THOMAS SCHILD
LAW GROUP, LLC

401 North Washington Street, Suite 500
Rockville, Maryland 20850

Tel: 301-251-1414 law@schildlaw.com
Fax: 301-251-6636 www.schildlaw.com

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Community Association LawLetter

MARYLAND APPEALS COURT AFFIRMS STRICT LIABILITY FOR PIT BULL INJURIES

The Maryland Court of Appeals on August 21 affirmed its April 26 ruling 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. However, it did modify its earlier decision so it does not apply to mixed breed pit bulls.

In *Tracey v. Solesky*, 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 law (i.e. court-made law) 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 imposes 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.**

According to the court ruling, the strict liability standard for injuries caused by pit bulls "simply requires that those who possess them or permit them on their property take reasonable steps to assure that they do not run loose or otherwise are in a position to injure other people".

The appeals court decision has been 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.

Faced with greater potential liability for pit bull bites, some landlords reportedly are terminating leases of tenants who have pit bulls and some dog owners are surrendering their pit bulls to animal shelters. And, some condominium, homeowner association and coop boards are considering a ban on pit bulls.

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STRICT LIABILITY FOR PIT BULL INJURIES (Cont'd from Page 1)

Dog Bite Legislation Stalls

In response to the appeals court decision, the Maryland General Assembly considered several bills regarding liability for injuries caused by dogs during its recent Special Session. Although the House and Senate passed similar versions of legislation, the differences is the two versions were not resolved before the General Assembly adjourned until January 2013 **without enacting any dog bite legislation.**

On behalf of the Community Associations Institute (CAI), Tom Schild attended the House Judiciary Committee hearing to explain the **special problems of condos, HOAs and coops in banning, identifying and removing pit bulls and mixed pit bull breeds**. Unlike landlords which can readily ban pit bulls and evict tenants who violate pet restrictions, it is far more difficult, time-consuming and costly for a community association to ban certain breeds of dogs and have prohibited dogs removed from the community. The final House version of the legislation included an amendment to make clear that condominiums, homeowner associations, and housing cooperatives are not subject to the strict liability standard.

With the support of animal rights groups, the Senate and House passed bills to generally **extend the strict liability standard to owners and keepers of all dogs,** with a few exceptions for veterinarians, police and military personnel, and other specified circumstances.

With the support of organizations representing landlords, community associations, insurance companies and animal rights advocates, both the Senate and House–passed versions **overturn the strict liability standard for property owners** and restore the common law liability standard for property owners which was in effect prior to the *Tracey* court ruling.

Although similar (but different) versions of dog bite legislation were introduced, considered and passed in less than a week during the special legislative session, the differences were not reconciled and **no new law was approved by the General Assembly**. The entire topic of dog bite liability is expected to be revisited again during the regular 2013 legislative session.…when the legislative dogfight will continue!

Board Review of Pet Rules

In light of the Court of Appeals decision and the uncertainty of legislative action to change the liability standard for pit bull injuries, **boards of directors should review existing pet covenants, rules and policies** to determine whether the covenants provide adequate provisions to prohibit or regulate pit bulls by rule; whether there is adequate indemnification of the association for injuries caused by animals kept by residents; whether the Board is authorized to remove animals which are deemed inherently dangerous; and whether amendments to the covenants and/or rules are necessary or desirable.

Condominium, HOA and coop boards may also want to determine if there are any pit bulls kept by residents; determine if association liability insurance policy covers claims for injuries caused by pit bulls kept by residents; take enforcement action to remove any pit bull from the community; and adopt a pet registration procedure.

In Prince George's County, all pit bulls are prohibited by County law.

CONDO RESALE DISCLOSURES MAY VIOLATE MARYLAND CONSUMER PROTECTION ACT

The Maryland Court of Appeals--the highest state appellate court--has ruled that condominiums and their managers may be sued by purchasers for issuing deceptive or misleading resale disclosure packages. The court issued its initial opinion in *MRA Property Management. v. Armstrong* in October 2011 but withdrew that ruling in December 2011 in response to objections by the unit owners, condominium and management company who were the parties to the litigation. The court issued a new and revised ruling in April 2012.

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 condominium and 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 resale disclosure information.

Consumer Protection Act Applies to Resale Disclosures

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 condo unit. The court reasoned that the statutory duty under the Condo 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".

Therefore, the Consumer Protection Act establishes an independent basis of potential liability by the condo 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.

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The appeals court did not rule on whether the operating budgets provided by the condominium and its management company was deceptive in violation of the Consumer Protection Act. Instead, the court found that they were not necessarily deceptive and sent the matter back to the trial court to determine if they were deceptive or not. The Court of Appeals left open the possibility that the mere disclosure of the operating budget might be deceptive if additional known information was not also disclosed to prevent the budgets from being misleading.

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CONDO RESALE DISCLOSURES
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Additionally, the appellate court did not address whether the condominium has an obligation under the Condominium Act to disclose building conditions that may have been code violations but were never charged as such by a government agency. Although the court had addressed that issue in its earlier withdrawn decision, the court's revised decision concluded that issue was not properly before the court.

Board Review of Resale Disclosures

With the additional exposure to liability based on the Consumer Protection Act, all condominium boards should review the resale disclosure package to ensure that information and documents provided to prospective purchasers are not misleading.

MARYLAND CONDOMINIUM & HOA LAW BLOG

Legal News & Trends for Maryland Community Associations

Thomas Schild Law Group has launched an online Law Blog for managers, board members, and homeowners to keep current on law, legislation, and news affecting Maryland condos, HOAs and co-ops.

Free to Subscribe!

Link to the Law Blog at
schildlaw.com or **marylandcondominiumlaw.net**

THOMAS SCHILD LAW GROUP, LLC represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. The firm advises community associations on all aspects of association operations including covenant enforcement, assessment collection, developer warranties, maintenance and management contracts, and association document interpretation. Thomas Schild Law Group also represents community associations in court litigation and administrative hearings.
