

Summer 2017

Community Association LawLetter

2017 MARYLAND CONDO AND HOA LEGISLATIVE UPDATE

During the 2017 Maryland legislative session, the General Assembly considered many bills regarding condominium and homeowner association governance, foreclosure procedures, state registration of community associations, and regulation of community association managers.

Legislation passed includes bills to make it easier to amend a community's governing documents; require lender notice of foreclosure sale postponement and cancellation, and require community associations to provide owners with notice of common property sales, including government tax sales.

Document Amendments. The vote required to amend bylaws of a condominium, and the declaration or bylaws of a homeowner association, has been reduced to 60 percent of the members in good standing, or a lower percentage if allowed by the document amended. Owners are in "good standing" if payment of association assessments or other charges are not more than 90 days past due.

Previously, the minimum necessary for amending condominium bylaws was 66 and 2/3 percent of all of votes of all owners. For HOA's, declaration amendments often require approval by 80 percent or more of the homeowners.

The new lower approval standard will make it easier for condos and homeowner associations to make changes to their governing documents beginning October 1.

Lender Foreclosure Sales. When a lender postpones or cancels a foreclosure sale, notice will now have to be sent to a condominium or homeowners association which has recorded an assessment lien at least 30 days before the foreclosure sale date. This additional notice is intended to help associations better monitor the status of foreclosures and assist in collecting delinquent assessments when a sale is delayed or canceled.

Because notice of postponement or cancellation must also be provided to the property owner, the owner will know of the continuing obligation to pay the mortgage and association assessments.

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Separately, legislation was passed to require a lender to notify the Maryland Department of Labor, Licensing and Regulation of a pending foreclosure within seven days after a court foreclosure action is filed. This is in addition to the post-sale notice which the foreclosure purchaser is required to provide to DLLR.

Sale of Common Area. A new requirement for a condo or HOA to notify owners of sale of the association common property was enacted. Notice can be provided by sending to each owner, or posting a sign on the property and including on any association website.



As introduced, the bill was intended to help associations by requiring better County notice of tax sales of association common area because the association may not know of a scheduled sale for non-payment of real property taxes or other government fees. After amendment of the bill, no additional County notice is required.

HOA Resale Inspection Fee. A bill to allow a fee of up to \$100 for inspecting a home in connection with issuance of a resale certificate was amended before being passed to allow an inspection fee of up to \$50 only if the fee is authorized by the HOA governing documents.

Legislation considered but **not passed in 2017** includes bills to:

- require State registration of all condos, homeowner associations, and co-ops which are not already registered with a County;
- require State licensing of community association managers who would have to take specified training and pass a test showing proficiency in community association management; and
- require all condos and HOAs to obtain a replacement reserve study every five years.

Legislation to prohibit provisions in condominium governing documents which limit enforcement of developer construction warranties was passed by the House but died in the Senate committee.

Other bills killed by legislative committee would have invalidated association restrictions on electric vehicle charging stations and backyard gardens. Legislation to allow condo and HOA rules to ban tobacco smoking in an owner's condo or townhome was voted down in committee.

Bills on association registration, manager licensing, replacement reserves and electric vehicle charging stations are likely to get another look in 2018.

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MARYLAND APPEALS COURT SLAMS OWNER'S DOOR

A homeowner's unauthorized installation of a new entry door was slammed by a Maryland appeals court. The Maryland Court of Special Appeals ruled that a Howard County condominium acted properly in requiring a unit owner to remove her six-panel entry door which did not match the flat entry doors of other condo units.

The court rejected the owner's contention that the architectural covenant could not be enforced because other owners had a variety of storm-door styles and door knockers. The variation in these features did not constitute an abandonment of the requirement for prior approval of changes in the appearance of the entry door.



Because the condominium consistently required all entry doors to have a matching flat style and had taken enforcement action against other owners who installed six-panel doors, the appeals court concluded that it was appropriate for the condominium board to require the owner to replace the unapproved door and install a flat door. Additionally, the court ruled that board had properly imposed a fine of \$5 for each day the owner had an unauthorized door, which totaled more than \$5700 by the trial date.

DISTRICT OF COLUMBIA CONDOMINIUM LAW AMENDED TO REQUIRE NEW OWNER NOTICES

The District of Columbia Condominium Act has been amended to require new notices and information be provided to condominium purchasers and unit owners.

When a condominium advises an owner of its intention to take legal action to collect any past due amount owed by the unit owner, the owner must be provided with a statement of account showing the total amount past due, including a breakdown of the categories of amounts claimed to be due and the dates those amounts accrued.

The notice of delinquent assessments must also include contact information for the condominium so the owner knows who to contact to settle the past due amount. Additionally, the owner must be informed of resources which the owner may utilize at the District of Columbia Department of Housing and Community Development and the United States Department of Housing and Urban Development.

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The new law also requires a Washington, D.C. condominium developer to provide each purchaser with the recorded condominium declaration and bylaws and information about the rights and responsibilities of condo unit owner under the Condominium Act. Among these rights are the right to attend most board meetings, the right of access to association books and records, and the right to cure a default in payment of assessments prior to foreclosure.

The Condominium Act amendments also establish a Condominium Association Advisory Council to advise the Washington, D.C. government on matters relating to condominiums in the District of Columbia.

The new law, known as the Condominium Owner Bill of Rights and Responsibilities Amendment Act of 2016, took effect April 7, 2017.

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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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