws.

TESTIMONY: If you live in a privately owned apartment building, you can make a complaint about fire code violations to the Office of the Fire Marshall. The fire inspector will meet with you, evaluate the situation and talk to the owner/manager about making corrections. If necessary, the inspector will issue a Notice of Violations against the owner. This Notice will have a timeline for corrections and serious penalties for not making the required corrections. It is a public document and the person complaining is entitled to a copy.

If you live in a common ownership community, you first make your complaint of fire code violations to the board. If the board refuses to act, you then make your complaint to the Fire Marshall. The fire inspector meets with the manager and board members who have already denied the complaint. If the inspector finds violations and orders corrections, the notice is given to the board. The person complaining is excluded from the negotiations.

I personally spent \$55,000 and more than a year on a complaint to the Maryland Office of the Attorney General trying to get the board of my condominium in Baltimore to abate dangerous fire code violations. Despite extensive documentation of violations and copies of past code notices, the board simply told the mediator that there were no violations, and the OAG chose not to take any action.

In February 2023, an apartment fire in Silver Spring resulted in the death of one woman and hospitalization of 17 residents and 3 fire fighters. These casualties were caused by fire code violations like the ones in my complaint, particularly the inoperable fire doors that allowed the killing smoke into the only escape stair. My complaint to the Office of Consumer Affairs was filed in January 2023, before this fatal fire.

Unrestrained Executive and Judicial Powers: This bill proposes to establish Local Commissions appointed by the local government that have both executive and judicial powers without judicial oversight or executive appeal. These powers include: 1) order investigation and document preparation by officers of the local government; 2) dismiss a complaint based solely on the report of the investigation; 3) require the Complainant to appeal to the Commission if he or she believes that the Commission has acted incorrectly; 4) hold a hearing before a panel of Commission members, and requires the Complainant to appear before the panel or be subject to an order of relief for the other party.

Usurping Judicial Authority: The Commission has the power to “enforce a decision of the hearing panel by appropriate legal action.” 1) file for injunctive relief for the prevailing party; 2) file to recover damages for a loss sustained by the prevailing party; 3) award costs and attorney’s fees to the prevailing party; and 4) require a losing party to pay all or part of any filing fee.

Limiting Right of Appeal: The act requires the court to sustain the decision of the Hearing Panel unless the decision is 1) inconsistent with applicable law; 2) lacking substantial evidence; or 3) arbitrary and capricious. This severely limits the judicial authority to evaluate the facts of the case and apply applicable law and precedent before rendering a fair and just decision.

Representation of Special Interests Only: The Local Commissions are composed exclusively of individuals who represent the interests of the governing bodies of the common ownership communities, not the actual owners or residents in the communities: members must be “professionals associated with common ownership communities” including developers, real estate agents, attorneys, and at least one licensed common ownership community manager. There is no consumer representation at all.

Justice Delayed is Justice Denied: This proposal requires an individual to spend months to get a hearing before a Local Commission on an action or inaction by the Governing Body of a common ownership community. The hearing adds more months before the Commission issues a decision. In total it can be expected to take 390 days from the date of filing a complaint with a Local Commission before a Complainant can appeal to a court, and this appeal is an action against the Local Commission, not the other party in the dispute.

RESPECTFULLY SUBMITTED BY: Katharine C Rathbun, MD, MPH.

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I live in Wilde Lake Village in Columbia, Howard County. Wilde Lake Village is one of the 10 HOAs that comprise the Columbia Association. The Columbia Association is also incorporated as an HOA.

I am a retired Preventive Medicine Physician, with experience in Code Enforcement, and I recently served as a Village Board Member in Columbia. Prior to moving to Columbia, I lived in a large high-rise condominium in Baltimore City.

TIMELINE: First the Complainant must “exhaust all procedures and remedies provided by the governing documents”. It takes at least two months to have a complaint heard by a Governing Body in a public meeting, and then another one to two months to have the body “investigate” and take action. After taking action, they must inform the complainant of their right to file with the local commission, a total of 90 to 120 days. The Governing Body may implement their action in 14 days if it is not stayed by the Commission.

The Commission meets once a month to review complaints (30 days). If any party requests mediation, the Commission must provide a mediator within 30 days of the request (now 60 days). If mediation is not successful within 10 days, the Commission must order an investigation into the complaint which will take at least 30 to 60 days (now 120 days). The Commission receives the report of the investigation and may dismiss the complaint based on the report. The parties have 30 days to file for reconsideration of the dismissal, so it is at least 60 days for the next action (now 180 days).

The Commission must schedule a hearing and appoint a hearing panel which will take at least 30 days, and the Commission must give all parties 30-days’ notice of the hearing (now 240 days). Once a hearing is held the panel and the Commission will need time to evaluate the evidence and issue a finding which will take 30 to 60 days (now 300 days). The Complainant may file a case in court, but the court may postpone the proceeding for at least 90 days because it involves the Commission. This brings the total to 390 days from filing a complaint with a Local Commission before a Complainant gets his day in court.