

MEMORANDUM

June 16, 2015

TO: Planning, Housing and Economic Development and Public Safety Committees

FROM: Kristen Latham, Legislative Analyst
Stephanie Bryant, Legislative Analyst
Office of Legislative Oversight

SUBJECT: Office of Legislative Oversight Report 2015-8: *An Evaluation of the Commission on Common Ownership Communities*

On June 18th, the PHED and PS Committees will hold a joint worksession on the Office of Legislative Oversight Report 2015-8: *An Evaluation of the Commission on Common Ownership Communities*. The report responds to the Council's request to better understand the Commission's mission, current practices and policies, and dispute resolution process. The report's executive summary, along with Executive and Commission responses are available at ©1. An update provided by the CCOC is available starting on ©11.

Executive Branch representatives expected to attend the Committee worksession include Eric Friedman from the Office of Consumer Protection and Clarence Snuggs and Rosie McCray-Moody from the Department of Housing and Community Affairs.

This packet is organized as follows:

- **Section A** summarizes OLO's findings; and
- **Section B** summarizes OLO's recommendations for Council Action, including County Executive and Commission responses and action updates.

COUNCILMEMBERS PREVIOUSLY RECEIVED COPIES OF REPORT 2015-8 AND SHOULD BRING A COPY OF THE REPORT TO THE WORKSESSION.

A. Summary of Findings in Report 2015-8

OLO staff will provide the Committee with an overview of the report. Key findings from the report, include:

- The Commission currently has one full-time staffer. Stakeholders reported that Commission staff is effective and knowledgeable, but there is a need for additional staff to carry the workload.
- The Commission received \$408,770 in association fees in FY14. These fees fund one full-time Commission staff member and a part of six other employees' salaries who support Commission staff when needed and available.
- The Commission's resources have been focused on dispute resolution and as a result, the Commission has done limited work towards their mandated education and policy missions.
- The Commission's dispute resolution process is highly paper-based; there is no electronic case management system or an up-to-date database on common ownership community information.
- Of the 178 closed cases that OLO reviewed from January 2012 through January 2015, 47% were resolved through informal negotiation, 29% were resolved through mediation, and 12% were resolved through a Commission hearing.
- The average length for dispute resolution, from the filing of the complaint to final resolution, was 169 workdays. It took twice as long to resolve a dispute through the hearing process as compared to informal negotiation or mediation.

B. Summary of Recommendations and Responses

Based on the findings of Report 2015-8, OLO offers the following three recommendations for Council action.

- 1. Request the County Executive review the Commission's allocation of resources and ensure the Commission perform all tasks mandated by Section 10B, including more informal dispute resolution (mediation), education, and policy work.**

The Commission was created to meet four objections: (1) ensure proper establishment and operation of common ownership communities; (2) provide education; (3) encourage informal dispute resolution; and (4) provide policy guidance. However, due to lack of resources, the Commission has not fully realized initiatives related to the training, legislative, and education mandates. Further, the passage of Council Bill 45-14 will require additional resources to maintain and monitor the training requirements of association board members. OLO recommends the addition of three employees:

- An investigator/education staff member, similar to the current CCOC staff person;
- An administrative aide; and
- An information technology person, primarily for the maintenance of Bill 45-14 training piece but also could meet other IT needs of the Commission.

Response and Updates. The County Executive and Commission both agree that the Commission should refocus its mission to include more educational outreach and encouragement of more informal dispute resolution, but does not address the addition of resources. The Commission has asked both the County Executive and County Council for additional resources.

2. Request the Executive to develop an electronic case management system for all Commission complaints and a database inventorying all relevant information regarding common ownership communities.

The Commission's current dispute resolution process and filing system is primarily paper-based and the Commission members report that the Commission lacks digital case management, capacity to collect and disseminate information, or the ability to host interactive online courses. Currently, DHCA is responsible for maintaining a list of all common ownership communities in County during the required annual registration and collection of registration fees from the member associations, including the name of the associations, property management groups, and board presidents. However, associations are not required to provide contact information (phone or email) or the names of all board members, information which will be crucial to the implementation of Council Resolution 45-14.

The creation of an electronic case management and tracking system, along with a more robust collection of association board information, could improve administrative efficiency and permit the availability of data to conduct analyses on complaint information and resolutions and provide required training.

Response and Updates. The County Executive and Commission members agree that the technology systems need updating and expansion. The Office of Consumer Protection has been working with DTS extensively to update all technology systems within the department, including the Commission on Common Ownership Communities. Further, OCP has been working with DTS to create an online training course to meet the requirements of Council Bill 45-14. There is a Council Committee worksession scheduled in mid-July to discuss the status of the training module.

3. Absent significant drawbacks, including organizational capacity to absorb the Commission, relocate the Commission on Common Ownership Communities from the Office of Consumer Protection to the Department of Housing and Community Affairs (DHCA).

OLO acknowledges that the Commission on Common Ownership Communities is not a perfect fit in any County department; however, OLO believes that relocating the Commission to DHCA could provide administrative and information technology resources and support that the Office Consumer Protection simply cannot provide.

Response and Updates. The Executive is completing an assessment of the CCOC after the implementation of OLO's first two recommendations (refocused mission and more technology) and reports that it will make a decision on the location of the Commission once that those recommendations have been implemented. Some Commission members do not support a move to DHCA, as they believe that it is a quasi-judicial body whose responsibilities are outside the mission of both Consumer Protection and DHCA. Rather, Commission members propose that the Commission on Common Ownership Communities becomes an independent office directly accountable to the County Executive and Council.

An Evaluation of the Commission on Common Ownership Communities

OLO Report 2015-8

Executive Summary

March 10, 2015

Montgomery County has experienced a significant growth in common ownership communities since the 1990's, with approximately 40% of residents (340,000) residing in one of the 1,000 plus communities in the County. This report responds to the County Council's request to better understand the Commission on Common Ownership Communities (Commission) including its mission, current practices and policies, and the dispute resolution process.

Organizational Structure and Programming

Created by County Code Chapter 10B, the Commission is to advise all branches of the County government on the proper establishment and operation of common ownership communities, provide education and policy resources, and establish an alternate dispute resolution process.

Office of Common Ownership Communities. The Office of Common Ownership Communities is part of the County's Office of Consumer Protection (OCP) and provides staff support to the Commission. With a one full-time staff member and assistance from OCP, DHCA, and volunteers, the Office must develop education and reference materials, conduct education programs, maintain a roster of common ownership communities, maintain model association documents, provide technical assistance to associations, advise on changes in the law, and operate a dispute resolution process.

Commission on Common Ownership Communities. The Commission has fifteen appointed commissioners who serve three year terms. The Commission consists of eight common ownership community property owners and seven professionals (including property managers, real estate sales agents, or attorneys). Members attend monthly meetings, participate in committees, and serve on hearing panels.

A *common ownership community* is an organization consisting of property owners within a residential development with shared common property. The governing associations for these communities must adopt and enforce rules, own and maintain common property, and assess dues for the maintenance and operations. There are three types of communities in the County: condominium associations, homeowner associations, and cooperative housing corporations.

	FY14 Actual Expenditures	FY15 Approved Expenditures
Office of Consumer Protection (1.9 WYS)		
Personnel	\$330,445	\$266,714
Operating	\$11,858	\$46,025
Department of Housing and Community Affairs (.6 WYS)		
Personnel	\$66,016	\$69,007
Operating	\$2,365	\$6,680

Funding. Each association must register annually with the Commission and pay a fee of \$3 per property unit. In FY14 the Commission received \$408,770 in fee revenue. This revenue funds the Commission and OCP staff positions, with an additional 16% of paid to DHCA to cover operating costs associated with fee collection.

Survey Results on the Commission Staff and Resources. OLO received 211 survey responses on the services and resources provided by the Commission. Key survey findings include:

Survey Topic	Key Survey Findings
Familiarity with the Commission	Eighty-one percent of respondents were familiar with the Commission; over 50% of respondents did not receive information on the Commission from their association.
Frequency of Resource Use	The most widely used Commission resources are the guides/manuals, newsletter and website. The least used resource was the YouTube educational video series.
Satisfaction with Resources	Overall, 62% of respondents were satisfied with available resources, particularly the newsletter and the classes.
Satisfaction with Commission Staff	Participants reported an 81% overall satisfaction rate with Commission staff, particularly concerning the staff's knowledge, courtesy, and helpfulness.

Dispute Resolution

A complaint filed with the Commission may be resolved through informal negotiation, mediation, or by an administrative hearing. Mediation is conducted by one part-time volunteer who is trained in common ownership community law. The administrative hearing is conducted by a hearing panel including two commissioners and a volunteer arbitrator. OLO reviewed paper case files for all closed cases filed with the Commission from January 23, 2012 through February 3, 2015 and found:

	Key Findings
Closed Cases (178 Cases)	<ul style="list-style-type: none"> Forty-seven percent were resolved before mediation, 29% through mediation, 12% with a hearing, and 12% were withdrawn or lacked jurisdiction. The average length to close a case was 169 workdays. Maintenance/architectural review/landscaping needs accounted for 78% of cases; in comparison 22% of cases dealt with association governance. In 58% of all cases, neither party was represented by an attorney. However, in 74% of cases that went to a hearing at least one party was represented by an attorney.

Survey Results on the Dispute Resolution Process. OLO received 61 survey responses (out of 211 surveys sent) on the dispute resolution process. Key survey findings include:

Survey Topic	Key Survey Findings
Filing or Responding to a Complaint	Sixty-six percent of parties reported having adequate and clear information when filing/responding to a complaint and that the process was easy. However, almost 33% did not feel that it was easy to contact staff.
Case Resolved through Mediation	Half of respondents who used mediation were satisfied with the process and over half thought the mediator was fair and information was readily available.
Case Resolved through an Administrative Hearing	Sixty percent of respondents were satisfied with the available information and how they were treated. However, 40% reported that the hearing was not fair and impartial and was not scheduled in a reasonable amount of time.

Feedback from Key Stakeholders

Based on stakeholder meetings and open-ended survey questions, OLO identified major themes, including:

- Although staff does an outstanding job, there needs to be increased capacity to meet all Commission goals;
- There is a need for more education for associations on management and property owners on living in a common ownership community;
- Although volunteer panel chairs provide an invaluable service, there were concerns over impartiality, leading to an Ethics Commission opinion preventing volunteer panel chairs from representing clients before the Commission;
- Scheduling delays and postponements considerably lengthen the dispute resolution process;
- Stakeholders have mixed views on whether the current dispute resolution process is too formal and not in line with the Commission's original mission;
- Stakeholders requested increased website and search functionality, particularly relating to case decisions; and
- The Commission needs to expand its policy initiatives relating to the financial health of communities.

Recommendations

OLO has the following three recommendations on the Commission and asks that the Executive reports on the developments made on all three recommendation by September 2015.

- Request the Executive review the Commission's allocation of resources to ensure the Commission can perform all tasks mandated by Chapter 10B, including more informal dispute resolution, education and policy work.
- Request the Executive to develop an electronic case management system for all Commission complaints and a database inventorying all relevant information regarding common ownership communities.
- Absent significant drawbacks, including organizational capacity to absorb the Commission, relocate the Commission on Common Ownership Communities from the Office of Consumer Protection to the Department of Housing and Community Affairs (DHCA).



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

March 18, 2015

TO: Chris Cihlar, Director, Office of Legislative Oversight

FROM: Timothy L. Firestine, Chief Administrative Officer *Timothy L. Firestine*

SUBJECT: OLO Draft Report No. 2015-8, An Evaluation of the Commission on Common Ownership Communities

I am in receipt of your draft report No. 2015-8, providing an evaluation of the Commission on Common Ownership Communities. As the first review of this program in over 20 years, and understanding the limitations of the sample size responding to the surveys, your assessment of this program has been thorough, thoughtful, and balanced. I am pleased that your review resulted in identifying potential ways to improve upon the success of this relatively unique program.

In response to the report's Recommendations, I offer the following comments:

OLO Recommendation #1: Request the County Executive review the Commission's allocation of resources and ensure the Commission performs all tasks mandated by Section 10B, including more informal dispute resolution (mediation), education, and policy work.

CAO Response: We agree with this recommendation. County Executive Leggett established the initial Task Force, recommended they consider the creation of the Commission, and introduced legislation to ultimately establish the Commission more than 20 years ago. Striving to encourage and provide informal dispute resolution as an alternative to litigation in court continues to be one of the primary responsibilities of the Commission. However, as referenced in Finding #5, this unique program is no longer operating as an informal and efficient dispute resolution program. We share the concerns expressed by some stakeholders that the Commission's hearing process can be protracted and expensive especially when the parties retain legal counsel. We support the idea that the work of the Commission should be refocused on its original objectives with much more emphasis on community outreach, education, informal negotiation, and mediation.

To the extent that Commission staff is engaged in duplicating a process similar to court litigation, Commission staff does not have the time or resources to engage in outreach, education, and other services which may assist those living in common ownership communities.

Chris Cihlar, Director, OLO
Page 2
March 18, 2015

We are determining what steps could be taken to promote a more robust informal resolution program. For example, the mediation offered by the Commission is currently optional. Mandating participation in mediation may serve to enhance the Commission's ability to function as an alternative dispute resolution program while also enabling Commission staff to engage in other more productive activities.

Funding for the Commission is supported by an annual fee charged to every common ownership community unit. It is necessary to strike an appropriate balance between the fees and the services which these common ownership communities receive.

OLO Recommendation #2: Request the Executive to develop an electronic case management system for all Commission complaints and a database inventorying all relevant information regarding common ownership community.

CAO Response: While we recognize the need to determine and develop an optimum way to enable staff to provide support to the Commission through the use of electronic data management, the Office of Consumer Protection (OCP) does not currently have this technology. This year, OCP will work with the Department of Technology Services to upgrade the department to an electronic case management system. At that time, we will assess the needs of the Commission as well.

OLO Recommendation #3: Absent significant drawbacks, including organizational capacity to absorb the Commission, relocate the Commission on Common Ownership Communities from the Office of Consumer Protection to the Department of Housing and Community Affairs (DHCA).

CAO Response: We recognize the need to provide sufficient resources to support the mission of the Commission. We believe that this concern is best addressed by refocusing and adjusting the Commission's complaint resolution process to ensure that it operates as an alternative dispute resolution process. In addition, we recognize that sufficient information technology resources would need to be provided to OCP and the Commission in order to accomplish this goal. We believe the Commission's operational efficiency will be greatly improved as a result of the implementation of the first two OLO recommendations.

We believe that the work of the Commission should be refocused on its original mission of educating owners and Association Boards on their rights and responsibilities, outreach for the purpose of building stronger organizations, and most importantly, utilizing its resources to create a system which provides an incentive to mediate differences rather than relying on litigation. We realize that the Commission needs additional resources to get the job done. This includes financial, human, and technology resources to help the operation run smoothly. Once this assessment is complete, we will revisit the issue of where the Commission should be located.

Chris Cihlar, Director, OLO

Page 3

March 18, 2015

Again, I thank the Office of Legislative Oversight for its work on this report. If you have questions or need additional information please contact Fariba Kassiri, Assistant Chief Administrative Officer.

TLF:ef

cc: Fariba Kassiri, Assistant Chief Administrative Officer
Eric Friedman, Director, Office of Consumer Protection
Clarence Snuggs, Director, Department of Housing and Community Affairs
Sonny Segal, Director, Department of Technology Services



MEMORANDUM

TO: Kristen Latham and Stephanie Bryant
Legislative Analysts
Office of Legislative Oversight

FROM: Rand H. Fishbein, Ph.D., Chair
Marietta Ethier, Esq., Commissioner
Commission on Common Ownership Communities

DATE: February 27, 2015

SUBJECT: Commission on Common Ownership Response to the draft OLO Report
Entitled: *An Evaluation of the Commission on Common Ownership
Communities*

The purpose of this memorandum is to provide the official response of the Commission on Common Ownership (CCOC) to the draft report of the Office of Legislative Oversight (OLO) on the operations and requirements of the (CCOC) entitled: *An Evaluation of the Commission on Common Ownership Communities*.

Introduction

The CCOC wishes to express its gratitude to the Office of Legislative Oversight for the impressive report it has produced and the important contribution it is sure to make in strengthening the CCOC and, by extension, improving good governance and social stability in common interest communities across Montgomery County.

Special words of appreciation are due Legislative Analysts, Kristen Latham and Stephanie Bryant, for the fair and balanced manner in which they analyzed the mandate, administrative requirements and constraints under which the CCOC operates. -Their openness to suggestions, diligence and professionalism, throughout the period of their work with the Commission speak highly of their efforts. The Commission looks forward to following up with the OLO in the coming months as we work to make many of changes in policies and procedures suggested by its report – changes that we expect will improve both the efficiency and effectiveness of the services we deliver to County residents.

Mandate, Expectations and Realization

The original drafters of Chapter 10B rightly identified the needs of COCs as shown in the recitation of the issues they expected the Commission to address -- issues ranging from

governance, education and dispute resolution, to matters relating to the maintenance of property values and the financial health of COCs as a means of preventing public financial liability.

The OLO rightfully points out in its General Findings that: "(t)he Commission's resources have been focused on dispute resolution and as a result, the Commission has done limited work towards their mandated education and policy missions." Putting the best possible light on the data, last year the Commission reached, through seminars and its annual forum, less than 10% of board members and less than 1% of unit owners. Here are a few examples of what we could and should be doing:

- There are a number of COCs that are financially very secure, well-staffed and are exploring various cost saving approaches. The Commission should be a conduit for the exchange of information whereby the haves share with the have-nots. One condominium replaced 1700 light bulbs in common areas with LED bulbs. The project resulted in annual savings in electricity of \$29,888. The original cost was \$23,603. This is a building with only 97 units.

Moreover, with Pepco incentives the condominium paid under \$5,000 to replace the bulbs and may realize an additional \$2500 in saving if it undertakes an energy study through PEPCO's consultant Lockheed Martin. The Commission should be disseminating information on such projects and if necessary identifying banks and other funding sources who could loan COCs money to underwrite same. If one fourth¹ of the COCs undertook such a cost saving measure there could be a potential *collective reduction in the cost of electricity of \$7,762,500 the second year.*²

- The 1261 requests for information in an eighteen month period highlighted in the OLO report shows a hunger for knowledge. A brochure on how to hold an election doesn't assure compliance. A webinar or webcasts where board members can ask questions is much more effective. The Commission could, and should, organize, market and sponsor many such interactive communication sessions.
- A recent informal survey conducted by the Commission identified a substantial number of COCs as self-managed. As a recent case before the Commission shows this is fertile ground for financial mismanagement. The Commission could pair successful COCs with those needing help and could establish an educational program specifically for self-managed entities and identify inexpensive sources of financial support.
- The potential for creativity is almost limitless from identifying addressing basic needs such as sample forms, resolutions and similar documentation to investigating the possibility of having COCs use sequential generation of electric and thermal energy from a single fuel source such as natural gas

¹ Many COCs are HOAs with limited common areas but many condominiums are much larger than the 97 unit building identified above.

²This assumes a one year payback.

Staffing

We concur, wholeheartedly, with the OLO recommendation that the CCOC is in urgent need of additional staffing. The Commission has done some further identification of the needs and the staff required to address all of the functional areas covered in our statutory mandate. We have urged both the County Executive and the Council to address these requirements fully in the FY 2016 budget so that the Commission can build the capacity essential to its function.

Automation

Your second recommendation recognizes that the key to efficient and effective delivery of services is automation. Unfortunately the Commission's ability to communicate digitally with its constituents in a targeted fashion and in real time is virtually non-existent. At present, the Commission has:

- no digital case management system (unlike the courts and the Office of the County Attorney),
- no digital survey capability,
- no ability to collect and disseminate real-time performance metrics,
- no ability to develop or track budgets,
- no ability to do digital messaging, conference calling, media communications, scheduling,
- no ability to efficiently manage personnel and task allocations,
- no ability to interface with other County agency data sets,
- no modern user-friendly web site,
- no ability to host interactive online courses or educational programs, and
- no ability to serve as an integrated digital clearing house for information on common ownership communities.

The Commission is in discussions with several organizations regarding how it might fully modernize its data management system from one that is essentially paper-based to one that is fully digitized.

Your report also points out that recently enacted Council Bill 45-14 will add significantly to the need for information gathering, processing and tracking. The Commission believes that this is true and urges the Executive and the Council to provide the Commission with additional resources to address this additional workload.

Dispute Resolution Process

The Commission is in agreement that the present dispute resolution process is long and paper intensive and that some of the "lesser" claims could be handled in a more informal manner and at less cost. Our staffing requests indicate a strong need to build the capacity for dispute resolution across the full continuum of conflict, from the intervention of an

ombudsman, to mediation to formal adjudication of complaint by a quasi-judicial hearing panel.

Recently, the Commission established a Process and Procedures Committee for the purpose of comprehensively evaluating all CCOC case operations from intake to final disposition with the goal of identifying greater efficiencies without sacrificing fundamental due process rights. The Committee will report back to the full Commission with its recommendations that could range from simple changes in policy to enhancement to our basic authorities. The issues which you have identified will be part of this process.

Ethics Commission Ruling

We respectfully request that you add a recommendation that in the absence of any proven problem with attorneys serving as Panel Chairs and also practicing before the Commission, all previously approved attorneys should be permitted to resume their duties while the concerns of the Ethics Commission are being addressed.

The Ethics Commission's Letter of Guidance has had crippling effect on the Commission's operations by forcing a Fifty Percent (50%) reduction in our pool of volunteer attorney panel chairs. Attorneys who practice before the Commission and who also serve as Panel Chairs, have been barred from serving the Commission until questions of an appearance of a conflict of interest (not actual), are satisfactorily resolved.

To the best of our knowledge, there never has been a confirmed instance of a conflict of interest in the nearly 25 years of Commission panel operations. The four instances referenced in the OLO report "where individuals felt that there was a bias..." should be taken as anecdotal until confirmed by an evidentiary investigation. The CCOC has requested, but not received from the Ethics Commission, any details of the complaints made to the CCOC or the names of the complainants. Under these circumstances, it has been impossible for the CCOC to investigate the veracity of the claims or defend its actions.

Nevertheless, the Commission takes any suggestion of a conflict of interest very seriously and currently is looking into put in place additional safeguards to ensure such instances do not arise and if so, are dealt with appropriately.

As noted earlier, the Commission has established a Process and Procedures Committee to review all aspects of the Commission's operations. Part of their charge is to consider meaningful approaches to addressing the issues raised by the Ethic Commission. One idea now under consideration is to put in place "filters," both individuals and rules, that would help to screen attorneys for any actual and/or perceived conflicts of interest. These filters would be in addition to those already in place and which have safeguarded our process successfully for the last quarter century.

Lastly, we respectfully ask that the OLO include a statement in its report to the effect that the Ethics Commission, in its Letter of Guidance to the CCOC, was unable to cite any confirmed instance of a conflict of interest relating to attorney service as a panel chair and his/her practice before the Commission.

Where Should the Commission Reside?

We note, with much reservation, the OLO recommends that the Commission relocate to the Department of Housing and Community Affairs (DHCA). We reluctantly must disagree. The Commission's Budget and Policy Committee has considered this option, met with DHCA officials, and concluded that this would not be a good fit for the following and other reasons:

- The main focus of DHCA is on rentals and individual ownership. COCs have unique issues and problems that need a different focus and approach,
- The Commission wants to think "outside the box"; looking for new creative solutions to issues,
- COCs need an advocate, an entity that will argue their special needs at the County and state levels. This advocacy may conflict at times with the interests of other housing constituencies,
- A major focus of DHCA is housing code enforcement which is not a function authorized under the CCOC's enabling legislation, and
- The Commission is a quasi-judicial body whose functional responsibilities lay outside the traditional focus of both OCP and DHCA.

The Commission has proposed to both the County Council and the County Executive that the Commission become an independent agency, funded through a combination of fees (as currently done), and General revenue. As a stand-alone agency, we would require staffing, funding and administrative capacity essential to meet all of our statutory mandates. After 25 successful years of operation, several NACo achievement awards and a respected body of case decisions, the CCOC has demonstrated it is ready, willing and able to assume the responsibilities associated with being a fully-fledged County agency. It still would be our desire to report directly to the County Executive and the County Council as we currently do.



Commission on Common Ownership Communities

To: Honorable Members, Montgomery County Council
Public Safety Committee (PS)
Planning, Housing & Economic Development Committee (PHED)

Cc: Eric Friedman, Director, Office of Consumer Protection

From: Rand H. Fishbein, Ph.D., Chair, CCOC
Aimee Winegar, Vice-Chair, CCOC
Marietta Ethier, Esq., Chair, Process and Procedures Committee
Commissioners/Committee Members: Jim Coyle; Rand H. Fishbein, Ph.D.; Eugenia Mays, CMCA, AMS, PCAM; David Weinstein; Aimee Winegar, CMCA, LSM, PCAM; Ken Zajic; Peter Drymalski, Esq., Commission Staff

Date: June 18, 2015

Re: **Cover Note: Draft Documents Responding to the OLO Report on CCOC Operations**

The Process and Procedures Committee of the Commission on Common Ownership Communities (CCOC), is pleased to transmit to Montgomery County Officials the following draft documents it has prepared relating to issues raised in the March 10, 2015, Report by the Office of Legislative Oversight (OLO): *An Evaluation of the Commission on Common Ownership Communities* (OLO Report 2015-8). They include:

- Draft - Preliminary Report of the Committee. The Report delineates the efforts made in the Revised Procedures to emphasize early intervention in, and quick resolution of, disputes.
- Draft - Streamlining the CCOC
- Draft - Correcting Misperceptions: Statistics on the CCOC's Adjudicatory Activities.

Each of these documents is in a preliminary stage of development and should be considered only a draft of a future product.

The OLO study recognizes that without additional staff and technology modernization, the Commission will continue to have difficulty executing all of the responsibilities set forth in its enabling statute. We agree. As the number of community associations in the county continues to grow, and the issues they face become more complex, it is critical that the issues faced by the CCOC be addressed as soon as possible. The Commission is grateful to both the Council and the Executive for the time and thoughtful consideration each has given to the Commission's needs.



Commission on Common Ownership Communities

To: Honorable Members, Montgomery County Council
Public Safety Committee (PS)
Planning, Housing & Economic Development Committee (PHED)

Cc: Eric Friedman, Director, Office of Consumer Protection

From: Rand H. Fishbein, Ph.D., Chair, CCOC
Aimee Winegar, Vice-Chair, CCOC
Marietta Ethier, Esq., Chair, Process and Procedures Committee
Commissioners/Committee Members: Jim Coyle; Rand H. Fishbein, Ph.D.; Eugenia Mays, CMCA, AMS, PCAM; David Weinstein; Aimee Winegar, CMCA, LSM, PCAM; Ken Zajic; Peter Drymalski, Esq., Commission Staff

Date: June 18, 2015

Re: DRAFT PRELIMINARY REPORT OF THE CCOC COMMITTEE ON PROCESS
AND PROCEDURES

DRAFT PRELIMINARY REPORT OF THE CCOC COMMITTEE ON PROCESS AND PROCEDURES

I. Introduction

- a. Various constituencies including the County Executive's Office and the OLO have noted problems with the current process.
- b. The Commission welcomed OLO's comments and established a Standing Committee on Process and Procedures to address the issues.
- c. Much more work remains to be done (development of training programs for field investigators, for volunteers assistants assigned to assist parties, for mediators, for commissioners assigned to hearing panels, revision of forms, etc.)

II. Committee's Goals and Operating Assumptions

- a. Facilitate and encourage the resolution of disputes as early as possible. The longer a dispute festers the more the position of the parties hardens and compromise becomes elusive. The Committee believes that the vast majority of complaints

brought to the Commission can be resolved at an early stage if structural opportunities are provided for complainants and the necessary resources to support the effort. The Committee has introduced the use of a Field Investigator who can make site visits and help the parties communicate to better understand the issues.

The experience of the Commission is that people do not talk to each other and if they do talk they do not communicate which leads to misunderstandings. The Committee will also recommend an amendment of County law to authorize the Commission to mandate mediation early in the process if deemed advisable to facilitate the resolution of a dispute.

The Commission also will recommend that that current law be amended to mandate that (i) HOAs establish an internal dispute resolution process that would provide aggrieved residents with an opportunity to be heard. This amendment would mirror Section 11-113 of the Maryland Condominium Act. (ii) revise said Section 113 to require that a "dispute settlement mechanism" now available only for associations be created for the use of residents with a complaint.

- b. Make the CCOC process for resolving disputes much simpler along the entire continuum of conflict.
- c. Provide timely and quality assistance for the complainant who needs help in understanding the process and using the system. The CCOC will explore various options including but not limited to: (i) law students who would provide counseling under the direction of a professor and receive credit for such services (ii) volunteer assistants (iii) client assistants on the staff of the CCOC, etc. All would receive training of course.
- d. Provide all services in a timely fashion. Delays defeat the promise of dispute resolution. The old adage of justice delayed is justice denied applies and is inherent in any dispute resolution process. Delays often are caused by the difficulty in coordinating schedules. The Commission will explore various computerized programs that can match the time and availability of the parties. This is one of the many elements that should be part of a CCOC IT system.
- e. Make the process more user friendly through use of nomenclature and procedures easily comprehended by average citizens unschooled in the legal process.
- f. In those few remaining cases which necessitate the appointment of a hearing panel the Commission will make the process simpler and provide procedures for the identification of information necessary to resolve the dispute as early as possible obviating the necessity for a hearing when and where possible.
- g. The Commission also wants to better define the role of attorneys whose participation often leads to protracted hearings. We are informed by the County Attorney that we cannot prohibit the use of attorneys in the dispute resolution process but we can delineate expectations that will make the process easier and fairer for everyone.

III. Mandate and Cost

- a. When operating in the manner envisioned by the 1989 Commission that proposed the CCOC and in accordance with the subsequent enabling statute, the Commission is able to provide the County with a unique, cost-effective approach to conflict resolution in common ownership communities.
- b. All of the Commissioners and attorneys who perform much of the work of the CCOC are volunteers drawn from the community who provide their services at no cost to the County.
- c. There's no free lunch. The improvements we hope to introduce cost money. Our one indefatigable staff member, Peter Drymalski, is currently overwhelmed. A few commissioners are volunteering their time to help him with administrative and other tasks since he has no clerical support.
- d. Dispute resolution may be the most visible part of the CCOC's mandate but other mandated responsibilities, like education, are of equal importance.



Commission on Common Ownership Communities

To: Honorable Members, Montgomery County Council
Public Safety Committee (PS)
Planning, Housing & Economic Development Committee (PHED)

Cc: Eric Friedman, Director, Office of Consumer Protection

From: Rand H. Fishbein, Ph.D., Chair, CCOC
Aimee Winegar, Vice-Chair, CCOC
Marietta Ethier, Esq., Chair, Process and Procedures Committee
Commissioners/Committee Members: Jim Coyle; Rand H. Fishbein, Ph.D.; Eugenia Mays, CMCA, AMS, PCAM; David Weinstein; Aimee Winegar, CMCA, LSM, PCAM; Ken Zajic; Peter Drymalski, Esq., Commission Staff

Date: June 18, 2015

Re: WHAT YOU SHOULD KNOW BEFORE FILING A REQUEST FOR DISPUTE RESOLUTION

WHAT YOU SHOULD KNOW BEFORE FILING A REQUEST FOR DISPUTE RESOLUTION

- I. The Commission on Common Ownership Communities (CCOC) is not a court. It is an administrative body established by the County to provide residents and associations with a cost-effective, efficient and user-friendly process for resolving disputes. The CCOC exists to ensure that those who may not have the means to go to court or cannot afford an attorney have a way to resolve their disputes.
- II. Before you decide whether to file a Request for Dispute Resolution consider the following:
 1. Have you made sincere efforts to resolve the dispute with the other party?
 2. Have you sufficiently communicated the basis for your dispute?
- III. Requests for Dispute Resolution and Responses to Such Requests
 1. The objective of the Commission is to facilitate the easiest, quickest and fairest resolution of any dispute.

2. Any Request should state specifically and precisely the nature of your complaint and what remedies you are seeking. Lack of specificity will only delay the process. You should include evidence to back up your claims, including documents and photographs.
3. Any Response should state specifically and precisely why the person making the Request is wrong.
4. There should be no surprises. Full disclosure is the rule. Don't expect to introduce something at the hearing which you have not provided to the other side or the panel.
5. The parties need not hire an attorney. Any party may request assistance in understanding the procedures, the kind of evidence useful in making a case, the expectations of those hearing your case the hearing process, etc. The Commission will provide such help. The role of the individual assigned to assist you is not to take sides in this matter but to help in explaining the process and what is expected of you in proving or denying the allegations made in the Request.
6. Hearings are designed to be less formal than a court. There are no rules of evidence. However the party filing the complaint is expected to submit sufficient proof to support a decision in his/her favor. For more information, you should go to our website and read our booklet, *How to Prepare for Your Hearing*.
7. There are videos which you may access online which will help you understand all aspects of the dispute resolution process. Links are as follows. (To be identified later)



Commission on Common Ownership Communities

To: Honorable Members, Montgomery County Council
Public Safety Committee (PS)
Planning, Housing & Economic Development Committee (PHED)

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From: Rand H. Fishbein, Ph.D., Chair, CCOC
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Date: June 18, 2015

Re: Draft Procedures of the Commission on Common Ownership Communities (CCOC) for the Resolution of Disputes Brought By Residents of Common Ownership Communities (COC's) or Boards of CoC's)

DRAFT PROCEDURES OF THE COMMISSION ON COMMON OWNERSHIP COMMUNITIES (CCOC)

I. Exhaustion of Internal Remedies

1. Associations must follow any written procedures for resolving any dispute before filing with the CCOC.
 - a. If the Association has no written procedures the Association must first give the resident written notice of any violation and notify the resident of his/her right to a hearing before the Board.
 - b. If Resident requests same the Board must hold a hearing.
 - c. Written notice of the Board's decision must be provided the Resident with notice of the Resident's right to appeal the decision to the CCOC.
2. Residents must follow any internal procedures established by the Association for resolving disputes. If the Association has no written dispute resolution process, the

Resident must give the Board written notice of the problem and give the Board a reasonable time to resolve it before filing with the CCOC.

II. Timeline for Activities Related to Request for Dispute Resolution (Assuming no defaults by either party)

1. Pre-Consideration Stage

- Day 1 Request for Dispute Resolution Filed
- Day 1 to 5 Copy sent to Respondent; 30 days to file Answer
- Day 10 to 40 .. Respondent files answer
- Day 40 to 60 .. Possible facilitation by Field Investigator or referral to either Mediation or the CCOC

2. Mediation – Matter referred to Mediator

- Day 40 to 60 .. Mediation

3. Consideration by Commission – Referral to Panel

- Day 1 CCOC meeting at which the Commission agrees to take jurisdiction
- By Day 10 Both parties are notified in writing of:
 - ❖ The CCOC's decision
 - ❖ The individuals assigned to the panel if Commission takes case
- By Day 30 Members of the Panel may submit questions to the parties. Parties must have submitted any discovery requests
- By Day 60 The parties will submit their responses to the queries submitted by Panel and respond to discovery requests.
- Day 61 All relevant responses to Panel's queries will be provided to the other party.
- By Day 75 The written record will remain open for additional documentation that may be generated in response to information produced during the initial queries.
- Day 76 The written record will close.
- By Day 100 The Panel will make a decision. A meeting of the parties may be requested by either of the parties or the Panel, but is not required.
- By Day 120 The panel will file a written Decision.

III. Process -Request for Dispute Resolution

1. Request received.

- a. Paper file is open
- b. Online file is created which field investigator and mediator can access to report.

2. Copy of Request for Dispute Resolution is sent to Respondent.

3. Answer filed by Respondent

4. Depending on nature of issue(s) CCOC staff decides whether referral to Field Investigator is appropriate.

IV. Field Investigator

1. The Field Investigator contacts parties; advises that he/she will assist as facilitator.
 - a. Gives parties a statement of issues for agreement of parties. If no agreement on statement of issues reports same to Commission.
 - b. If agreement reached on issues schedules on-site visit if appropriate.
 - c. If issues resolved makes brief report; sends copy to both parties for their agreement.

V. Mediation

1. If no referral to Field Investigator or if Field Investigator is unsuccessful matter may be referred to Mediation. The Mediator may request additional information from the parties.
2. Assigned Mediator will schedule sessions with parties.
3. If matter cannot be resolved within 45 days the matter will be returned to Commission for further processing.

VI. Consideration by Commission

1. If Field Investigator and Mediator are unsuccessful matter will be considered by Commission at next monthly meeting.
2. If Commission decides to proceed further it will appoint a panel.
3. Date on which Commission acts will be considered Effective Date from which all other action dates will be measured.

VII. Initial Consideration by Panel

1. Panel may submit questions to parties. Such requests must be sent to staff within thirty (30) days of Effective Date.
2. Staff will immediately forward same to parties.
3. Response to Panel's questions must be submitted within sixty days of Effective Date.

VIII. Discovery

1. Within thirty days of Effective Date parties must submit request for discovery to Panel Chair. Requests must be very specific. Panel Chair will rule on requests within ten (10) days of receipt of request.
2. All responses to discovery must be received seventy (70) days of Effective Date.
3. After close of the written record the CCOC staff will produce and distribute an Exhibit 1 which will consist of all documents and other information produced by the parties. The parties must use this information in presenting their evidence.

IX. Other Procedural Matters

1. Extensions
 - a. Extensions of time within which to respond will only be granted for circumstances totally beyond the control of the party requesting same. Examples include death of family member, illness, accident, etc.
 - b. Only the Panel Chair can grant extensions.

- c. The Panel may extend any deadline if it feels that such extension of time is necessary to obtain more information and documents from the parties or for other good and sufficient reason.
2. Copying Other Party
 - a. Copies of all submissions, of whatever nature, made by any party must be sent to the other party. Failure to do so may result in dismissal of action.
3. All requests of whatever nature must be made in writing.
4. Both parties must provide the other side and the Panel with a copy of everything they plan to introduce in support of their position.
5. Multiple parties may join in submitting a Request for Dispute Resolution if the complaints are identical and the remedy sought is the same. The complaining party must coordinate their efforts and decide who will be responsible in filings for all of them. All decisions must be unanimous.
6. Either party may request a hearing

X. **Consideration by Panel**

1. Panel will meet within eighty (80) days of Effective Date and if neither party has requested a hearing the Panel will decide whether a hearing is necessary. If no hearing is deemed necessary the Panel will issue a written Decision within forty-five (45) days of the meeting.
2. Any hearing must be scheduled within sixty (60) days of the date of the notice to the parties. A written decision must be issued by the Panel within 45 days of the hearing.
3. The Panel may act at any time after the written record is closed if it believes that evidence is clear and no real controversy exists. Example: Complainant alleges a faulty election process and documentation supports allegation.

XI. **Procedures at Hearing**

(In development - To be provided later)