



CCOC Communicator

CCOC to Present Two Seminars on Community Association Leadership; First Seminar Will Be December 7, 2013



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The CCOC will offer two day-long classes in "The Essentials of Community Association Volunteer Leadership" for members of Montgomery County's common ownership communities. The speakers will be Ursula Burgess, Esq., of the law firm of Rees Broome, and Craig Wilson, President of Vanguard Management. Ms. Burgess is a Volunteer Panel Chair for the CCOC, and Mr. Wilson is a former CCOC Commissioner.



The topics will include:

- *the functions and legal basis of common ownership communities;

- *budget preparation;
- *adopting and enforcing rules;
- *maintaining the association's property;
- *risk control and insurance;
- *problem solving.

CCOC has contracted with the Wash-

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CCOC Orders Community Association's Board of Directors to Take Class in Management

A CCOC hearing panel recently found an association's Board of Directors of a small homeowners association (HOA) to have repeatedly violated its governing documents in recent years by failing to notify the membership of its meetings, by conducting its business outside of the regular meetings without the consent of all the Board members, and by failing to adopt its budget properly. The panel ordered the HOA to require at least 4 members of its Board of Directors to take at

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CCOC to Present Seminar December 7 (continued from page 1)

ington D.C. Chapter of the Community Associations Institute, which normally produces these seminars. This allows local residents to attend them for a nominal fee, which will include teaching materials and lunch.

The seminar will also include information on the rights of association members.

The first seminar will take place on **Saturday, December 7, 2013, from 9:00 am to 4:30pm in the Cafeteria of the Council Office Building in downtown Rockville** (see photo, left). *Attendance is limited to the first 50 people to sign up.*

The seminar will be repeated in early 2014 on a date to be announced later.

To sign up for the seminar, send a check for ten dollars (\$10.00) made out to “Montgomery County MD” and send it to **CCOC, 100 Maryland Avenue, Room 330, Rockville, MD 20850**. Include your name, address, phone or email, and the name of the community you live in. Or you may sign up in person at the CCOC office at the same address. Fees are not refundable.

Free parking is available in the lowest level of the garage at the rear of the Council Office Building, which is located at the corner of Monroe Street and Jefferson Street (Route 28).

CCOC Orders Board to Take Training (continued from page 1)

The board of directors “showed a complete lack of interest in or understanding of the governing documents or Maryland law governing community associations.”



least 4 hours of training in essential association management procedures.

In *Bruno v. Potowmack Preserve, Inc.*, CCOC No. 30-12, the homeowner complained that his HOA adopted annual assessments arbitrarily, failed to conduct audits, failed to properly adopt budgets, failed to give proper notice of its meetings and failed to conduct open meetings.

The hearing panel found that the HOA’s budgets did not comply with the requirements of State law, that the HOA was not giving 30 days’ advance notice of its annual meetings as required by its Bylaws, that it was conducting some business outside of its regular meetings without the unanimous consent of all board members, in violation of the Bylaws, and that it was not distributing its proposed budgets 30 days before the board voted on them.

The HOA admitted that it had not had an audit of its finances for many years but argued that no Bylaw or State law required an audit.

The hearing panel wrote that, while it did not believe the board had acted maliciously, it

nonetheless showed “a complete lack of interest in or understanding of the governing documents or Maryland law governing community associations.”

Therefore, the panel concluded that it was necessary not only to order specific corrections to the association’s operating procedures but to require the association to ensure that its board members were trained in proper management practices.

Significantly, the panel upheld the assessments levied by the board even though they created a reserve fund far larger than the association was likely to need in the coming year. The association’s reserve fund was intended to deal with a catastrophic event and the current budget reflected greater attention to detail and a meaningful attempt to establish a reasonable budget.

The panel also ordered the HOA to reimburse the homeowner for his costs in the CCOC action.

The CCOC staff kept the case open to monitor the association’s compliance until it received certificates demonstrating that 4 members of the board had completed the required training.

County Council Votes to Limit CCOC Authority to Award Legal Fees

Although the CCOC strongly opposed the proposal, the County Council voted last month to significantly restrict the CCOC's authority to award legal fees to prevailing parties in CCOC actions.

Under Chapter 10B of the County Code, the CCOC has long had the right to order the losing party to reimburse the winning party for its legal fees in a CCOC action if the governing documents of the association contained a provision requiring the losing party to do so.

For example, when the bylaws of an association gave the association the right to be reimbursed for its legal fees if it had to sue in order to enforce one of its rules, the association could ask the CCOC hearing panel to order the homeowner to pay its reasonable legal fees if the association won its case. The CCOC has recently done so in two recent cases by awarding fees averaging \$8,000.

In such cases, the CCOC hearing panel reviewed the documentation submitted by the association's lawyer and made its own decision as to what is a reasonable fee for such a case. Usually, the panels reduced the fee requested.

The problem faced by homeowners is that while the governing documents often provide for legal fees if the association sues to enforce those documents, they do not provide for legal fees to the homeowners when homeowners sue to enforce the documents. In the case of *Fiscina v. Devonshire East HOA*, CCOC #71-06, a homeowner represented by an attorney prevailed in a long and difficult case involving several hearings, in which she successfully proved widespread violations by the association's board of directors of the association's rules and of state law. The panel awarded her \$15,000 in legal fees; but on appeal the Circuit Court reversed the order on attorney fees. The Court held that the CCOC had no right to award legal fees because the governing documents did not state explicitly that the HOA must reimburse homeowners for their legal fees if the homeowners successfully sued the HOA to force it to comply with its own rules.

Earlier this year, Councilmember Leventhal introduced Bill 19-13, which would have leveled this playing field. He proposed that Chapter 10B should be amended to allow homeowners to recover their legal fees if they successfully sued their associations to make the association obey its own rules. The CCOC and the Community Associations Institute supported the bill if it were amended to allow *both* homeowners *and* associations to recover their legal fees from the losing party if they successfully sued to enforce the governing documents or state laws. A council committee voted to accept this amendment and to recommend it to the full Council.

However, between the time the committee favorably reported the bill with the amendment, and the time the full Council was to vote on it, Mr. Leventhal notified the Council that he no longer supported his original proposal or the agreed-upon amendment, and instead wished to level the playing field by preventing the CCOC from awarding legal fees to *either* party, even if the governing documents required it.

Mr. Leventhal explained that some associations used their potential rights to attorney fees to try to frighten homeowners into dropping their complaints without a hearing. He pointed out that associations have the right to represent themselves without lawyers in CCOC cases, and that the best way to level the playing field and to avoid intimidation was to prevent the associations from asking the CCOC to award them their legal fees.

The CCOC strongly opposed the new proposal (called "Option D"), and pointed out that the right of an association to demand reimbursement for its legal fees, if required by the governing documents, was an enforceable legal right, and that preventing the CCOC from ruling on fee requests in certain cases would not prevent associations from enforcing their contracts in the court system or by placing liens for such fees on the losing homeowner's property. The CCOC also argued that allowing homeowners the right to be reimbursed for their legal fees would encourage more homeowners to seek legal advice and assistance.

Several attorneys who specialize in community association law also opposed Option D, warning the Council that if Option D passed, they would simply file their cases in the Circuit Court instead of with the CCOC, where it would be much more difficult for homeowners to defend themselves and where the costs would likely be significantly higher.

Nonetheless, the County Council, on October 22, 2013, voted unanimously to amend the law to limit the CCOC's ability to award legal fees to a party only to those situations where the panel finds that the other party has caused unnecessary delay, unreasonably refused to participate in mediation, or filed a frivolous complaint.

The new law becomes effective February 5, 2014, and applies to all complaints filed after that date.

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“Trespass” Towing in Montgomery County

The right of common ownership communities to regulate parking on their streets and lots usually includes the right to tow vehicles which are parked in violation of the community’s rules. Such involuntary tows, or “trespass tows” as they are called in Montgomery County, can create anger and conflict between the association and the person whose vehicle has been removed. To minimize the risk of legal liability for the association, it’s important to understand the relevant laws and to comply with them.

What is trespass towing? It is the towing of a private vehicle from private property without the permission of the vehicle’s owner. Trespass tows are regulated by two different and sometimes conflicting laws: Chapter 30C of the Montgomery County Code and Section 21-10A of the Transportation Article of the Maryland Code.

Who is responsible for obeying the law? The law regulates both property owners—the condominium and homeowners association that own the parking spaces—and the towing companies. Property owners must have written contracts with their tow companies, and these must be kept on file by the owner and available for inspection by the Office of Consumer Protection (OCP), the County Police, and the owner of any vehicle that has been towed.

Towers are also regulated. Their rates are set by Executive Regulation and must be posted at the storage lot. All drivers must have valid licenses. The tower cannot charge any fee until he has actually attached the vehicle to his truck. If the tow is halted at that point, the tower can charge a “drop fee”, which is half the price of the tower’s hook-up” fee. All towed vehicles must be taken immediately to a storage lot in Montgomery County, which must be well lit. The tow company must be available “24/7” to release towed vehicles, and the tow company must accept either a credit card or a personal check (at the company’s option), or cash to redeem the vehicle.

Tows must be properly authorized. The property owner or its agent must authorize each tow. All agents must have written authority from the property owner to authorize a trespass tow. The agent cannot have a family or business relationship to the tow company, and the tow company cannot offer rebates to or otherwise pay the property owner for the right to tow. However, **authorization is not required** between the hours of 2 am and 9 am, if the vehicle is blocking a fire lane or access to the property or a building, or if the vehicle is parked in a handicapped parking space without valid handicapped plates or permits. Vehicles with expired license plates cannot be towed for 72 hours after a written violation notice has been posted on the vehicle.

The police must be notified of a trespass tow. The property owner or its agent must notify the County or the local police of the tow before the vehicle is taken from the property, and they must keep a copy of the tow slip or other record of the tow, and of the authorization given to the tow company for the tow. These records must be available for inspection during ordinary business hours by OCP, the County Police, or the vehicle’s owner.



Proper signage is essential to a valid tow. Signs must be installed at least 24 hours before towing can begin. Signs must be at least 24 inches high and 30 inches wide. Signs must be located at every entrance to the lot and there must be at least 1 sign for every 7500 square feet of parking space. The signs must be permanently posted and easily readable from each parking area and vehicle entrance at all times. Finally, the signs must summarize all the parking restrictions that will be enforced by towing, including the times and areas regulated.

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One-Stop Property Information Center

Most homeowners and association representatives are not aware of a very useful tool offered by the County's Department of Housing and Community Affairs (DHCA): the "eProperty Data Mining Application."

The Property Data Mining website contains information on:

- *the property's tax number and property lines;
- *whether the property is licensed as a rental, and if it is, the license number and address of the owner/agent;
- *whether and Housing Code Enforcement complaints were filed and how they were resolved;
- *whether any Landlord-Tenant complaints were filed and how they were resolved;
- *whether the property is an MPDU unit; and
- *whether any complaints about the property or its residents were made to the Police.

The website is available through the main DHCA website. Go to www.montgomerycountymd.gov/dhca, and on the left side of the page, click on "Resources." This will in

turn give you a link to "eProperty Data Mining."

Or, type in this address:

http://www6.montgomerycountymd.gov/apps/DHCA/pdm_online/mobile/index.html

The website is an easy way to track down absentee owners, to find out the status of complaints about unsafe or unsanitary conditions on a lot or unit, or to assist in the enforcement of association rules regulating rentals. There is no charge for this service.



Tips for Associations When Filing CCOC Complaints

The CCOC prides itself on keeping its procedures simple and easy to use, but there are certain basic pieces of information that the CCOC must have if it is to understand and rule upon a complaint. This is especially true if the homeowner does not answer the complaint and the CCOC uses its default judgment procedures to decide the case without a hearing, simply on the basis of what is in the complaint file. Unfortunately, even experienced managers or board members sometimes fail to include crucial information, which causes a delay in the progress of their case or can even cause it to be dismissed for lack of proof.

Essential information includes the following:

- *the names and addresses of *all* owners of the unit;
- *a summary of the history of the complaint;
- *photographs of the problem/architectural violation;
- *copies of the governing documents;
- *the specific rules that were violated;
- *copies of violation notices;
- *copies of the notice of the board hearing on the

violation;

- *a copy of the notice of the board's decision on the violation that was sent to the member.

In addition, complaints must be signed by an officer of the board of directors, not by a manager.

The law, and CCOC policy, require that the association show that it gave due process to the member and that it followed its own rules for handling violations. This is why the CCOC needs to have proof of what the rules are, that there was a violation, and whether the association gave notice of the violations, notice of the member's right to a hearing, and notice of the association's final decision. In addition, all final decisions on a violation *must* contain a notice that the member can appeal the association's decision by filing a complaint with the CCOC. (The association may, but is not required, to, give the CCOC's email address or web page address as part of the notice.)

The association must show that it actually made a decision on the violation. Sometimes it appears that the board of directors simply delegates this important function to its manager. That is not an acceptable practice and can result in the dismissal of the complaint.

Useful County Phone Numbers for Common Ownership Communities

Most County Government agencies may now be reached by phone by dialing "311" during ordinary business hours. The operator will then refer the caller to the proper agency. This service includes non-emergency Police services such as reporting abandoned cars and community outreach, Libraries, the Circuit Court, Landlord-Tenant Affairs, Housing Code Enforcement, the Office of the County Executive, Cable TV regulation, the Department of Permitting Services and the Department of Transportation.

Some County agencies may be called directly or through 311, including:

Office of Consumer Protection	240-777-3636	(email: ConsumerProtection@montgomerycountymd.gov)
CCOC	240-777-3766	(email: ccoc@montgomerycountymd.gov)
County Council	240-777-7900	
Parks & Planning Commission		
Planning Board	301-495-4605	
Parks Headquarters	301-495-2595	

City of Rockville: residents should still call their City agencies directly.

Emergency services: 911

For more information on the 311 system or to search for agencies by computer, go to:

[Http://www3.montgomerycountymd.gov/331/Home.asp](http://www3.montgomerycountymd.gov/331/Home.asp)

FY 2013 Commission Participants (as of November, 2013)

Residents from Condominiums/Homeowner Associations:

Elizabeth Molloy, Chairperson

Jim Coyle

Rand Fishbein

Marietta Ethier

Bruce Fonoroff

Elayne Kabakoff

David Weinstein

Ken Zajic

Professionals Associated with Common Ownership Communities:

Arthur Dubin, Vice-chairperson

Terry Cromwell

Helen Whelan

Mitchell Alkon

Richard Brandes

Aimee Winegar

Thomas Stone

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.

Charles Fleischer, Esq.

Nicole Williams, Esq.

Rachel Browder, Esq.

Kevin Kernan, Esq.

Commission Staff

Ralph Vines, Administrator

Peter Drymalski, Deputy Assistant Editor

Trespass Towing in Montgomery County

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Here are some examples of good and bad signs:



Find the tow sign!



Not the right size, not permanent, not readily visible from all spaces affected.



Much better!

What is the association’s liability for violation of the law? Both the association and its tow company are liable for violation of any duty imposed by law for any actual damages to the vehicle towed during the tow or its storage which are caused by a lack of reasonable care by the tow company, the property owner or its agent. In addition, the property owner and its tow company are liable to the vehicle owner for **three times** the amount of the towing, storage and release fees charged to the vehicle owner for a tow in violation of the law. If the violation involved County law, the OCP can issue a civil citation of up to \$500.00; the County Police can issue a traffic citation for violations of the State law.

For more information, contact OCP’s tow specialist, Doug Numbers at 240-777-3636, by email at doug.numbers@montgomerycountymd.gov, or visit the OCP website: www.montgomerycountymd.gov/consumer.

We thank Doug Numbers, OCP Investigator, for the contents and photographs of this article.

Remember to Send Your Annual Notices

We remind all common ownership communities in Montgomery County that they must send a notice to all their members at least once a year to inform the members of the CCOC and the services it provides. No particular form or mailing is required: for example, the notice can be part of a newsletter or included in the annual meeting announcement. CCOC offers two sample formats for this purpose which associations can adapt to their needs—a long form and a short form. Both are available in Word format by emailing us at ccoc@montgomerycountymd.gov.



I want YOU to send your Annual CCOC Notice!

MONTGOMERY COUNTY GOVERNMENT

Commission on Common Ownership Communities
 100 Maryland Avenue, Room 330
 Rockville, Maryland 20850
www.montgomerycountymd.gov/ccoc

This side for mailing.

“Let Us Cross the River and Rest Under the Shade of the Trees.”



General Thomas (“Stonewall”) Jackson (left) died 150 years ago of complications from wounds he received in the battle of Chancellorsville. His dying words were, “let us cross the river and rest under the shade of the trees.” The phrase movingly conveys a sense of solace and peace.

Trees are deeply important to us. They provide not only shelter and calm, but cooling shade, fresh air, homes for birds and animals, windbreaks, water conservation and protection from erosion.

Our communities are fortunate to live in a jurisdiction that promotes tree planting. Not one, but two different agencies offer free trees or discounts for the purchase of trees.

Maryland National Capital Parks & Planning Commission (MNCPPC) will provide free trees, free planting, and free tree care for two years under its “Shades of Green” pilot program. The offer covers parts of Silver Spring, Montgomery Hills, and downtown Bethesda, Wheaton and Friendship Heights. For more information, visit: http://www.montgomeryplanning.org/environment/shades_of_green.shtm.

MNCPPC also offers a “Leaves for Neighborhoods” program,

under which it will provide free \$25 coupons to be used to defray the cost of purchasing certain trees with a retail value of \$75 or more at selected nurseries. For more information on this program, go to: <http://www6.montgomerycountymd.gov/content/dep/downloads/Rainscapes/MocoTreeCanopy.pdf>.

The County’s Department of Environmental Protection (DEP) has a “Rainscape” program which offers rebates to defray the cost of installing improvements to reduce storm water runoff. Among these is a rebate of up to \$200 per tree. The tree must shade or cover an impervious area. To get the details, go to: http://www.montgomeryplanning.org/environment/shades_of_green.shtm.

Community associations are eligible for these programs. By planting trees, associations can improve the beauty and value of their properties and reduce the cost of landscape maintenance.

