

*Winter 2013*

## *Community Association LawLetter*

### **MARYLAND APPEALS COURT DECISIONS ADDRESS THE 4 P'S OF ASSOCIATION LIVING--PEOPLE, PETS, PARKING, AND PAPER**

In 2012, the Maryland appellate courts issued several rulings concerning the 4 P's of condominium and homeowner association living--people, pets, parking, and paper.

The Maryland Court of Appeals --- the highest state appellate court --- ruled in *Tracy v. Solesky* that property owners who have the right to control the presence of pit bulls are strictly liable for any injuries caused by such dogs. The Court of Appeals separately ruled in *MRA Property Management v. Armstrong* that condominiums and managers may be liable under the Maryland Consumer Protection Act for issuing deceptive or misleading resale disclosure documents. For more about these court decisions, see the Fall 2012 Thomas Schild Law Group Community Association Law Letter online at [schildlaw.com](http://schildlaw.com).

Other legal disputes involving condominium and homeowners associations were decided in 2012 by Maryland's intermediate appeals court --- The Court of Special Appeals. These court cases involved the fair housing requirements for reasonable and necessary accommodations for individuals with disabilities; interpretation of covenant restrictions regarding "single family

residences"; and easement use rights and parking restrictions.

### **Condominium Violates Fair Housing Law by Refusing Side and Back Door Access**

The Maryland Court of Special Appeals, in *Maryland Commission on Human Relations v. Cameron Grove Condominium II*, ruled that a Prince George's County condominium violated the state fair housing law by refusing to provide individuals with physical mobility disabilities with a key to the side and back door of the condominium.

When two condominium owners were denied key access to the side and rear doors to facilitate moving groceries from their vehicle to their dwelling unit, they filed complaints with the state and federal fair housing agencies alleging that the Condominium had discriminated on the basis of their disability by refusing to provide a reasonable and necessary accommodation in the condominium rules, policies and practices.

After a 3-day hearing, an Administrative Law Judge (ALJ) of the Maryland Commission on Human Relations (MCHR) issued a proposed decision which recommended dismissal of the complaints on the basis that the requested accommodation was

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not necessary to load and unload groceries. The ALJ also concluded that the request for side and back door key access was not reasonable because providing such access would undermine the condominium's legitimate interest in ensuring the safety of residents and would create an undue financial burden on the Condominium. Additionally, because no other residents could gain entry by the side or rear door, the ALJ concluded that the requested access was not necessary to provide an "equal opportunity" to use the condominium facilities.



However, the MCHR Appeal Board disagreed with the legal conclusions of the ALJ and found that the requested accommodation for access to the side and rear doors was reasonable and necessary. The Appeal Board concluded that providing keys was a reasonable accommodation because it would not constitute an undue financial burden or require a substantial change in the condominium policies and practices. Additionally, according to the Appeal Board, the keys to the side and rear doors were necessary for ingress and egress without limitations, obstructions or additional burdens. It also required the condominium to pay damages totaling \$35,000 and a civil penalty of \$5,000, and exempted the complainant unit owners from any condominium assessment to pay these charges.

Nearly 6 years after the fair housing discrimination complaints were first filed, the Court of Special Appeals affirmed the decision of the MCHR Appeal Board. Based on the MCHR hearing record, the appeals court determined there was substantial evidence to support the MCHR Appeals Board conclusion that providing keys to the side and rear doors

was a reasonable and necessary accommodation for the disabled residents. Therefore, the Condominium had violated the Maryland fair housing laws by refusing to provide a reasonable accommodation in its rules, policies and practices.

The unpublished appeals court opinion also upheld the imposition of the \$5,000 civil penalty and noted that the Condominium did not challenge the \$35,000 damage award on appeal. It also concluded that MCHR's authority to grant "other specific relief" allowed it to exempt the complainant unit owners from paying any fees used to pay the penalty or compensatory damage awards.

### **“Single Family Residences” Restriction Does Not Bar Unrelated Occupants**

A restrictive covenant which limits use of lots to "single family residences" -- but does not define the term "family" -- is ambiguous. Therefore, it is not enforceable to prevent renting a house to persons not related by blood, marriage or adoption, according to the Maryland Court of Specials' decision in *South Kaywood Community Association v. Long*.

A Wicomico County homeowners association contended that a restrictive covenant requiring use and occupancy as a "single family" residence prevented lease of a house to 3 unrelated students who attend Salisbury University.

The appeals court noted that Maryland courts apply a "reasonably strict construction" to interpreting covenants so that if there is ambiguity in meaning, any doubt should favor the unrestricted use of the property. In discerning the intent of the drafter in using the term "single family", the court looked for but found no guidance in other provisions of the South Kaywood covenants. Observing that no Maryland appellate court has considered the

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meaning of a "single family" covenant, it also considered court decisions from other states decided near the time the 1961 South Kaywood restriction was drafted but found no clear guidance.

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**The "single family" covenant restriction does not prohibit occupancy by 3 unrelated college students.**

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In concluding that the term "single family" is ambiguous, the Court noted that the term as used in zoning ordinances is often defined to include a specified number of unrelated persons living as a single housekeeping unit. It also noted that the great majority of courts in other states which have construed the term in zoning ordinances or restrictive covenants have concluded that the term is ambiguous and does not necessarily restrict usage of property to persons related by blood, marriage or adoption.

Therefore, the court concluded, the "single family" covenant restriction does not prohibit occupancy by 3 unrelated college students.

**Roadway Parking May Be Prohibited To Preserve Unobstructed Ingress and Egress**

An easement granting non-exclusive rights of ingress and egress over a private roadway which serves several condominiums allows the entity responsible for managing, operating and maintaining the roadway to prohibit parking on portions of the roadway which pass through the common elements of a condominium, the Maryland Court of Special Appeals ruled in *10101 Grosvenor Park Condominium v. Grosvenor Park Maintenance Trust Association*.

The Grosvenor Park community in Montgomery County consists of several separate condominium and apartment buildings all served by a private loop roadway connecting the buildings to the public streets. Prior to construction of most of the buildings, the developer created a Deed of Easement to allow all residents and their guests a right of access to use the loop roadway. Pursuant to a 1979 amendment to the Deed of Easement, the Grosvenor Park Maintenance Trust Association was created to manage and operate the roadway. The 1979 amendment provided that the Trust could not modify the configuration or existing uses of the roadway and all of the residential condominiums and apartment owners agreed "not to relocate, move, or obstruct" the easement area.



Since 1965, "No Parking" signs have been placed at regular intervals on the West Loop of the roadway and parking has not been permitted on a permanent basis. Parking was allowed on certain portions of the wider East Loop. In 2009, the 10101 Grosvenor Park Condominium removed the "No Parking" signs from the portion of the West Loop which passed through the Condominium common elements and installed signs stating that guests of Condominium unit owners could parallel park on the roadway.

In response, the Trust filed suit to enjoin the Condominium from allowing parking on the roadway and replace the "No Parking" signs. After a 3-day trial, the Circuit Court ruled that parking on the West Loop was not a use existing at the time of the 1979 amendment; the Condominium had impermissibly obstructed and restricted the use

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of the West Loop roadway by designating the roadway for Condominium guest parking; and the Condominium must re-install the "No Parking" signs.

On appeal, the Court of Special Appeals agreed with the trial court, explaining that the core purpose of the easement to provide ingress and egress to the residential

community includes the authority for the Trust to regulate parking along the roadway within the common elements of the Condominium. Additionally, the unpublished appeals court decision affirmed the trial court conclusion that parallel parking on a daily basis on the West Loop roadway within the easement area is an interference of a permanent nature which impermissibly obstructs the private roadway used by other residents for ingress from and egress to the public streets.

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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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