

Winter 2014

Community Association LawLetter

USE RESTRICTION COVENANTS ENFORCED BY MARYLAND APPEALS COURTS

Two recent decisions of the Maryland appellate courts reviewed restrictive covenants which limit the use of property. The Maryland Court of Appeals and Maryland Court of Special Appeals reiterated that a covenant which is clear and unambiguous will be applied as written and without modification by the courts.

In *Dumbarton Improvement Association, Inc. v. Druid Ridge Cemetery Company*, decided August 22, 2013, Maryland's highest court--the Court of Appeals-- ruled that a restrictive covenant, imposed on a 200 acre parcel in Baltimore County, remained enforceable despite a change in use of surrounding properties. At issue was whether a covenant restricting a property to use as a cemetery remained in effect nearly 100 years after it was first imposed on the property.

The Court of Appeals held that, although covenants may become unenforceable due to the changing character of a neighborhood, there was insufficient evidence of such change in this case. Specifically, the Court concluded there is no nexus between the demographic and

economic changes in the surrounding area and "the purpose of the covenant as revealed by its express language." The Court ruled that a restrictive covenant will remain enforceable unless the intent and purpose of the covenant cannot be achieved.

It found that the language of the cemetery use restriction contained in the 1913 deed was clear and unambiguous. As such, the Court did not need to consider other evidence regarding the intent of the parties in imposing the covenant. Had the covenant not been clear, other evidence could be considered to ascertain the intent of the parties and the purpose of the restriction.

A covenant which is clear and unambiguous will be applied as written and without modification by the courts.

In *Newell v. The Johns Hopkins University*, decided November 21, 2013, the Court of Special Appeals applied the same analysis and ruled that the language of a deed regarding use restrictions was not ambiguous with regard to the scope and intensity of

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future use of property conveyed to The Johns Hopkins University. The only restriction was that the Montgomery County property be used for "agricultural, academic, research and development, delivery of health and medical care and services, or related purposes only".

The Court explained it was not appropriate to consider other evidence beyond language in the same document to determine if the covenant was ambiguous. Concluding that the covenant was not ambiguous and did not limit the scope and intensity of future use so long as the type of use complied with the covenant, the Court ruled that the covenant did not preclude high density development of the property.

In sum, if a covenant is ambiguous, the court may consider other evidence to determine the intent of the person imposing the covenant. However, a covenant will be applied as written if it is clear and unambiguous.

CONDO OWNERS' OBLIGATION TO PAY MASTER HOA ASSESSMENTS IS IMPLIED FROM DEVELOPMENT DOCUMENTS

The Maryland Court of Special Appeals ruled that, where a condominium was meant to be part of a master homeowners association, the owners of units within the condominium were required to pay homeowners association assessments in addition to condominium assessments despite the developer's failure to clearly establish the obligation.

In *Points Reach Condominium Council of Unit Owners v. Point Homeowners Association, Inc.*, decided August 30, 2013, a Worcester County condominium sought a court order declaring that the condominium units were not part of the homeowners association.

The Court applied the equitable doctrine of "implied negative reciprocal covenants" which provides that when an owner of land develops land for sale, pursues a course of conduct indicating an intention to follow a general plan of development and imposes substantially uniform restrictions on the lots conveyed, those same restrictions may be enforced against other land intended as part of the development plan but inadvertently omitted. Accordingly, the condominium was deemed subject to the homeowners association declaration and the condominium unit owners were responsible for assessments levied by the homeowners association.



The court determined that certain provisions of the homeowner association declaration, and their relationship to other development documents, were not clear. As a result of the ambiguity, extrinsic evidence was allowed to help ascertain the developer's intent in creating the community. This evidence included the various versions of the governing documents, plats, and even correspondence between the developer and the County Planning Administrator.

MARYLAND GENERAL ASSEMBLY TO REVISIT LEGISLATIVE ISSUES

Heading into an election year for all state legislators in 2014, the Maryland General Assembly will again consider many bills affecting condominiums, homeowner associations, and housing cooperatives. Among the hot topics to be revisited this year are dog bite liability, community manager licensing and condominium construction warranties.

Dog Bite Liability. Last year, the legislature failed to enact legislation to address a 2012 court ruling which imposed strict liability on property owners for injuries caused by pit bulls when on the owner's property. Although there was general agreement that property owners should not be responsible for dog bites unless the property owner knew (or should have known) that a particular animal had vicious tendencies, the legislation was not enacted because of disagreement over the standard of dog bite liability for dog owners.

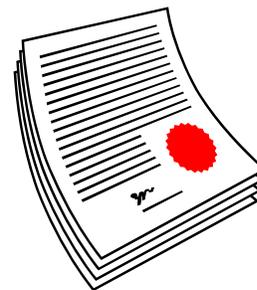
Community Manager Licensing. Various proposals to require state licenses for community managers have been considered for the past several years. Legislation regarding manager licensing is expected again this year. If enacted, it would require individuals who manage condominiums, homeowner associations, and housing cooperatives to meet minimum education and training standards.

The legislation would establish a State Board of Common Ownership Community Managers with authority to issue, suspend and revoke community manager licenses. A license could be suspended or revoked for theft of association funds or other improper conduct.

Condo Construction Warranty. Also expected again in 2014 is a bill to prohibit condominium developers from limiting the ability to file suit for construction defects. If enacted, the legislation would prevent developers from shortening the statute of limitations on condo unit warranties or including provisions in condo bylaws to require unit owner approval for a condo board to pursue legal claims by litigation or arbitration.

HOA RESALE DISCLOSURES MUST BE PROVIDED TO PURCHASERS WHO ALREADY OWN OTHER PROPERTY IN THE SAME HOA COMMUNITY

The resale disclosures required by the Maryland Homeowners Association Act ("HOA Act") must be provided to every purchaser who is a "member of the public", including purchasers who already own other property in the community governed by the homeowners association, according to a recent decision of the Maryland Court of Appeals--the highest state appellate court.



In *Lipitz V. Hurwitz*, decided October 21, 2013, the buyer of a home in Baltimore County attempted to cancel the sales contract

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on the basis that the seller had not provided the disclosures mandated by the HOA Act. The parties had deleted from the sales contract the standard provisions regarding resale disclosures because they believed those provisions did apply, or could be waived, since the buyer already owned two other houses in the same community and was already a member of the HOA.

After the buyer claimed the contract was canceled, the seller sued the buyer for breach of contract contending that the buyer was not a "member of the public" to whom the resale disclosures were required to be provided. The trial court and Maryland Court of Special Appeals concluded that the

term "member of the public" unambiguously included all purchasers who intended to live in the home or rent it to others, and dismissed the suit.

On appeal, the Court of Appeals found that the term "member of the public" was ambiguous, considered the legislative history of the resale provisions of the HOA Act, and concluded that the buyer was a "member of the public" entitled to the resale disclosures. However, because the suit alleged the buyer deleted the resale provisions from the contract and declined the seller's attempt to provide the required resale information, the case was returned to the trial court to determine if the buyer was equitably barred by his own actions from canceling the contract.

2014 MARYLAND LEGAL HANDBOOK

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- Condominium Act
- Homeowners Association Act
- Other Related Statutes

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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