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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, our attorneys are recognized locally and nationally as leaders in the field of community association law.

Thomas C. Schild
Scott J. Silverman

401 North Washington Street, Suite 500
Rockville, Maryland 20850

301-251-1414
law@schildlaw.com
www.schildlaw.com

Community Association LawLetter

2020 Vision: Maryland Condominium and HOA Legislative Update

Condominium insurance, replacement reserves and dispute resolution procedures were among the condominium and homeowners association topics which were considered during the 2019 Maryland legislative session. However, virtually no new laws affecting community governance were enacted this year.

Looking ahead to 2020, legislation concerning insurance, reserves and dispute resolution is likely to be introduced again.

Condominium Property Insurance Deductible

Where damage to condominium units and common elements is caused by fire, water or other perils covered by the master property damage insurance, the Maryland Condominium Act requires a unit owner to pay up to the first \$5,000 of repair expenses when the cause of the damage originates in that owner's condominium unit. While some condos choose a higher deductible, others can only obtain insurance with a deductible of \$10,000 or more. This leaves the condominium association responsible for repair expenses between \$5,000 and the amount covered by insurance.

To shift more responsibility to the unit owner where the cause of damage originates in the unit, legislation was proposed in 2019 to allow the bylaws of a condominium to require a unit owner to pay the full deductible amount up to \$25,000 (House Bill 249). As passed unanimously by the House of Delegates, this proposal was modified to allow a \$10,000 deductible amount payable by an owner, whether or not the bylaws address the amount of the insurance deductible. The Senate did not act on this bill.

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Replacement Reserves

As communities age, many associations have not saved enough to make major repairs or replace major components of the building structure and other common property. All too often, the board of directors has not taken the first step of determining the remaining useful life of each common property component and determining the estimated future cost of repair and replacement.

Legislation was introduced in 2019 to require condominiums, co-ops and homeowners associations to conduct a study of the reserves necessary for major repairs and replacement of the structural, mechanical, electrical and plumbing components of the common property (House Bill 900).



The developer would be required to have the initial reserve study prepared and contribute to the reserve fund. The board of directors then would be required to have a reserve study prepared every 5 years and fund at least 80 percent of the recommended amount of reserves.

Although no action was taken on the replacement reserve legislation this year, a reserve bill is likely to be re-introduced in 2020 to aid associations in planning for future repair and replacement expenses.

Other Governance Legislation

For nearly 40 years, the Maryland Condominium Act has required condo boards to provide owners notice and a hearing regarding alleged violations of the condo rules before a fine can be imposed on the owner. Legislation to streamline the condo hearing process and extend the dispute resolution procedures to homeowners associations was passed by the House but not acted on by the Senate (House Bill 392).



Also passing the House but not considered by the Senate in 2019 were bills clarifying the required vote for amending condo bylaws (House Bill 207); extending the condo bylaw amendment procedure regarding notice sent to lenders and presumed lender approval to amendments to the condo declaration and HOA governing documents (House Bill 825); and, clarifying the procedure for holding a second owners' meeting when a quorum is not present for the annual meeting (House Bill 1037).

Legislation to facilitate the installation of electric vehicle charging stations in an owner's designated parking space also passed the House (House Bill 826). If enacted, condo and HOA boards would be required to approve installation of charging stations if specified conditions are met.

These bills may get a second look in the 2020 legislative session of the Maryland General Assembly.

U.S. Supreme Court Sidesteps Condominium Assessment Dispute

The United States Supreme Court, during its recently-ended 2018 Term, declined to review the decision of a federal appeals court that a condominium unit owner is not personally responsible for payment of condo assessments which become due after the owner files a Chapter 13 bankruptcy petition when the owner makes all payments under a bankruptcy payment plan approved by the Bankruptcy Court.

The Bankruptcy Court in Washington State had ruled that the obligation to pay assessment arises when each monthly assessment is due, allowing a condominium to collect the assessments for the 4-year period between the time when the bankruptcy was filed and the lender foreclosed on the condominium unit.

Appeals Court Voids Payment Obligation

However, the federal appeals court for the Ninth Circuit, in *Godelock v. Sixty-01 Association of Apartment Owners*, decided differently that the obligation to pay all future assessments was established **when the owner purchased the condominium unit** which was subject to the assessment covenant in the condominium declaration creating the condominium. The appeals court concluded that assessments which became due after the Chapter 13 bankruptcy was filed should be regarded as “unmatured contingent debts” which arose **prior to filing the bankruptcy petition**. Therefore, the owner had no obligation to pay such assessments even though the assessments were not due until after the bankruptcy petition was filed.

The appellate court noted that the federal Bankruptcy Code requires a condo unit owner to pay post-bankruptcy assessments in a Chapter 7 bankruptcy, but that obligation does not apply in a Chapter 13 bankruptcy when all bankruptcy plan payments are made.

The court rejected the condominium association’s contention that it is inequitable and unfair for an owner to own a condominium unit without paying assessments and suggested that it is up to Congress to change the bankruptcy laws.



In its July 2018 decision, the appeals court noted that it is the first federal appeals court to address whether a condominium association can collect assessments which become due after filing a Chapter 13 bankruptcy. Because other bankruptcy courts and federal trial courts have ruled that a condominium owner is always obligated to pay post-petition assessments, the request that the United States Supreme Court review the appeals court ruling was supported in an amicus brief by the Community Associations Institute.

Maryland Bankruptcy Court Guidance

Although the decision of the Ninth Circuit federal appeals court applies only in certain Western states (and Alaska and Hawaii), the Maryland Bankruptcy Court last year similarly ruled in *In Re Wiley* that assessments which become due after a Chapter 13 bankruptcy is filed are uncollectible if the owner makes all bankruptcy plan payments. The Maryland court guidance allows for relief from the bankruptcy stay so a condominium or homeowners association can obtain a state court judgment for the assessments which become due after the filing of a Chapter 13 bankruptcy, but enforcement of the court judgment cannot be taken until it is known whether all bankruptcy plan payments are made and the debt becomes uncollectible.

Montgomery County Revises New Home Warranty Law

Montgomery County, Maryland has updated its new home warranty law to require both new home builders and new home sellers to provide a construction warranty to the purchaser of the home. The law is intended to provide additional protection to home purchasers in response to the industry trend where a homebuilder owns the land and sells new homes which are constructed by a related construction company.

The required warranty is for 1 year on any defects in materials or workmanship; 2 years on the electrical, plumbing, heating, cooling, ventilating and mechanical systems; and 5 years on major

structural defects. This is substantially the same warranty which has been required by the prior Montgomery County new home warranty law.

The updated law establishes greater uniformity with the State of Maryland's builder registration law and is intended to ensure that building permits for new homes constructed and sold to the public are issued to home builders registered with the County. It also deletes outdated references to the County's prior third-party warranty requirements and new home security fund.

The new warranty law applies to new home sales beginning May 16, 2019.

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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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