

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1328 (Delegates Swain and Vaughn)
Environmental Matters

Maryland Cooperative Housing Act - Transparency Requirements and Member Rights

This bill amends the Maryland Cooperative Housing Act (MCHA) to apply specified provisions of law similar to those contained in the Maryland Homeowners Association Act (MHAA) and the Maryland Condominium Act (MCA). Substantively similar to MHAA, the bill establishes (1) meeting standards; (2) record depositories; and (3) standards for late charges for delinquent payments. The bill establishes a dispute settlement mechanism in MCHA similar to that contained in MCA. For a cooperative project that is no longer subject to a mortgage or deed of trust, the bill restricts the ability of a governing body to bring an action to evict a member.

Fiscal Summary

State Effect: No material impact on Judiciary general fund expenditures as the fee schedule that the State court administrator must establish is required to cover the costs incurred by the clerks of court for implementing and maintaining the required depositories.

Local Effect: It is anticipated that any additional court cases arising from the bill's establishment of a dispute settlement mechanism can be handled with existing resources.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions: Under the bill, “governing body” means the board of directors or other entity established to govern the cooperative housing corporation. “Assessment” means any share of common costs or other expense charged to a member by a cooperative housing corporation.

Meetings and Distribution of Information: Notwithstanding the documents of the cooperative housing corporation, all meetings of a governing body of a cooperative housing corporation must be open to all members of the cooperative housing corporation or their agents. However, a meeting may be held in closed session only for:

- discussion of matters pertaining to employees and personnel;
- protection of the privacy or reputation of individuals in matters not related to the cooperative housing corporation’s business;
- consultation with legal counsel on legal matters;
- consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters;
- conducting investigative proceedings concerning criminal misconduct;
- consideration of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the cooperative housing corporation;
- compliance with a specific constitutional, statutory, or judicially imposed requirement that protects particular proceedings or matters from public disclosure; or
- discussion of individual owner assessment accounts.

If a meeting is held in closed session for one of the aforementioned purposes, a statement of the time, place, and purpose of the meeting; the record of the vote of each board or committee member to close the meeting; and the statutory authority for closing the meeting must be included in the minutes of the next meeting of the cooperative housing corporation.

The bill requires that the governing body provide a designated period of time during a meeting to allow members an opportunity to comment on any matter relating to the cooperative housing corporation. The governing body must also convene at least one meeting each year at which the agenda is open to any matter relating to the cooperative housing corporation.

The bill also allows members to assemble in the area that the governing body uses for scheduled meetings to consider and discuss the operation of the cooperative housing corporation. Subject to reasonable restrictions, a cooperative housing corporation must allow any member to distribute written information or materials related to the operation of a cooperative housing corporation in the same manner that the governing body distributes written information and materials. These provisions do not apply to any meetings or distributions of information that occur before the members, other than the developer, have a majority of votes as provided in the declaration.

Depository: The bill requires the establishment of a cooperative housing corporation depository in each county and the City of Baltimore substantially similar to that required for homeowners associations. The depository must be established and maintained by the clerk of the circuit court in each jurisdiction and must be separate from the land records of the jurisdiction. The depository must contain a record of the names of all cooperative housing corporations and all disclosures deposited by a cooperative housing corporation. The depository must be made available for public examination and obtaining copies during normal business hours. The clerk of the circuit court is authorized to collect fees for a deposit and regulate the form and manner of documents deposited.

By December 31, 2015, each cooperative housing corporation that was in existence on June 30, 2015, must deposit all specified disclosures in the depository. The required disclosures include (1) the content of the public offering statement of the cooperative housing corporation and (2) the contents of proprietary lease agreements issued by the cooperative housing corporation. Each cooperative housing corporation established after June 30, 2015, must deposit all specified disclosures by the later of the date 30 days following the corporation's establishment or December 31, 2015. Beginning January 1, 2016, within 30 days after the adoption of or amendment to any required disclosures, a cooperative housing corporation must deposit the adopted or amended disclosures in the depository.

If a cooperative housing corporation fails to deposit disclosures in the depository, those disclosures are unenforceable until deposited.

Late Charges: A cooperative housing corporation may, in a proprietary lease or its bylaws, impose a late charge equaling the greater of \$15 or one-tenth of the total amount of any delinquent assessment or installment owed by a member. The charge may not be imposed more than once for the same delinquent payment and may be imposed only if the delinquency has continued for at least 15 calendar days.

Dispute Settlement Mechanism: The bill establishes a dispute settlement mechanism substantially similar to the dispute settlement mechanism in MCA for any complaint or

demand formally arising on or after January 1, 2015. Unless the bylaws of a cooperative housing corporation or the proprietary lease of the member who is a party to the dispute state otherwise, the governing body may not impose a fine, suspend voting, bring an action to evict, or infringe upon the rights of a member for a violation of the rules of the cooperative housing corporation or the provisions of the member's proprietary lease until a written demand to cease and desist is served upon the alleged violator that specifies (1) the alleged violation; (2) the action required to abate the violation; and (3) a time period of at least 10 days during which an ongoing violation may be abated without further sanction.

If a violation continues beyond the abatement period noted in the governing body's written demand to cease and desist, or if the same rule is subsequently violated, the alleged violator must be served with written notice of a hearing. The notice must be sent to the violator at least 10 days before the hearing; contain a description of the alleged violation and proposed sanction; and inform the individual of the opportunity to produce any statement, evidence, and witnesses on his or her behalf.

The hearing must be held in an executive session of the governing body and afford the alleged violator a reasonable opportunity to be heard. Prior to imposing any sanction on the member, the governing body must place in the minutes of the meeting proof of the notice provided to the member. The meeting minutes must also contain the results of the hearing and the details of any sanction imposed. A decision made pursuant to these procedures is appealable to the courts by a member.

If a member fails to comply with MCHA, the cooperative housing corporation's bylaws, or a governing body's decision made pursuant to the dispute settlement procedures, the member may be sued for damages or injunctive relief by the governing body or any other member. Attorney's fees may be awarded by the court to the prevailing party.

Eviction Restrictions: The bill imposes eviction restrictions on a cooperative project that is no longer subject to a mortgage or deed of trust. Notwithstanding the articles of incorporation, bylaws, or regulations of a cooperative housing corporation or the proprietary lease of any member, a governing body may not bring an action to evict a member based solely on the failure of the member to pay assessments owed to the cooperative housing corporation unless (1) the member has been delinquent in paying assessments for a period of six months or more; (2) the governing body has given the member notice and an opportunity to be heard regarding the delinquency and opportunity to cure the delinquency; and (3) the member has failed to cure the delinquency.

Current Law: MCHA does not provide standards for meetings or set forth a dispute settlement mechanism.

Member and Cooperative Housing Corporation Relations: Under MCHA, a member has a “cooperative interest” in the corporation. This interest is considered personal property and is evidenced by a membership certificate.

A proprietary lease is an agreement with the cooperative housing corporation under which a member has an exclusive possessory interest in a unit and a possessory interest in common with other members in that portion of a cooperative project not constituting units and which creates a legal relationship of landlord and tenant between the cooperative housing corporation and the member, respectively.

Thus, similar to a landlord’s ability to evict a tenant, a cooperative housing corporation may pursue an eviction action against a member by filing a written complaint with the District Court.

Books and Records: Generally, for cooperative housing corporations, condominiums, and homeowners associations (collectively referred to as “common ownership communities” (COCs)), books and records kept by or on behalf of a cooperative housing corporation, a condominium, or a homeowners association must be made available for examination or inspection during normal business hours and after reasonable notice.

Books and records may be withheld from public inspection to the extent that they concern (1) personnel records; (2) an individual’s medical or specified financial records; (3) records relating to business transactions that are currently in negotiation; (4) written advice of legal counsel; or (5) minutes of a closed meeting of the governing body.

Reasonable copying fees may be charged in conjunction with any authorized inspection or copying of COC books or records or a request for delivery of the information. The copying charge may not exceed the authorized charge for copying of court records.

Background: For more information on common ownership communities, see the **Appendix – Common Ownership Communities**.

Small Business Effect: To the extent that small cooperative housing corporations are considered small businesses, the bill’s transparency requirements may result in additional expenditures.

Additional Information

Prior Introductions: None.

Cross File: SB 865 (Senator Benson) - Judicial Proceedings.

Information Source(s): State Department of Assessments and Taxation, Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Secretary of State, Department of Legislative Services

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Analysis by: Joshua A. Lowery

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – Common Ownership Communities

When a person purchases a house, condominium, or an interest in a cooperative housing arrangement, he or she may also be required to join an association of owners, which is intended to act in the common interests of the homeowners, condominium owners, or cooperative housing corporation owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs).

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent.

Many new housing developments are subject to governing documents that create a homeowners association (HOA) with the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the owners of lots, or the common areas.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws applicable to corporations.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees.

A growing number of homes are located in condominiums, HOAs, and cooperative housing corporations. The Secretary of State reports that there were more than 2,500 condominiums in the State of Maryland registered with the office in 2013. The Foundation for Community Association Research estimates that there were 6,400 community associations in the State in 2012.

Task Force on Common Ownership Communities

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and

resale of homes within COCs. The task force met 10 times, held 5 public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation intended to improve the operation of COCs. This legislation, enacted from 2007 through 2013:

- authorized a group of three or more unit owner or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007);
- eased restrictions on the ability of certain older HOAs to amend their governing documents by allowing an amendment at least once every five years by a specified percentage of votes (Chapters 144 and 145 of 2008);
- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);
- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009 and Chapter 615 of 2010);
- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);
- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapter 449 of 2013); and
- expanded the purposes for which a condominium's board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013).

The task force's report also featured findings and recommendations relating to alternative dispute resolutions and the creation of an ombudsman in local governments. Montgomery County's Commission on Common Ownership Communities was referenced as an alternative dispute resolution model for future local offices. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of HOAs, residential condominiums, and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs that predates the task force.

Finally, findings and recommendations of the report that have not been codified in statute concern reserves of COCs, an insurance deductible cap for unit owners, the suspension of privileges of delinquent unit owners, uniformity of disclosure requirements and packages, and uniformity of COC depository requirements.