

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 42-09, Common Ownership Communities – Dispute Resolution

Bill 42-09, Common Ownership Communities – Dispute Resolution, sponsored by the Council President at the request of the County Executive, was introduced on November 17, 2009. A Planning, Housing and Economic Development Committee worksession will be scheduled at a later date.

Bill 42-09 would amend Chapter 10B by:

- modifying the composition of Commission on Common Ownership Communities;
- requiring community associations to notify members annually about Commission programs and availability of dispute resolution;
- broaden the types of complaints subject to dispute resolution through administrative hearings by the Commission;
- establish a special panel with authority to lift the automatic stay imposed when a dispute is filed with the Commission; and
- generally revise the County law regarding common ownership communities.

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Bill No. 42-09
Concerning: Common Ownership
Communities – Dispute Resolution
Revised: 11-12-09 Draft No. 1
Introduced: November 17, 2009
Expires: May 17, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) modify the composition of the Commission on Common Ownership Communities;
- (2) subject community associations to certain annual notification requirements;
- (3) make certain types of complaints subject to dispute resolution through administrative hearings by the Commission;
- (4) establish a special panel with authority to lift the automatic stay imposed when a dispute is filed with the Commission; and
- (5) generally revise County law regarding common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-3, 10B-8, 10B-9, and 10B-12

By adding

Chapter 10B, Common Ownership Communities
Sections 10B-7A and 10B-9A.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

27 availability of **dispute** resolution, education, and other services to owners and
 28 residents of **common ownership communities** through the **Office** and the
 29 **Commission**. The **governing body** may satisfy this requirement by including with
 30 any annual notice or other mailing to all members of the **community association** any
 31 written materials developed by the **Office** to describe the **Commission's** services.

32 **10B-8. Defined terms.**

33 In this Article and Article 3, the following terms have the following meanings:

34 * * *

35 (2) **Common element** includes:

36 (A) in a condominium or cooperative, all portions of the
 37 **common ownership community** other than the units; or

38 (B) in a homeowners' association, any real estate in a
 39 homeowners' association community that is owned or
 40 leased by the association, other than a unit; and

41 (C) in all **common ownership communities**, any other
 42 interest in real estate for the benefit of **owners** which is
 43 subject to the declaration.

44 [(2)] (3) * * *

45 [(3)] (4) **Dispute** means any disagreement between 2 or more **parties**
 46 that involves:

47 (A) the authority of a **governing body**, under any law or
 48 **association document**, to:

49 (i) require any person to take any action, or not to take
 50 any action, involving a **unit** or **common element**;

51 (ii) require any person to pay a fee, fine, or assessment;

52 (iii) spend association funds; or

53 (iv) alter or add to a **common [area or] element**; or

54 (B) the failure of a **governing body**, when required by law or
55 an **association document**, to:

- 56 (i) properly conduct an election;
- 57 (ii) give adequate notice of a meeting or other action;
- 58 (iii) properly conduct a meeting;
- 59 (iv) properly adopt a budget or rules;
- 60 (v) maintain or audit books and records; [or]
- 61 (vi) allow inspection of books and records[.];
- 62 (vii) maintain or repair a **common element** if the failure
63 results in personal injury or property damage; or
- 64 (viii) require any person who is subject to **association**
65 **documents** to comply with those documents.

66 [(4)] (5) **Dispute** does not include any disagreement that only involves:

- 67 (A) title to any **unit** or any **common** [area or] **element**;
- 68 (B) the percentage interest or vote allocable to a unit;
- 69 (C) the interpretation or enforcement of any warranty;
- 70 (D) the collection of an assessment validly levied against a
71 party; or
- 72 (E) the exercise of a **governing body's** judgment or discretion
73 [of a **governing body**] in taking or deciding not to take
74 any legally authorized action.

75 [(5)] (6) * * *

76 [(6)] (7) * * *

77 [(7)] (8) * * *

78 (9) **Unit or lot** includes:

- 79 (A) any physical portion of a **common ownership community**
80 with distinct property boundaries that:

- 81 (i) provides complete, independent living facilities for
- 82 one or more individuals.
- 83 (ii) contains permanent provisions for living, sleeping,
- 84 eating, cooking, and sanitation, and
- 85 (iii) is designated for exclusive ownership, control, or
- 86 occupancy by those individuals; and
- 87 (B) all legally enforceable rights and interests incidental to
- 88 individual ownership of real property in a **common**
- 89 ownership community.

90 **10B-9. Filing of disputes; exhaustion of association remedies.**

91 * * *

- 92 (e) [When] Except as provided in Section 10B-9A, when a **dispute** is filed
- 93 with the **Commission**, a **community association** must not take any
- 94 action to enforce or implement the association's decision, [except] other
- 95 than filing a civil action under subsection (f), until the process under this
- 96 Article is completed.

97 * * *

98 **10B-9A. Request for relief from stay.**

- 99 (a) At any time after a **dispute** is filed under Section 10B-9, a **community**
- 100 **association** may submit a request to lift the automatic stay required
- 101 under Section 10B-9 (e) to a hearing panel appointed under Section
- 102 10B-12, or if no hearing panel has been appointed, a special standing
- 103 panel authorized to consider requests for relief from stays.
- 104 (b) The special panel must consist of 3 voting members of the **Commission**
- 105 designated by the chair, and must include at least one representative of
- 106 each membership category.

- 107 (c) An association that requests relief from a stay must serve a copy of its
 108 request on any other party named in the dispute by certified mail or
 109 personal service. A certificate of service must accompany any request
 110 submitted under this Section. A party served with a copy of the request
 111 must file its opposition, if any, within 5 days after receiving service.
- 112 (d) If a request assigned to a special panel is not granted or denied within
 113 15 days after the request was filed, the request must be treated as
 114 granted.
- 115 (e) Except as provided in subsection (d), a request for relief from stay may
 116 only be granted if the assigned panel finds that:
- 117 (1) enforcing the stay would impose undue hardship on the
 118 community association; and
- 119 (2) lifting the stay will not result in irreparable harm to the rights or
 120 interests of any opposing party.

121 **10B-12. Hearing Panel.**

122 * * *

123 (b) The chair must choose 2 members of the panel from the voting
 124 members of the **Commission**. [They] The persons selected must
 125 represent the 2 different membership groups of the Commission. [At
 126 least one member must be a resident of a common ownership
 127 community]. The 2 **Commission** members must designate the third
 128 member from a list of volunteer arbitrators trained or experienced in
 129 common ownership community issues maintained by the Commission.
 130 The third member must chair the panel. If a suitable arbitrator is not
 131 available, the chair of the Commission must [choose] designate the third
 132 panelist from among the voting members of the Commission, and must
 133 designate the chair of the panel.

134

* * *

135

Sec. 2. Transition. Until otherwise amended or superseded, a regulation

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issued under Chapter 10B before this Act takes effect remains in effect to the extent

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that the regulation is consistent with Chapter 10B, as amended by this Act. This Act

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does not affect the term of any member of the Commission on Common Ownership

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Communities serving when this Act takes effect.

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Approved:

141

Philip M. Andrews, President, County Council Date

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Approved:

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Isiah Leggett, County Executive Date

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This is a correct copy of Council action.

145

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Bill 42-09

Common Ownership Communities—Dispute Resolution

DESCRIPTION: Modifies the composition of the Commission on Common Ownership Communities. Expands the Commission's subject-matter jurisdiction by broadening the definition of "dispute". Requires common ownership communities to provide information to their members about the Commission. Clarifies the Commission's authority to lift the automatic stay triggered by the filing of a complaint.

PROBLEM: Insufficient resident representation: Under current law, the Commission is composed of 15 members, of which 6 must be residents of common ownership communities, 6 must be professionals employed by such communities, and 3 must be real estate brokers or developers. Since the law also requires that every hearing panel must have a resident member, the 6 resident members must bear a larger burden of hearings than the 9 other members.

Lack of jurisdiction to deal with common problems: Some complaints filed with the Commission involve homeowner allegations of property damage attributable to their association's failure to maintain the common areas in good and safe condition. Other complaints focus on the failure of the association's governing board to take non-discretionary actions in response to complaints concerning violations of the community's rules. Although the Commission has in some instances accepted jurisdiction and decided such disputes under a broad interpretation of the existing law, its legal authority to do so has been questioned and is the subject of ongoing debate because of how "dispute" is currently defined in Section 10B-8(3). Since the Commission's quasi-judicial authority is limited to adjudication of "disputes," there is concern about the validity of some of its decisions and the consistency of its procedures.

Lack of information about the Commission: There is presently no requirement that the governing bodies of community associations ensure that their members are aware of the services available to them through the Commission. This lack of information tends to place individual homeowners at a disadvantage when

disagreements between those homeowners and their community associations arise.

Ability to lift the automatic stay: There is presently no clear mechanism for approving a community association's request to lift the automatic stay of action to implement a community association's decision. The stay is automatically triggered whenever any party files a complaint for consideration by the Commission.

GOALS AND OBJECTIVES: To make the Commission more visible and accessible to County residents; to clarify the authority of the Commission to adjudicate Certain kinds of disputes; to organize the Commissioners using two membership categories instead of three with a majority being classified as "owners or residents"; and to provide a mechanism for expedited consideration of requests for relief of the automatic stay.

COORDINATION: Office of Consumer Protection

FISCAL IMPACT: Minimal. The main proposal that could affect the CCOC's existing workload is the one that requires all regulated associations to inform their members of the CCOC. While this may result in increased complaints, it might also avoid many complaints through better education of both parties. It is likely that there will be increased requests for information from the public as the public becomes more aware of the CCOC, but it is impossible to estimate at this time to what extent that will require more, if any, staff time.

ECONOMIC IMPACT: Minimal

EXPERIENCE ELSEWHERE: None

SOURCE OF INFORMATION: Evan Johnson, Office of Consumer Protection, 240-777-3657; Peter Drymalski, Office of Consumer Protection, 240-777-3716

APPLICATION WITHIN MUNICIPALITIES: None in the Cities of Rockville and Gaithersburg; Chevy Chase Village; or the Towns of Chevy Chase, Garrett Park, Kensington, Laytonsville, Poolesville, Somerset, and Washington Grove

BILL



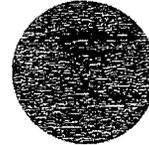
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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM



October 27, 2009

2009 OCT 28 PM 4:16

RECEIVED
MONTGOMERY COUNTY
COUNCIL

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Proposed Legislation Relating to the Commission on Common Ownership Communities

I am forwarding for Council's consideration a bill that modifies current law governing common ownership communities to implement recommendations of the Commission on Common Ownership Communities (CCOC) based on more than 17 years of experience under the original enabling statute. This bill would expand the CCOC's ability to respond to the types of complaints brought to it and enhance its ability to educate the County's 900-plus common ownership communities. I am also forwarding a Legislative Request Report for the bill.

The bill's proposed changes relate to five topics: (1) composition of the CCOC; (2) expansion of the CCOC's jurisdiction; (3) required notice regarding the CCOC; (4) lifting of automatic stays issued by the CCOC; and (5) technical amendments.

Composition of the CCOC

The bill specifies that eight members of the 15 member CCOC should be unit owners, lot owners, or residents of common ownership communities, instead of the current six. It also creates a single professional category for seven members who represent professions associated with common ownership communities (e.g., developers, real estate agents, attorneys, and community association managers) instead of the current real estate professional category for three members and community association professional category for six members.

Expansion of the CCOC's Jurisdiction

The bill defines the term "common element" to combine the separate terms of art used in condominium law (common element) and homeowners association law (common area). The bill gives the CCOC jurisdiction over disputes relating to: (1) the authority of a governing body to require any person to take or not take any action involving a common element, in

addition to its current authority over such disputes involving a "unit"; and (2) allegations of an association's failure to maintain or repair common elements if the alleged failure results in property damage or personal injury.

The bill also expands the CCOC's jurisdiction to include disputes involving the failure of an association to take action against a member when applicable law or the association's own rules requires it to act.

Notice about the CCOC

Despite its increasing prominence, the CCOC and its functions are still not well known throughout all the County's community associations. To help address this problem, the bill requires associations to notify their members on an annual basis of the education and complaint resolution services offered by the CCOC. The CCOC will prepare a simple form for the community associations to use for this purpose.

Automatic Stay

Current law specifies that once a dispute is filed with the CCOC, a community association must not take any action to enforce or implement its decision, except filing a civil action. Because this "automatic stay" provision has at times been controversial, the CCOC adopted a procedural regulation allowing associations to request that the stay be lifted. The bill would incorporate that procedure into the County Code and set the standard for ruling on such motions. To expedite these motions, if a hearing panel has not yet been appointed in the case, a special panel of the CCOC must rule on the motion within 15 days or it is deemed granted.

Technical Amendments

The bill defines the terms "unit" and "lot" to make it clear that these terms include all legally enforceable rights and interests that are incidental to ownership of real property in a common ownership community, and not just the real property itself. It also makes several additional miscellaneous technical changes.

If you have questions on any of the proposed changes, please contact Eric Friedman, Director, Office of Consumer Protection at 240-777-3719. Thank you for your consideration of this important bill.

Attachments: (2)

cc: Eric Friedman, Director, Office of Consumer Protection
Kathleen Boucher, Assistant Chief Administrative Officer