

*Summer 2016*

## *Community Association LawLetter*

### **2016 MARYLAND CONDO & HOA LEGISLATIVE SCORECARD**

The Maryland legislature has passed legislation which affects the management and operation of condominiums and homeowner associations. New laws which take effect October 1, 2016 include:

**Resale Disclosures.** Homeowner associations will be required for the first time to provide resale disclosure information to an owner selling a home in an HOA. For condos which have long been required to provide resale disclosures, the disclosure requirements have been clarified or changed on matters such as assessments, replacement reserves, pending litigation, unit alterations, and violations of health or building codes. And, the amount which condos, HOAs and management companies may charge for providing resale disclosure information is capped by the new law.

**Tax Sale Procedure.** The purchaser of property at a tax sale will be required to notify condos and HOAs when a court suit is filed to prevent owners of property in those communities from keeping ownership of property. The new law also provides that when a tax sale is approved by the court, the

tax sale purchaser is responsible for payment of condominium and homeowner association assessments from the date of the court judgment, whether or not a tax sale deed to the property is recorded in the land records.

**Assessment Collection.** A court suit will not be permitted for any unpaid assessments where the time for filing suit has expired. Any subsequent payment on the debt, or written or oral affirmation of the debt will not revive or extend the statute of limitations. This applies to all suits involving consumer debt, not just association assessments.

**Home Gambling.** Card games and mah jong games hosted in a residence not more than once a week will now be allowed where the total gambling bets for all players is no more than \$1,000 in a 24-hour period. In senior communities with age 55 restrictions, these games will also be allowed in the common areas.

Legislation considered but **not enacted** would have required state registration of all condos, co-ops and HOAs, and would have made it easier to amend association governing documents by

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Legislative Scorecard  
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allowing an owner's failure to vote on a proposed amendment to be counted as that owner's approval of the proposed amendment.

Also rejected was a bill to prohibit provisions in condominium sales contracts and bylaws which limit the ability of condo associations to file suit to enforce construction warranties on the common elements.

Several House bills regarding **foreclosure sales** were referred for further study. A bill passed by the House (but not the Senate) would have required lenders to notify condominiums and HOAs when a foreclosure sale is scheduled, postponed or cancelled. Other bills addressed property maintenance prior to a foreclosure sale and recording conveyance documents after a court approves a sale.

**CONDOMINIUM RULE MAY NOT  
SUSPEND USE OF COMMON  
ELEMENTS BY DELINQUENT  
OWNER**

A Maryland condominium's policy of towing vehicles of unit owners who are delinquent in payment of condominium assessments was recently struck down by the Maryland Court of Special Appeals—an intermediate appeals court.

In an effort to get owners to pay the condominium assessments, the Board of Directors of an Anne Arundel County condominium passed a **rule** which prohibited parking in the condominium common

element parking lot if an owner was in arrears in payment of condominium assessments and other charges for more than 45 days. The rule was enforced by towing vehicles from the condominium property. The condominium Board also enacted a **rule** to prohibit use of the community pool by owners who had not paid their assessments.

When an owner filed suit challenging the suspension of the right to use the parking lot and pool, the appeals court concluded that the Board was not authorized to take such action unless the condominium declaration or bylaws were amended to allow suspension of use of the common elements a tool for the collection of delinquent assessments.

The court relied on a prior decision of the Maryland Court of Appeals—the highest state appeals court—and a provision in the Maryland Condominium Act which recognize that the right to use the common elements is a property right which can only be limited by the condominium **declaration**. Although the Court of Special Appeals ruled that the use of common elements could not be restricted by Board rule, it concluded the **declaration or bylaws** could be amended to allow suspension of the common element parking lot and pool for non-payment of condo assessments.

The court decision in *Elevaton Towne Condominium Regime II v. Rose* is an “unreported” decision which is not a binding precedent applicable to any other condominium. However, it is instructive on how courts view limitations on the authority of condominium boards to restrict the use of common elements by owners who are delinquent in paying assessments.

## **MONTGOMERY COUNTY CCOC TO REQUIRE NEGOTIATION OF ASSOCIATION DISPUTES**

After a year-long examination of the operations of the Montgomery County Commission on Common Ownership Communities (CCOC), the County Council has enacted a new law which makes changes in the CCOC dispute resolution process. More than 340,000 Montgomery County, Maryland residents live in over 1,000 condominiums, homeowner associations, and housing cooperatives. The CCOC was created in 1991 to provide a forum for certain disputes between association residents and the boards which govern the association to be resolved without going to court, and to provide educational resources for association residents and leaders.

Where the CCOC staff has determined that there are reasonable grounds to conclude that a violation of law or association documents has occurred, the new law requires the staff to attempt to resolve disputes filed with the CCOC through informal negotiation and possibly mediation.

If the party who filed the CCOC dispute does not attend the mediation, the dispute must be dismissed. If the party who is alleged to violate applicable law or the association documents does not attend the mediation, the matter must be set for a hearing, and that party is prohibited from appearing at the hearing to present testimony and evidence. Previously, there was no requirement for active staff negotiation, and mediation was voluntary.

The new law also requires all members of the CCOC to take the same CCOC training on community association governance which association board members are required to take. Additionally, volunteer arbitrators who chair CCOC hearing panels will be prohibited from

representing any parties in disputes before other hearing panels.

Beginning in July 2016 when the new Montgomery County law takes effect, the CCOC will be part of the Department of Housing and Community Affairs.

Separately, it has been proposed that the annual community association registration fee be increased from \$3 per dwelling unit to \$5 per dwelling unit beginning July 1 to allow the CCOC to provide more staff and educational resources.

## **MARYLAND APPEALS COURT UPHOLDS ENFORCEMENT OF ASSOCIATION TRUCK COVENANT**

A homeowner association restriction on trucks has been determined by a Maryland appeals court to be enforceable against the owner of a large military-style vehicle.

The 3-axle camouflaged vehicle was taller than the first story of the home and as wide as the driveway. The Maryland Court of Special Appeals agreed with the trial court that the truck covenant had not been waived by allowing other smaller Sport Utility Vehicles built on a truck chassis. It was appropriate and reasonable to distinguish between “consumer vehicles” and a “massive army-surplus truck”.

Although the appeals court noted that restrictive covenants may become invalid and unenforceable if the original development plan has been abandoned, or the character of the neighborhood has changed so much as to defeat the purpose of the restriction, those factors were not applicable to the community of single family homes in Harford County

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**Enforcement of Truck Covenant  
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where the over-sized military truck was parked.

The court also rejected the homeowner's contention that suit to obtain an injunction to enforce the truck covenant could not be filed before complying with the dispute resolution procedure in the HOA bylaws. The bylaws required notice of the alleged violation and an opportunity for a hearing before the HOA Board of Directors before imposing a fine, suspend voting rights or infringe on other rights of a homeowner.

The appeals court concluded that the right to enforce the covenants by court

action was provided for in the Declaration without conditions and, therefore, the dispute resolution procedures in the HOA Bylaws did not apply. Even if the suit was deemed to be an attempt to "infringe" on the rights of the owner, the terms of the Declaration which had no pre-conditions to litigation prevailed over the notice and hearing provisions in the Bylaws.

Although the decision in *Maloney v. Fountain Glen Homeowners Association, Inc.* is an "unreported" decision and, therefore, not a binding precedent, it is instructive on how courts view enforcement of homeowner association covenant restrictions.

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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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