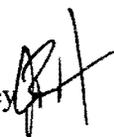


MEMORANDUM

December 4, 2015

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Introduction:** Bill 50-15, Common Ownership Communities - Commission on Common Ownership Communities – Composition – Dispute Resolution

Bill 50-15, Common Ownership Communities - Commission on Common Ownership Communities – Composition – Dispute Resolution, sponsored by Lead Sponsor Council President on behalf of the County Executive, is scheduled to be introduced on December 8, 2015. A public hearing is tentatively scheduled for January 12, 2016 at 1:30 p.m.

Bill 50-15 would:

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

By memorandum dated November 23, 2015, the Executive requested the Council's consideration of Bill 50-15. The memorandum details the proposed changes to the law, and the justification for the changes (See ©12-13).

This packet contains:

Bill 50-15
Legislative Request Report
Memo from County Executive

Circle #

1
10
12

Bill No. 50-15
 Concerning: Common Ownership
Communities - Commission on
Common Ownership Communities -
Composition - Dispute Resolution
 Revised: _____ Draft No. _____
 Introduced: December 8, 2015
 Expires: June 8, 2017
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

AN ACT to:

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

By amending

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

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

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

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

4 * * *

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

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

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

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

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

14 * * *

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

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

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

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

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

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

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

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

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

44 * * *

45 (i) The [Office] Department must provide the Commission with staff, offices
 46 and supplies as are appropriated for it.

47 (j) The Commission must submit an annual report by September 1 to the
 48 County Executive and the County Council summarizing its activities,
 49 needs, and recommendations, and the extent to which the goals of this
 50 Chapter are being met.

51 **10B-4. Administrative support.**

52 In selecting staff to carry out the [Office’s] Department’s responsibilities under
 53 this Chapter, the Director must consider the recommendations of the
 54 Commission.

55 **10B-5. Duties of the [Office] Department of [Consumer Protection] Housing and**
 56 **Community Affairs.**

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

58 * * *

59 **10B-7A. Notification requirements.**

60 The governing body of a community association must, at least annually,
 61 distribute information in a form reasonably calculated to notify all owners about
 62 the availability of dispute resolution, education, and other services to owners
 63 and residents of common ownership communities through the [Office]
 64 Department and the Commission. The governing body may satisfy this
 65 requirement by including with any annual notice or other mailing to all members
 66 of the community association any written materials developed by the [Office]
 67 Department to describe the Commission’s services.

68 **Article 2. Dispute Resolution.**

69 * * *

70 **10B-9A. Request for relief from stay.**

71 * * *

72 (b) The special panel must consist of 3 voting members of the Commission
 73 designated by the chair, and must include [at least] one representative of
 74 each membership category.

75 * * *

76 **10B-11. Mediation; dismissal before hearing.**

77 (a) The [Office] Director may investigate facts and assemble documents
 78 relevant to a dispute filed with the Commission, and may summarize the

79 issues in the dispute. The [Office] Director may notify a party if, in [its]
80 the Director's opinion, a dispute was not properly filed with the
81 Commission, and may inform each party of the possible sanctions under
82 Section 10B-13(d).

83 (b) If the [Office] Director, after reviewing a dispute, finds that, assuming all
84 facts alleged by the party [which] that filed the dispute are true, there are
85 no reasonable grounds to conclude that a violation of applicable law or
86 any association document has occurred, [it] the Director may so inform
87 the Commission. The Commission[, in its discretion, may] must dismiss
88 a dispute if it finds that there are no reasonable grounds to conclude that
89 a violation of applicable law or any association document has occurred,
90 or it may order the [Office] Director to investigate further. The
91 Commission may reconsider the dismissal of a dispute under this
92 subsection if any party, in a motion to reconsider filed within 30 days
93 after the dispute is dismissed, shows that:

- 94 (1) the Commission erroneously interpreted or applied applicable law
95 or an association document; or
96 (2) material issues of fact [which] that are necessary to a fair resolution
97 of the dispute remain unresolved.

98 (c) [Any party may request mediation.] If the Director, after reviewing a
99 dispute and any investigation, finds reasonable grounds to conclude that
100 a violation of applicable law or an association document has occurred,
101 the Director must attempt to resolve the matter through mediation. Each
102 party named in the dispute or its representative must attend any mediation
103 conference scheduled by the Director under this Section unless excused
104 by the Director. If the party that files the dispute refuses or fails to
105 participate in the mediation, the Director must dismiss the dispute. If the

106 party that is the subject of the dispute refuses or fails to participate in the
107 mediation, the Director must refer the dispute to the Commission for
108 resolution. The party that is the subject of the dispute may not appear at
109 the hearing, and the hearing panel may award relief to any party that the
110 facts on the record warrant.

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

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

124 [(f) If any party refuses to attend a mediation session, or if mediation does not
125 successfully resolve the dispute within 10 days after the first mediation
126 session is held, the Commission must promptly schedule a hearing under
127 Section 10B-13 unless a hearing has already been held under Section
128 10B-13.]

129 **10B-12. Hearing Panel.**

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

132 (b) The chair must choose [2] 3 members of the panel from the voting
 133 members of the Commission. The persons selected must represent the [2]
 134 3 different membership groups of the Commission. [The 2 Commission
 135 members must designate the third member from a list of volunteer
 136 arbitrators trained or experienced in common ownership community
 137 issues maintained by the Commission. The third member must chair the
 138 panel. If a suitable arbitrator is not available, the chair of the Commission
 139 must designate the third panelist from among the voting members of the
 140 Commission, and must designate the chair of the panel.] The chair must
 141 designate one panel member to serve as panel chair.

142 * * *

143 **10B-13. Administrative hearing.**

144 * * *

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

- 147 (1) filed or maintained a frivolous dispute, or filed or maintained a
 148 dispute in bad faith;
- 149 (2) [unreasonably] refused to participate in mediation of a dispute[, or
 150 unreasonably withdrew from ongoing mediation]; or
- 151 (3) substantially delayed or hindered the dispute resolution process
 152 without good cause.

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

155 (e) [the] The hearing panel must apply state and County laws and all relevant
 156 caselaw to the facts of the dispute, and may order the payment of damages
 157 and any other relief that the law and the facts warrant. The decision of the

158 hearing panel is binding on the parties, subject to judicial review under
159 Section 2A-11.

160 * * *

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

164 * * *

165 **10B-14. Settlement of disputes; assistance to parties.**

166 * * *

167 (b) The [Office] Director may inform any party who has settled a dispute by
168 mediation, or any party who prevails in a hearing held under Section 10B-
169 13, about how the agreement or decision can be enforced.

170 **10B-19. Enforcement.**

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

172 (b) In addition to any action by the [Commission] Department and any other
173 action authorized by law, including the filing of a dispute under Article
174 2, any person may file an action:

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

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

179 **Sec. 2. Effective Date.**

180 Sections 10B-11(c), (d), and (e), which mandate mediation of disputes, applies
181 to all disputes filed with the Commission after this Act takes effect as provided in
182 Charter Section 112.

183 **Sec. 3. Transition.**

184 The first three vacancies of members selected under Section 10B-3(a)(1) and
185 the first two vacancies of members selected under Section 10B-3(a)(2) must be filled
186 by members selected under Section 10B-3(a)(3).

187

188 *Approved:*

189

Nancy Floreen, President, County Council

Date

190 *Approved:*

191

Isiah Leggett, County Executive

Date

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

193

Linda M. Lauer, Clerk of the Council

Date

194

LEGISLATIVE REQUEST REPORT

Bill 50-15

Common Ownership Communities - Commission on Common Ownership Communities – Composition – Dispute Resolution

DESCRIPTION:	This legislation would: 1) make mediation a mandatory component of dispute resolution when complaints are filed with the Commission on Common Ownership Communities (CCOC); 2) change the composition of the Commission by requiring that one third of the Commissioners be selected from members of the general public; 3) replace the volunteer arbitrators that currently chair hearing panels with voting members of the Commission; and 4) transfer staff support duties from the Office of Consumer Protection to the Department of Housing and Community Affairs.
PROBLEM:	This legislation addresses three concerns that have arisen about the operation of the current CCOC law. 1) Adjudication of disputes has required parties to engage in hearings that require the parties to comply with complex rules of procedure. 2) The CCOC does not have adequate access to staff support and other resources to carry out its mission as effectively as initially envisioned. 3) CCOC hearing panels are currently chaired by outside volunteers that are not voting members of the Commission and have been found, in some instances, by the Ethics Commission to have a conflict of interest.
GOALS AND OBJECTIVES:	To improve the efficiency and effectiveness of the CCOC by encouraging informal resolution of disputes between homeowners, residents and governing bodies of common ownership communities; to ensure that hearing panels are composed of individuals who represent a balance of the interests involved in adjudication of disputes; and to provide the CCOC with better access to administrative support and technology resources.
COORDINATION:	Department of Housing and Community Affairs
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	N/A
SOURCE OF INFORMATION:	Eric Friedman, Office of the Consumer Protection, 240-777-3636 Clarence Snuggs, Department of Housing and Community Affairs, 240-777-3600.

**APPLICATION
WITHIN
MUNICIPALITIES:**

Only applicable in the City of Rockville.

PENALTIES:

N/A

F:\LAW\BILLS\1550 CCOC\LR.Docx



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

November 23, 2015

TO: George Leventhal, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Commission on Common Ownership Communities – Amendments to
Chapter 10B

I am forwarding with this memorandum proposed legislation to amend Chapter 10B, Common Ownership Communities. I believe that this legislation will enhance the ability of the Commission on Common Ownership Communities (CCOC) to better fulfill the purposes for which it was established 25 years ago. As you know, I was a member of the County Council when the CCOC was established, and I remember well the intent and the need for creating this first-of-its kind commission. After 25 years, however, revisions are needed.

Several factors contribute to the timeliness of these proposed legislative changes. Over one-third of Montgomery County's residents now live in common ownership communities, and the CCOC has gathered considerable experience regarding a multitude of issues. The Office of Legislative Oversight recently submitted a report evaluating the CCOC and offered several recommendations, including having the staff support for CCOC be provided by the Department of Housing and Community Affairs. Furthermore, Montgomery County's Ethics Commission has identified a conflict of interest regarding the manner in which CCOC hearing panels are convened. Finally, a review of the nature of the complaints filed, as compared to the mechanisms used to process those complaints, indicates that the CCOC dispute resolution program has strayed from its original intent to function as an alternative to court litigation.

In order to systematically address all of the above issues, and to ensure that the CCOC will continue to contribute to the quality of life in Montgomery County, the legislation I am forwarding to the Council for its consideration would: (1) make mediation a mandatory component of dispute resolution when complaints are filed with the CCOC; (2) change the composition of the Commission by requiring that one-third of the Commissioners be selected from members of the general public; (3) replace the volunteer arbitrators who currently chair hearing panels with voting members of the Commission;

George Leventhal, President
November 23, 2015
Page 2

and (4) transfer staff support duties from the Office of Consumer Protection to the Department of Housing and Community Affairs.

Executive staff stand ready to work with the Council on this important legislation.

IL:tjs