

*Spring 2016*

## *Community Association LawLetter*

### **MARYLAND LEGISLATIVE HOT TOPICS FOR 2016**

With the Maryland legislature in the midst of its 2016 session which runs to mid-April, several bills which would affect condominium and homeowner association operations are now being considered by House and Senate legislative committees of the Maryland General Assembly.

#### **Resale Disclosures**

Legislation concerning resale disclosures would cap the amount which an association or management company could charge an owner for providing the governing documents and other information in connection the sale of the owner's home. As introduced, the bill would limit the basic charge to \$250 and allow additional charges of \$100 to inspect the property for covenant violations and up to \$100 for providing an expedited response to a request for resale disclosures.

Condo associations have long been required to provide resale disclosure information. If enacted, the bill would create a new obligation for a homeowners association to provide resale disclosure

information to an owner who is selling a home in an HOA.

#### **Condominium Construction Warranty**

Also under review is legislation to amend the Maryland Condominium Act to prevent developers of residential condominiums from including provisions in sales contracts and condo governing documents which limit the ability of condominium associations to file suit to enforce construction warranties for the condominium common elements.

Among the provisions which the warranty bill would prohibit are those which purport to shorten the statute of limitations applicable to any legal claims; waive the "discovery rule" or other accrual date applicable to claims; and prevent a condo association from bringing claims on behalf of two or more unit owners. It would also disallow developer-imposed requirements that as condo association obtain the approval of unit owners, the developer or others as a condition to commencing mediation, arbitration or litigation on behalf of the condo association.

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MARYLAND LEGISLATIVE HOT TOPICS  
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### Annual State Registration

Legislation has also been introduced which would require annual state registration of all condos, HOAs and coops and require associations to provide contact information for the association board members and any management company and attorney employed by the association. It would also require information regarding the number and type of residential units, fidelity insurance, replacement reserves, grievance procedures and any other information required by the Maryland Department of Assessments and Taxation.

### Amendment of Governing Documents

A bill to make it easier to amend the declaration, bylaws and other governing documents of condos and HOAs has also been introduced. It would allow an amendment by a vote of owners in "good standing" which includes only owners who are not more than 3 months in arrears in payment of association assessments and have



satisfied other requirements of the bylaws. An amendment could be passed by two-thirds of the total votes of owners in good standing, or by a lower percentage if required in the governing document. The legislation would also allow an owner's failure to vote to be counted as that owner's approval of the proposed amendment.

As of early March, none of these bills have been enacted and remain under review by legislative committees. To become law, a bill must be passed by the Maryland House and Senate and signed by the Governor.

### PRINCE GEORGE'S COUNTY OFFERS ASSISTANCE TO RESOLVE ASSOCIATION DISPUTES

Prince George's County, Maryland now provides "alternative dispute resolution" assistance regarding disputes involving the governance of condominium, co-op and homeowner associations. Additionally, a new Commission on Common Ownership Communities has been established to promote better understanding of the rights and responsibilities of living in a common ownership community, and the registration requirements for common ownership communities have been expanded.

#### Alternative Dispute Resolution

The dispute resolution process will be conducted through the County Office of Community Relations (OCR) which will provide a "qualified dispute resolution specialist" to attempt to settle a dispute. Disputes between associations and homeowners which may be submitted to the OCR include the authority of the association board of directors to require a person to take any action, or not take any action, involving a unit or common element; require a person to pay a fee, fine or assessment; or spend association funds or alter or add a common element.

The alternative dispute resolution procedure may also be used for disagreements concerning the failure of the association board of directors (when

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**PRINCE GEORGE’S ASSOCIATION DISPUTES**  
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required by law or an association document) to properly conduct an election; give adequate notice of a meeting or other action; properly conduct a meeting; properly adopt a budget or rules; maintain or audit books and records; maintain or repair a common element if the failure results in significant personal injury or property damage; or exercise its judgment in good faith concerning the enforcement of the association documents.

Matters which are not subject to the OCR dispute resolution process include disagreements which involve the collection of an assessment validly levied, and the exercise of an association board’s judgment or discretion in taking or deciding not to take any legally authorized action.



A request to invoke the dispute resolution procedure may not be filed with the OCR until the requesting party makes a good faith attempt to exhaust all procedures and remedies provided in the association documents.

Additionally, under the recently enacted Prince George’s County law which establishes the alternative dispute resolution procedure, a community association member

“may not file an action in any Prince George’s County Court until he/she has first attempted conflict resolution” through the OCR. The new County law also prohibits a community association from taking “any action to enforce or implement its decision until the time to file a request for alternative dispute resolution process has been exhausted and the opposing party has not requested alternative dispute resolution process”.

**Commission on Common Ownership Communities**

A newly-created Prince George’s County Commission on Common Ownership Communities will begin operating in April, 2016. The purpose of the Commission is ensure proper establishment and operation of homeowners associations, condominiums, and housing co-operatives.

Other purposes include promoting education, public awareness and association membership understanding of the rights and responsibilities of living in a common ownership community; reducing the number and divisiveness of disputes; encouraging informal resolution of disputes; and preventing potential public financial liability for repair or replacement of common ownership facilities.

The Commission is also charged with reviewing and evaluating the new alternative dispute resolution process administered by the OCR.

However, unlike the Commission on Common Ownership Communities in Montgomery County, the Prince George’s Commission will not be directly involved in resolving disputes between associations and homeowners.

**MONTGOMERY COUNTY CCOC  
UNDER REVIEW**

Changes to the operation, composition and dispute resolution process of the Montgomery County Commission on Common Ownership Communities (CCOC) are under review by the Montgomery County Council.

Legislation proposed by the Montgomery County Executive would require mediation of certain disputes regarding common ownership communities and would require that all members of a dispute resolution hearing panel be members of the CCOC. Currently, mediation is voluntary and the hearing panels are chaired by an attorney volunteer who is not a member of the CCOC.

Additionally, the proposed legislation would change the composition for the CCOC membership to include 5 members of the public who are not owners or residents in a common ownership community or affiliated with professions associated with these communities. The bill would also change the government agency responsible for providing staff and other support from the Office of Consumer Protection to the Department of Housing and Community Affairs.

The CCOC opposes the legislation and instead proposes that a work group which includes CCOC members be convened to provide recommendations to the County Executive and County Council before any statutory changes are made.

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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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