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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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Community Association LawLetter

2018 Maryland Legislative Update — New Laws Help Condos and HOAs

The hot topic during the Maryland legislative session was how Maryland will adapt to the recent changes in federal income tax and health insurance laws.

Beyond the headlines, the Maryland General Assembly considered many bills which directly affect Maryland condominiums, homeowner associations, and housing cooperatives. Several new laws were enacted.

Suspension of Parking and Amenities

A bill to make it easier for condominium associations to collect delinquent assessments by suspending use of the common area parking lots and recreational facilities was approved unanimously in the final days of the legislative session.

The new law allows approval by 60 percent of the total eligible votes to amend a condo declaration to provide for suspension of use of these portions of the condominium property when an owner is delinquent in paying the condo assessments for more than 60 days. This is far less than the 80 percent minimum required by the Maryland Condominium Act for other declaration amendments, and some older condo documents require as much as 100 percent approval. The new amendment procedure takes effect October 1 (HB 575).

The legislation was in response to a 2017 Maryland appeals court ruling that a board of directors did not have the authority to adopt rules for suspending use of the common property. Instead, any such restriction must be in the condo declaration.

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Purchaser Protections

Beginning October 1, condo developers will no longer be able put provisions in condominium bylaws or sales contracts which shorten the time for condo associations and owners to file suit against the developer regarding construction defects. This applies to claims which allege failure to comply with implied statutory warranties, building codes, government approved plans and specifications, or manufacturer's installation instructions (HB 77/SB 258).

Separately, a new law will allow for an earlier turnover of developer control of a homeowners association by preventing developers from using disproportionate weighting of votes for lots owned by the developer. Instead of getting multiple votes for each lot, the developer will have one vote for each lot which has been subdivided, recorded in the land records, and not yet sold to a member of the public (HB 669).



Discriminatory Covenants

Where covenants restrict ownership based on race, religious belief, or national origin, the board of a homeowners association must delete these unenforceable restrictions from common area deeds and declarations by September 30, 2019. The board may delete these restrictions without action by the homeowners, as of October 1, 2018.

The final version of this legislation eliminated proposed provisions which would have created new fair housing liability for HOAs (SB 621).

Master Electric and Gas Meters

The Maryland Public Service Commission (PSC) will no longer be able to authorize new gas or electric service for leased or owned multi-family residential properties unless there are individual meters or submeters, as of July 1, 2018. The PSC must also study the feasibility of transitioning master meters for gas or electric service to energy allocation systems or submeters in apartment buildings, condominiums and housing co-operatives (HB 1491).

In Prince George's County, beginning June 1, 2018, master meters for gas, electricity or water will no longer be allowed in a residential multi-family occupancy building that is newly constructed or converted for condominium or co-operative ownership. A property with an existing master meter system cannot be converted to condominium or cooperative ownership until individual meters have been installed for each individual dwelling unit and the common areas (HB 218).

Not This Year

Many other bills concerning the management and governance of condos, HOAs and co-ops were considered but not enacted. Several bills were introduced again this year to establish a state agency to regulate community association managers and require managers to obtain a license based on training and testing, but all died in committee without any action (HB 1158/SB 1208 and SB 65).

A bill to revise the dispute settlement procedure for condos, and to extend a similar procedure to HOAs, passed the House but did not make it through the Senate Committee (HB 1097). A similar bill regarding the dispute resolution procedure for housing co-ops was also killed (HB 680).

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And, bills concerning board conflicts of interests (SB 95) and HOA governance procedures (HB 1007/SB 883) were not acted on. Legislation to restrict the authority of condos and HOAs to regulate electric vehicle recharging stations died in committee (HB 602).



Maryland State House, Annapolis

Other bills killed in committee would have required condo developers to provide the board with information about government bonds on common areas; required earlier transition of the board to the homeowners; and required a developer replacement reserve study and reserve funding (HB 564/SB 432 and HB 997). A bill to amend a 2017 law regarding the vote required to amend condo and HOA governing documents also was not acted on (HB 413).

These bills can be obtained on the website of the Maryland General Assembly.

“Commercial Vehicle” Covenant May Be Clarified by Board Rule

Maryland condominium and homeowners association covenants often prohibit parking “commercial vehicles” without specifying what constitutes a commercial vehicle.

Where a word or phrase used in the declaration of covenants for a condominium or homeowners association is not defined in the covenants or by statute, the board of directors has broad discretion to adopt rules which explain how the provisions of the covenants will be applied.

If there are no community rules which define what constitutes a “commercial vehicle”, it is likely that a court would apply the **Maryland statutory definition of “commercial motor vehicle”** used in connection with the requirements for obtaining a commercial driver’s license.

Under that definition, a commercial vehicle includes any vehicle with a gross weight rating of at least 26,001 pounds; a vehicle designed to transport 16 or more passengers; or any size vehicle used to transport hazardous materials. Excluded from the statutory definition are fire and rescue vehicles with audible and visual signals.

However, condo and homeowners association rules can establish a more restrictive or less restrictive standard as to what “commercial vehicles” are prohibited. An expansive reading of the “commercial vehicle” restriction would bar any vehicle used primarily in connection with a business or other non-residential purpose, regardless of the size or appearance of the vehicle. A narrower interpretation could be adopted by describing specific features of vehicles which are not allowed.

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Size and Appearance

In communities where parking is limited, the main concern is with the size of the vehicle rather than its appearance. Commercial vehicles of a certain width or length which do not fit in a parking space could be prohibited while smaller vehicles are allowed. Other communities are mostly concerned with the size and placement of commercial signage and the display of additional tools and equipment on the vehicle. Rules can address these factors in describing what constitutes a "commercial vehicle". If police and rescue vehicles are to be allowed, the rules could exempt these vehicles from the "commercial vehicle" definition.

As with all community rules, it is important to adopt a clear, objective standard so all residents know exactly what vehicles are prohibited. And, to avoid resident claims of selective enforcement or fair housing discrimination, whatever rules the board adopts to describe a "commercial vehicle" should be enforced uniformly and consistently.

If the goal is to allow all commercial vehicles, regardless of size and appearance, the covenants should be amended to eliminate the ban on commercial vehicles.

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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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