



Community Association LawLetter

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Thomas Schild Law Group, LLC provides legal services to community associations – condominiums, homeowner associations, and cooperatives – in **Maryland and the District of Columbia**.

Our attorneys advise community associations on all aspects of association governance such as covenant interpretation and enforcement, assessment collection, construction and contract warranties, and fair housing compliance. We also represent associations in court litigation and administrative proceedings.

With more than 30 years' experience working with condo, HOA and co-op communities, we are recognized locally and nationally as leaders in the field of community association law.

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Maryland Appeals Court Voids Condominium Parking Rule

A Maryland condominium Rule which barred delinquent condo owners from using the common property parking lot and swimming pool has been struck down by the Maryland Court of Appeals—the highest state appellate court.

In *Elvaton Towne Condominium Regime II v. Rose*, the appeals court decided that a condominium board of directors cannot rely on general rulemaking authority to adopt a Rule which interfered with the owner's statutory property right to use the common elements. However, the court ruled that the Maryland Condominium Act permits a condominium Declaration to provide that an owner's parking and pool privileges may be suspended where the owner is in arrears in payment of condo assessments.

Although recognizing a condo board may adopt reasonable Rules regarding the use of the common elements, the court noted that such **Rules must be consistent with the condominium Declaration and Bylaws and with the Maryland Condominium Act**.

Because the condominium Declaration did not allow for suspension of the right to use the common element parking lot and swimming pool as a consequence of non-payment of condo fees, the court concluded that the board-adopted Rule was invalid no matter how reasonable it might be to prevent owners who have not paid their assessment from parking on the community property or using the community pool.

Distinguishing between permitted Rules necessary to “administer the condominium on day-to-day issues” and prohibited Rules which take away an owner's property interest in the common elements even temporarily, the court concluded that **the board did not have the authority to adopt a Rule to bar use of the parking lot and pool for non-payment of assessments**. (Cont'd on Page 2)

(Cont'd from Page 1, Parking Rule)

The court rejected the condominium's contention that the board had the authority to adopt the suspension-of-privileges Rule because the Declaration stated that all owners are subject to the Bylaws and Rules and that the Bylaws require owners to pay assessments and authorize the board to adopt Rules regulating the use of the common elements. **According to the appeals court, the board's authority to suspend an owner's access to the common property must be stated clearly and unambiguously in the Declaration.**

Although the court suggested that it might be reasonable to suspend use of common areas when an owner is delinquent in payment of assessments, it was bound by the Condominium Act to disallow such action based on a board-adopted rule or the collection provisions of the condo bylaws.

If a condo declaration does not include the authority for a board to suspend use of the common area for non-payment of assessments, the declaration could be amended to grant such power. However, that will be difficult to do since the amendment will need approval of at least 80 percent of all owners and possibly lender approval as well.



In response to the court ruling in *Elvaton*, the Maryland legislature could amend the Maryland Condominium Act to provide condo boards with greater authority to suspend use of common areas when an owner has not paid the condominium fees.

Maryland Makes it Easier to Amend Condo Bylaws and HOA Covenants

Changes to the Maryland Condominium Act and Maryland Homeowners Association Act will soon make it easier to amend the governing documents of condominiums and homeowner associations.

The new law allows amendments to be made by a vote of members "in good standing" instead of all of the owners. An owner is not in good standing if the payment of assessments or other charges is in arrears for more than 90 days.

Additionally, the vote required to approve amendments to condo bylaws and the declaration and bylaws of a homeowner association is reduced to 60 percent, or such lower amount allowed by the association governing documents, beginning October 1, 2017.

The Condo Act currently requires condo bylaw amendments to be approved by at least 66 and 2/3 of the total owner votes. For homeowner associations, declaration covenants often require owner approval by a vote of 80 percent or more.

Because of these approval standards, many condos and HOAs have been unable to amend outdated provisions or add new provisions. **The new lower threshold of 60 percent of the votes of owners in good standing will make it easier to get amendments passed.**

Many association boards of directors are now reviewing the association documents for possible amendments concerning leasing, parking, attorneys' fees, assessment collection costs, fines, maintenance responsibilities and amendment procedures. (Cont'd on Page 3)





(Cont'd from Page 2, Amendments)

For older associations with outdated governing documents, it will now be easier to amend the documents to conform the association documents to the governance provisions of the Condo Act and HOA Act and other “best practices” for association governance.

Fair Housing Claim Against Homeowner Association Director Allowed by District of Columbia Appeals Court

The District of Columbia Court of Appeals has ruled that **a board member of a homeowners association may be personally liable for violating the disability discrimination provisions of the fair housing laws** by delaying action on a homeowner’s request for a reasonable accommodation in the enforcement of the association’s leasing restrictions.

When homeowners leased their home to a non-profit organization for occupancy by recovering alcoholics and drug addicts, the association board asked the homeowners to terminate the lease because it violated the HOA bylaws which prohibited leasing to anyone not named in lease and prohibited subleasing. After it received a request for waiver of the bylaw restrictions as a reasonable accommodation based on the disabilities of the sub-tenants, the HOA board approved the lease.

Unhappy with the action of the board in approving the lease, another owner—who was also a board member and the association secretary—filed suit against the owners alleging the lease violated the leasing restrictions in the bylaws. The suit requested an injunction to stop the leasing and also requested monetary damages.

The owners who were leasing their home filed a countersuit, which alleged that the objecting owner—as HOA secretary—violated the fair housing laws by failing to promptly provide the association attorney with the request for an accommodation by waiver of the lease restrictions. This allegedly delayed the board response to the accommodation request for several months.

The owners also claimed that the suit to enforce the leasing restrictions was retaliatory based on the disability of the tenants and was, therefore, a violation of the fair housing laws which prohibit retaliation against persons requesting disability accommodations.

The trial court ruled that neither the suit nor countersuit should be allowed. Because the association had approved the lease, the objecting owner could not seek to enforce the bylaw restrictions, and the fair housing violations were moot, according to the trial court.

On appeal, the District of Columbia appeals court reversed the trial court and allowed both the suit and countersuit to proceed to trial. The court did not rule on the merits of the claims.

However, in allowing the suit for fair housing violations to proceed, the court ruled that, even though the objecting board member was only a single member of the board and did not have the authority to prevent the lease for disabled tenants, **he could be individually liable if, in that capacity or otherwise, he personally committed or contributed to a violation of the fair housing laws.** (Cont'd on Page 4)

(Cont'd on Page 3, Fair Housing)

Additionally, the appeals court ruled that an individual owner could seek to enforce the bylaw occupancy and sublet restrictions even though the association board of directors had decided to allow the lease as a reasonable accommodation and was not seeking to enforce those restrictions.

The District of Columbia Court of Appeals returned the case to the trial court to allow both the bylaw enforcement claims and the fair housing claims to proceed to trial.



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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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