

Fall 2016

Community Association LawLetter

NEW MARYLAND CONDO AND HOA RESALE DISCLOSURES REQUIRED

New resale disclosure requirements for Maryland condominiums and homeowner associations apply beginning October 1, 2016.

Condo Resales. Condominiums will now be required to provide prospective purchasers with the current reserve study report or a summary of the report, and a statement of the status and amount of any reserve or replacement fund. There are also changes regarding disclosure of unsatisfied judgments against the condominium and pending lawsuits to which the condominium is a party.

The condo resale disclosure information will no longer require a statement as to whether the association has knowledge of an alteration or improvement to the unit or limited common elements assigned to the unit are in violation of the bylaws or rules. And, the required statement about common element health or building code violations will be limited to actual knowledge of such violations.

The fees which a condominium may charge for providing the resale disclosure certificate and condo documents is capped at \$250 plus additional fees up to \$100 to inspect the unit and rush fees up to \$100.

HOA Resales. Additionally, Maryland homeowner associations for the first time will be required to provide information and documents to owners when they sell their property.

This includes information about the total amount of assessments and fees charged by the association, whether any of the assessments or fees are delinquent, the contact information for the associations of its management agent, unsatisfied court judgements, and pending claims, covenant violation actions or notices of default against to property.

The required information and documents must be provided to an owner within 20 days of a written request. A homeowners association may charge up to \$250 for the resale disclosure information and HOA documents plus rush fees of up to \$100.

CONGRESS DIRECTS FHA TO EASE CONDO APPROVAL STANDARDS

It took an Act of Congress!

But, more condominiums are soon expected to be approved by the Federal Housing Administration (FHA). Only condominium owners in FHA-approved condo associations are eligible for loans insured by the FHA. These loans offer borrowers lower down payments and more lenient credit criteria.

Under the Home Opportunity Through Modernization Act (Act), passed unanimously by Congress and signed into law in late July, 2016, the number of **owner-occupied units** allowed will be lowered from 50 percent to 35 percent of units unless the FHA promptly adopts guidance to support a higher number of owner-occupied units in a condominium.

The new law also prohibits FHA from denying approval to a condominium because the condo imposes **transfer fees** to fund condominium operations. Instead, the FHA policy on private transfer fee covenants must conform to the less restrictive standards of the Federal Housing Finance Agency (FHFA) for the purchase of loans by Fannie Mae and Freddie Mac. And, the FHA is encouraged to approve more **mixed-use condos** with both residential and commercial units.

For condos seeking renewal of its FHA-approved status, the FHA is now required to make **condo recertification** "substantially less burdensome".

New FHA rules and guidelines are expected in the coming months in order to implement

the congressional directive to make it easier for condominium associations to obtain and keep FHA-approval, making FHA-insured loans available to more condo unit owners and purchasers.



BOARD TRAINING REQUIRED FOR MONTGOMERY COUNTY COMMUNITY ASSOCIATIONS

Hundreds of directors of condos, HOAs and coops in Montgomery County, Maryland have successfully completed the online training program now required by County law for directors elected, re-elected or appointed since January 1, 2016. The training program, **Community Governance Fundamentals**, is provided by the Montgomery County Commission on Common Ownership Communities (CCOC).

The required education program is intended to promote more knowledgeable and responsible management of common

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ownership communities. Topics include the roles and responsibilities of board members and homeowners, community governing documents, financial management, meeting procedures, and covenant and rule enforcement procedures.

The online training takes about 2 hours to complete, may be taken in phases over time, is interactive and includes short quizzes which must be passed to move on to the next section. The program is also offered in a live format by community association attorneys and managers. Tom Schild will be teaching the class in Silver Spring on October 25.



A director who does not complete the training is not prohibited from continuing to serve on the board. However, a CCOC dispute resolution panel may consider failure to complete the training in deciding a dispute between the association and a homeowner.

There are more than 1,000 common ownership communities in Montgomery County, which include over 130,000 dwelling units and 5,000 board members.

NEW FAIR HOUSING HARASSMENT RULES APPLY TO COMMUNITY ASSOCIATIONS

Condominiums, housing co-ops and homeowner associations may be liable for the conduct of community residents which subjects other residents to "**hostile environment harassment**" under new rules issued by the United States Department of Housing and Urban Development (HUD).

The new fair housing rules, which apply beginning October 14, 2016, establish nationwide standards which HUD will apply in enforcing the federal Fair Housing Act with respect to alleged harassment based on race, color, religion, national origin, sex, familial status or disability.

According to HUD, the rules do not create any new forms of liability under the Fair Housing Act but merely clarify HUD's enforcement policies on "quid pro quo" and "hostile environment" harassment. In addition, the rules clarify when a person may have vicarious liability for the actions of agents and employees in the context of discriminatory housing practices.

The new HUD rules define "hostile environment harassment" to mean "unwelcome conduct that is sufficiently severe or pervasive as to interfere with the availability, sale, rental, or use or enjoyment of a dwelling" and other housing-related activity. Whether hostile environment harassment exists will be evaluated from the totality of the circumstances and from the perspective of a reasonable person in the aggrieved person's position.

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"Quid pro quo" harassment refers to circumstances where submission to an "unwelcome request or demand" is a condition related to housing transactions or services.

In addition to direct liability for a person's own conduct and the conduct of that person's agents and employees, the new fair housing rules also make a person liable for **failing to take prompt action to correct and end a discriminatory housing practice by a third-party**, where the person knew or should have known of the discriminatory conduct and had the power to correct it.

The HUD explanatory statement accompanying the rules specifically addresses the obligations of condominiums, homeowner associations and housing co-ops to act to correct a discriminatory housing practice. A community association must take "whatever actions it legally can take to end the harassing conduct".

Referring to the 2015 decision of the United States Supreme Court in *Texas Department of Community v. Inclusive Communities Project, Inc.*, HUD further explained that a person's failure to act to correct third-party harassment does need to be motivated by a discriminatory intent in order to be a Fair Housing Act violation.

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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.

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