

Spring 2009

Community Association LawLetter

NEW MARYLAND LAWS IMPACT ASSOCIATION GOVERNANCE

Several new laws have been enacted regarding the governance of Maryland condominiums, homeowner associations and housing cooperatives.

During the 2009 legislative session of the Maryland General Assembly, bills were considered regarding condominium property insurance, fidelity insurance, developer to homeowner transition, closed meetings, books and records, replacement reserves, association assessments, association manager licensing and other topics affecting Maryland community associations.

New Laws Enacted

The following new laws have been enacted (or await final signature by the Governor):

- **Condominium Property Insurance.**

In response to the April 2008 Maryland Court of Appeals decision in the *Anderson v. Gables on Tuckerman* case, the Maryland Condominium Act was amended to clarify that condominium master property insurance policies must cover both common elements

and units. Additionally, up to \$5,000.00 of the master policy deductible will be the responsibility of the unit owner when the cause of damage or destruction originates in a unit.

The new condominium insurance law also requires each condominium to provide an annual notice to unit owners regarding the unit owner's responsibility for the property insurance deductible and the amount of the deductible. A similar notice must be included in resale certificates issued by the condominium.



Maryland Governor Martin O'Malley signs fidelity insurance legislation as Tom Schild and others look on, April 14, 2009

(Cont'd on Page 2)
NEW MARYLAND LAWS

(Cont'd from Page 1)

Upon signing by the Governor (expected in May), the condominium insurance law will take effect on June 1, 2009. (House Bill 287/Senate Bill 201).

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Fidelity Insurance. This legislation requires all condominiums, homeowner associations, and housing cooperatives to purchase fidelity insurance to provide for the indemnification of the community against loss resulting from fraud or theft by any officer, director, managing agent, or employee who disburses funds for the community. The fidelity insurance policy must cover three months of assessments and the amount in investment accounts held by the community up to \$3,000,000, at the time the fidelity insurance is issued. This legislation takes effect October 1, 2009. (House Bill 687/Senate Bill 541)

- **Closed Meetings of Board of Directors.** This new law repeals the provisions in the Maryland Condominium Act and Maryland Homeowners Association Act that boards of directors may hold a closed meeting on a two-thirds vote for “reasons so compelling as to override the general public policy in favor of open meetings.” It adds language that allows boards of directors to close meetings for

consultation and discussion on all legal matters and for discussion of individual owner assessment accounts. The new closed meeting provisions are effective October 1, 2009. (House Bill 552/Senate Bill 171)

There is no open meetings requirement for housing cooperatives.

- **Association Books and Records.**

This legislation requires condominiums, homeowner associations and housing cooperatives to provide copies of meeting minutes and financial statements prepared within the past 3 years to a requesting owner by mail, electronic transmission, or personal delivery within 21 days of receiving a written request. If the requested financial statements and minutes were prepared more than three years before the receipt of the written request, the community has 45 days to provide the copies.

As in the past, other association books and records must be available for examination and copying during normal business hours upon reasonable notice of a request to review or copy such records. However, there are some changes to provisions regarding what personnel and personal records may be withheld from inspection.

Under the new law, the charge for copying books and records may not exceed the amount charged by Maryland courts. Additional charges may apply if an owner wants to personally review the records or wants the records delivered. When the legislation is signed by the Governor (expected in May), the new provisions take effect on October 1, 2009. (House Bill 137)

NEW MARYLAND LAWS
(Cont'd from Page 2)

- **Developer to Homeowner Control.**

This legislation establishes a procedure for the election of the first owner-controlled board of directors of a condominium or homeowner association. It also sets other requirements for transition of control of a condominium or homeowner association from the developer to the owners, including providing financial records, contracts, owner records and other documents. This transition procedure applies beginning on October 1, 2009. (House Bill 667/Senate Bill 742)



Other Bills Not Enacted

Other bills regarding community associations were killed by Maryland House and Senate legislative committees. Among the bills considered, but not enacted, are the following:

- **Pre-Foreclosure Association**

Assessments. This legislation would have required buyers (other than lenders) who purchase a foreclosed property at a foreclosure sale, or buyers from a lender to pay up to six months of condominium or homeowners association assessments past due at the time of the foreclosure sale. Passage would have helped associations recover some past due assessments when a mortgage is foreclosed on by a lender. (House Bill 74)

- **Replacement Reserves.** This

legislation would have required condominium and homeowner associations to conduct a reserve study every 5 years to determine the appropriate amount of funds needed for future repair and replacement of common areas. (House Bill 666/Senate Bill 570)

- **Common Interest Community**

Association Annual Registration. This legislation would have required of each common ownership community to register annually with the Consumer Protection Division of the Office of the Attorney General. (House Bill 850)

- **Community Association Manager**

Licensing. This bill would have created a State Board of Community Association Managers. It also would have required management companies to register and individuals to be licensed by the State Board in order to engage in community association management in Maryland.

To be eligible for a community association manager's license, an individual must be of "good character and reputation", satisfy certain education requirements, and pass the Certified Manager of Community Associations examination offered by the National Board of Certification of Community Association Managers, or its equivalent. (Senate Bill 873)

- **Clotheslines or Other Laundry**

Drying Devices. This legislation would have restricted the ability of each community to regulate the use of clotheslines or other outdoor drying devices. (House Bills 197 and 443/Senate Bill 559)

CONDOMINIUM PIPE RESTORATION CONSTITUTES A "REPAIR" NOT AN "IMPROVEMENT"

The action of a condominium board of directors in contracting for a major restoration

of the plumbing system without the approval of the unit owners was upheld by a hearing panel of the Montgomery County Commission on Common Ownership Communities (CCOC).

In *Jappie Lee v. University Towers Condominium*, an owner challenged the authority of the board to enter a \$1.9 million contract to re-line the inside of the water supply pipes in two high-rise condominium buildings. The plumbing work also involved replacing valves and installing some new valves and access panels where none existed before. The owner contended that the plumbing work involved an addition, alteration or improvement to the common elements which required the approval of unit owners under the condominium bylaws.

The condominium, represented by Thomas Schild Law Group, contended the plumbing work involved maintenance and repair of the existing pipes which the board of directors could approve without the consent of the owners.

The CCOC hearing panel concluded that the work undertaken was a reasonable

response to pinhole leaks occurring throughout the condominium plumbing system. Other methods of addressing the pinhole leak problem, such as making repairs on a leak-by-leak basis, or replacing the entire domestic water supply system, would have been impractical, disruptive, and substantially more costly.

Incidental Changes Allowed

The hearing panel further concluded that, although there were “additions” to the plumbing system in the form of new valves and access panels which “improved” the system, these were minor, incidental changes made to enable the contractor to complete its work, or which were required by the plumbing code. More than 99% of the original plumbing system remained and the overall appearance and functionality of the system were substantially the same. Therefore, the CCOC hearing panel concluded, the work was “maintenance”, “repair” or “replacement” as the terms are used in the condominium bylaws and the board of directors had the authority to enter into the \$1.9 million contract without approval of the unit owners.

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 collections, 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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