

Bill No. 42-09  
Concerning: Common Ownership  
Communities – Dispute Resolution  
Revised: 3-30-10 Draft No. 2  
Introduced: November 17, 2009  
Enacted: April 6, 2010  
Executive: April 12, 2010  
Effective: July 12, 2010  
Sunset Date: None  
Ch. 10, Laws of Mont. Co. 2010

**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, and 10B-17

By adding

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

<b>Boldface</b>	<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:*

*Clerk's Note: The word "created" on page 7, line 146 was not double underlined and should have been.*



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 significant personal injury or property
- 64 damage; or
- 65 (viii) exercise its judgment in good faith concerning the
- 66 enforcement of the **association documents** against
- 67 [[require]] any person [[who]] that is subject to
- 68 [[**association documents** to comply with]] those
- 69 documents.

70 [(4)] (5) **Dispute** does not include any disagreement that only involves:

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

79 [(5)] (6) \* \* \*

80 [(6)] (7) \* \* \*

81 [(7)] (8) \* \* \*

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

83 (A) any physical portion of a **common ownership community**  
84 with distinct property boundaries that:

85 (i) provides complete, independent living facilities for  
86 one or more individuals,

87 (ii) contains permanent provisions for living, sleeping,  
88 eating, cooking, and sanitation, and

89 (iii) is designated for exclusive ownership, control, or  
90 occupancy by those individuals; and

91 (B) all legally enforceable rights and interests incidental to  
92 individual ownership of real property in a **common**  
93 **ownership community.**

94 **10B-9. Filing [[of]] disputes; exhaustion of association remedies.**

95 \* \* \*

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

101 \* \* \*

102 **10B-9A. Request for relief from stay.**

103 (a) At any time after a **dispute** is filed under Section 10B-9, a **community**  
104 **association** may submit a request to lift the automatic stay required  
105 under Section 10B-9(e) to a hearing panel appointed under Section 10B-  
106 12, or if no hearing panel has been appointed, a special standing panel  
107 authorized to consider requests for relief from stays.

- 108           (b) The special panel must consist of 3 voting members of the **Commission**  
 109                   designated by the chair, and must include at least one representative of  
 110                   each membership category.
- 111           (c) An association that requests relief from a stay must serve a copy of its  
 112                   request on any other **party** named in the **dispute** by certified mail or  
 113                   personal service. A certificate of service must accompany any request  
 114                   submitted under this Section. A **party** served with a copy of the request  
 115                   must file its opposition, if any, within ~~[[5]]~~ 10 days after receiving  
 116                   service.
- 117           (d) If a request ~~[[assigned to a special panel]]~~ for relief from a stay which  
 118                   states facts sufficient to show a need for immediate action is not granted  
 119                   or denied within ~~[[15]]~~ 20 days after the request was filed, the request  
 120                   must be treated as granted.
- 121           (e) Except as provided in subsection (d), a request for relief from stay may  
 122                   only be granted if the assigned panel finds that:
- 123                   (1) enforcing the stay would ~~[[impose]]~~ result in undue ~~[[hardship~~  
 124                               on]] harm to the **community association**; and
- 125                   (2) lifting the stay will not result in ~~[[irreparable]]~~ undue harm to the  
 126                               rights or interests of any opposing **party**.

127 **10B-12. Hearing Panel.**

128                               \*       \*       \*

- 129           (b) The chair must choose 2 members of the panel from the voting  
 130                   members of the **Commission**. [They] The persons selected must  
 131                   represent the 2 different membership groups of the **Commission**. [At  
 132                   least one member must be a resident of a common ownership  
 133                   community.] The 2 **Commission** members must designate the third  
 134                   member from a list of volunteer arbitrators trained or experienced in

135 common ownership community issues maintained by the Commission.  
136 The third member must chair the panel. If a suitable arbitrator is not  
137 available, the chair of the Commission must [choose] designate the third  
138 panelist from among the voting members of the Commission, and must  
139 designate the chair of the panel.

140 \* \* \*

141 **10B-17. Voting procedures.**

142 \* \* \*

143 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid  
144 under state law ~~[[is valid]]~~ may be used at any association meeting.  
145 However, a proxy and any power of attorney ~~[[that is not appointed to~~  
146 vote as directed]] created for the purpose of a governing body's election  
147 must be appointed only to meet a quorum or to vote on matters other  
148 than an election for a governing body unless the proxy or power of  
149 attorney contains a directed vote on the election. If a proxy or power of  
150 attorney form must be approved before it is ~~[[used]]~~ cast, the approving  
151 authority must not unreasonably withhold its ~~[[approval]]~~ consent. A  
152 general power of attorney valid under state law may be used for any  
153 purpose at an association meeting that is consistent with the provisions  
154 of the general power of attorney, including for an election of the  
155 governing body.

156 \* \* \*

157 **Sec. 2. Transition.** Until otherwise amended or superseded, a regulation  
158 issued under Chapter 10B before this Act takes effect remains in effect to the extent  
159 that the regulation is consistent with Chapter 10B, as amended by this Act. This Act  
160 does not affect the term of any member of the Commission on Common Ownership  
161 Communities serving when this Act takes effect.

162 *Approved:*

163

164

*Nancy Floreen* 4/7/10  
Nancy Floreen, President, County Council Date

165 *Approved:*

166

167

*Isiah Leggett* 4/12/10  
Isiah Leggett, County Executive Date

168 *This is a correct copy of Council action.*

169

170

*Linda M. Lauer* 4/19/10  
Linda M. Lauer, Clerk of the Council Date