

*Fall 2021*

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 35 years' experience working with condo, HOA and co-op communities, our attorneys are recognized locally and nationally as leaders in the field of community association law.

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## *Community Association LawLetter*

### **New Maryland Laws Impact Association Governance**

Several new Maryland laws regarding community association governance take effect October 1, 2021.

**Common Property Replacement and Repairs.** In 2020, a new law was enacted to require condos, coops and HOAs in Prince George's County, Maryland to obtain a study of the association needs for future major replacement and repair of common property, and require the annual association budget to provide funds for future repair work. Although statewide reserve legislation was considered in 2020 and 2021, it was not passed.

But, HB 567, a bill like the one applicable to Prince George's County associations, was passed this year with respect to associations in Montgomery County, Maryland. Under the new law, condos, coops and HOAs in Montgomery County will be required to obtain reserve studies and to have them updated at least every five years. And, boards must include reserve funds in the annual budget for future major replacement and repair of common property. (*See related article for more about the reserve study law.*)

**Electric Vehicles.** Concern for the environment was the basis of HB 110/SB 144, the Electric Vehicle Recharging Equipment for Multifamily Units Act, which will make it easier for residents of condominiums and homeowners associations to install electric vehicle recharging stations in parking spaces they own or have an exclusive right to use. Electric vehicle owners will be entitled to install recharging equipment, which community associations will be able to regulate with respect to safety, architectural standards, and damage to the association common property.

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**Association Meetings.** Considering that the 2021 legislative session was conducted virtually with success, it comes as no surprise that the General Assembly passed legislation that will permit community associations to conduct their meetings virtually as well. HB 1023/SB 686 will allow meetings of community members and Boards of Directors to convene, attain a quorum, participate in, and vote at meetings by electronic means. Also enacted was HB 593 to clarify the procedure for holding additional meetings of condo and HOA owners where there is no quorum present at the initial owners' meeting.

**Covenant Restrictions.** The time spent at home during the COVID pandemic may have caused legislators to focus attention on condo and HOA covenant restrictions on home-based leisure activities. Legislators passed HB 1347, which allows homeowners to use portable basketball hoops free of prohibitions in their communities' governing documents when that equipment is located upon property that they own or over which they have exclusive control. And, pursuant to HB 248 and HB 322, certain covenant restrictions will be disallowed so that community associations may reasonably regulate, but not prohibit, composting and low-impact landscaping projects associated with promoting environmental conservation, such as rain gardens, pollinator gardens and xeriscaping.

**Not This Year.** Legislation that would have regulated reserves on a statewide basis is not the only initiative that failed to garner sufficient support to pass. A similar fate befell bills that would have: (i) required mandatory training of board members or officers; (ii) mandated registration and licensure of community association managers; (iii) altered the dispute resolution procedures that a board must follow to impose sanctions for violations of a community's rules; and, (iv) granted community associations immunity from liability to those infected with COVID-19, so long as the

association has complied with prevailing statutes, rules, regulations, or executive orders. Those bills are likely to be introduced again next year, when the Maryland General Assembly convenes in January, 2022.



## Replacement Reserve Law Enacted for Montgomery and Prince George's Counties

The sudden collapse of the 12-story Champlain Tower South Condominium in Surfside, Florida has focused attention on the need for all condominiums to determine and fund the long-term needs for repair and replacement of structural common components such as roofs, foundations, and walls, as well as the common plumbing, electrical and mechanical systems.

Legislation has been proposed in Maryland the past few years to require all condominiums, HOAs and coops to obtain a reserve study at least every 5 years and to include the recommended annual reserve funding the annual budget.

Although statewide Maryland reserve legislation has not been enacted, state law now requires associations in Prince George's County and Montgomery County to obtain periodic reserve studies of the common property major structural components and to include the recommended reserve funding in

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the annual budget of all condominiums, housing cooperatives and homeowner associations in these counties. The new reserve fund requirement has applied in Prince George's County since October, 2020, and has been extended to apply in Montgomery County beginning in October, 2021.

**Reserve Study Requirement.** For new communities, the developer-controlled board of directors must obtain a reserve study for the future major repairs and replacements of the common elements at least 30 days before the required turnover meeting to the owners. The replacement reserve funds at turnover from the developer must be at least the reserve funding amount recommended in the reserve study. Similar requirements apply to housing cooperatives and homeowner associations. A further reserve study must be completed within 5 years after the initial study and every 5 years thereafter.

For existing communities in Prince George's County which have not done a reserve study since October 1, 2016, a reserve study must be completed by October 1, 2021. In Montgomery County, if a reserve study has not been done since October 1, 2017, a reserve study must be completed by October 1, 2022. Where a more recent study has been done since those dates, the new reserve study must be completed within 5 years of the most recent study and every 5 years thereafter.

**Reserve Study Information.** Each reserve study must be prepared by a person who meets certain experience or education requirements and must:

(1) identify each structural, mechanical, electrical, and plumbing component of the common elements and any other components that are the responsibility of the association to repair and replace;

(2) state the normal useful life and estimated remaining useful life of each identified component;

(3) state the estimated cost of repair or replacement of each identified component; and

(4) state the estimated annual reserve amount necessary to accomplish an identified future repair or replacement.

**Reserve Repair Funds.** The new law also requires that the reserve study be reviewed by the board of directors in connection with the annual budget; and be summarized for submission with the annual proposed budget sent to the owners. Most importantly, the funding amount recommended in the most recent reserve study must be included in the annual budget.

To ensure that the necessary repair and replacement reserve funds are included in owner assessments based on the annual budget, the new reserve law authorizes the board of directors to increase the assessment levied to cover the required reserve funding amount regardless of any provision in the association declaration, bylaws or articles of incorporation which restricts assessment increases or capping the assessment that may be levied in a fiscal year.



Although the Maryland reserve study and funding law applies only in Montgomery County and Prince George's County, the standards in this statute provide guidance to condos, HOAs, and housing coops throughout Maryland and other states which do not have mandatory reserve study and funding requirements.

## Fair Housing Is A Top Priority for Biden Administration

President Joe Biden has directed the United States Department of Housing and Urban Development (HUD) to re-examine the 2020 Trump-era rule which limited the role of the federal government in encouraging local government to affirmatively further the goals of the Fair Housing Act to prevent housing discrimination. Also, under review is the 2020 HUD rule regarding implementation of the "disparate impact" standard of the Fair Housing Act.

HUD has proposed to rescind the 2020 disparate impact rule and restore a 2013 HUD rule regarding the burden of proof for housing discrimination claims based on the discriminatory effects of a facially neutral housing policy or practice.

HUD also intends to restore the standards of a 2015 rule for recipients of HUD funding grants to certify they are affirmatively furthering fair housing. According to HUD, the Trump administration improperly modified the 2015 rule so it was no longer consistent with the requirements of the Fair Housing Act.

In anticipation that HUD will be more active in enforcing the fair housing laws in coming years, boards and managers of condominiums, homeowner associations and housing cooperatives should be mindful of the fair housing implications of the community rules, practices and policies. This includes actions such as enforcement of rules and covenants, collecting assessments, review of architectural change requests, review of requests for reasonable accommodations and modifications based on disability, use of common areas, and providing community services.

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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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