



CCOC Communicator

Serving On The CCOC

By Andrew Oxendine,, Commissioner
Commission on Common Ownership Communities

Inside this issue:

	Page #
Serving on a Board	1
Open Records v. Secret Ballots	2
New Laws from Annapolis	2
League of Women Voters Election Services	3
Selected Summaries of CCOC Decisions	4
Don't Fall Apart Tonight	5
Rockville Joins CCOC	5
Useful County Phone Numbers	6
Commission Participants	6
Sign Up for Alert Montgomery	7
County Amends Ch. 10B	7
CCOC Elects New Officers	8

This issue of the *Communicator* will be my last, because my term will expire soon. Serving on the CCOC has been a privilege and an invaluable opportunity. As our U.S. Senator Barbara Mikulski has said, "In American society today, we need volunteerism. I truly believe that it is the glue that will hold us together and it will be the energy that will take us into the 21st Century". This is what my 14 colleagues and I have done on an annual basis.

Four of my colleagues and I have served on the CCOC for the maximum six year period of 2 three-year terms and our terms are about to expire. The six years passed as though they began yesterday. I even had the opportunity to serve as the chair of the Education Committee, which supervised the writing and publication of this newsletter.

The CCOC is made up of homeowners and professionals in community management/real estate, and is assisted by volunteer attorneys who serve as chairs of our hearing panels. We meet the first Wednesday of each month and serve at the pleasure of the County Executive and County Council.

There is no financial compensation for serving on the Commission. The reward comes from the ability to network with others interested in the mission and, most importantly, the opportunity to serve the residents of Montgomery County. To quote Helen Turner, "Volunteerism is the voice of the peo-

ple put into action. These actions shape and mold the present into a future of which we can all be proud". We have the opportunity to make friends and to make changes to the rules and legislation applied to the homeowner and condominium associations in Montgomery County (of which there are currently 976 registered associations representing over 124,000 homes).

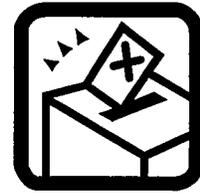
While I could go over the mission of the Commission and the fun and exciting things we do, a good overview can be found at our webpage at www.montgomerycountymd.gov/ccoc.

My colleagues and I get to hear cases and help to formulate the decisions in disagreements between associations and homeowners. There is much satisfaction in knowing that we are able to resolve issues that might otherwise have to be disputed in a court of law, which could be much more costly, or no resolution at all because parties might not be able to afford to take their issues to court.

I wish that one could serve more than two consecutive terms on the Commission because I would certainly stay on for another term.

I would like to invite all readers of this article to volunteer to serve on the CCOC, or for that matter, any of the many volunteer Boards that serve the residents of Montgomery County. The work is sometimes hard, but extremely fulfilling. The time commitment is not great, but the work done by the Commission can have an impact that long survives your term on it. The return for serving cannot be measured in revenues, but it is priceless nonetheless.

Open Records v. Secret Ballots



A CCOC hearing panel was recently confronted with an unusual dilemma that forced it to choose between a condominium bylaw or the Maryland Condominium Act.

In #68-08, Kessler v. Cloverleaf Center I Condominium (September 10, 2009), a CCOC hearing panel had supervised a general election pursuant to a settlement between the parties. After the election, one of the parties asked to see the ballots cast in the election, including the proxy and absentee ballots. The condominium rejected the request on the grounds that the bylaws required that all voting be by secret ballots, and that therefore the ballots could not be shown to the members. The dispute came up to the hearing panel.

The panel chair, Charles Fleischer, ruled in favor of the member who asked to see the ballots. He pointed out that Section 11-116 (c) of the Maryland Condominium Act made "all" books and records available for inspection unless there was a specific exemption that applied, and none of the 6 exemptions in the law covered ballots or elections. He then noted that under Section 11-124(c) of the Condominium Act, if there is any conflict between a condominium document and the Condominium Act, the Act governs. Therefore, the "secret ballot" bylaw must give way to the requirements of State law.

As a practical matter, this ruling will only affect proxy or absentee votes, because such forms must show the identification of the voter in order to be verified. Even then, however, it is possible to preserve the secrecy of absentee and proxy votes by using the "2-envelope" system described in pages 36-37 of the CCOC Manual and Resource Guide, which is online at the CCOC's website. Under this procedure, the identifying information or signature is on the outer envelope. Inside is a smaller, blank envelope, which contains the voter's ballot, and this ballot has no identifying information. The ballot is separated from the outer envelope and used for voting. This preserves secrecy by separating the ballot from the necessary identifying information.



2009 Laws from Annapolis

Last year, the General Assembly adopted, and the Governor signed, several new laws affecting common ownership communities.

Master Insurance: The most important of these is the "Condominium Master Property Insurance Coverage" act. This law effectively and completely repeals the Court of Appeals ruling in Anderson v. The Gables on Tuckerman, which held that the condominium master insurance did not cover repairs to private units. Under the new law, the condominium master insurance must cover most repairs to private units when those repairs are caused by an insured event, even if that event originates inside the unit that is damaged. However, a significant change is that the condominium can pass on up to \$5,000 of the insurance deductible to the owner of the unit that caused the event, without having to amend its governing documents. (Many condominium documents limited the liability for the deductible to \$1,000 and under former law, that sum could not be changed unless the membership of the condominium voted to amend the governing documents.) The condominium must notify new owners of their liability and it must remind all owners of their liability for such damage at least once a year.

Document Inspection: This new law applies to cooperatives, condominiums and HOA's. It states that if a member makes a written request for *financial statements* or for *minutes of board meetings*, the association must provide them within 21 days if they are less than 3 years old and 45 days if they are older than that. The association can charge a "reasonable" fee for the inspection; and the fee for copying is limited to what the Courts charge for such a service (currently, 50 cents per page).

Fidelity Insurance: Also applying to cooperatives, condominiums and HOA's is the requirement that they purchase and keep in effect fidelity insurance on their officers, directors, managers and other agents or employees who "control or disburse" the association's money. The minimum amount of the insurance must be \$3 million or 3 months worth of gross common charges plus the amount of all the association's investment accounts.

Open Meetings: The major changes to the open meetings requirements of condominiums and HOA's are that they may now close the meetings to discuss the assessment accounts of individual members. In addition, the legislature deleted a very general clause in the HOA law that allowed boards to close meetings for "exceptional reasons."

In the next issue, we will report on the 2010 session of the General Assembly

League of Women Voters Election Services

The League of Women Voters in Montgomery County contracts with homeowner associations, municipalities, and professional societies to assist them in running fair, efficient and accurate elections. The services are provided by volunteers and the fees that are charged are used to fund the operation of the League and its projects.

WHY SHOULD YOU HIRE THE LEAGUE TO ASSIST WITH YOUR ELECTION?

- The League is a respected non-profit organization that has been an independent monitor of elections for over 20 years.
- The League has experience and expertise in many facets of the election process.
- The League is a neutral party with no vested interest in the outcome of the elections it monitors.
- Running a good election can be a time consuming, labor intensive process. Hiring the League takes away the stress from your association.

The League's clients are very loyal and come back to the League election year after election year.

HOW MUCH DOES THE LEAGUE OF WOMEN VOTERS CHARGE FOR THEIR SERVICES?

The League's rates vary depending on:

- The scope of the work the League is contracted to do.
- The number of hours the League will work.
- The number of likely voters

The complexity of issues the League will be resolving.

The League's fees over the past year have ranged from \$200 for providing consultation on the balloting process to \$5,000 for advice and support before the election, staffing an all day high turn-out election, counting the ballots, and writing a final report. Additional fees may be charged for handling all facets of proxy or absentee voting.

For more information and to have the League assist you, please contact Sylvia Brown Olivetti at sbolivetti@aol.com.

**MAKE
LWV
DEMOCRACY
WORK**

SELECTED SUMMARIES OF CCOC FINAL PANEL DECISIONS



Dealing with inactive boards: In two recent cases, CCOC panels heard disputes involving boards of directors that were unable to manage the affairs of their associations. At the hearings the boards' representatives basically admitted that the boards had failed to function properly for years at a time, and had neither called annual elections nor adopted annual budgets, among other defaults. The panels took the unusual step of issuing lengthy and detailed timetables for the boards to follow and retained jurisdiction over the cases to monitor the boards' compliance. In Opiyo v. Boland Farm HOA, #22-08 (Fleischer, Gelfound, Negro) the order instructed the board to hire a manager to call and conduct an annual election, then for the new board to publish and adopt a budget, renew its corporate status, file required tax returns, purchase insurance, and take other steps to comply with its governing documents. Similarly, the panel in Montreal v. Preakness Drive HOA, #41-08 (Dymowski, Dubin, Farrar) also established a schedule for the board to call an election of the board and then to publish and adopt annual budgets for 2009 and 2010; significantly, the panel also ordered the HOA to propose and adopt a policy for the enforcement of its architectural rules.

Discrimination based on family membership: An HOA member challenged the board's refusal to grant her live-in boyfriend a parking permit under a new rule that restricted extra parking permits only to members of the immediate family of the owners. The panel held the policy invalid, on the grounds that it was unreasonable for the board to allocate scarce parking spaces on the basis of the family membership. Palacios v. Oxford Crossing HOA, #75-08 (Stevens, Kali, Oxendine).

The terms of office of appointed board members: Two HOA members claimed that the board treated them unfairly by prematurely terminating their membership on the HOA's board of directors, arguing that they were elected in 2006 to 3-year terms and so their positions should not have been up for election in 2008. But the evidence at the hearing showed that they were *appointed* to the board in 2006, and under the HOA's bylaws and under State law, directors who are appointed to serve can only serve until the next election. They do not serve full terms. Therefore their positions were properly up for election in 2008. Luna and Arneja v. Goshen Run HOA, #35 & 36-08 (Burgess, Farrar, Gannon). (This case is now on appeal to the Circuit Court.)

Haste makes waste: The landlord of a home filed an appeal of a fine of \$125 levied against him for landscaping services performed on his lot by the HOA. The HOA claimed it gave the owner advance notice that the lot was in poor condition before hiring a lawn care company to enter the lot and do the work at the landlord's cost. The panel found that the written notice was not clear enough to specify exactly what the HOA wanted the landlord to do: the HOA thought the grass was too tall, the landlord thought the HOA wanted weeds removed—and to compound the problem, the HOA actually had the work performed one day before its own notice expired. The panel held that the HOA acted in violation of its own notice and ordered it to drop the fine.

Thanks to the following CCOC Commissioners and Staff for making this publication possible:

Articles:

Andrew Oxendine
Kevin Gannon
Arthur Dubin
Peter Drymalski

Compilation and Formatting:

Andrew Oxendine
Kevin Gannon

Printing & Mailing:

Peter Drymalski
Pandora Prather



Don't Fall Apart Tonight!!

These are not just lines from an old Bob Dylan song but are becoming the current state of affairs for far too many architectural review or covenants committees today. What do we mean by "falling apart"? In plain terms, the demands of properly providing and enforcing guidelines in a common interest association are more challenging and committees are losing volunteers.

The state of affairs reveals owners not acting in accordance with their community guidelines/documents. Owners who want to make changes do not always follow process/procedures. Also, owners who do not get what they want skirt the issues OR proceed without approval. Worst of all, some owners do not even know there is an association OR that approval is even needed! One other variable is the uniform application of the rules – one owner sees a variance and thinks that is OK or was rejected only to see a variance for someone else and proceeds anyway.

Unfortunately, that is only part of the problem – the next issue concerns the volunteers on the committee. Do committee members have an agenda (i.e., personal goals which may or may not conflict with association guidelines) or not enough time or experience or patience to perform this volunteer function? Committee members do not have as their only "job" being members of a committee to oversee architectural matters or covenants issues. The responsibility includes inspection, reading and preparing, meeting, and then communicating. This takes time and again is a volunteer position. Another issue now being faced are the persistent calls and complaints to committee members in the course of doing this work, including but not limited to, being stopped walking in the community, late hour calls, and then having a meeting where many individuals can shout at them over the course of one evening.

We know the value of this work and how it helps maintain the community and values. We accept that overall this work is mostly performed well and is quite necessary. Now, unfortunately over time, members are being reluctant to serve and be as active as they need be due to the returns not being appropriately recognized and the support for the work not being appreciated.

Recently, some of the cases the CCOC heard mention issues with the process and it is hearing more stories of committee members resigning. Without these volunteers, the community will lose out. Communities with active volunteers function better, provide more support, and over time demonstrate more often than not to have better resale activity. So think seriously when asked to volunteer and also think twice before you plan to "unload" on a volunteer – consider being in their shoes and if you believe you can do better – get involved!

CITY OF ROCKVILLE JOINS THE CCOC!

After several months of discussions and public hearings, the City Council of Rockville voted 3 to 2 to adopt Chapter 10B of the Montgomery County Code and to bring its condominium and homeowner associations under the CCOC's jurisdiction. The law was passed on January 25, 2010. The City estimates that it will add approximately 8000 new homes and units to those already served by the CCOC.

Although the CCOC did not propose the change, County Executive Isiah Leggett expressed his support for it, and the CCOC is pleased to have Rockville communities join our family, and it looks forward to working with them.

The CCOC plans to host a welcome and orientation meeting for the boards and the members of the Rockville community on Monday, May 10, 2010, at 7pm in the Council Office Building Cafeteria (100 Maryland Ave.).

The only other major jurisdiction in the County that has still not adopted Chapter 10B is the City of Gaithersburg; several small towns and villages have also not yet adopted it.



Useful County Phone Numbers for Common Ownership Communities

Office of Consumer Protection	(240) 777-3636	Zoning Information	(240) 777-6240
Commission on Common Ownership Communities	(240) 777-3766	Stormwater Inspections	(240) 777-6266
Dept. of Housing and Community Affairs	(240) 777-3600	General Information	(240) 777-1000
Landlord-Tenant	(240) 777-3609	Housing Opportunities Commission	(301) 929-6700
Licensing & Registration	(240) 777-3799	Human Rights Commission	(240) 777-8450
Housing Code Enforcement	(240) 777-3785	Libraries	(240) 777-0002
Cable TV Office	(240) 773-2288	Park and Planning Commission	301) 495-4600
Circuit Court	(240) 777-9400	Police Department (non-emergency)	(301) 279-8000
Community Use of Public Facilities	(240) 777-2706	Abandoned Autos	(301) 840-2455
County Council	(240) 777-7900	Community Outreach	(301) 840-2715
County Executive	(240) 777-2500	Department of Transportation	(240) 777-7170
Department of Permitting Services		Traffic Operations	(240) 777-2190
		Department of Environmental Protection	(240) 777-6410

FY 2010 Commission Participants (as of December 31, 2009)

Residents from Condominiums/Homeowner Associations:

Charles H. Fleischer
 Elizabeth Molloy
 Antoinette Negro
 Karen Shakira Kali (Annual Forum Chair)
 Allen Farrar
 Steven Greenspan

Professionals Associated with Common Ownership Communities:

Paul Nettleford
 Staci Gelfound (Vice Chair)
 Helen Whelan
 Mitchell Alkon
 Andrew Oxendine, Education Committee Chair
 Jeffrey R. Williams, Chair

Real Estate Sales and Development:

Maria Garcia
 Arthur Dubin
 Kevin Gannon

County Attorney's Office:

Walter Wilson, Esq. Associate County Attorney

Volunteer Panel Chairs:

Christopher Hitchens, Esq.
 John F. McCabe, Jr., Esq.
 Dinah Stevens, Esq.
 John Sample, Esq.
 Douglas Shontz, Esq.
 Julianne Dymowski, Esq.
 Corinne Rosen, Esq.
 Ursula Burgess, Esq.
 Greg Friedman, Esq.

Office of Consumer Protection:

Evan Johnson, Administrator
 Peter Drymalski, Investigator
 Nellie Miller, Investigator

Newsletter

Editors: Andrew Oxendine, Kevin Gannon
 Articles: Andrew Oxendine, Arthur Dubin, Peter Drymalski
 Mailing: Pam Prather, Lorena Bailey



Receive Emergency Alerts and Road Closures!!

Sign Up for Alert Montgomery!!!!

Montgomery County officials are urging residents to take advantage of the County's automated warning system—Alert Montgomery. In an emergency, staff from the County's Homeland Security Department can send text messages to email accounts, cell phones, pagers, Blackberrys and wireless PDAs. In addition to emergency alerts, residents can sign up for information about severe traffic delays and severe weather. Residents of Rockville, Gaithersburg and Takoma Park can also sign up for their municipal alert systems from the county website. Residents already signed up for their municipal alert systems will automatically receive the Montgomery County messages.

To sign up for the personal warning system, go to the County home page at www.montgomerycountymd.gov and click on Alert Montgomery. Residents can choose to have the emergency alerts, notifications and updates sent to one or more of their electronic communication devices. The service is free of charge, although residents may be charged by their wireless carriers to receive the text messages.

County residents are also urged to educate themselves about emergency planning and personal preparation. The County's "Plan to Be Safe" campaign includes a tri-fold "Plan 9" brochure with pictures and simple text listing the essential items (water, food, clothes, medications, flashlight, manual can opener, battery powered radio, hygiene items and first aid kit). Another component of the campaign is a brochure, "Everybody Ready," describing three steps to prepare: start a conversation, make a plan, and make a kit. The brochure is printed in nine languages, including Cambodian, Farsi, Spanish and Russian. For more information on the "Plan to Be Safe" campaign, go to www.montgomerycountymd.gov and click on the link for emergency preparedness or call 240-777-3038.

County Amends Chapter 10B, New Law Will Give Residents Majority on Commission

The County Council has approved, and County Executive Isiah Leggett has signed, changes to Chapter 10B of the Montgomery County Code, the "Common Ownership Communities Act." The changes will take effect on July 12, 2010.

A major change is to the makeup of the Commission. Currently, it is composed of 6 members who are residents, 6 who are professionals who work with associations (such as property managers), and 3 who are in the real estate business (property developers, builders, realtors). Under the new law, residents will make up 8 members, giving residents a majority. The remaining 7 members will be professionals from the management, legal, and real estate fields.

A second change is aimed at improving the Commission's ability to reach and to educate the members of the associations. The law requires all association to notify all their members, at least once a year, of the work that the Commission does and how they can contact the Commission.

The new law requires the Commission to create a special panel to decide motions to lift the automatic stay on an expedited basis, and clarifies the kinds of disputes that the Commission can decide.



COMMISSION ON COMMON OWNERSHIP COMMUNITIES

100 Maryland Avenue, Room 330

Rockville, Maryland 20850

www.montgomerycountymd.gov/ccoc

CCOC Elects New Officers

At its February meeting, the CCOC elected Staci Gelfound as Chairperson and Elizabeth Molloy as Vice-Chairperson. Ms. Gelfound, who has served as the CCOC vice-chairperson since 2009, replaces Jeffrey Williams, whose term on the CCOC is due to expire soon.