

Summer 2014

Community Association LawLetter

NEW MARYLAND LAWS ENACTED - - PIT BULLS, PROCEDURES, AND PAYMENTS

During the 2014 legislative session, the Maryland General Assembly considered dozens of bills affecting the management and operation of condominiums, homeowner associations, and housing co-operatives. Most bills were not passed. However, new laws were enacted to eliminate property owner strict liability for injuries caused by pit bulls owned by residents of the property; establish open meeting and rule enforcement procedures for housing co-ops; and allow interest to be included in assessment liens which may be enforced by a foreclosure sale.

Pit Bulls.....and Other Dogs

In response to the 2012 decision of the Maryland Court of Appeals in *Tracey v. Solesky*, a new statutory standard was enacted regarding liability for injuries and damage caused by dogs (House Bill 73/Chapter 49). The new law eliminates the strict liability imposed by the appeals court for owners of pit bull dogs and property owners who have the right to control the presence of such dogs. Instead, the owner of any breed of dog will be liable for any injury or death unless it is shown the dog owner did not know or have reason to know that the dog had vicious or dangerous propensities. The new law creates a rebuttable

presumption that a dog owner knows or should have known the dog had such characteristics.

For those who control the property (including condominiums, homeowner associations, housing co-operatives and rental properties) where a dog causes injury or death, the new law restores the common law negligence standard in effect prior to the *Tracey* court ruling. That standard requires evidence that the property owner knew the dog was on the property and knew or should known that the particular dog was vicious or dangerous.

After debating various proposals regarding dog bite liability for nearly 2 years, the General Assembly enacted the new law as emergency legislation which became effective on signing by the Governor on April 8, 2014.

Procedures for Housing Co-op Governance

Also enacted is a law which establishes significant new requirements regarding the operation of Maryland housing co-operatives (Senate Bill 865/Chapter 567). It amends the Maryland Co-operative Housing Act to include procedures regarding board meetings, rule enforcement and other provisions to increase the transparency of board decisions and establish co-op member due process rights.

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NEW MARYLAND LAWS
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Meetings of the board of directors must now be open to all co-op members, except for specified reasons for holding a closed meeting--such as personnel and legal matters. Also, time must be allowed at board meetings for co-op members to address the board. Where a co-op member is alleged to violate the co-op rules, the board will now be required to send a violation notice and allow an opportunity for a hearing before imposing fines or taking other action to enforce the rules. Similar procedures have applied to homeowner associations and condominium associations for many years.

With regard to collection of delinquent assessments, a cap on late fees is established --- the greater of \$15 or 10 percent of the assessment. Additionally, for a housing cooperative that is no longer subject to a deed of trust, the new law restricts the ability of the cooperative to evict a member. A co-op member may not be evicted based solely on the failure to pay assessments unless the member has (1) been delinquent in paying assessments for a period of 3 months or more; (2) been given notice and an opportunity to be heard regarding the delinquency; and (3) failed to cure the delinquency, after being given that opportunity.

The new law also provides statutory authority for the prevailing party to recover reasonable attorneys fees in any legal action to enforce the cooperative governing documents.

The changes to the Co-op Act are effective October 1, 2014.

Payment of Assessments

The Contract Lien Act was amended to again allow interest on delinquent assessments to be included in assessment liens which may be enforced by foreclosure sale (House Bill 602/Chapter 603). In 2013, the Act was changed to limit such liens to assessments plus reasonable costs and attorney's fees directly

related to the filing of the lien and not exceeding the amount of delinquent assessments.

As introduced, the 2014 bill would have also allowed liens to again include late fees and other collection expenses related to other efforts to collect the delinquent expenses. However, these charges were not included in the final version of the law which passed and takes effect October 1.

Proposed But Not Passed

Other bills considered--but not passed--include proposals to require state licenses for community association managers and establish a State Board of Common Ownership Community Managers; prohibit certain restrictions on leasing condominium units; prevent condominium developers from limiting construction warranty claims; and limit the fees which may be charged for providing resale disclosure certificates and documents. Proposed legislation applicable only to condominiums in Prince George's County would have prohibited condominium assessments that exceed 20 percent of an owner's mortgage payment.

**MONTGOMERY COUNTY JUDGE
UPHOLDS CONDO OWNER ACCESS TO
DELINQUENT ASSESSMENT RECORDS**

A Montgomery County Circuit Court judge recently upheld the ruling of a hearing panel of the Montgomery County Commission on Common Ownership Commission (CCOC) that a condominium unit owner is entitled by the Maryland Condominium Act to obtain assessment account records which include the names of delinquent owners. A further appeal is pending before the Maryland Court of Special Appeals.

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JUDGE UPHOLDS ACCESS TO RECORDS
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In *Brown v. Americana Finmark Condominium*, an owner contested the manner in which the board of directors of a Silver Spring condominium determined the annual expenses and method of keeping the condominium financial records. Where the condominium provided delinquency report records with deletion of the names of individual delinquent owners, the owner also claimed that he was improperly denied the opportunity to review the account records of owners who were delinquent in payment of assessments. Additionally, he contended that the board was required by the condominium bylaws to publish the names of delinquent owners.

The CCOC referred the dispute to a hearing examiner who conducted a hearing and made recommendations to a CCOC hearing panel. The hearing panel adopted the conclusion of the hearing examiner that the condominium board had discretion, as a matter of business judgment, to decide how to estimate the annual expenses and the method for keeping the condominium financial records.

It also agreed with the hearing examiner that the condominium bylaws authorized, but did not require, the board to publish the names of delinquent owners. The decision not to publish owner names is a matter protected from review by the business judgment rule.

Although the hearing examiner concluded that a condominium board may withhold a unit owner's "personal information" regarding unit owner "liabilities", the CCOC hearing panel and Circuit Court judge disagreed and ruled that the names of delinquent unit owners must be provided to other unit owners. The Court affirmed the CCOC conclusion that Section 11-116 of the Maryland Condominium Act entitles a unit owner to examine the association books and records, including delinquency reports "without redaction" of the names of delinquent owners.

MONTGOMERY COUNTY CCOC RULING PROVIDES GUIDANCE FOR EMAIL BETWEEN BOARD MEMBERS

A hearing panel of the Montgomery County Commission on Common Ownership Communities (CCOC) recently addressed when Maryland homeowner association boards are permitted to take action by email and how those actions must be reported in board meeting minutes.

In *McBeth and Muse v. Fountain Hills Community Association, Inc.*, the CCOC hearing panel ruled that, although the term "meeting" is not defined by the Maryland Homeowners Association Act (HOA Act), email communications among the members of the board of directors or committee for the purpose of making decisions on association business constitute a meeting. In contrast, communications by email for the purpose of discussing, but not deciding, the association's business is not a "meeting" governed by the open meeting provisions of the HOA Act.

If the purpose of the meeting is one which may be held in closed session under the Act, then action by email is permitted. Otherwise, according to the CCOC panel, discussion but no action is permitted by email.

Where a meeting is held in closed session in person, by email, or by phone conference, the closed meeting protocol of the HOA Act must be followed. This requires a statement of the reason for holding a closed meeting, a recorded vote by each board member on the reason for closing the meeting, the statutory authority for holding a closed meeting, and a record of the time and place of the meeting. This information must be included in the minutes of the next open meeting. These requirements apply to meetings of the board of directors and all committees of the homeowners association.

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CCOC GUIDANCE ON EMAIL
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Applying these guidelines, the CCOC hearing panel agreed with the Association in concluding that action on a proposed settlement of collection litigation is permitted by email among board members. And, where there was discussion--but no action--regarding removal of members of an association committee, the CCOC determined those emails did not constitute a meeting and therefore did not require compliance with the closed meeting procedure, as contended by the Association.

In another instance, board members offered their opinion by email on a request by a homeowner to waive the board's prior decision to suspend the homeowner's pool privileges.

After polling the board members for their views, the President then "made an executive decision to deny [the homeowner's waiver] request based on the results of the Board poll". The CCOC panel did not find such emails constituted an impermissible closed meeting.

In sum, the CCOC guidance regarding application of the open meeting statute to email communications is as follows: "Email discussion among Board members does not constitute a meeting unless an action is taken usually evidenced by a vote to take or authorize a Board action which requires a vote".

Similar open meeting requirements apply to Maryland condominiums and, beginning October 1, to housing co-operatives.

Community Association LawLetter

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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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