

*Spring 2015*

## *Community Association LawLetter*

### **MARYLAND LEGISLATIVE SESSION ENDS WITH NO NEW COMMUNITY GOVERNANCE LAWS**

The 2015 legislative session of the Maryland General Assembly ended April 13 after lots of talk but not much action on bills concerning condos, coops and homeowner associations.

Legislation to extend **resale disclosure requirements** to homeowner associations and cap the fees which may be charged by condos and HOAs died in the final hours of the legislative session. As passed by the House of Delegates, the bill would also have limited the liability of a condo or HOA for issuing an incorrect resale disclosure statement. The Senate approved the fee cap but did not agree to the liability limits. Therefore, the legislation was not enacted.

A bill to prevent developers from limiting condominium statutory warranty rights was withdrawn; and a bill to require **access to common areas for political candidates** was rejected on initial review by a House legislative committee.

A proposal to eliminate a 3-month waiting period before a housing coop can initiate **legal action to evict a coop member** for not paying assessments was referred for further study. Legislation to regulate community association managers was not

considered this year for the first time in several years.

Although not limited to community associations, several other bills would have made it more difficult to collect assessments from delinquent owners. One bill would have **restricted the ability to collect court judgments** by increasing the amount exempt from garnishment. Several other bills proposed to **delay residential foreclosures**.

These topics may get another look next year. For 2015, the General Assembly session had lots of talk—but no new laws regarding governance of condos, coops and HOA's.

### **MONTGOMERY COUNTY TO REQUIRE BOARD MEMBER EDUCATION IN 2016**

Board members of condominiums, homeowner associations, and housing coops in Montgomery County, Maryland will soon have to complete a class on the responsibilities of serving on the board of directors. Beginning in January 2016, a new County law **mandates training for all board members** within 90 days of first being elected or appointed to the board of directors of a condo, HOA or coop.

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## BOARD MEMBER EDUCATION (Cont'd from Page 1)

The Montgomery County Commission on Common Ownership Communities (CCOC) has been tasked with developing an educational curriculum and approving a similar training program administered by other organizations. Where a condo, HOA, or coop board member does not complete the mandatory board education, the CCOC may take legal action to enforce the new training requirement. Additionally, a CCOC dispute resolution panel may consider a board member's failure to complete the training in deciding a dispute between a homeowner and a community association.

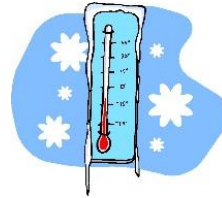
However, **failure to complete the training requirement does not disqualify a board member from continuing to serve on the board or invalidate a vote by the member.**



Each community association in Montgomery County will have to certify to the CCOC that each board member has completed the required training and must provide an annual report which includes the name and address of each board member, the date each member completed the training, the number of vacancies on the board, and the length of time each vacancy existed.

## CONDO INSURANCE CLAIMS SOARED AS 2015 TEMPERATURES PLUMMETED

As arctic temperatures blanketed Maryland and much of the eastern United States this past winter, frozen pipe breaks caused havoc for homeowners.



Typically, the cost of repairing a burst pipe is not covered by property insurance but repair costs for the related water damage to the building is covered. For condominiums, there are special challenges in sorting out whether the condo association—or the individual unit owner—pays to repair damage to walls, floors, carpet and other portions of the building.

In Maryland, the Condominium Act requires the condo association to have property insurance for both the common elements and the individual units. Repair costs in excess of the insurance deductible amount will be paid for by the insurance company.

However, who pays up to **the first \$5,000 of repair costs** depends on whether the broken pipe is a common element or part of the unit. Under Section 11-114 of Maryland Condominium Act, the entire insurance deductible amount is paid for by the condo association if the cause of the damage originates in a common element pipe. But, if the frozen pipe is a unit pipe, the owner of the unit where the cause of the damage occurs must pay up to \$5,000 of the repair cost not paid by the insurance company.

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**CONDO INSURANCE CLAIMS**

(Cont'd from Page 2)

The individual unit owner is also responsible for the cost of repairing or replacing any upgrades or additions to the unit—commonly referred to as “betterments and improvements” in insurance jargon—beyond what was in the unit as originally constructed.

To cover up to \$5,000 of the condo association insurance deductible and the cost to repair or replace betterments and improvements, unit owners can obtain their own individual unit insurance known as an HO-6 policy. This insurance also covers damage to an owner’s furniture and other personal property. The deductible amount to be paid by the unit owner in individual insurance policies can be as little as \$250.

Yet, many condo owners do not have individual HO-6 coverage and are not able to pay the first \$5,000 to repair their unit, other units and the common elements when the broken pipe is part of the unit. This can leave other unit owners or the condo association to make repairs and then seek reimbursement from the owner of the unit where the cause of the damage originated.

To avoid surprises and disputes over payment of the first \$5,000 of repair costs, each condominium association is required by the Condo Act to provide annual written notice of the amount of the deductible in the condominium master insurance policy and the unit owner’s responsibility for the property insurance deductible.

Additionally, the **condo bylaws can require each unit owner to maintain an individual condominium unit insurance policy.** Existing bylaws can be amended to require unit owner insurance with approval of 51 percent of the unit owners.

With the unusually cold weather this year, the number of condo insurance claims related to frozen pipes soared. Water damage can occur year round. But for many condos, the arctic temperatures of the winter of 2015 are gladly a blast from the past.

**ASSOCIATION ASSESSMENTS LINKED TO RENTAL LICENSE**

A new law in Montgomery County, Maryland requires that the owner of property in a condo, coop or HOA must be current in payment of association assessments in order to obtain a County rental license to lease the property. As part of the application for a rental license beginning June 12, 2015, an owner must certify that the assessments are no more than 30 days past due.



Additionally, the County may deny, suspend, revoke or refuse to renew a housing rental license if the board of directors of the condo, coop or HOA submits a recorded statement of lien or unpaid court judgment as proof of unpaid association assessments.

Prince George’s County and Howard County have similar laws linking payment of association assessments to the issuance and revocation of a rental license.

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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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