



**By Thomas C. Schild, ESQ., CCAL**

Thomas C. Schild is an attorney with Thomas Schild Law Group LLC in Rockville, Md. He is past chair and a member of CAI's Maryland Legislative Action Committee. Additionally, Schild is a member of CAI's National Faculty and College of Community Association Lawyers.

# Maryland Appeals Court Decisions Address the Four P's of PEOPLE, PETS, PARKING AND PAPER Association Living

**C**ommunity association disputes often involve owner rights and association responsibilities. In the past year, the Maryland appellate courts issued several rulings concerning the four P's of condominium and homeowner association living—people, pets, parking and paper.

The Maryland Court of Appeals—the highest state appellate court—made landmark rulings regarding liability for any injuries caused by pit bulls and liability for issuing deceptive or misleading resale disclosure documents. It also clarified the fair housing requirements for reasonable and necessary accommodations for individuals with disabilities.

Other legal disputes involving condominium and homeowners associations were decided by Maryland's intermediate appeals court—the Court of Special Appeals. These court cases involved interpretation of covenant provisions regarding “single-family residences” and parking rights.

## Property Owner Liability for Pit Bull Injuries

The Maryland Court of Appeals ruled that owners of pit bulls and property owners who have the right to control the presence of pit bulls are strictly liable for injuries caused by such dogs.

In *Tracey v. Solesky*, where a pit bull escaped from the yard of a leased home and ran loose in the neighborhood, the parents of a child mauled by the dog sought dam-

ages from the owner of the pit bull and the owner of the Baltimore City house leased to the pit bull owners. The court ruled that property owners who know, or have reason to know, of the presence of a pit bull on their property are liable for injuries caused by such dogs, whether or not they know a particular dog has a history of vicious propensities. Concluding that all pit bulls are inherently dangerous animals, the court changed the long-established common (i.e., court-made) liability standard for pit bull owners and property owners.

Under a negligence standard, a landlord, condominium, homeowners association, housing cooperative or other person with control over the presence of a dog can be liable for injuries caused by a dog only where there is (1) knowledge of the dog on the property and (2) knowledge of that particular dog's history of being vicious.

However, the *Tracey* decision imposed liability for pit bull owners and property owners who have the right to control the presence of pit bulls on their property, without knowing that a particular dog had any prior vicious propensities.

The appeals court decision was widely criticized for its conclusion that pit bulls are inherently dangerous, for applying a different standard of liability to one breed of dog, and for making landlords and others with the right to control the presence of pit bulls on their property strictly liable for injuries caused by such dogs.

In response to the appeals court decision, the Maryland General Assembly considered several bills regarding liability for injuries caused by dogs. Although the House and Senate passed similar versions of legislation, the differences in the two versions were not resolved, therefore the General Assembly adjourned until January 2014 without enacting any dog bite legislation. In Prince George's County, all pit bulls are prohibited by county law.

## Resale Disclosures May Violate Consumer Protection Act

The Maryland Court of Appeals also ruled in *MRA Property Management v. Armstrong* that condominiums and their managers may be sued by purchasers for issuing deceptive or misleading resale disclosure packages.

Unit owners who received the condominium operating budget as part of the resale disclosure package claimed the approved budget was misleading because there was no indication that additional repairs would be required and a special assessment to fund the repairs would be imposed on unit owners. The Cecil County condominium and its management company contended that they had complied with the resale disclosure requirements of the Maryland Condominium Act by providing the operating budget and that the Maryland Consumer Protection Act does not apply to the issuance of condo-

minium resale disclosure information.

The appeals court concluded that the Consumer Protection Act does apply to the issuance of resale disclosure certificates and other information even though neither the condominium nor management company is the seller of the condominium unit. The court reasoned that the statutory duty under the Condominium Act to provide materials to prospective buyers injects the condominium and management company into the sales transaction as "central participants" because the sales contract would be unenforceable if they failed to provide the resale disclosure information. According to the court, the required disclosures "may have been integral to the transactions."

**The Court of Special Appeals ruled that the term "single family" was ambiguous. Because there was no evidence that showed what the drafters of the covenant intended, the court concluded it must be construed against those seeking to enforce the covenant.**

Therefore, the Consumer Protection Act establishes an independent basis of potential liability by the condominium and its manager if the disclosures are "misleading or had the capacity, tendency or effect of misleading or deceiving." The Maryland Condominium Act requires disclosures, while the Consumer Protection Act mandates that those disclosures not be deceptive.

The appeals court did not rule on whether the operating budget provided by the condominium and its management company was deceptive in violation of the Consumer Protection Act. However, the Court of Appeals stated that the mere disclosure of the operating budget might be deceptive if additional known information was not also disclosed to prevent the budget from being misleading.

In a separate case involving resale disclosures, the Court of Special Appeals ruled in *Lipitz v. Hurwitz* that a contract for the sale of property in a Baltimore County

homeowners association could be cancelled by the purchaser where the seller did not provide resale disclosures and documents required by the Maryland Homeowners Association Act.

### **Condominium Violates Fair Housing Law**

The Maryland Court of Appeals, in *Cameron Grove Condominium II v. Maryland Commission on Human Relations*, ruled that a Prince George's County condominium violated the state fair housing by refusing to provide individuals with physical mobility disabilities with a key to the side and back door of the condominium.

When two condominium owners were denied key access to the side and rear doors to facilitate moving groceries from their vehicle to their dwelling unit, they filed complaints with the state fair housing agency alleging that the condominium had discriminated on the basis of their disability by refusing to provide a reasonable and necessary accommodation in the condominium rules, policies and practices.

The Maryland Commission on Human Relations (MCHR) found that the requested accommodation for access to the side and rear doors was reasonable and necessary. It concluded that providing keys was a reasonable accommodation because it would not constitute an undue financial burden or require a substantial change in the condominium policies and practices.

Nearly seven years after the fair housing discrimination complaints were first filed, the Court of Appeals affirmed the decision of the MCHR. The appeals court ruled that once the residents showed that the requested accommodation is generally reasonable, the burden shifts to the housing provider to show that the accommodation is unreasonable due to the financial burden of providing the accommodation. The court determined there was substantial evidence to support the MCHR conclusion that providing keys to the side and rear doors was a reasonable and necessary accommodation for the disabled residents.

### **Restriction Does Not Bar Unrelated Occupants**

A restrictive covenant which limits use of lots to "single-family residences"—but does not define the term "family"—is ambiguous and, therefore, not enforceable to prevent renting property to persons not related by blood, marriage or adoption, according to the Maryland Court of Specials' decision in *South Kaywood Community Association v. Long*.

A Wicomico County homeowners association contended that a restrictive covenant requiring use and occupancy of a property as a "single-family residence" prevented lease of a house to three unrelated students who attend Salisbury University. When the association attempted to enforce the covenant to bar the rental, the owner filed suit to obtain a court order declaring that the covenant did not restrict the use of the property to persons related by blood, marriage or adoption. The trial court agreed that the "single-family residence" restriction did not require residents of the property to be related by blood, marriage or adoption.

On appeal, the Court of Special Appeals ruled that the term "single family" was ambiguous. Because there was no evidence that showed what the drafters of the covenant intended, the court concluded it must be construed against those seeking to enforce the covenant.

In concluding that the term "single family" is ambiguous, the court noted that the term as used in zoning ordinances is often defined to include a specified number of unrelated persons living as a

single housekeeping unit. It also noted that the great majority of courts in other states, which have construed the term in zoning ordinances or restrictive covenants, have concluded that the term is ambiguous and does not necessarily restrict usage of property to persons related by blood, marriage or adoption.

#### **Parking May Be Prohibited**

An easement granting nonexclusive rights of ingress and egress over a private roadway which serves several condominiums allows the entity responsible for managing, operating and maintaining the roadway to prohibit parking on portions of the roadway which pass through the common elements of a condominium, the Maryland Court of Special Appeals ruled in *10101 Grosvenor Park Condominium v. Grosvenor Park Maintenance Trust Association*.

The Grosvenor Park community in Montgomery County consists of several separate condominium and apartment buildings all served by a private loop roadway connecting the buildings to the public streets. The Grosvenor Park Maintenance Trust Association was created to manage and operate the roadway.

The 10101 Grosvenor Park Condominium removed the "No Parking" signs from the portion of the West Loop, which passed through the condominium common elements and installed signs stating that guests of condominium unit owners could parallel park on the roadway. In response, the trust filed suit to enjoin the condominium from allowing parking on the roadway.

The Court of Special Appeals' decision affirmed the trial court conclusion that parallel parking on a daily basis on the West Loop roadway within the easement area is an impermissible obstruction of the private roadway used by other residents for ingress from and egress to the public streets, and that the condominium must reinstall the "No Parking" signs.

#### **People, Pets, Parking and Paper**

While most community association disputes are resolved without resort to litigation, the variety of recent Maryland appeals court decisions involving condominium and homeowner associations suggests that the courts will be increasingly called upon to address the four P's of association living—people, pets, parking and paper. 