

Bill No. 50-15
 Concerning: Common Ownership
Communities - Commission on
Common Ownership Communities -
Composition - Dispute Resolution
 Revised: March 10, 2016 Draft No. 4
 Introduced: December 8, 2015
 Enacted: April 5, 2016
 Executive: April 13, 2016
 Effective: July 13, 2016
 Sunset Date: None
 Ch. 10, Laws of Mont. Co. 2016

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President at the request of the County Executive

AN ACT to:

- (1) make ~~[[mediation]]~~ attempted resolution of certain disputes regarding common ownership communities by informal negotiation mandatory;
- (2) ~~[[alter the composition of the three member hearing panel]]~~ require members of the Commission to complete certain training;
- (3) ~~[[alter the composition of the Commission on Common Ownership Communities to include members of the public~~;
- (4)] transfer duties assigned to the Office of Consumer Protection to the Department of Housing and Community Affairs;
- ~~[[5]]~~(4) provide for certain transition provisions; and
- ~~[[6]]~~(5) generally amend County law concerning common ownership communities.

By amending

Montgomery County Code
 Chapter 10B, Common Ownership Communities
 Sections 10B-2, 10B-3, 10B-4, 10B-5, 10B-7A, 10B-9A, 10B-11, 10B-12, 10B-13, 10B-14,
 and 10B-19.

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:

1 **Sec 1. Sections 10B-2, 10B-3, 10B-4, 10B-5, 10B-7A, 10B-9A, 10B-11, 10B-12, 10B-**
2 **13, 10B-14, and 10B-19 are amended as follows:**

3 **Article 1. Commission on Common Ownership Communities.**

4 * * *

5 **10B-2. Definitions.**

6 In this Chapter, the following words have the following meanings:

7 [(a)] *Commission* means the Commission on Common Ownership
8 Communities.

9 [(b)] *Common ownership community* includes:

- 10 (1) a development subject to a declaration enforced by a homeowners'
11 association, as those terms are used in state law;
- 12 (2) a residential condominium, as that term is used in state law; and
- 13 (3) a cooperative housing project, as that term is used in state law.

14 * * *

15 [(c)] [Office means the Office of Consumer Protection.] Department means
16 the Department of Housing and Community Affairs.

17 Director means the Director of the Department of Housing and
18 Community Affairs or the Director's designee.

19 **10B-3. Commission on Common Ownership Communities.**

20 (a) The County Executive must appoint, subject to confirmation by the
21 Council, a Commission on Common Ownership Communities. The
22 Commission consists of 15 voting members.

- 23 (1) [Eight] [~~Five~~] Eight members should be selected from unit or lot
24 owners or residents of self-managed and professionally managed
25 condominiums, self-managed and professionally managed
26 cooperative housing corporations, and self-managed and

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professionally managed homeowners' associations, and may include members or former members of governing boards.

(2) ~~Seven~~ ~~Five~~ Seven members should be selected from persons who are members of professions associated with common ownership communities (such as persons involved in housing development and real estate sales and attorneys who represent community associations, developers, housing management or tenants), including at least one person who is a professional community association manager.

~~[[3) Five members should be selected from the public at large who would not meet the criteria for selection under subsection (a)(1) or (a)(2).]]~~

(b) Designees of the County Council (if the Council selects a designee), Planning Board, Department of Environmental Protection, Department of Permitting Services, Department of Transportation, [Office of Consumer Protection,] and Department of Housing and Community Affairs are ex-officio nonvoting members of the Commission.

(c) Each voting member serves a 3-year term. Of the members first appointed, one-third must be appointed for 1-year terms, one-third must be appointed for 2-year terms, and one-third must be appointed for 3-year terms. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(d) Prior to participation in any Commission matter, each voting member must complete:

53 (1) training required of common ownership community board
 54 members under Section 10B-17(h); and

55 (2) training in the State and local laws on matters within the
 56 jurisdiction of the Commission provided or otherwise approved by
 57 the County Attorney.

58 (e) The County Executive, with the consent of the Council, may remove a
 59 voting member of the Commission for neglect of or inability to perform
 60 the duties of the office, misconduct in office, or serious violation of law.
 61 Before the Executive removes a member, the Executive must give the
 62 member notice of the reason for removal and a fair opportunity to reply.

63 ~~[(e)]~~(f) Section 2-148(c) applies only to voting members of the
 64 Commission.

65 ~~[(f)]~~(g) The Commission must elect one voting member as chair and
 66 another as vice chair, to serve at the pleasure of the Commission, and may
 67 elect other officers as it determines.

68 ~~[(g)]~~(h) Voting members of the Commission receive no compensation for
 69 their services.

70 ~~[(h)]~~(i) The Commission meets at the call of the chair as often as required
 71 to perform its duties, but at least once each month. A majority of the
 72 voting members are a quorum for the transaction of business, and a
 73 majority of the voting members present at any meeting may take any
 74 official action.

75 ~~[(i)]~~(j) The Office must provide the Commission with staff, offices and
 76 supplies as are appropriated for it.

77 ~~[(j)]~~(k) The Commission must submit an annual report by September 1 to
 78 the County Executive and the County Council summarizing its activities,

79 needs, and recommendations, and the extent to which the goals of this
80 Chapter are being met.

81 **10B-4. Administrative support.**

82 In selecting staff to carry out the [Office's] Department's responsibilities under
83 this Chapter, the Director must consider the recommendations of the
84 Commission.

85 **10B-5. Duties of the [Office] Department of [Consumer Protection] Housing and
86 Community Affairs.**

87 The [Office] Department, in consultation with the Commission, must:

88 * * *

89 **10B-7A. Notification requirements.**

90 The governing body of a community association must, at least annually,
91 distribute information in a form reasonably calculated to notify all owners about
92 the availability of dispute resolution, education, and other services to owners
93 and residents of common ownership communities through the [Office]
94 Department and the Commission. The governing body may satisfy this
95 requirement by including with any annual notice or other mailing to all members
96 of the community association any written materials developed by the [Office]
97 Department to describe the Commission's services.

98 **Article 2. Dispute Resolution.**

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100 **10B-9A. Request for relief from stay.**

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102 (b) The special panel must consist of ~~[[3]]~~ three voting members of the
103 Commission designated by the chair, and must include [at least] at least
104 one representative of each membership category.

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106 **10B-11. Mediation; dismissal before hearing.**

- 107 (a) The [Office] Director may investigate facts and assemble documents
 108 relevant to a dispute filed with the Commission, and may summarize the
 109 issues in the dispute. The [Office] Director may notify a party if, in [its]
 110 the Director's opinion, a dispute was not properly filed with the
 111 Commission, and may inform each party of the possible sanctions under
 112 Section 10B-13(d).
- 113 (b) If the [Office] Director, after reviewing a dispute, finds that, assuming all
 114 facts alleged by the party [which] that filed the dispute are true, there are
 115 no reasonable grounds to conclude that a violation of applicable law or
 116 any association document has occurred, [it] the Director may so inform
 117 the Commission. The Commission[, in its discretion, may] must dismiss
 118 a dispute if it finds that there are no reasonable grounds to conclude that
 119 a violation of applicable law or any association document has occurred,
 120 or it may order the [Office] Director to investigate further. The
 121 Commission may reconsider the dismissal of a dispute under this
 122 subsection if any party, in a motion to reconsider filed within 30 days
 123 after the dispute is dismissed, shows that:
- 124 (1) the Commission erroneously interpreted or applied applicable law
 125 or an association document; or
 - 126 (2) material issues of fact [which] that are necessary to a fair resolution
 127 of the dispute remain unresolved.
- 128 (c) [Any party may request mediation.] If the Director, after reviewing a
 129 dispute and any investigation, finds reasonable grounds to conclude that
 130 a violation of applicable law or an association document has occurred,
 131 the Director must attempt to resolve the matter through informal
 132 negotiation including, in the Director's discretion, mediation. Each party

133 named in the dispute or its representative must attend any mediation
134 conference scheduled by the Director under this Section unless excused
135 by the Director. If the party that files the dispute refuses or fails to
136 participate in the mediation, the Director must dismiss the dispute. If the
137 party that is the subject of the dispute refuses or fails to participate in the
138 mediation, the Director must refer the dispute to the Commission for
139 resolution. The party that is the subject of the dispute may not appear at
140 the hearing, and the hearing panel may award relief to any party that the
141 facts on the record warrant.

142 (d) [If a party requests mediation, the Commission must notify all parties of
143 the filing and of the mediation session.] Unless otherwise agreed to by
144 the parties in writing, a mediation conference is informal and nothing said
145 or done during a mediation conference is admissible in any subsequent
146 hearing under this article.

147 (e) [The Commission must provide a qualified mediator to meet with the
148 parties within 30 days after a party requests mediation to attempt to settle
149 the dispute.] The Commission must promptly schedule a hearing under
150 Section 10B-13 if either: (1) mediation has not occurred within 90 days
151 after the Director found reasonable grounds to believe a violation
152 occurred; or (2) the Director decides at any time that mediation would be
153 fruitless. The Director may extend the mediation deadline by mutual
154 consent of the parties.

155 [(f) If any party refuses to attend a mediation session, or if mediation does not
156 successfully resolve the dispute within 10 days after the first mediation
157 session is held, the Commission must promptly schedule a hearing under
158 Section 10B-13 unless a hearing has already been held under Section
159 10B-13.]

160 **10B-12. Hearing Panel.**

- 161 (a) If a hearing is scheduled, the chair of the Commission must convene a 3-
 162 member panel to hear the dispute.
- 163 (b) The chair must choose [2] ~~[[3]]~~ two members of the panel from the voting
 164 members of the Commission. The persons selected must represent the [2]
 165 ~~[[3]]~~ two different membership groups of the Commission. [The 2
 166 Commission members must designate the third member from a list of
 167 volunteer arbitrators trained or experienced in common ownership
 168 community issues maintained by the Commission. The third member
 169 must chair the panel. If a suitable arbitrator is not available, the chair of
 170 the Commission must designate the third panelist from among the voting
 171 members of the Commission, and must designate the chair of the panel.]
 172 [[The chair must designate one panel member to serve as panel chair.]]
 173 The two Commission members must designate the third member from a
 174 list of volunteer arbitrators trained or experienced in common ownership
 175 community issues maintained by the Commission. The third member
 176 must chair the panel. If a suitable arbitrator is not available, the chair of
 177 the Commission must designate the third panelist from among the voting
 178 members of the Commission, and must designate the chair of the panel.
- 179 (c) Each panelist must not have any interest in the dispute to be heard.
- 180 (d) Each volunteer arbitrator must not represent any parties in disputes
 181 before other hearing panels convened under this Chapter.
- 182 (e) If the Commission chair decides that a hearing should be held by a
 183 hearing examiner instead of a hearing panel, the chair, with the approval
 184 of the Commission, may designate the Office of Zoning and
 185 Administrative Hearings to conduct the hearing.

186 ~~[[e]]~~(f) If the parties to a dispute agree that the hearing should be held
187 and the dispute decided by a hearing examiner instead of a hearing
188 panel, the chair must designate the Office of Zoning and Administrative
189 Hearings or another hearing examiner to conduct the hearing and issue
190 a decision.

191 **10B-13. Administrative hearing.**

192 * * *

193 (d) The hearing panel may award costs, including reasonable attorney's fees,
194 to any party if the other party:

195 (1) filed or maintained a frivolous dispute, or filed or maintained a
196 dispute in bad faith;

197 (2) [unreasonably] refused to participate in mediation of a dispute[, or
198 unreasonably withdrew from ongoing mediation]; or

199 (3) substantially delayed or hindered the dispute resolution process
200 without good cause.

201 The hearing panel may also require the losing party in a dispute to pay all
202 or part of the filing fee.

203 (e) [the] The hearing panel must apply [[state]] State and County laws and
204 all relevant caselaw to the facts of the dispute, and may order the payment
205 of damages and any other relief that the law and the facts warrant. The
206 decision of the hearing panel is binding on the parties, subject to judicial
207 review under Section 2A-11.

208 * * *

209 (i) The Commission, acting through the [Office] Department and the County
210 Attorney, may enforce a decision of the hearing panel by taking any
211 appropriate legal action.

212 * * *

213 **10B-14. Settlement of disputes; assistance to parties.**

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215 (b) The [Office] Director may inform any party who has settled a dispute by
 216 mediation, or any party who prevails in a hearing held under Section 10B-
 217 13, about how the agreement or decision can be enforced.

218 * * *

219 **10B-19. Enforcement.**

220 (a) The [Commission] Department may enforce this Article by legal action.

221 (b) In addition to any action by the [Commission] Department and any other
 222 action authorized by law, including the filing of a dispute under Article
 223 2, any person may file an action:

224 (1) for injunctive relief to enforce this Article or correct any violation
 225 of it[[,]]; and

226 (2) to recover damages for a loss sustained as a result of a violation of
 227 this Article.

228 **Sec. 2. Effective Date.**

229 Sections 10B-11(c), (d), and (e), as amended by this Act, which [[mandate
 230 mediation]] require attempted informal resolution of disputes, including mediation,
 231 [[applies]] apply to all disputes filed with the Commission after this Act takes effect as
 232 provided in Charter Section 112.

233 **Sec. 3. Transition.**

234 [[The first three vacancies of members selected under Section 10B-3(a)(1) and
 235 the first two vacancies of members selected under Section 10B-3(a)(2) must be filled
 236 by members selected under Section 10B-3(a)(3).]] Current members of the
 237 Commission must complete the training required under Section 10B-3(d) within 90
 238 days after this Act takes effect.

239 *Approved:*

240 *Nancy Floreen* *April 7, 2016*
Nancy Floreen, President, County Council Date

241 *Approved:*

242 *Isiah Leggett* *April 13, 2016*
Isiah Leggett, County Executive Date

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

244 *Linda M. Lauer* *April 14, 2016*
Linda M. Lauer, Clerk of the Council Date

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