



# Montgomery County Government

## A Description and Evaluation of the Common Ownership Communities Legislation (Code Chapter 10B)

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## EXECUTIVE SUMMARY

In February, 1990, the County Council enacted Bill 44-89, which created the Commission on Common Ownership Communities (COCOC) and the Office of Common Ownership Communities (OCOC). Council's creation of a Commission and Office were in response to a September 1989 report of a Council-appointed Homeowners' Association (HOA) Task Force. Among the various duties assigned to the Commission and Office was the operation of a resolution process for binding settlement of disputes among members of common ownership community associations, and between members and governing bodies of those associations. Earlier, in October 1983, again in response to a previous HOA Task Force report, the Council enacted Bill 62-83, which established within the County's Office of Consumer Affairs, (OCA), a Dispute Resolution Bureau to provide common ownership communities with free voluntary mediation services and mandatory, nonbinding arbitration services.

When enacting Bill 44-89, the Council transferred the dispute resolution services from OCA to the newly created Commission and Office. In addition, the Council made arbitration before a three-member Commission hearing panel mandatory, and the panel's decisions and orders, binding. To fund the dispute resolution and other services of the Commission and Office, Bill 44-89 directed the annual registration of all common ownership communities, and authorized the County Executive to assess a per unit fee for the registration.

In the two years that the Commission and Office have been in operation (the effective date of Bill 44-89 was January 1, 1991, and the first date for filing disputes with the Commission, was July 1, 1991), some Councilmembers have raised questions concerning the size of the annual registration fee and the need for a Commission. In November, 1992, when approving the Executive Regulation setting the FY93 registration fee at \$1.50 per unit, the Council directed the Office of Legislative Oversight (OLO) to evaluate the Common Ownership Communities law (Code Chapter 10B), and report on its findings prior to Council action on the Executive's FY94 recommended operating budget. This report complies with the Council's directive.

The major conclusions of the OLO report are:

The Common Ownership Communities legislation (Code Chapter 10B) should be continued.

Certain sections of the law should be amended so as to improve the operational efficiency and economy of the Commission and Office.

The method of funding the Commission and Office should be changed to eliminate the annual registration fee, substituting instead a combination of service fees and funds appropriated from general revenues.

## **I. AUTHORITY, SCOPE, METHODOLOGY, AND ACKNOWLEDGMENT**

### **A. Authority**

A November 10, 1992, County Council directive to the Office of Legislative Oversight to evaluate Montgomery County Code Chapter 10B, Common Ownership Communities (COC).

### **B. Scope and Organization of the Report**

This report examines the legislative history of Bill 44-89 (codified as Code Chapter 10B) which created the Commission on Common Ownership Communities (COCOC) and the Office of Common Ownership Communities (OCOC). The examination includes a description of the composition and duties of the Commission and Office of Common Ownership Communities, with emphasis on the dispute resolution process transferred to the COCOC from the Office of Consumer Affairs. Finally, the report proposes changes to the law and the dispute resolution process to reduce the operating costs of the Commission and Office, and improve the efficiency of operations.

The report is organized as follows:

- Chapter II: Discusses the background, the legislative history, and the funding history of Code Chapter 10B.
- Chapter III: Examines the purpose of the legislation and the current organization and operational provisions of the COC law, with emphasis on the dispute resolution process.
- Chapter IV: An evaluation of compliance with the intent and purpose of the COC law, the duties and responsibilities of the Commission and Office, the efficiency of the dispute resolution process, and the funding to support the Commission's activities. Also presented are a number of changes to the law.
- Chapters V and VI: Presents of the report's conclusions and recommendations.

### **C. Methodology**

This evaluation was conducted during February and March, 1993, using an evaluation design that included a variety of fact-finding and research methods:

- Review of reports of the first Homeowners' Association (HOA) Task Force of 1983, and the second HOA Task Force of 1989.
- Review of the legislative history of Bill 44-89, and of earlier legislation (Bill 62-83), which established a dispute resolution process for common ownership communities in the Office of Consumer Affairs.
- Review of available policies, operating procedures and records of the Common Ownership Communities' Commission and Office.

- An examination of the current organization, management, operations, and funding of the Commission on, and Office of, Common Ownership Communities.
- Interviews with over 40 individuals in the following categories:
  - Present and former members of the Commission;
  - Staff assigned to the Office of Common Ownership Communities;
  - Volunteer hearing panel chairs;
  - A sampling of complainants, respondents, legal counsel, and witnesses involved in dispute resolution cases;
  - A sampling of attorneys, professional managers of community associations, current and former community association board members, and condominium and home association unit owners; and
  - Staff of the Department of Housing and Community Development, the Office of the County Attorney, and other Executive Branch agencies that are associated with the Commission on Common Ownership Communities.
- Analysis of 118 dispute resolution case files that have been received between July 1991, the month the Commission began accepting dispute complaints, and February 1993.

#### **D. Acknowledgment**

The Office of Legislative Oversight acknowledges the full and courteous support from the members and office staff of the Commission on Common Ownership Communities (COCOC), and the many County citizens who give their personal and professional opinion on common ownership community associations and COCOC. Interviews were candid and information was forthcoming. The reader should keep in mind that the conclusions and recommendations of this report solely represent the views of the OLO author.

## **II. BACKGROUND AND LEGISLATIVE HISTORY**

### **A. Background**

1. Early Council attention to homeowners' associations. During the two decades preceding the 1990s, the County witnessed a period of rapid development and growth. Between 1970 and 1990, the population of the County grew by almost 50 percent from 522,800 to over 757,000; while in the same period, the number of households grew by 75 percent from 161,380 to 282,230. Most of the new housing units that were constructed to accommodate this growth were developed as common ownership communities. That is, the communities were planned, developed and marketed so that areas common to the unit owners were

controlled and regulated by internal covenants, declarations, and regulations administered by unit owner-elected condominium, homeowners' and cooperative association governing bodies.

The State recognized early that this form of planned community development introduced a whole new range of opportunities and problems that required specific legislation. In the 1950s, the State enacted The Maryland Condominium Act (Annotated Code of Maryland, Title 11, Real Property Article). However, it was not until 1987 that the State enacted The Maryland Homeowners Association Act (Annotated Code of Maryland, Title 11B, Real Property Article).

The first County legislative action relating to these new common ownership community associations dates from the early 1980s. In April 1982, the County Council enacted Bill 76-81, Homeowners' Associations, requiring open meetings and open voting procedures within community associations. However, there continued to be a demand for more County government involvement in these new and increasing associations. Accordingly, in November 1982, the Council appointed a Homeowners' Association (HOA) Task Force to study a broad range of issues and problems relating to the three types of common ownership communities.

2. 1983 Homeowners' Association (HOA) Task Force. The HOA Task Force divided itself into two groups. One group studied a variety of issues: reimbursement for road maintenance, reserve funds, real property liens, etc. The other group focused on a single, but highly troublesome issue: establishment of an alternate dispute resolution mechanism to settle the numerous disagreements growing out of funding and administration of the associations' common areas, and enforcement of the associations' conveyances, declarations, rules and regulations.

3. Council legislation resulting from the work of the HOA Task Force. In July 1983, the HOA Task Force issued a report which included recommended draft legislation establishing an alternative dispute resolution mechanism. In October 1983, the Council introduced Bill 62-83, Alternate Dispute Resolution Methods, which incorporated many of the provisions the Task Force's recommended. After a year of debate, and several draft versions, the Council enacted Bill 62-83 with an effective date of October 7, 1984. The Bill was subsequently codified as Article III, Chapter 24B, Homeowners' Associations, of the Montgomery County Code.

Two companion bills were also introduced during the same period, Bill 57-83, which dealt with reimbursements to those community associations that provided required maintenance for association roadways; and Bill 58-83, which gave community associations a role in the building permit process. These two companion bills were eventually enacted by the Council in July 1985 and November 1986, respectively.\*

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\* Bill 57-83, concerning road maintenance reimbursement, is codified as Code Section 24B-2, Program of Support for Roadway Maintenance, and is an operating program. However, Bill 58-83, codified as Code Section 8-24B, Permits for Property Within Homeowner's Associations, Municipal Corporations, or Special Taxing Districts, has as of this date not been implemented.

The dispute resolution mechanisms created in Bill 62-83 were voluntary mediation and mandatory, but nonbinding arbitration. The agency created to hear the disputes was the Dispute Resolution Bureau, located within the Office of Consumer Affairs (OCA). The Dispute Resolution Bureau began accepting disputes in October 1984.

4. Second Homeowners' Association Task Force. In late 1987, the Council established another task force to study problems of homeowners' associations (Council Resolution No. 11-579, adopted December 8, 1987). As was the case with the previous homeowners' association task force, the Council specifically requested the 1987 HOA Task Force to research and analyze ways of improving the process for responding to disputes. To address this issue, the Task Force established a Dispute Resolution and Government Agencies Subcommittee.

In May 1988, the Chairperson of the HOA Task Force requested the Council to revise the work program of the Office of Legislative Oversight (OLO) to provide for a program evaluation of the Dispute Resolution Bureau. The Council acceded to the request and amended the OLO work program to direct a program evaluation of the Dispute Resolution Bureau.

The OLO evaluation (OLO Report 88-5, September 1988) contained a number of recommendations, to include legislative amendments to improve the dispute resolution process.

The HOA Task Force endorsed the OLO report recommendations, adding even more far-reaching changes. The Task Force proposed that the Council create by legislation a separate Commission on Common Ownership Communities, with supporting staff in an Office of Common Ownership Communities, which would concentrate on all matters relating to the three community housing associations: condominiums, homeowners' and cooperative. The Task Force also proposed that responsibility for dispute resolution and overseeing compliance with open conduct by association governing boards be transferred from the Office of Consumer Affairs to the proposed Commission on Common Ownership Communities.

#### **B. Legislative History**

The County Council introduced legislation on October 3, 1989 that included the major recommendations of the second Homeowners' Association Task Force. The major innovations proposed in the legislation, Bill 44-89, were:

- Created a Commission on Common Ownership Communities and an Office of Common Ownership Communities;
- Directed the Commission to establish and operate an alternate resolution process for the binding settlement of disputes among members of common ownership community associations and between members and the governing bodies of the associations;
- Required common ownership communities to register annually with the Commission; and

- Authorized the County Executive to set fees for the annual registration and for other services of the Commission.

Over the next four months the Bill went through a public hearing, two worksessions, and seven drafts. The provisions of the Bill were debated in great detail by the Council's Governmental Structure, Automation, and Regulation (GSA) Committee. The discussions centered around three major issues: the need for a Commission (should the government have a role in what was essentially a matter between private parties?); the dispute resolution process (should disputes brought before the Commission be given a binding administrative hearing?); and funding of the Commission (should the Commission be funded from general revenues or from a per unit annual charge levied against common ownership communities to register with the County?).

Bill 44-89 was enacted on February 27, 1990, to be effective on January 1, 1991. By the final reading of the Bill, the question of whether the County should have a role in dispute resolution was no longer a major issue. However, the other two issues debated in the GSA Committee: the binding nature of the dispute resolution process and the method of funding the Commission, and a new issue concerning the standard of review by the courts, continued to be debated by the Council.

When the Council eventually enacted the Bill by a vote of six to one, these three issues of concern were settled as follows:

- The dispute resolution process would be binding on the parties;
- The Executive could fund the Commission's services, primarily dispute resolution, technical assistance and educational programs, by a per unit charge to common ownership community associations to initially register with the Commission, and to annually renew the registration; and
- The courts could hear a civil action de novo if a Commission hearing panel assigned to a dispute had not issued a formal decision; and must hear an appeal of a decision of a Commission hearing panel on the record.

### **C. Funding History**

The method of funding the Commission continued to be debated after the Bill was enacted. In March 1991, the Executive submitted two actions to the newly elected Council relating to funding. The first was a supplemental appropriation for the Department of Housing and Community Development for \$82,880 to staff and fund the operation of the Office of Common Ownership Communities (OCOC)\*. The other was an Executive Regulation to establish an initial per unit registration fee for common ownership communities.

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\* In addition to creating the Commission of Common Ownership Communities (COCOC), the legislation also created an Office of Common Ownership Communities to support the Commission. The Office was established in the Department of Housing and Community Development (DHCD), when the dispute resolution function and the responsibility for oversight of associations' open conduct requirements were transferred out of the Office of Consumer Affairs.)

The Council approved the supplemental appropriation and the registration fee, but not without considerable debate, especially on the registration fee. It must be remembered that the legislation and the use of a registration fee to fund the Commission's activities were enacted by the previous Council. The action of the supplemental appropriation and the registration fee was now before a new and enlarged County Council, some of whose members questioned the need for a Commission.

The vote on Executive Resolution No. 56-90M, which assessed a registration fee of \$3.00 per unit for the 18-month period from January 1, 1991, through June 30, 1992, (\$1.00 for the last half of FY91 and \$2.00 for FY92), was approved with one Councilmember voting in the negative. In approving the registration fee, the Council also approved a recommendation of the Council's Management and Fiscal Policy Committee that the Commission document its operating costs during this 18-month period so that the Council would have data to compare the costs of the operation with the fees charged prior to June 30, 1992 when Executive Regulation No. 56-90M was to sunset.

The Council next debated the operating budget of the Office of Common Ownership Communities (OCOC) in the spring of 1992, during Council review of the Executive's recommended FY93 budget. The Executive's budget recommended continuation of the \$2.00 per unit per year registration fee. After extensive debate during which a motion to contract out the whole operation failed, the Council approved a reduced operating budget for OCOC and a reduced annual per unit registration fee of \$1.50. Included in the approved motion was the stipulation that the Office of Legislative Oversight (OLO) evaluate the "long-term questions" and issues surrounding the Commission on Common Ownership Communities.

In the summer of 1992, the Council reviewed and "reluctantly" accepted a recommendation from OLO to evaluate the Common Ownership Communities (COC) law in 1993, so as to be completed and available to the Council in early 1994 when it reviewed the Executive's FY95 operating budget. However, when the Council received Executive Regulation No. 56-92, establishing the Council-directed FY93 registration fee of \$1.50, Councilmembers again challenged the whole concept of the Commission and the government's involvement in common ownership communities. After much debate the Council approved the Executive Regulation by a vote of five to two, with one Councilmember abstaining and another Councilmember temporarily absent, on the condition that OLO accelerates its evaluation of the COC law and make it available to the Council when it considers the FY94 operating budget.

Those who continued to oppose the County's authority to levy a per unit annual registration fee on common ownership communities took their case to the courts. The argument presented against the registration fee was that it was really a tax which the County had no authority to impose. On January 2, 1992, the Circuit Court granted the County's motion for summary judgment and affirmed the County's authority to impose the fee. The plaintiffs appealed the decision to the Maryland Court of Special Appeals, which also decided in favor of the County. As of this writing, the plaintiffs' petition for review to the Maryland Court of Appeals is still pending.

### III. DESCRIPTION OF THE COMMON OWNERSHIP COMMUNITIES LEGISLATION

#### A. Overview

The Common Ownership Communities legislation (County Code Chapter 10B) is divided into three articles: Article 1 includes the purpose of the legislation, definitions, and the composition and duties of the Commission on Common Ownership Communities (COCOC) and the Office of Common Ownership Communities (OCOC); Article 2 covers the dispute resolution process; and Article 3 addresses the open conduct provisions of the legislation (e.g. association open meetings, voting procedures, and budgets).

This report does not discuss the entire law. Rather it concentrates on the following issues which the Council has repeatedly identified as critical in forming a judgment on the continued existence of the Commission on the Common Ownership Community:

- the purpose of the legislation;
- the composition and duties of the Commission;
- the duties, staffing, and funding of the Office of Common Ownership Communities; and
- the entire dispute resolution process.

At Exhibit A is a copy of Chapter 10B, Montgomery County Code.

#### B. Purpose of the Legislation

During consideration of Bill 44-89, the question of the role of County government in the affairs of the common ownership communities was a recurring topic of discussion. Those supporting a governmental role cited the fact that the State legislature had recognized the uniqueness of these real estate arrangements, and had enacted legislation regulating both condominiums and homeowners' associations. Also, supporters cited the reports of the two homeowners' association task forces; and the then current legislation directing the County government's Office of Consumer Affairs to provide dispute resolution services and oversee the open conduct requirements of association governing boards. Those opposed to the Bill argued that the government had no business involving itself in private matters internal to community associations. Opponents cited the fact that many associations, especially the larger umbrella associations, had established internal processes to settle disputes.

As discussed above, the argument for government involvement prevailed, and the Council enacted the Bill by a six to one vote. Written into the legislation was the Council finding that a Commission on Common Ownership Communities was necessary to advise the Council, the Executive and offices of the County government on ways to:

- Ensure the proper operation of the associations;
- Promote education, public awareness, and association membership understanding of the rights and obligations of living in an association;
- Reduce disputes and encourage informal resolution of those disputes that do arise;
- Assist and oversee the development of coordinated community and government policies, programs, and services which support the communities; and
- Prevent potential public financial liability for repair or replacement of community facilities.

### **C. The Commission on Common Ownership Communities (COCOC)**

1. Composition. The legislation created a Commission on Common Ownership Communities (COCOC), composed of 15 voting members representing three groups: residents, housing development and real estate, and professions associated with common ownership communities (COC). Also created were six ex-officio nonvoting members representing the County Council and various County government departments with responsibilities relating to COC. The voting members are appointed by the Executive and confirmed by the Council to three-year terms without compensation. The Commission elects its chair and vice chair.

2. Duties. In addition to the normal duties assigned County commissions (e.g. adopting rules and procedures to carry out its responsibilities, maintain minutes and records, and cooperate with the Executive and Council), the Commission is charged with two specific duties:

- Hold public and private meetings, conferences, and public hearings to examine conditions in common ownership communities which may result in unmet community, resident, or public needs; and
- Advise citizens, Council, Executive, and County, State and Federal agencies on matters involving COC, and recommend programs, procedures and legislation.

### **D. The Office of Common Ownership Communities (OCOC)**

1. Location. Support for the Commission was assigned to an Office of Common Ownership Communities (OCOC), established in the Department of Housing and Community Development.

2. Duties. In consultation with the Commission, OCOC was assigned a wide array of duties, all of which can be organized into three main categories:

- Education, Information, and Referral. Research and disseminate pertinent data and educational materials about programs and activities to assist COC; conduct educational programs, meetings, and conferences to promote the operation of COC; and develop and maintain an information and referral system for all services in the County relating directly to COC.

- Technical Assistance and Documents Preparation. Provide technical assistance to association governing bodies on matters such as transition, elections, rules adoption and enforcement, and stormwater management services; maintain a master roster of COC, their leadership and their professional management companies; develop model documents for use by developers and associations; develop and maintain an operations manual to serve as a guide to common ownership community leadership; and advise association managers on changes in laws and regulations affecting COC.

- Dispute Resolution. Establish and operate a dispute resolution service to include both mediation services and administrative hearings.

3. Budget and Staffing. For its first six months of operations (the second half of FY91), the Office of Common Ownership Communities (OCOC) had no assigned staff,\* but did have a budget of \$82,880, appropriated in April 1991 as a supplemental FY91 appropriation. Although the legislation creating the Commission was effective January 1, 1991, the Council concurred with an arrangement that the Commission would come into existence on that day, but the Commission would not accept any complaints for dispute resolution until July 1, 1991. While this gave the Department of Housing and Community Development (DHCD) six months to organize the Commission and Office, it also created a six-month hiatus when disputes were no longer accepted by the Dispute Resolution Bureau of the Office of Consumer Affairs and when the Commission started to accept them.

4. Operations. Beginning in late FY91, OCOC began registering common ownership communities and collecting the \$3.00 per unit registration fee. To guarantee the dedicated nature of these revenues, a Common Ownership Communities Special Revenue Fund was created. Drawing immediately from the supplemental appropriation, OCOC purchased the usual office furnishings and supplies. Also, to accommodate registering and maintaining records on an estimated 100,000 housing units, and administering the dispute resolution process, the OCOC made capital expenditures in excess of \$37,000 for hardware and software automation and reproduction equipment.

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\* Operation of the OCOC for the last half of FY91 (January - June, 1991), was provided by staff from the Office of Landlord-Tenant Affairs. Beginning in FY92 (July 1991), the OCOC was authorized two full time positions and a total of 2.5 workyears.

At Table 1 (next page) is a detailed breakdown of revenues and expenditures for the three fiscal years that the COC law has been in effect, and the Executive's recommended operating budget for FY94. Also, Table 1 reflects the personnel complement of the Office for the same periods. The two full time position shown for FY92 and FY93 are not totally dedicated to activities relating to the Office of Common Ownership Communities (OCOC). The Program Manager II and Administrative Aide assigned to OCOC also perform duties for the Office of Landlord-Tenant Affairs (OLTA). Specifically, besides being responsible for the legislative duties associated with support of the COCOC (registering common ownership communities, education and technical assistance, and administering the dispute resolution program), the two full time OCOC personnel are responsible for OLTA's multi-family, single-family, and condo/coop licensing programs.

## **E. Dispute Resolution**

### **1. Background and History**

The major achievement of the First Homeowners' Task Force was Council's enactment of Bill 62-83, which created a forum for resolving disputes among residents and between residents and community associations' governing boards. The forum was administrative and was an alternative to costly court litigation. Located in the Office of Consumer Affairs, the Dispute Resolution Bureau attempted to resolve disputes by voluntary, informal mediation; and failing mediation, compulsory, nonbinding arbitration. Bill 62-83 also permitted the Bureau to provide a voluntary, binding arbitration service.\*

When the Second Homeowners' Association Task Force issued its report in September 1989, it recommended that the Council enact legislation to move the dispute resolution function from the Office of Consumer Affairs to a new Commission for Common Ownership Communities. In addition to moving the function, the Task Force recommended that the dispute resolution process be made binding on the parties, and that dispute resolution decisions be enforced by the County. As discussed earlier in Chapter II, after considerable debate, the Council enacted Bill 44-89 that included Article 2: Dispute Resolution. The Bill has been codified as Code Chapter 10B, Common Ownership Communities.

### **2. Legislative Provisions**

a) Definition of a dispute. The legislation defines a dispute as a disagreement between two or more unit owners, occupants, or association governing bodies that involves:

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\* As noted earlier in the report, the State has enacted two acts that relate to common ownership communities: Title 11, The Maryland Condominiums Act, and Title 11B, The Homeowners Associations Act. Neither title includes provisions relating to alternate methods of resolving disputes among residents of their respective type of community associations. However, Sec. 11-113 of The Maryland Condominium Act does require condominium associations to establish and follow a specific procedure prior to imposing a sanction on a unit owner, and to establish a dispute settlement mechanism for processing complaints.

Table 1

**Common Ownership Communities Special Revenue Fund**  
**Revenues, Expenditures and Personnel Complement Since Established**  
**FY91 - FY94**

<b><u>Revenues</u></b>	FY91 (Actual)	FY92 (Actual)	FY93 (Bud)	FY93 (Est <sup>a</sup> )	FY94 (Bud)
Fee Income <sup>b)</sup>	\$ 0	\$230,476	\$150,000	\$124,500	\$200,000
Investment Income	0	1,433	7,470	3,000	2,000
Miscellaneous <sup>c)</sup>	0	1,075	0	0	0
Prior Year Undesig Reserves	0	(41,630)	60,790	46,243	12,860
Total Revenue/Available Funds	82,880 <sup>d)</sup>	191,354	218,260	173,743	214,860
<b><u>Expenditures</u></b>					
Personnel Expense	\$( 0)	(104,305)	(114,430)	(116,860)	(159,490)
Operating Expense	(17,676)	( 27,523)	( 58,220)	( 30,820)	( 19,820)
Capital Outlay <sup>e)</sup>	(23,954)	( 13,283)	0	0	0
Total Operating Budget	41,630	145,111	172,650	147,680	179,310
Transfer to General Fund <sup>f)</sup>	0		12,950	13,201	20,490
Total Expenditures	\$ 41,630	\$145,111	\$185,600	\$160,881	\$199,800
Personnel Complement					
Full Time Positions	0	2	2	2	3
Workyears	0	2.5	2.5	2.5	3.5

Notes:

- a) FY93 estimate as of February 1993.
- b) Second half FY91 and FY92 (Actual): \$3.00/unit for approximately 76,825 units.  
FY93 (Actual): \$1.50/unit for an estimated 100,000 units.  
FY94 (Budget): \$2.00/unit for an estimated 100,000 units.
- c) Transcripts, reproduction, etc.
- d) Supplemental appropriation: Council Resolution No. 12-181, adopted 04/23/91.
- e) Capital outlay expenditures for FY91 and FY92 of \$37,230: Upgrade Wang System - 13,000; three PC's - \$17,870; copier - \$6,360.
- f) Indirect cost charges for administrative support of special funds: personnel, finance, County Attorney, etc.

Source: OMB - Common Ownership Communities Fund Analyses, 2/3/93;  
Executive's Recommended FY94 Operating Budget

- The authority of a governing body, under any law or association document, that: 1) requires a person to take any action, or not to take any action, involving a unit; 2) requires any person to pay a fee, fine or assessment; 3) spends association funds; or 4) alters or adds to a common area or element.

- The failure of a governing body, when required by law or an association document, to: 1) properly conduct an election; 2) give adequate notice of a meeting or other action; 3) properly conduct a meeting; 4) properly adopt a budget or rule; 5) maintain or audit books and records; or 6) allow inspection of books and records.

The law further specifies that a dispute does not include any disagreement that only involves:

- Title to any unit or any common area or element;
- The percentage interest or vote allocable to a unit;
- The interpretation or enforcement of any warranty;
- The collection of an assessment validly levied against a party; or
- The judgment or discretion of a governing body in taking or deciding not to take any legally authorized action.

b) Filing a dispute. Prior to filing a dispute with the Commission, the law requires that the complainant first make a good faith attempt to exhaust all remedies provided in his/her association's documents. However, 60 days after notifying the association, the complainant can file the complaint with the Commission, and the association is prohibited by law from taking any action to enforce or implement any decision directly relating to the complaint (except to file a civil action in court)\* until the dispute resolution process is completed.

Before the Commission can accept a complaint, the geographical location of the common ownership community must be determined, because the provisions of the Common Ownership Communities (COC) law do not apply in all jurisdictions in the County. Specifically, the following jurisdictions have not adopted Chapter 10B: Chevy Chase Village; the towns of Chevy Chase, Garrett Park, Kensington, Laytonsville, Somerset, and Washington Grove; and the cities of Gaithersburg and Rockville.

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\* Code Section 10B-9(f) permits any party to file a civil action arising out of an association document or a law regulating the association's powers and procedures at any time. The court may stay all proceedings for at least 90 days after the court is notified that the dispute has been filed with the Commission so that a hearing may be completed. If the Commission's hearing panel does not issue a decision before the court holds a trial of the action, the court may hear the case de novo.

c) Mediation. A continuing effort is made by OCOC staff to mediate the dispute. At any time any party to the dispute may request mediation, and the Commission must provide a mediator. Any settlement of a dispute by mediation agreed to by the parties is binding, with the force and effect of a contract. However, if any of the parties refuses to attend a mediation session, or if the mediation effort does not successfully resolve the dispute within ten days, the Commission must schedule a formal hearing of the dispute.

d) Dispute resolution process. Once a complaint has been filed with the Commission, the other party or parties notified, any internal association resolution attempted, and it has been verified that the association falls within the geographical jurisdiction of the Commission, the complaint is accepted and the dispute resolution process commences.

The schematic on the next page diagrams the current dispute resolution process under Code Chapter 10B, Common Ownership Communities, and Code Chapter 2A, Administrative Procedures Act. The following are highlights of the steps in the dispute resolution process.

- Step A - Filing a Complaint: The staff of the Office of Common Ownership Communities (OCOC) is responsible for receiving and processing all requests for dispute resolution. Although the law permits the Executive to assess a fee for this service, no filing fee has been imposed.

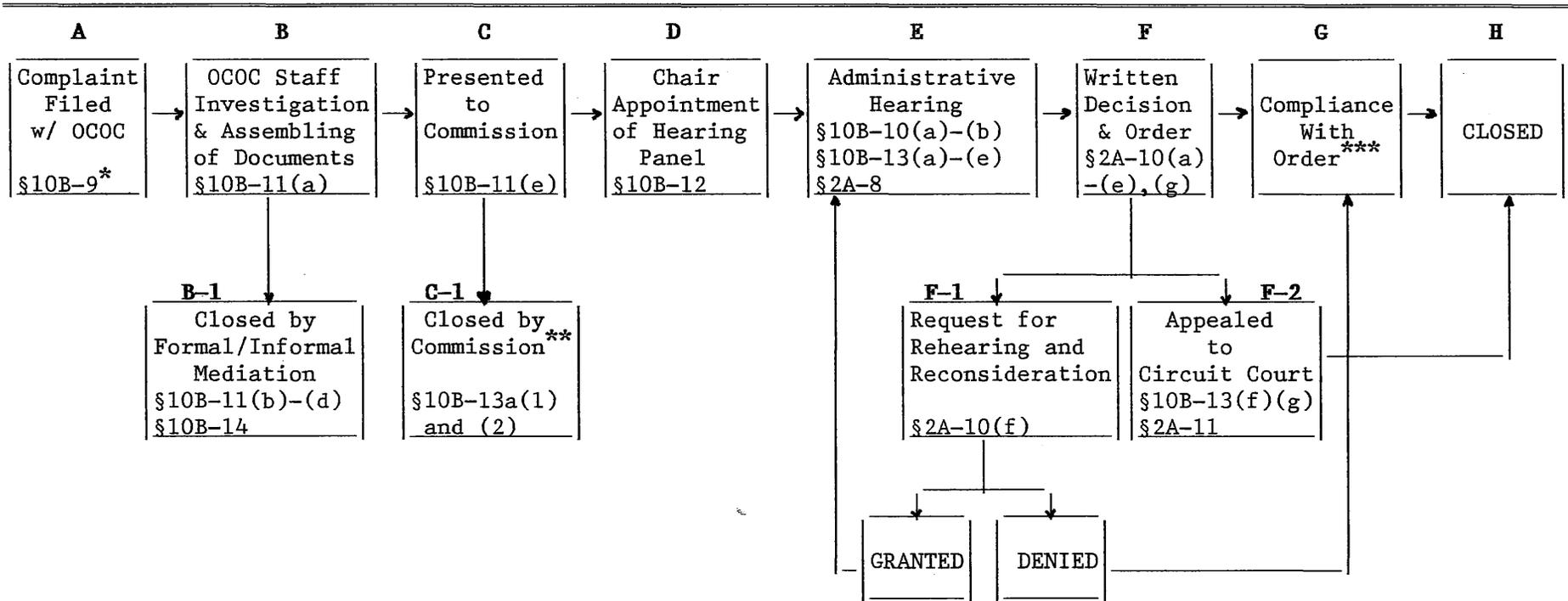
- Step B - OCOC Investigation. The law authorizes the OCOC staff to investigate facts, assemble relevant documents, and summarize the issues in the dispute filed with the Commission. However, under current operating procedures, the staff cannot present to the Commission any determination or recommendation arising from the investigation. The staff can encourage informal mediation and will arrange for a formal mediation session if the parties agree to participate.

- Step C - Dispute presented to Commission. Any dispute not resolved through mediation must be presented to the Commission, and the Commission must accept the dispute unless it finds that: the dispute is essentially identical to another dispute between the same parties on which a hearing has already been held; or the dispute is clearly not within the jurisdiction of the Commission. The Commission has interpreted "jurisdiction" as both geographical authority and legislative authority, i.e., falling under the provisions of Code Section 10B-8(4): disagreements of a type that the legislation specifically excludes from the Commission's authority.

- Step D - Hearing Panel Appointed. The Commission Chair appoints a three-member hearing panel. Two of the members are selected from the voting members of the Commission. They must be from different membership groups and at least one must be a resident of a common ownership community. The two selected members then designate a third member from a roster of volunteer arbitrators experienced in common ownership community issues to chair the panel. All three panelists must have no interest in the dispute they will hear.

Chart 1

**Current Dispute Resolution Process**  
**Art 2, Dispute Resolution, Chapter 10B**  
**Common Ownership Communities**



Notes: \* References are to Chapter 10B, Common Ownership Communities and Chapter 2A, Administrative Procedures Act.

\*\* The Commission on one occasion reconsidered a decision to close a case on jurisdictional grounds.

\*\*\* §10B-13(h) provides that the County Attorney may enforce a decision of the hearing panel through "appropriate legal action".

Source: Office of Legislative Oversight, March 1993.

The volunteer arbitrators who chair the hearing panels are an important part of the process. Not only do these volunteers bring an independent judgment to the process, they bring an informed judgment in that most are attorneys experienced in common ownership community documents and operations, and all are experienced in arbitration procedures and the conduct of administrative hearings.

- Step E - The Administrative Hearing. After proper notice is given to all parties, a hearing is conducted under the provisions of Code Chapter 2A, the County's administrative procedures act. The Commission has the authority to issue subpoenas, and to compel the attendance of witnesses and the production of documents, records and other evidence. All parties to a hearing may be advised by counsel. Should any party, after proper notice, not appear at a scheduled hearing, the panel may order relief to another party that the facts on record warrant.

- Step F - Decision and Order. At the conclusion of the hearing, the panel must issue a written decision and order that is based on the evidence of record, presents findings of fact, and conclusions of law. The panel may award costs, including reasonable attorney's fees, to any party if another party: 1) filed or maintained a frivolous dispute, or filed or maintained a dispute in other than good faith; 2) unreasonably refused to accept mediation of a dispute, or unreasonably withdrew from ongoing mediation; or 3) substantially delayed or hindered the dispute resolution process without good cause. The panel may also award costs or attorney's fees if an association document so requires and the award is reasonable under the circumstances.

- Step F-1 - Rehearing and Reconsideration. The Commission may approve a request for rehearing and reconsideration only in the case of fraud, mistake, or irregularity. If granted, the dispute receives another hearing.

- Step F-2 - Decision Appealed to Circuit Court. A decision of the hearing panel may be appealed to the Circuit Court. The court must hear the appeal on the record and must sustain the decision of the hearing panel unless the court finds that the decision was: 1) inconsistent with applicable law; 2) not supported by substantial evidence on the record; or 3) arbitrary and capricious, considering all facts before the panel. As of February 1993, of 14 panel decisions and orders that have been issued, only one has been appealed to the Circuit Court. The court sustained the hearing panel's decision.

- Step G - Compliance With the Order. The law provides that the Commission, acting through the Office of the County Attorney, may enforce a decision of the hearing panel by taking any appropriate legal action. To date, all decisions and orders issued by a hearing panel have been complied with except for two. In both cases the County Attorney, citing prosecutorial discretion and budgetary concerns, has chosen not to move to enforce the two decisions. The County Attorney has noted that in both cases, the prevailing private parties in the hearing have the authority to enforce the Commission's decisions and orders; and that the prevailing parties can take the matter to Circuit Court for a decision on the record. At Exhibit B is a copy of the County Attorney's memorandum on this matter.

- Step H - Closing a Dispute. Disputes that go through the dispute resolution process are closed only after full compliance has been verified.

3. Status and Analysis of Disputes Filed With the Commission

On the following four pages, pages 14a through 14d, is Table 2, which is a status and analysis of the 118 disputes that have been filed with the Commission during the period July 15, 1991 (the date the Commission began accepting disputes) and February 12, 1993.

(Text continues on page 15)

Table 2

**Status of Disputes Filed  
With the Commission on Common Ownership Community  
July 15, 1991 - February 12, 1993**

(Source: Office of Common Ownership Communities Files)

**A. General Description**

1. Total disputes filed: - - - - -	118	(100.0%)
2. Dispute from a self-managed association: - - - - -	58	(49.2%)
HOA 41 (70.7%)		
Condo 16 (27.6%)		
Co-op 1 ( 1.7%)		
3. Dispute from a professionally managed association: -	60	(50.8%)
HOA 29 (48.3%)		
Condo 31 (51.7%)		
Co-op 0 ( 0%)		

Note: A total of 15 disputes have been filed from an association that is a member of an umbrella group:

HOA 7 (46.7%)
Condo 8 (53.3%)
Co-op 0 ( 0%)

**B. Nature of Disputes<sup>a)</sup>**

Total disputes filed: - - - - -	118	(100.0%)
• Enforcement architectural controls: - - - - -	52	(44.1%)
• Enforcement of other rules/regulations: - - - - -	24	(20.3%)
• Governance: - - - - -	23	(19.5%)
• Assessments and fees: - - - - -	19	(16.1%)

a) Dispute Categories:

Enforcement of architectural controls. (Decks, fences, paint, roofs, landscaping, patios, walkways, antenna, light fixtures)

Enforcement of other rules/regulations. (Pets, parking, commercial activities, noise)

Governance by the association's governing body. (Authority, powers and procedures, bi-laws, elections, records, minutes, meetings, budgets, reserves, audits and documents)

Assessments, fees and fines. (Annual and special assessments, parking fees, late fees, reimbursements)

**C. Party Filing Dispute**

1. Total disputes filed: - - - - -	118	(100.0%)
2. Individual Unit Owner: - - - - -	73	(61.9%)
HOA 30 (41.1%)		
Condo 42 (57.5%)		
Co-op 1 (12.4%)		
3. Governing Body: <sup>a)</sup> - - - - -	45	(38.1%)
HOA 40 (88.9%)		
Condo 5 (11.1%)		
Co-op 0 (0%)		

**D. Party Responding to Dispute**

1. Total Disputes Filed: - - - - -	118	(100.0%)
2. Individual Unit Owner: - - - - -	44	(37.3%)
HOA 40 (90.9%)		
Condo 4 (9.1%)		
Co-op 0 (0%)		
3. Governing Body: <sup>a)</sup> - - - - -	74	(62.7%)
HOA 30 (40.5%)		
Condo 43 (58.1%)		
Co-op 1 (1.4%)		

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a) In one dispute, the governing body of a member association filed a dispute against the governing body of its umbrella association.

**E. Represented by Counsel**

1. Total disputes filed: - - - - -	118	(100.0%)
2. Total disputes where <u>all parties</u> are represented by Counsel: <sup>a)</sup> - - - - -	13	(11.0%)
HOA 5 (38.5%)		
Condo 7 (53.8%)		
Co-op 1 ( 7.7%)		
3. Total where <u>only owner</u> represented by Counsel: - - - - -	0	(0%)
4. Total disputes where <u>only governing</u> body represented by Counsel: <sup>b)</sup> - - - - -	42	(35.6%)
HOA 21 (50.0%)		
Condo 21 (50.0%)		
Co-op 0 (0%)		
5. Total where <u>no party</u> represented by Counsel - - - - -	63	(53.4%)

**F. Disposition of Disputes**

Total disputes filed: - - - - -	118	(100.0%)
1. Closed: - - - - -	78	(66.1%)
• Hearing Panel decision and order: -	14 (18.0%) <sup>c)</sup>	
• Mediation: - - - - -	48 (61.5%)	
• Dispute withdrawn, no jurisdiction, prior court action: - - - - -	16 (20.5%)	
2. Open: - - - - -	40	(33.9%)
• Awaiting disposition on enforcement: 2	( 5.0%)	
• Action pending in hearing process: -	8 (20.0%)	
• Under investigation: - - - - -	30 (75.0%)	

a) Breakdown by type management:

    Self-managed: HOA-2, Condo-3, Co-op-1  
    Professionally managed: HOA-3, Condo-4, Co-op-0

b) Breakdown by type management:

    Self-managed: HOA-7, Condo 10, Co-op-0  
    Professionally managed: HOA-14, Condo-11, Co-op-0

c) One Hearing Panel decision against an owner in an architectural control dispute was sustained on appeal to the Circuit Court.

**G. Time to Process Disputes**

1. Total disputes filed: 118 (100.0%)
2. Closed cases (as of February 1993): 78 ( 66.1%)

<b>Category</b>	<b>No. of Cases</b>	<b>Range<sup>a)</sup> (from)</b>	<b>Median</b>	<b>Weighted Average</b>
Mediated	48 (61.5%)	1 to 13 months	6 months	4.4 months
Hearing Panel Action	14 (18.0%)	7 to 17 months	11 months	10.6 months
Withdrawn <sup>b)</sup>	16 (20.5%)	1 to 12 months	7 months	4.25 months

3. Open cases (as of February 1993): 40 (100.0%)

<b>Category</b>	<b>No. of Cases</b>	<b>Range (from)</b>	<b>Median</b>	<b>Weighted Average</b>
Under Investigation	30 (75.0%)	1 to 14 months <sup>c)</sup>	9 months	6.5 months
Hearing Panel Action still pending	8 (20.0%)	4 to 16 months <sup>c)</sup>	9 months	8.75 months
Awaiting Enforcement Action	2 ( 5.0%)			

- a) From date dispute filed until date closed.
- b) Prior court judgment, lack of jurisdiction, complainant failed to file proper documents or exhaust internal procedures, disputes settled prior to Commission action, etc.
- c) From date dispute filed until February 1993.

#### **IV. EVALUATION OF THE COMMON OWNERSHIP COMMUNITIES LEGISLATION**

##### **A. Overview**

As stated in the previous chapter, this evaluation addresses only the first two articles in Code Chapter 10B, Common Ownership Communities: Article 1, Commission on Common Ownership Communities; and Article 2, Dispute Resolution.

In this chapter, OLO evaluates compliance with the purpose of the legislation; the composition and operations of the Commission on Common Ownership Communities (COCOC); the organization, operations, and funding of the Office of Common Ownership Communities (OCOC); and the dispute resolution process.

##### **B. Legislative Compliance: Purpose of the Legislation**

The purpose statement in the legislation (Code Sec. 10B-1) is understandably broad. Specifically, it states that the COCOC is created to advise the Council, Executive, and the County government on ways to:

- ensure proper establishment and operation of common ownership communities(COC), to include the development of COC policies, programs and services;
- promote and assist in the education and public awareness of the rights and obligations of living in a COC;
- reduce and assist in the resolution of disputes arising out of living in a COC; and
- prevent potential public liability for repair or replacement of COC facilities.

Overall, in the short period it has been in existence (approximately 30 months), the Commission has attempted to satisfy all of these purposes. Some, the Commission has done rather well (establishing a dispute resolution service); others have not received the degree of attention that Commission members had hoped (educational programs and technical assistance); and still others have yet to be attempted (activities to prevent potential public liability for repair or replacement of COC facilities).

##### **C. Legislative Compliance: Duties of the Commission on Common Ownership Communities**

The legislation (Code Sec. 10B-6) specifies five broad duties of the Commission on Common Ownership Communities (COCOC). A review of the Commission's activities indicates the following degrees of compliance for each duty assigned:

1. Adopt rules and procedures. A major effort of the Commission in its initial period of operation has been to organize itself. The Commission has adopted Roberts Rules as its official procedures, and is in the process of completing and adopting a variety of operating procedures, such as one for the intake and processing of complaints, and one on the administrative hearing process. Recently the Commission reorganized its committee system in order to more directly concentrate on its legislative mandates. One committee, Process and Procedures, is working on preparing a variety of rules and procedures.

2. Maintain records and minutes. The Commission has established a system of maintaining records on all its various activities, such as dispute resolution services and mail and phone inquiries. Minutes are prepared and published for each Commission meeting; and the Commission has complied with the legislation and prepared two annual reports for distribution to the Council and Executive, government agencies, common ownership communities, and the public.

3. Cooperate with the Executive. There was nothing in OLO's evaluation to indicate that the Commission, the Executive, and the appropriated Executive branch offices were not in full cooperation. As noted earlier in the report, a representative of the County Council, the Maryland-National Capital Park and Planning Commission, and four Executive branch agencies serve as nonvoting, ex-officio members of the Commission.

In addition to working with County government, the Commission, through its committees, has been coordinating with other public County and bi-County agencies and the Cooperative Extension Service, on issues and problems common to the agencies and the COC. Finally, the Commission has initiated conversations with the Circuit Court to establish closer lines of communication.

4. Examine conditions in COC that may result in unmet community, resident, or public needs. In this rather all-encompassing duty lies great potential. Based on information gathered at public forums, meetings, and conferences, the Commission has been preparing policies and procedures to address areas that affect the communities, their residents, and the general public. Although the Commission has as yet not formally published these policies and procedures, they are currently being developed under the Commission's Model Documents committee. The areas of interest include: the importance of building cash reserves to meet future known and emergency maintenance requirements; the need to address the transfer of control from developers to governing boards; and the adoption of association rules and procedures.

5. Advise the citizens and government officials on matters involving common ownership communities. Through appearances before the Council and the County's Delegation in Annapolis, the Commission has been a voice for all matters relating to common ownership communities. In late 1992, the Commission published and widely distributed its first COC newsletter. A second newsletter is being distributed at this time. The Commission's effort in this area is the responsibility of the Commission's Association Resources committee.

#### **D. Legislative Compliance: Duties of the Office of Common Ownership Communities**

The legislation (Code Sec. 10B-5) enumerates nine specific duties to be accomplished by the Office of Common Ownership Communities (OCOC). These nine duties can be organized and evaluated under three broad categories: education, information and referral; technical assistance and document preparation; and dispute resolution. Discussions on the first two follow. Dispute resolution is discussed in a subsequent section of this chapter.

1. Education, Information, and Referral. The OCOC staff has been very active in the areas of education, information, and referral. However, considering the large number of communities and the total lack of any effort in this area prior to the creation of the Commission and Office, there remains a great deal yet to be done.

A sampling of efforts in this area include: co-hosted and participated in workshops on COC issues; established a speaker's bureau; published a fact sheet on services offered by the Commission and Office; made presentations at association board meetings; and prepared and maintains a library of pamphlets, directories, etc. The OCOC also maintains an automated, on-line record of the 480 common ownership communities and 79,748 housing units currently (as of February 1993) registered with the Commission. Finally, since April 1991, the OCOC staff has responded to over 3000 telephone inquiries concerning matters relating to the responsibilities of the Commission.

2. Technical Assistance and Document Preparation. While not totally ignored, in OLOs opinion, this area has received the least attention from the Commission and Office. Although oral responses are provided to phone inquiries on a variety of technical issues, the preparation of written technical documents and manuals have received low priority of staff and Commission time. The Commission's Model Documents committee has begun work on developing a set of model association documents. However, a COC model operations manual and other manuals to assist the interaction between common ownership communities and governmental agencies have not been developed due to staff and budget limitations.

3. Operate a Dispute Resolution Process. The major effort of the Commission has been dedicated to establishing a dispute resolution process. A detailed evaluation of that process is discussed in the following section.

#### **E. Dispute Resolution Process**

1. Overview. As discussed earlier in the report, in 1984, the Council established in legislation an alternate dispute resolution mechanism for common ownership communities when it created the Dispute Resolution Bureau in the Office of Consumer Affairs. The Bureau offered the services of voluntary, informal mediation, or mandatory, nonbinding arbitration. These services continued to be offered by the Bureau until December 1990, when the dispute resolution services were transferred to the newly created Commission on Common Ownership Communities. The Council not only changed the location

of the dispute resolution services, but also changed the type of services provided. Mediation remained a voluntary choice of the parties to the dispute; however, failure to enter into, or successfully mediate a dispute, resulted in compulsory and binding arbitration before a Commission hearing panel.

2. Number and Status of Disputes Filed. The Commission accepted its first dispute on July 15, 1991. In the subsequent 19 months, a total of 118 disputes have been accepted by the Commission. Earlier in the report, a status and analysis was presented of all disputes filed during the period July 15, 1991 to February 12, 1993. (See Table 2, pages 14a-14d). From a review of these dispute resolution statistics, and from interviews with over 40 persons on the necessity, effectiveness, and efficiency of the dispute resolution process, OLO has arrived at several findings concerning the dispute resolution process.

3. OLO Findings Concerning the Dispute Resolution Process

- a. The County government should continue to provide alternative dispute resolution services between and among residents and community associations.

Except for two persons, all who were interviewed opined that it was both appropriate and necessary that the County government provide alternate methods to resolve disputes among and between residents and community associations. Those interviewed represented a cross section of persons involved in common ownership communities: residents, Commission members, attorneys, volunteer arbitrators, professional managers, members of governing boards, parties to a dispute before a Commission hearing panel, and representatives of government agencies.

The major reasons most cited for continuing the dispute resolution services include:

- The Commission's dispute resolution services provide an informal administrative process for resolving disputes between parties who are essentially not disinterested strangers, but neighbors who share a common interest in seeing that the particular dispute is resolved in a manner that will allow for the continuation of a relationship as neighbors and business partners.\*

- The informal administrative process for resolving disputes between neighbors offered by the Commission can be a less costly and less intimidating alternative to expensive and protracted litigation in the courts. Additionally, the Commission possesses more expertise in the issues underlying the disputes that do the courts (e.g., covenants, parking and pet regulations, architectural restrictions).

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\* The total number of housing units in the County as of January 1992 was 298,450. It is estimated that over 100,000, or approximately 34 percent, of the units are located in common ownership communities (COC). Currently 79,748 COC units, or almost 27 percent of the total number of housing units in the County, are registered with the Commission.

- The Commission's dispute resolution services helps remove cases from the courts. It is important to note that alternate dispute resolution mechanisms are being established by many jurisdictions to relieve the heavy case load of the courts. As an example, the Montgomery County Circuit Court is initiating a Differentiated Case Management project to reduce the number of criminal and civil cases going to trial. Alternate dispute resolution services will be a part of that project because the Court presently handles approximately 30,000 civil cases a year.

- The County has a legitimate role in maintaining harmony among its citizens, a high quality of neighborhood life, and a strong sense of community. Accordingly, it is appropriate and proper for the County to provide a service that facilitates the expeditious resolution of disputes and preserves the quality of community life. In addition, the County's activities in this area are consistent with the County's highly successful and visible role in protecting consumers.

- The County has a financial interest in assisting the settling of disputes among residents and between residents and common ownership community governing boards. Community association monies that are expended on attorney's fees and court costs settling disputes through litigation are monies that are not available to maintain the common ownership infrastructure, such as roads, parking areas, and stormwater management facilities. If an association does not have funds to repair a road or a non-functioning stormwater management facility, it may well fall on the County to correct the problems.

- Providing alternate dispute resolution services visibly demonstrates the County government's interest in helping citizens work out solutions to community problems in an open and fair manner. The Commission provides an independent and objective hearing process that supplements the dispute resolution mechanisms of the community associations where governing boards are often perceived in the role of both accuser and judge.

- The State has failed to provide alternate dispute resolution mechanisms in either The Maryland Condominium Act or The Maryland Homeowners Association Act. Accordingly, the County has a right and an obligation to step in and fill that void. (Note: The Maryland Condominium Act does require that condominium associations have a dispute settlement mechanism; however, the Act nearly addresses a procedure for processing complaints, not resolving them).

- The existence and proliferation in the number of community associations has been both encouraged and required by the County.\*

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\* The County's zoning ordinance requires that all development under the cluster method of development provide community open space for active or passive recreation as well as for the preservation of trees (Code Sec. 59-C-1.51). Further, the site plan for cluster method development must include provisions for assuring the common use and adequate maintenance of common open space (Code Sec. 59-C-1.524). Hence, cluster development requires the eventual creation of community association governing boards to control and maintain all community common space.

• Finally, the County has benefited from the existence of common ownership communities, such as: the construction of moderately priced housing units; additions to the County's infrastructure (roads and stormwater management facilities); amenities (swimming pools and tot lots); and the provision of government-type services at no cost to the County (snow removal and road maintenance). In exchange for these many benefits, it appears appropriate that the County provide a service unique to those communities, specifically, alternate methods for the resolution of disputes among and between residents and community association governing boards.

- b. The current dispute resolution process should be modified to reduce the time it takes the Commission to resolve a dispute.

The major criticism of the dispute resolution process voiced by almost all who OLO interviewed was the long time it took for the Commission to complete a case. Those interviewed suggested a variety of solutions to speed up the process. Outlined below are improvements OLO believes will expedite the current dispute resolution process:\*

- 1) Eliminate the investigation step by the staff of the Office of Common Ownership Communities.

Currently, staff of the Office of Common Ownership Communities (OCOC) conducts some degree of investigation for each complaint. The extent of the investigation varies with the complexity of the complaint. Because of limited staff resources and the time allotted to the various parties to respond to staff requests, most cases experience considerable delay at this step in the process. As cited in Section G, Table 2 (page 14d), of 14 administrative hearings, the median time for staff to investigate and prepare the case for the panel was 11 months.

OLO suggests that staff should not investigate the facts of the complaint. Rather, staff should advise that the complainant is responsible for assembling all pertinent facts and documents to support the complaint. To assist complainants and respondents, staff should prepare detailed written instructions and guidelines on what is required when a complaint is filed, such as: the facts in the complaint, the requirement to notify the respondent, remedies taken within the association to resolve the complaint, the specific relief that is desired, and copies of pertinent documents. Once the complainant has provided that information, and mediation attempts have failed,\*\* than the staff would summarize the complaint, collect the necessary documents from the complainant and respondent, assemble a case file, and forward the file to the Commission for a disposition on a hearing.

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\* The reader is reminded that a graph of the current dispute resolution process is at page 12a.

\*\* Throughout the period of filing the complaint and assembling the facts and documents, staff should continue efforts to bring the dispute to mediation. As indicated at Section F, Table 2 (page 14c), of the 78 disputes that the Commission has closed, 48 or 61.5 percent have been closed through mediation.

2) Replace the current three-member hearing panel with a hearing officer.

At present, the Commission Chair appoints two of the panel members from the voting members of the Commission. The legislation specifies that the two selected members choose the third member from a list of volunteer arbitrators, who becomes the hearing panel chair. In actuality, the Commission Chair, after coordinating with the two selected panel members, also selects the volunteer arbitrator. The appointed panel then coordinates their schedules to prepare for, and conduct the hearing. All this has proven to take considerable time because all panel members are volunteers and have other responsibilities.

OLO suggests that the dispute resolution process could be expedited if the three-member hearing panel was replaced with a single hearing officer selected by the Commission from the roster of volunteer arbitrators. The major reasons for changing to a single hearing officer include:

- A hearing officer can satisfy the objectives of a hearing panel, specifically, to conduct an independent third-party administrative review of the facts in the dispute in an objective manner where administrative due process is guaranteed and protected.

- A hearing officer would bring more rigor and concentration to the process in that a single hearing officer can more readily focus on the major issues of the dispute.

- A hearing officer would be able to satisfy the many requirements of the Administrative Procedures Act (Code Chapter 2A), specifically, receive all motions and requests for discovery, continuance, summary judgment, stipulation of facts, etc.

- The hearing process would be faster because of the requirement to accommodate the calendar of only one hearing officer instead of three panel members. In addition, the hearing itself should be faster because of the expeditious rulings on the above motions and requests prior to the hearing.

- A hearing officer would eliminate the cost of preparing multiple copies of the hearing record for two additional panel members.

- The confidence and validity of the process should be enhanced because the hearing officer's written findings of facts, conclusions of law, and recommended decision and order will be presented to the entire Commission.

- Finally, while not totally eliminating the use of counsel, the presence of a professional experienced attorney and/or arbitrator serving as a hearing officer may encourage confidence in the administrative process and thereby reduce the use of counsel, especially by governing boards. One of the goals of the Commission's dispute resolution process was

to provide a less expensive alternative to litigation through attorneys. As indicated in Section E, Table 2 (page 14c), counsel represented governing boards in over one-third of the cases filed with the Commission; while counsel represented owners in only 13 disputes and only when the governing board was represented by counsel. OLO believes that attorneys will never be totally eliminated from the dispute resolution process, especially by governing boards who, as volunteers, are understandably concerned about potential exposure to liability.

3) Legislate an alternate method of enforcing the decisions and orders issued by the Commission on Common Ownership Communities

As discussed earlier in the report, the current law provides that the Commission, acting through the Office of the County Attorney, may enforce a decision of the hearing panel by taking appropriate action. The one time the Commission requested the Office of the County Attorney to enforce two decisions of hearing panels, the County Attorney, citing prosecutorial discretion and budget concerns, chose not to take any action.

In declining the Commission's request to enforce the two decisions, the County Attorney indicated that her office was exploring other avenues of enforcement, one of which would be to give the Commission the authority in legislation to issue civil citations for noncompliance with Commission decisions and orders. (See Exhibit B for a copy of the County Attorney's memorandum on this matter.)

OLO agrees that an alternate method of enforcement is necessary. Without the ability to enforce its decisions and orders, there would be little incentive to file complaints with the Commission. The County Attorney's suggested use of civil citations appears to be a feasible alternative, in that it is used to enforce failures to comply with the decisions and orders of other Commissions.\* It should also be noted that the Common Ownership Communities law presently includes a provision for the Commission to issue a civil citation if a common ownership community fails to register or makes a false statement on a registration form (Code Sec. 10B-7(a)(2)).

4) Restructure the size and composition of the Commission.

While not specifically related to the dispute resolution process, restructuring the size and composition of the Commission would, in OLO's opinion, make it more efficient. Many who OLO interviewed expressed the opinion that the Commission was too large to be efficient, and the composition of the Commission was such that there was a perception that the voting members of the Commission were unfairly weighted against individual unit owners.

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\* See Code Section 29-44, Chapter 29, Landlord-Tenant Relations.

The legislation (Code Sec. 10B-3(a)) stipulates that the 15 voting members will be appointed from the following groups: six from residents of associations, to include members or former members of governing boards; three who are persons involved in housing development and real estate sales; and six who are members of professions associated with common ownership communities (COC), (such as attorneys who represent associations, developers, housing management or tenants), or investor-owners of units in COC, including at least one person who is a professional community association manager.

In OLO's opinion, restructuring the Commission on Common Ownership Communities (COC) to a size and composition similar to the Commission on Landlord-Tenant Affairs would make it more balanced, manageable, and efficient. Specifically, OLO suggests that a restructured COC consist of nine members, appointed by the County Executive and subject to confirmation by the County Council. Three of the members must be residents of a common ownership community and not at the time of appointment a member of a governing board or affiliated in any way with COC management; three of the members must be members of a COC association governing board; and three of the members must be selected from the public at large who are not a resident of a COC, a developer, affiliated with the management of a COC, involved in housing development and real estate sales, or an attorney whose normal practice involves representing COC residents, association governing boards, or professional COC managers.

OLO recognizes that the professional representatives, such as attorneys, developers, real estate representatives, and association and housing managers have an interest in the work of the Commission. However, contribution can still be made without having direct representation on the Commission.

- c. A modest fee should be imposed for filing a complaint with the Commission.

The current legislation authorizes the Executive to impose a fee to cover the actual cost of the dispute resolution service (Code Sec. 10B-7(b)). However, to date no fee has been imposed. OLO suggests that a filing modest fee of \$25 or \$35 be assessed when a complaint is accepted by the Commission.

The major argument against a filing fee has been that it would discourage bringing a dispute to the Commission. OLO does not agree with that argument. The issue of whether a filing fee should be levied was asked by OLO to all who were interviewed. No one interviewed opined that a modest filing fee would discourage filing a complaint; however, almost all cautioned that the amount of the fee should not be set at a level to cover the entire cost of the hearing. The \$25 or \$35 charge was generally cited as a reasonable amount, in that it was low enough not to be a financial disincentive, but sufficient to help defray the considerable reproduction costs associated with preparing the hearing record.

## **F. Funding the Commission and Office of Common Ownership Communities**

As discussed earlier in the report, the amount and method of funding the Commission and Office has been repeatedly debated. Starting with the public hearing on the Bill that created the Commission and continuing right up to its final reading, funding the Commission was a major issue. The Council's decision to fund the Commission by an annual per unit registration fee has not been supported by many common ownership community associations, especially the larger umbrella associations. Also, several of the new Councilmembers have questioned the imposition of an annual registration fee, and some Councilmembers have even questioned the need for a Commission on Common Ownership Communities.

The reader will also recall that the County's authority to levy a registration fee was challenged in court. Although the County prevailed in both the Circuit Court and the Court of Special Appeals, the imposition of the fee continues to be questioned. Finally, many who OLO interviewed support the continued existence of the Commission, but do not support the annual registration fee.

In OLO's opinion, the annual registration fee should be discontinued. Instead of an annual registration fee, OLO suggests that the Commission and the Office be funded by service fees, augmented by an annual appropriation from the general fund. It was probably not feasible to rely on service fees when the Commission was first being organized. But now it would appear appropriate.

OLO has already suggested one legislatively authorized service fee: a modest charge when a complaint is filed with the Commission. Other fees for service that are also authorized in current legislation include a charge for educational materials, model documents, and technical assistance. Many associations already purchase these latter services from professional organizations like the Community Associations Institute.

Recognizing that service fees will not be sufficient to fund all of the Commission's legislated activities, additional funding will be needed in the form of appropriated general funds. The exact ratio of service fees and appropriated funds will have to be determined; however, OLO anticipates that, if the various changes to the dispute resolution process previously recommended are implemented (eliminating staff investigations of complaints, changing from hearing panels to a single hearing officer, reducing the number of hearing records that must be prepared, and eliminating the functions associated with collecting an annual registration fee), the staff of the Office of Common Ownership Communities could be scaled back, with a concomitant reduction in expenditures by the Commission and Office.

The justification for replacing the annual registration fee with a combination of service fees and appropriated funds to accomplish the legislative duties of the Commission and Office is essentially that the County has a legitimate obligation to maintain harmony among community residents. Other justifications that were presented earlier to justify the continuation of the Commission's dispute resolution services (pages 18 through 20) also apply.

## V. CONCLUSIONS

- A. The Commission on County Ownership Communities should be continued in legislation as a government-sponsored activity to advise the County Council, the County Executive, and offices of County government on all matters relating to common ownership communities.
- B. The efficiency, effectiveness, and economical operations of the Commission on Common Ownership Communities and the Office of Common Ownership Communities can be improved by implementing certain legislative changes and procedural improvements.
- C. The following amendments should be made to County Code Chapter 10B, Common Ownership Communities (COC):
  1. Restructure the size and composition of the Commission to reduce the number of voting members from 15 to nine, with the nine members equally representing three groups: residents of a COC, members of a COC governing board, and the public at large (Code Sec. 10B-3(a)).
  2. Eliminate all investigation activities into complaints by staff of the Office of Common Ownership Communities (Code Sec. 10B-11(a)).
  3. Replace the three-member hearing panel in the dispute resolution process with a single hearing officer (Code Sec. 10B-12).
  4. Substitute an alternate method of enforcing administrative hearing decisions and orders issued by the Commission (Code Sec. 10B-13(h)).
- D. The following changes should be made to the operating procedures of the Commission and Office:
  1. Eliminate the imposition on common ownership communities of an annual per unit registration fee, while maintaining the requirement to annually register with the Commission and the legislative penalty for failing to register.
  2. Impose a modest filing fee for complaints accepted by the Commission for dispute resolution.
  3. Impose a service fee for materials and services provided by the Commission and Office, such as pamphlets, educational materials and classes, conferences, and technical services.
  4. Augment the service fees collected by the Commission with appropriated funds from general revenues to operate a scaled back Office of Common Ownership Communities.

## VI. RECOMMENDATIONS

It is recommended that:

- A. The County Council continue, with some modifications, to provide the services of the Commission on Common Ownership Communities and the Office of Common Ownership Communities.
- B. County Code Chapter 10B, Common Ownership Communities, should be amended to :
  1. Restructure the size and composition of the Commission on Common Ownership Communities.
  2. Eliminate all investigation activities into complaints by the staff of the Office of Common Ownership Communities.
  3. Replace the three-member hearing panel in the dispute resolution process with a single hearing officer.
  4. Provide an alternate method of enforcing the decisions and orders issued by the Commission in administrative hearing.
- C. The operating procedures of the Commission on Common Ownership Communities and the Office of Common Ownership Communities should be changed to:
  1. Eliminate the imposition on common ownership communities of an annual per unit registration fee.
  2. Impose service fees for the filing of a complaint with the Commission and for various educational materials and technical services provided by the Office.
  3. Augment the service fees collected by the Commission with sufficient appropriated funds from general revenues to operate a scaled back Office of Common Ownership Communities.

Chapter 10B.

**COMMON OWNERSHIP COMMUNITIES.**

**Article 1. Commission On Common Ownership Communities.**

- § 10B-1. Purpose.
- § 10B-2. Definitions.
- § 10B-3. Commission on common ownership communities.
- § 10B-4. Office of common ownership communities.
- § 10B-5. Duties of the office of common ownership communities.
- § 10B-6. Duties of the commission on common ownership communities.
- § 10B-7. Registration; fees.

**Article 2. Dispute Resolution.**

- § 10B-8. Defined terms have the following meanings:
- § 10B-9. Filing of disputes; exhaustion of association remedies.
- § 10B-10. Production of evidence.
- § 10B-11. Mediation.
- § 10B-12. Hearing panel.
- § 10B-13. Administrative hearing.
- § 10B-14. Settlement of disputes; assistance to parties.
- § 10B-15. Regulations.

**Article 3. Open Conduct.**

- § 10B-16. Open meetings.
- § 10B-17. Voting procedures.
- § 10B-18. Budget.
- § 10B-19. Enforcement.

**ARTICLE 1. COMMISSION ON COMMON OWNERSHIP COMMUNITIES.**

**Sec. 10B-1. Purpose.**

The County Council finds that a Commission on Common Ownership Communities is necessary to advise the County Council, the County Executive, and offices of County government as necessary on ways to:

- (a) ensure proper establishment and operation of homeowners' associations, condominium associations, and cooperative housing corporations;

(b) promote education, public awareness and association membership understanding of the rights and obligations of living in a common ownership community;

(c) reduce the number and divisiveness of disputes, and encourage informal resolution of disputes;

(d) maintain property values and quality of life in these communities;

(e) assist and oversee in the development of coordinated community and government policies, programs, and services which support these communities; and

(f) prevent potential public financial liability for repair or replacement of common ownership community facilities. (1990 L.M.C., ch. 33, § 1.)

#### **Sec. 10B-2. Definitions.**

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

(a) *Commission* means the Commission on Common Ownership Communities.

(b) *Common ownership community* includes:

(1) a development subject to a declaration enforced by a homeowners' association, as those terms are used in state law;

(2) a condominium, as that term is used in state law; and

(3) a cooperative housing project, as that term is used in state law.

(c) *Office* means the Office of Common Ownership Communities. (1990 L.M.C., ch. 33, § 1.)

#### **Sec. 10B-3. Commission on Common Ownership Communities.**

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

(1) Six members should be selected from residents of self-managed and professionally managed condominiums, self-managed and professionally managed cooperative housing corporations, and self-managed and professionally managed homeowners' associations, and may include members or former members of governing boards.

(2) Three members should be selected from persons involved in housing development and real estate sales.

(3) Six members should be selected from persons who are members of professions associated with common ownership communities (such as attorneys who represent associations, developers, housing management or tenants) or investor-owners of units in common ownership communities, including at least one person who is a professional community association manager.

(b) Designees of the County Council, Planning Board, Department of Housing and Community Development, Department of Environmental Protection, Department of Transportation, and Office of Consumer 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) The County Executive, with the consent of the Council, may remove a voting member of the Commission for neglect of or inability to perform the duties of the office, misconduct in office, or serious violation of law. Before the Executive removes a member, the Executive must give the member notice of the reason for removal and a fair opportunity to reply.

(e) Section 2-148(c) applies only to voting members of the Commission.

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

(g) Voting members of the Commission receive no compensation for their services.

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

(i) The Department of Housing and Community Development must provide the Commission with staff, offices and supplies as are appropriated for it.

(j) The Commission must submit an annual report by September 1 to the County Executive and the County Council summarizing its activities, needs, and recommendations, and the extent to which the goals of this Chapter are being met. (1990 L.M.C., ch. 33, § 1; FY 1991 L.M.C., ch. 9, § 1.)

**Sec. 10B-4. Office of Common Ownership Communities.**

The Department of Housing and Community Development must establish an Office of Common Ownership Communities. In selecting staff for the Office under the merit system, the Director of Housing and Community Development must consider the recommendations of the Commission. (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-5. Duties of the Office of Common Ownership Communities.**

The Office of Common Ownership Communities, in consultation with the Commission, must:

(a) research, assemble, analyze and disseminate pertinent data and educational materials about activities and programs which assist common ownership communities; plan and conduct educational and other programs, meetings and conferences to promote the operation of common ownership communities;

(b) maintain a master roster of homeowners' associations, condominiums, and cooperatives, their leadership, and their professional management companies if applicable;

(c) develop and maintain an information and referral system for all services in the County related directly to common ownership communities, and recommend other services when needed;

(d) develop model documents for use by developers and associations;

(e) provide technical assistance to association governing bodies on matters such as transition, elections, rules adoption and enforcement, selection of association managers, storm water management and other services;

(f) develop and maintain a manual for the mutual benefit of common ownership communities and government agencies;

(g) develop and maintain an operations manual which will serve as a guide on operations to common ownership community leadership;

(h) advise common ownership communities and professional association managers of changes in the laws and regulations that affect their communities or operations; and

(i) operate a dispute resolution process to furnish mediation and administrative hearings. (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-6. Duties of the Commission on Common Ownership Communities.**

The Commission must:

(a) adopt rules and procedures as necessary to carry out the purposes of this Chapter;

(b) keep a record of its activities and minutes of all meetings, which must be kept on file and open to the public at reasonable business hours upon request;

(c) cooperate with the County Executive and all government agencies concerned with matters within the jurisdiction of the Commission;

(d) examine by means of public or private meetings, conferences, and public hearings, conditions in common ownership communities which may result in unmet community, resident, or public needs; and

(e) advise the citizens of the County, the County Council, and the County Executive, and County, state, and federal agencies on matters involving common ownership communities, and recommend such programs, procedures, or legislation as it finds necessary. (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-7. Registration; fees.**

(a) (1) Each common ownership community must register with the Commission annually, and identify its elected leadership and managing agents, on a form provided by the Commission.

(2) Failure to register, or making a false statement on a registration form, is a class A violation and also makes the community ineligible to file a dispute under Article 2.

(3) The governing body of a homeowners' association, the council of unit owners of a condominium, and the board of directors of a cooperative housing corporation are responsible for compliance with this subsection, including the payment of any registration fee.

(b) The County Executive by regulation adopted under method (2) may establish reasonable fees in amounts sufficient to fund the provision of dispute resolution and technical assistance by the Commission and the Office. These fees may include:

(1) a per unit annual charge to common ownership communities to renew registration;

(2) fees for service, that seek to recover the actual cost of the service, for technical assistance and dispute resolution; and

(3) a per unit charge to developers when documents are recorded. (1990 L.M.C., ch. 33, § 1.)

**ARTICLE 2. DISPUTE RESOLUTION.**

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

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

(1) *Association document* means:

(A) the master deeds, declaration, incorporation documents, bylaws, and rules of any common ownership community;

(B) any written private agreement between any parties concerning the operation of the community or maintenance or control of common or limited common property; and

(C) any similar document concerning the operation or governance of a common ownership community. Association document does not include a lease covered by Chapter 29 unless the lease provides that it may be enforced under this Chapter.

(2) *Community association* means the legal entity, incorporated or unincorporated, that is responsible for the governance or common property of a common ownership community.

(3) *Dispute* means any disagreement between 2 or more parties that involves:

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

(i) require any person to take any action, or not to take any action, involving a unit;

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

(iii) spend association funds; or

(iv) alter or add to a common area or element; or

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

(i) properly conduct an election;

(ii) give adequate notice of a meeting or other action;

(iii) properly conduct a meeting;

(iv) properly adopt a budget or rules;

(v) maintain or audit books and records; or

(vi) allow inspection of books and records.

(4) *Dispute* does not include any disagreement that only involves:

(A) title to any unit or any common area or element;

(B) the percentage interest or vote allocable to a unit;

(C) the interpretation or enforcement of any warranty;

(D) the collection of an assessment validly levied against a party; or

(E) the judgment or discretion of a governing body in taking or deciding not to take any legally authorized action.

(5) *Governing body of a community association* means the council of unit owners, board of directors, or any other body au-

thorized by an association document to adopt binding rules or regulations.

(6) *Owner* includes:

- (A) a unit owner in a condominium;
- (B) a lot owner in a homeowners' association, and
- (C) a member of a cooperative housing corporation.

(7) *Party* includes:

- (A) an owner;
- (B) a governing body; and
- (C) an occupant of a dwelling unit in a common ownership community. (1990 L.M.C., ch. 33, § 1.)

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

(a) The Commission may hear any dispute between or among parties.

(b) A party must not file a dispute with the Commission until the party makes a good faith attempt to exhaust all procedures or remedies provided in the association documents.

(c) However, a party may file a dispute with the Commission 60 days after any procedure or remedy provided in the association documents has been initiated before the association.

(d) After a community association finds that a dispute exists, the association must notify the other parties of their rights to file the dispute with the Commission. The association must not take any action to enforce or implement its decision for 14 days after it notifies the other parties of their rights.

(e) When a dispute is filed with the Commission, a community association must not take any action to enforce or implement the association's decision, except filing a civil action under subsection (f), until the process under this Article is completed.

(f) Any party may file a civil action arising out of an association document or a law regulating the association's powers and procedures at any time. The court may stay all proceedings for at least 90 days after the court is notified that a dispute has been properly filed under this Article so that a hearing under Section 10B-13 may be completed. Whether or not a stay is issued, the court may hear the action *de novo* only if a hearing panel as-

signed to the dispute has not issued a decision under Section 10B-13(e). (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-10. Production of evidence.**

(a) The Commission may:

(1) compel the attendance at a hearing of witnesses and parties, administer oaths, take the testimony of any person under oath and, in connection with any dispute, require the production of any relevant evidence; and

(2) issue summonses to compel the attendance of witnesses and parties and the production of documents, records and other evidence in any matter to which this Article applies.

(b) If any person does not comply with any summons issued under this Article to compel the attendance of persons or the production of documents, records or other evidence in any matter to which this Article applies, the County Attorney, on behalf of the Commission, may enforce the summons in a court with jurisdiction.

(c) Any court with jurisdiction may, on request of the Commission, in accordance with state law and the Maryland Rules of Procedure:

(1) require compliance with a summons;

(2) require the attendance of a named person before the Commission at a specified time and place;

(3) require the production of records, documents, or other evidence;

(4) require the transfer of custody of records, documents, or other evidence to the court; or

(5) prohibit the destruction of any records, documents, or other evidence until a lawful investigation by the Commission is ended.

(d) A court may punish any disobedience of any order entered under this Section as a contempt of court. (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-11. Mediation.**

(a) The Office may investigate facts and assemble documents relevant to a dispute filed with the Commission, and may summarize the issues in the dispute. The Office may notify a party if,

in its opinion, a dispute was not properly filed with the Commission, and may inform each party of the possible sanctions under Section 10B-13(d).

(b) Any party may request mediation.

(c) If a party requests mediation, the Commission must notify all parties of the filing and of the mediation session.

(d) The Commission must provide a qualified mediator to meet with the parties within 30 days after a party requests mediation to attempt to settle the dispute.

(e) If any party refuses to attend a mediation session, or if mediation does not successfully resolve the dispute within 10 days after the first mediation session is held, the Commission must promptly schedule a hearing under Section 10B-13 unless a hearing has already been held under Section 10B-13. (1990 L.M.C., ch. 33, § 1.)

#### **Sec. 10B-12. Hearing Panel.**

(a) If a hearing is scheduled, the chair of the Commission must convene a 3-member panel to hear the dispute.

(b) The chair must choose 2 members of the panel from the voting members of the Commission. They must represent 2 different membership groups. At least one member must be a resident of a common ownership community. The 2 Commission members must designate the third member from a list of volunteer arbitrators trained or experienced in common ownership community issues maintained by the Commission. The third member must chair the panel. If a suitable arbitrator is not available, the chair of the Commission must choose the third panelist from among the voting members of the Commission, and must designate the chair of the panel.

(c) Each panelist must not have any interest in the dispute to be heard. (1990 L.M.C., ch. 33, § 1.)

#### **Sec. 10B-13. Administrative hearing.**

(a) A hearing panel appointed under Section 10B-12 must hold a hearing on each dispute that is not resolved by mediation under Section 10B-11 unless the Commission finds that:

(1) the dispute is essentially identical to another dispute between the same parties on which a hearing has already been held under this Section; or

(2) the dispute is clearly not within the jurisdiction of the Commission.

(b) Sections 2A-1 through 2A-11 apply to a hearing held under this Section. However, the parties need not be given more than 15 days' notice before the hearing is held, if the Commission finds that an expedited hearing is necessary. At any hearing, a party or a witness may be advised by counsel.

(c) If any party, after proper notice, does not appear at the scheduled hearing, the hearing panel may order any relief to another party that the facts on record warrant.

(d) The hearing panel may award costs, including a reasonable attorney's fee, to any party if another party:

(1) filed or maintained a frivolous dispute, or filed or maintained a dispute in other than good faith;

(2) unreasonably refused to accept mediation of a dispute, or unreasonably withdrew from ongoing mediation; or

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

The hearing panel may also award costs or attorney's fees if an association document so requires and the award is reasonable under the circumstances. The hearing panel may also require the losing party in a dispute to pay all or part of the filing fee.

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

(f) An appeal of a decision under this Section must be consolidated with any case filed under Section 10B-9(f) that arises out of the same facts.

(g) The court hearing an appeal must sustain the decision of the hearing panel unless the decision is:

(1) inconsistent with applicable law;

(2) not supported by substantial evidence on the record; or

(3) arbitrary and capricious, considering all facts before the hearing panel.

(h) The Commission, acting through the Office and the County Attorney, may enforce a decision of the hearing panel by taking any appropriate legal action. (1990 L.M.C., ch. 33, § 1.)

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

(a) Settlement of a dispute by mediation agreed to by the parties is binding, has the force and effect of a contract, and may be enforced accordingly.

(b) The Office may inform any party who has settled a dispute by mediation, or any party who prevails in a hearing held under Section 10B-13, about how the agreement or decision can be enforced. (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-15. Regulations.**

The County Executive must promulgate, under method (2), regulations for the dispute resolution process. (1990 L.M.C., ch. 33, § 1.)

**ARTICLE 3. OPEN CONDUCT.**

**Sec. 10B-16. Open meetings.**

(a) Each meeting of a community association, including the governing body or any committee created by the governing body, must be:

(1) (A) held only on regularly scheduled and established dates or periods, at a time and place that has been disclosed to all members by public posting, circular, newsletter or another method that gives a reasonable assurance of general knowledge thereof; or,

(B) if not held on a regular basis, on reasonable advance notice, which normally means at least 72 hours' notice given by a method listed in subsection (a)(1)(A);

(2) open to each owner or occupant of a unit in the community, their guests, and any representative of the news media;

(3) held at a place and time convenient to the greatest number of members; and

(4) held in closed session only for one or more of the following purposes:

(A) discussion of the employment, assignment, appointment, promotion, demotion, compensation, discipline, removal, or resignation of an employee over whom the association has juris-

diction, or any other personnel matter affecting a particular individual;

(B) protection of the privacy or reputation of individuals in matters not related to association business;

(C) consultation with legal counsel;

(D) consultation with staff, consultants, attorneys, or other persons in connection with pending or potential litigation;

(E) investigative proceedings concerning possible or actual criminal misconduct;

(F) complying with a specific constitutional, statutory, or court ordered requirement protecting a particular proceeding or matter from public disclosure;

(G) on an individually-recorded affirmative vote of two-thirds of the members present, for another exceptional reason so compelling as to override the general public policy in favor of open meetings;

(H) acquisition of capital items previously specifically approved as part of a published budget adopted in an open meeting;

(I) discussion of short-term investments of funds of the association in liquid assets if authorized by an investment policy previously adopted in an open meeting;

(J) conducting collective bargaining negotiations or considering related matters and issues; or

(K) discussions concerning public security, including the deployment of personnel and the development and implementation of emergency plans.

(b) If a meeting is held in closed session under subsection (a):

(1) no action may be taken and no matter may be discussed except those permitted under paragraph (a)(4); and

(2) a statement of the time, place, and purpose of each closed meeting, the record of the vote of each member by which a meeting was closed, and the authority under this Section for closing any meeting, must be made available so as to reasonably notify members of the association within 14 days after the meeting.

(c) The notice required under paragraph (a)(1) may be waived if the person calling the meeting declares an emergency. (1990 L.M.C., ch. 33, § 1.)

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

(a) *Election dates and procedures.* Not less than 10 nor more than 90 days before an election for the governing body of an association, the governing body must notify all members of the association of election procedures and the date of the election. An initial election for the governing body must be held not later than 60 days after the date that 50 percent of the units have been conveyed by the developer to the initial purchasers.

(b) *Election materials.* All election materials prepared with funds of the association:

- (1) must list candidates in alphabetical order; and
- (2) must not suggest a preference among candidates.

(c) *Absentee ballots.* Any unsigned absentee ballot, to be valid, must be:

(1) received in a signed, sealed envelope, bearing the identification of the dwelling unit and proportional voting percent, if any, on the outside; and

(2) opened only at a meeting at which all candidates or their delegates have a reasonable opportunity to attend.

(d) *Proxy or power of attorney.* Any proxy or power of attorney valid under state law is valid at any association meeting. However, a proxy that is not appointed to vote as directed must be appointed only to meet a quorum or vote on matters other than an election for a governing body. If a proxy form must be approved before it is used, the approving authority must not unreasonably withhold its approval.

(e) *Cumulative voting prohibited.* In an election for a governing body, for each unit that a members owns the member must not cast more than one vote for each candidate.

(f) *Counting votes.* Until the time for voting closes, an association must not open or count election ballots.

(g) *Terms of office.* Unless the association documents provide for other terms of office:

(1) a member elected to the governing body of an association is elected for a term of two 2 years; and

(2) the individual terms of the entire governing body are staggered, so that as close to one-third as possible are elected each year. (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-18. Budget.**

Unless the association documents provide otherwise:

(a) the governing body must provide members of the association with the proposed budget of the association at least 30 days before the governing body votes on the budget; and

(b) the governing body must provide members of the association with any proposed amendment to the budget at least 30 days before the governing body votes on the amendment, if the amendment will result in an increase or decrease of more than 15 percent of the approved budget. This requirement does not apply to expenditures made to respond to an imminent threat to health or safety or of serious property damage. (1990 L.M.C., ch. 33, § 1.)

**Sec. 10B-19. Enforcement.**

(a) The Commission may enforce this Article by legal action.

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

(1) for injunctive relief to enforce this Article or correct any violation of it, and

(2) to recover damages for a loss sustained as a result of a violation of this Article. (1990 L.M.C., ch. 33, § 1.)

# Montgomery County Government

EXHIBIT B



## OFFICE OF THE COUNTY ATTORNEY

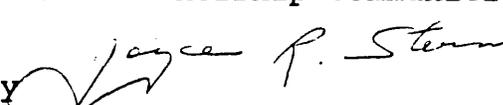
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### M E M O R A N D U M

March 31, 1993

TO: Jacqueline Simon, Chairperson  
Commission on Common Ownership Communities

FROM: Joyce R. Stern  
County Attorney 

RE: Summary on Enforcement of Commission on Common Ownership  
Communities Decisions and Orders

This memorandum is to summarize the recent discussion with the Commission on Common Ownership Communities (hereinafter "COCOC"), regarding the enforcement of COCOC decisions and orders. This discussion regarding enforcement of COCOC decisions and orders originally was raised in the context of two cases, one involving the weight of a dog in excess of that permitted by the covenants of a community association and the other involving the construction of a deck which did not conform to the covenants of a condominium.

Since the time of our initial meeting regarding this subject, the Office of the County Attorney, along with the entire County government, has been faced with various budgetary concerns which require us to look carefully at initiation of litigation. Consequently, the Office of the County Attorney must carefully exercise its prosecutorial discretion in undertaking enforcement of COCOC decisions, and will continue to do so on a case-by-case basis. The decision has been made that the Office of the County Attorney will not be moving to enforce the two pending cases discussed herein.

Upon reviewing the decisions and orders of these two cases, it is clear that they both involve a unit owner not complying with the private covenants of a governing body. The prevailing private party involved in the COCOC dispute resolution process has the authority to enforce Commission decisions and orders. Furthermore, the prevailing party is in a more advantageous position after having gone through the COCOC process, because it would then be going to Circuit Court to enforce the Commission decision on the record and under the auspices of the County law, rather than having to relitigate all of the issues regarding its private covenants.

Please note that at the time COCOC came into existence, our Office requested funding from the County Council in order to support the enforcement of COCOC's decisions and orders. However, absolutely no funding was provided to this Office to provide for the resources necessary to undertake enforcement.

Jacqueline Simon  
March 31, 1993.  
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I also want to draw your attention to the difficulty inherent in having the County act as the sole party in enforcing orders which relate to private covenants of community associations. An absent original party would thereafter have no standing to enforce any judgment or order the Court may enter. To avoid this dilemma, it is necessary that the private litigants participate in any action to enforce, regardless of whether the County takes the lead in such enforcement.

Currently, the Office of the County Attorney is exploring other avenues of enforcement which would assist COCOC. Although Chapter 10B currently does not provide the ability to issue civil citations regarding noncompliance with decisions and orders, this office is looking into possible methods by which noncompliance with an order may be considered a violation of County law, subject to the issuance of a civil citation. The issuance of civil citations would be appropriate in cases in which a party failed to perform or cease some action required by a COCOC order. The imposition of a fine on the party not in compliance with the order would be handled on the general civil infraction docket in the County District Court, and would encourage parties to comply with COCOC decisions and orders.

Should you have any questions or require any further information, please do not hesitate to contact your legal counsel Richard H. Melnick, Assistant County Attorney. We look forward to continuing to work with the Commission and hope this memorandum helps to clarify the basis for these initial decisions regarding enforcement.

JRS:pas  
SIMON.COC