

Winter 2010

Community Association LawLetter

MARYLAND GENERAL ASSEMBLY CONSIDERS NEW LAWS REGULATING COMMUNITY ASSOCIATIONS

Facing a nearly \$2 billion shortfall in tax revenue, budget cuts and the weak economy are expected to dominate the 2010 session of the Maryland General Assembly. The legislature meets from mid-January to mid-April.

The General Assembly will also be considering numerous proposals which directly affect the operation of Maryland condominiums, homeowner associations and housing cooperatives.

Assessment Priority Lien

As the mortgage crisis enters its third year, lender foreclosures continue to impact the ability of condominium and homeowner associations to collect assessments. When a lender forecloses and there is no equity in the property, the association's assessment lien is extinguished by the foreclosure.

The assessment priority lien legislation under consideration this year differs from the legislation proposed the past 2 years. The 2010 assessment priority lien bill would require a lender which forecloses to pay

up to 6 months of assessments and related charges due at the time of the foreclosure sale. Two similar bills have been introduced. The assessment priority lien bill known as The Residential Association Sustainability Act (HB 842) is broader in scope and is preferred by the Community Associations Institute (CAI).

Association Governance

Several bills involving association governance have been introduced.

Legislation regarding association reserves would require a study of major community facilities every 5 years (HB 28 and SB 345). It is intended to help associations plan for replacement of common building components, roads, and recreation facilities.

Other bills would limit restrictions on the use of clotheslines (HB 763 and SB 224), allow assessment surcharges for condominium units and homes which are not owner occupied (HB 460), and require additional notice of the proposed association budget (HB 695 and SB 416).

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Legislation has also been proposed to ban prohibitions on display of non-commercial signs, posters, flags, and banners (SB 212). It also provides that an association may not prohibit a homeowner or tenant from “visiting, telephoning, petitioning, or otherwise contacting” their neighbors. Additionally, any “lawful activities” relating to a community or public election may not be prohibited.

Developer Warranties

Legislation regarding developer warranties on condominium and homeowner association common areas is also under consideration by the General Assembly (HB 620 and SB 597). The bill expands the scope of condominium warranties by requiring certain condominium building components to be classified as common elements, which have longer warranty periods than unit components. The warranty bill would also extend the warranty period for condominium common elements and common area facilities in homeowner associations.

Updates on the status of all legislation can be found on the Maryland General Assembly website, mlis.state.md.us.

MONTGOMERY COUNTY CCOC SEEKS EXPANDED AUTHORITY OVER ASSOCIATION DISPUTES

The Montgomery County Commission on Common Ownership Communities (CCOC) is seeking to expand its authority over disputes regarding the actions of boards of directors of condominiums, homeowner associations and housing cooperatives.

Legislation is under consideration by the Montgomery County Council (Bill No. 42-

09) to permit the CCOC to decide disputes regarding a community’s common elements. This includes homeowner complaints about the **authority of a board of directors** to (1) require a homeowner to take (or not take) an action involving a common element or (2) alter or add to the common elements.

Additionally, the proposed legislation would allow the CCOC to decide disputes regarding the **failure of a board of directors** to (1) maintain or repair a common element if the failure results in personal injury or property damage or (2) require a homeowner to comply with the association’s governing documents.

The proposed legislation would also require a board of directors to send a notice to each homeowner about the dispute resolution, education and other services provided by the CCOC.



Separately, the City of Rockville has enacted a new law to make all condominiums, homeowner associations and housing cooperatives in Rockville subject to the jurisdiction of the Montgomery County CCOC. Associations within Rockville must register with the CCOC and pay an annual registration fee. Disputes between Rockville homeowners and associations boards of directors may now be filed with the Montgomery County CCOC.

FHA ADOPTS NEW REQUIREMENTS FOR CONDOMINIUMS

New requirements for eligibility to obtain condominium loans insured by the Federal Housing Administration (FHA) became effective February 1, 2010.

The FHA will no longer allow “spot loans” which allowed borrowers to qualify a condominium for FHA-insured loans on an individual basis. Now the entire condominium must obtain FHA approval in order for individual condominium units to be financed with an FHA-insured loan.

The popularity of FHA-insured loans has increased significantly in the past few years. FHA-insured loans were about 5 percent of all residential loans in 2007 and now account for over 20 percent.

For newly built or converted condominiums, the developer typically works with a lender to obtain FHA approval. For existing condominiums, the condominium association can apply to the FHA directly to become an FHA-approved condominium. The requirements for a condominium to qualify for FHA approval include:

- At least 50 percent of the condominium units must be owner occupied;
- No more than 10 percent of the units may be owned by one investor;
- No more than 15 percent of the units can be in arrears in payment of condominium assessments for more than 30 days;
- No more than 50 percent of the units in a condominium may have FHA insurance;

- At least 10 percent of the annual budget must be for funding replacement reserves for capital expenditures and deferred maintenance, or there must be a reserve study within the past 12 months to assess the financial stability of the condominium;



- If the condominium master hazard insurance policy does not include unit damage (including betterments and improvements made by the unit owner), the unit owner must obtain an individual HO-6 policy covering damage to the unit; and
- Fidelity insurance is required for all condominiums with 20 or more units in an amount at least equal to 3 months of assessments plus reserve funds.

Condominiums approved for FHA loans prior to October 1, 2008 must obtain a new approval by December 7, 2010 and recertification every 2 years thereafter. For condominiums which received FHA approval after October 1, 2008, recertification must be obtained within 2 years after the initial approval.

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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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