



# **An Evaluation of the Commission on Common Ownership Communities**

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# 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.

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*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.*

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	FY14 Actual Expenditures	FY15 Approved Expenditures
<b>Office of Consumer Protection (1.9 WYS)</b>		
Personnel	\$330,445	\$266,714
Operating	\$11,858	\$46,025
<b>Department of Housing and Community Affairs (.6 WYS)</b>		
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
<b>Familiarity with the Commission</b>	Eighty-one percent of respondents were familiar with the Commission; over 50% of respondents did not receive information on the Commission from their association.
<b>Frequency of Resource Use</b>	The most widely used Commission resources are the guides/manuals, newsletter and website. The least used resource was the YouTube educational video series.
<b>Satisfaction with Resources</b>	Overall, 62% of respondents were satisfied with available resources, particularly the newsletter and the classes.
<b>Satisfaction with Commission Staff</b>	Participants reported an 81% overall satisfaction rate with Commission staff, particularly concerning the staff's knowledge, courtesy, and helpfulness.

## Dispute Resolution

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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
<b>Closed Cases (178 Cases)</b>	<ul style="list-style-type: none"><li>• Forty-seven percent were resolved before mediation, 29% through mediation, 12% with a hearing, and 12% were withdrawn or lacked jurisdiction.</li><li>• The average length to close a case was 169 workdays.</li><li>• Maintenance/architectural review/landscaping needs accounted for 78% of cases; in comparison 22% of cases dealt with association governance.</li><li>• 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.</li></ul>

**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
<b>Filing or Responding to a Complaint</b>	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.
<b>Case Resolved through Mediation</b>	Half of respondents who used mediation were satisfied with the process and over half thought the mediator was fair and information was readily available.
<b>Case Resolved through an Administrative Hearing</b>	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

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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

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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.

1. 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.
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.
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).

# An Evaluation of the Commission on Common Ownership Communities

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## **CHAPTER I. Authority, Scope, and Methodology**

### **A. Authority**

Amendment to Council Resolution 17-830, *FY14 Work Program for the Office of Legislative Oversight*, adopted July 30, 2013. Amendment was approved on November 25, 2014.

### **B. Scope, Purpose, and Methodology**

A common ownership community is an organization consisting of property owners within a residential development that share common property. These communities are governed by associations that are required to establish a method of self-governance, own and maintain common property, adopt and enforce rules and regulations, assess dues for maintenance of common property and operations, and hold property owners accountable for rule violations. There are three kinds of community associations: condominium associations, homeowners associations and cooperatives.

Montgomery County has experienced significant growth in common ownership communities since the 1990s, with approximately 40% of County residents currently residing in one of these communities. The Commission on Common Ownership Communities (Commission or CCOC) was created to (1) ensure the proper establishment and operation of common ownership communities; (2) provide education on the rights and responsibilities of common ownership communities and their residents; (3) reduce disputes and encourage informal dispute resolution; and (4) provide support for the development of policies that affect these communities.

The Council requested this report in order to gain a better understanding of how the Commission functions including its mission, current practices and policies, and the dispute resolution process. This report provides:

- An overview of the administration and laws applicable to common ownership communities and the Commission;
- A summary of the dispute resolution options offered and data on cases handled over the past three years; and
- A summary of survey responses and feedback regarding experiences with the Commission.

OLO analysts Kristen Latham and Stephanie Bryant completed this report with editorial and production assistance from Kelli Robinson and Carl Scruggs. In addition to analyzing Commission documents and complaints, OLO met with County staff, the Commission on Common Ownership Communities, and other relevant stakeholders. OLO also created two electronic surveys to capture the experience of community members with the Commission.

### **C. Report Organization**

**Chapter II, Overview of Commission on Common Ownership Communities**, describes the Commission on Common Ownership Communities' organizational structure, available services and budgetary information;

**Chapter III, Governing Legal Authorities**, summarizes laws applicable to common ownership communities and the Commission;

**Chapter IV, Dispute Resolution Process**, details the current dispute resolution process and provides a statistical summary of cases currently handled by the Commission;

**Chapter V, Summary of Feedback on Experience with the Commission on Common Ownership Communities**, presents an overview of survey response data and feedback on the Commission; and

**Chapter VI, OLO Findings and Recommendations**, presents OLO's findings and recommendations for next steps.

**D. Acknowledgements**

OLO received a high level of cooperation from Executive staff and community members. We acknowledge the invaluable contributions of:

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**Other Stakeholders**

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## **CHAPTER II. Overview of the Commission on Common Ownership Communities**

A common ownership community is an organization consisting of property owners within a residential development who share common property including open spaces, privately owned streets, parking, recreation and other facilities. These communities are governed by associations that are required to establish a method of self-governance, own and maintain common property, adopt and enforce rules and regulations, assess dues for maintenance of common property and operations, and hold property owners accountable for rule violations. Communities vary in size, type of properties, and services provided. There are three types of common ownership communities: homeowner's associations, condominium associations, and cooperative housing corporations.

In Montgomery County, common ownership communities have grown significantly since the 1990s. Currently, the County has 1,034 condominium, cooperative, and homeowner associations containing over 127,000 homes and approximately 340,000 residents. The Montgomery County Commission on Common Ownership Communities is responsible for the registration of all common ownership communities in the County and provides support, education, and dispute resolution services to association boards and property owners. This chapter provides an overview of the Commission including the following sections:

- **Section A** briefly summarizes the creation of the Commission;
- **Section B** outlines the Commission's organizational structure and budget; and
- **Section C** describes the services provided by the Commission.

### **A. Creation of the Commission**

In 1987, the County Council, believing that property owners in common ownership communities required protection, created a Task Force to examine issues regarding homeowner associations, condominium associations and cooperatives.

The Task Force's 1989 report offered numerous recommendations, one of which was the establishment of the Commission on Common Ownership Communities. Bill 42-89, which created the Commission, took effect in January 1991. As outlined in County Code Chapter 10B, the Commission on Common Ownership Communities' mission is to advise all branches of County government on ways to ensure the proper establishment and operation of common ownership communities, provide education and policy resources for communities, and establish an alternate dispute resolution process. For a more detailed summary of laws applicable to the Commission, please see Chapter Three.

### **B. Commission Organizational Structure and Budget**

This section discusses the organizational structure of both the Office of Common Ownership Communities and the Commission of Common Ownership Communities, followed by a summary of the Office's budget.

**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 for the Commission. The Office was part of the Department of Housing and Community Affairs (DHCA) until a reorganization in 2005 when OCP became independent, with the Commission also moving to OCP.

The Commission currently has one full-time staff person. In prior years, in addition to this full-time staff member, the Office had a part-time supervisor, an administrative aide, and a part-time investigator. The remaining single staffer is responsible for all Commission-related tasks including providing information and outreach for common ownership communities and arranging the dispute resolution proceedings.

Additionally, there are two volunteers who provide support to County staff. Staff estimate that the volunteers provide about twelve hours per week of work, primarily responding to information requests.

**Commission on Common Ownership Communities.** The Commission has fifteen commissioners, appointed by the County Executive and confirmed by the County Council for three year terms. The Commission consists of eight residents of common ownership communities and seven professionals associated with common ownership communities (including persons involved in housing development/real estate sales or attorneys who represent community associations, developers, housing management or tenants). At least one member must be a professional community association manager.

During their term, Commission members attend monthly meetings, participate in committees, and serve on dispute resolution hearing panels. The Commission currently has several committees that review issues related to the common ownership communities:

- Education Committee;
- Legislative Committee;
- Budget and Policy Committee;
- Process and Procedures Committee; and
- Liftstay Committee.<sup>1</sup>

**Commission Budget.** The Office of Consumer Protection is responsible for the budget of the Commission.

Each association is required to register annually with the Commission and pay an association fee of \$3 per property unit. As the sole source of revenue, the Commission received \$408,770 in fee revenue in FY14.

This revenue funds one full-time Commission staff position, along with the following Consumer Protection employees, who have other job duties in addition to work related to the Commission:

- Administrative aide who schedules hearings, mediations; prepares hearing packages, and completes data entry (.3 workyears);
- Program aide/receptionist who replies to citizen requests and distributes education materials (.3 workyears);
- A manager who provides program oversight (.2 workyears); and
- An investigator who is responsible for webpage maintenance (.1 workyears).

While this Commission funding goes to fund part of these positions, OLO did not perform a desk audit to determine their workload related to the Commission.

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<sup>1</sup> County law (Section 10B-9A) says that once a complaint is filed, the association may not take any action to enforce its decision against a homeowner until the Commission rules on the dispute (or it's otherwise resolved). Section 10B-9A, adopted in 2010, allows the Commission to "lift" the automatic stay in conditions where the stay can cause more harm than good.

Additionally, approximately 16% of FY14 Commission fees went to the Department of Housing and Community Affairs to fund part of the staff's salary (.6 workyears) responsible for the annual registration and collection of registration fees from the member associations. The following summarizes the budget expenditures of the Commission.

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

### C. Services Provided by the Commission

This section summarizes all of the services provided by the Commission and its staff including:

- Information requests
- Dispute resolution
- Online resources
- YouTube educational videos
- CCOC Communicator (newsletter)
- Annual forum and education classes
- Community manuals

**Information Requests.** One of the most significant responsibilities of the Commission is to respond to information requests relating to common ownership communities. Commission staff report that between January 2013 and July 2014, there were 1,261 requests for information. This represented about 19% of all information requests to the Office of Consumer Protection (6,714 requests). Staff estimate that about 90% of calls pertain to pending Commission business, including a number of continuance requests for mediations and hearings.

Commission staff report that on days when the office is closed there are approximately 50 daily emails, compared to approximately 100 daily emails when the office is open. Additionally, staff report that a digital database for all information requests would be beneficial, but that there is currently not enough time to maintain one.

**Dispute Resolution.** The Commission offers two options for dispute resolution: mediation and administrative hearings. Often, disputes are settled by Commission staff prior to the use of either option. Chapter Four of this report details the Commission's dispute resolution process.

**Online Resources.** The following table summarizes the resources available on the Commission's website. There are additional resources available on the website that are discussed in more detailed in the remainder of this section.

Title	Summary
Architectural Control	Summary of architectural control policies <sup>2</sup> and procedures in the County
Assessments and Your Community	Brochure about the rights and responsibilities of owners regarding common ownership community assessments <sup>3</sup>
Bill of Rights and Responsibilities	Statement of principles that outline basic rights for owners in a common ownership community
What You Should Know About Buying a Home...	Summary of what it is like to live in a common ownership community and the rights of a buyer of a home in a common ownership community
What You Should Know About Your Condominium, Cooperative, or Homeowner Association	Definitions related to governing documents, open meetings, open records within a common ownership community
Registration of Common Ownership Communities	Report on who needs to register as a common ownership community and how to register
How to Hold an Election	Sample forms and checklists for common ownership communities, including application for boards, agenda, official ballot, and "How to Hold an Annual Election"
Meetings	Summary of applicable laws associated with open meetings and notice requirements along with techniques for running effective meetings
Records and Documents	Summary of what documents are available in common ownership communities and how to retrieve them
Sample Association Notices: Long Form / Short Form	Summary of Commission duties and contact information for common ownership communities to distribute to owners

The Commission's website also provides additional information on the administration and work of the Commission, including:

- General Information;
- Frequently Asked Questions (FAQs);
- Minutes of Recent Commission Meetings;
- Commission Decisions;
- Guide to the Procedures and Decisions of Commission; and
- Meet Our Commissioners guide.

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<sup>2</sup> Architectural control is a common ownership community process that relies on prior written approval of the changes, additions, or alterations that homeowners wish to make.

<sup>3</sup> Assessments are the amount of money that each owner in a common ownership community must pay to help meet the total expenses of the community.

**YouTube Educational Video Series.** In 2013, the Commission developed a video series to help residents and boards learn more about living in a common ownership community. The following videos are currently available:

- What is a Common Ownership Community?
- CCOC Overview
- Buying a Home in a Community Association
- Homeowner Roles & Responsibilities
- Architectural Rules
- Before Filing a Complaint
- The Complaint Process
- Preparing for a Hearing
- The Mediation Process
- The Enforcement Process
- How Association Rules and Governing Laws Interact
- Board Roles & Responsibilities
- Holding an Election
- Condos, Insurance, and the Duty to Repair
- Budgeting and the Reserve Fund

The National Association of Counties recognized the video series with a 2014 Achievement Award. Commission staff report that the office is planning on creating additional videos.

**CCOC Communicator.** The CCOC Communicator is a newsletter released four times a year by the Commission. The distribution list for the newsletter currently has approximately 1,000 recipients.

The newsletter informs recipients of Commission events, recent Commission rulings, and contact information for County offices. In addition, stakeholders contribute a variety of articles on topics such as enforcement of rules and covenants, avoidance of election disputes, and rules on open, closed, and electronic meetings.

**Annual Forum and Seminars.** The Commission hosts an annual forum, along with several seminars:

- The most recent annual forum occurred in April 2014 and focused on reserve planning, including reserve studies, tax/audit issues, and preventative maintenance. Participants are provided with sample documents relevant to the forum topics. Staff report that approximately 150 people participate in the Annual Forum.
- In partnership with the Community Association Institute (CAI), the Commission held two day-long seminars. Topics of these seminars included: the functions and legal basis of common ownership communities; budget preparation; adopting and enforcing rules; and risk control and insurance.

**Common Ownership Community Manuals.** In 2012, the Commission created extensive handbooks, including a manual about the policies and procedures of the Commission and a guidebook for common ownership community administration. Both resources were updated in 2014.

Common Ownership Community Manual and Resource Guide. This manual provides guidance on the best administrative practices for common ownership communities. Some of the topics detailed in the manual include:

- Governing Standards and Documents
- Building a Strong Community
- Board, Annual, and Special Meetings
- Replacement Reserves
- Financial Procedures
- Assessments and Their Collection
- Operations and Finance
- Mediation of Disputes

Staff's Guide to the Procedures and Decisions of the Montgomery County Commission on Common Ownership Communities. This guidebook outlines the Commission's powers, policies and procedures, provides a legal summary of common ownership community laws and a summary, by topic, of over 600 Commission decisions. It is the only Commission guide on Maryland laws regarding community associations. A sample of the topics summarized include:

- Filing and Answering a Complaint
- Mediation
- Commission's Jurisdiction
- Prehearing Procedures
- Commission Hearings and Decisions
- Default Judgments
- Enforcement of Panel Orders

#### **Common Ownership Community Offices in Other Jurisdictions**

During the course of this study, OLO was able to find similar government offices in surrounding jurisdictions:

- The Prince George's County Office on Common Ownership Communities provides information and training to common ownership communities and residents, assists common ownership communities during transition periods, and offers mediation services.
- The Charles County Homeowner's Association Dispute Review Board helps to resolve conflicts between property owners and their governing associations.
- In Virginia, the Office of the Common Interest Community Ombudsman offers assistance and information to association members regarding the rights and processes available to them through their associations and offers non-binding explanations of laws and regulations. The Common Interest Community Board (a separate entity) is the regulatory body responsible for licensing association managers, certifying certain employees of licensed management firms, receiving annual reports filed by associations, and registering condominium and time-share projects.

### Chapter III. Governing Legal Authorities

State and County law establish standards for the formation, operation, and management of common ownership communities. This chapter highlights current laws addressing common ownership communities in three sections:

- **Section A** briefly discusses the relevant State laws governing homeowner and condominium associations, and cooperatives;
- **Section B** details the provisions of the Montgomery County Code and Regulations that govern over 1,000 associations in the County; and
- **Section C** provides an overview of the Montgomery County Ethics Commission's decisions relating to Commission activities and Chapter 10B of the County Code.

#### A. Maryland State Law

The following summarizes State laws that governs all three types of associations: condominium associations, homeowners associations, and cooperatives.

**Maryland Condominium Act.** This Act regulates the formation, management, and termination of condominium associations in Maryland. While the Act addresses the management of condominiums on a range of topics, it also establishes a dispute resolution process for condominium owners. As detailed in the law, the association board must notify the owner of the alleged violation in writing, including: an explanation of the violation; corrective actions; and a time period of no less than ten days to provide a solution without further sanction. If the owner fails to correct the problem, the board must hold a confidential hearing in which the alleged violator is afforded the opportunity to present a defense, including the calling and cross examining of witnesses. At the close of the hearing the board is required to submit its decision in writing.<sup>1</sup>

**Maryland Homeowners Association Act.** This Act governs the formation and management of homeowner associations (HOAs), including elections, closed and open meetings, and production of the resale package.<sup>2</sup> Similar to the Condominium Act, this Act sets minimum standards for consumer protection.<sup>3</sup> Although a county may enact a more stringent law, the Act grants enforcement duties to the Division of Consumer Protection of the Office of Attorney General. The Act specifically identifies election procedure violations as cases that fall under this provision. Enumerated are complaints concerning date, place, and/or time of elections, manner in which nominations are made, ballot format, use of proxies for an election, or manner in which quorum is defined.<sup>4</sup>

**Maryland Cooperative Housing Corporation Act.** This Act governs the sale, operations and management, and dispute resolution process for housing cooperatives.<sup>5</sup> While the Act provides statutory oversight for meetings, voting, and board responsibilities, as of January 2015, the law also sets minimum standards for a dispute resolution process.<sup>6</sup> The statute requires the governing body to serve the member with a written demand to cease the alleged violation, provide a time frame to correct the violation, and state that failure to correct the violation could result in a sanction. If the violation is uncorrected, the governing body must serve the alleged party with a notice of a hearing. At the hearing the member is afforded the

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<sup>1</sup> Md. Real Property Code Ann. § 11-113 (2014).

<sup>2</sup> Md. Real Property Code Ann. §§ 11B-101 – 118.

<sup>3</sup> See also § 11-130 (2014).

<sup>4</sup> §§ 11B-115,115.1 (2014).

<sup>5</sup> Md. Corporations and Associations Code. Ann. § 5-6B.

<sup>6</sup> § 5-6B-30.

opportunity to present evidence and cross examine witnesses. The governing body publishes the results of the hearing in the community's newsletter and the decision may be appealed in the Maryland Court system. The statute gives the governing body the right to sue for damages or injunctive relief. In addition, the prevailing party is entitled to an award of attorney's fees as determined by the Court.<sup>7</sup>

**Maryland Business Occupations and Business Code.** This section permits the director or officer of a homeowner association, condominium association, or cooperative to represent the common ownership community in a dispute, hearing, or other matter before a board or commission established to oversee common ownership communities.<sup>8</sup>

**Business Judgment Rule.** The Business Judgment Rule states the "decisions of the governing body of an association and its members – usually the board of directors – are assumed to be correct and the courts will therefore uphold them unless certain conditions are met."<sup>9</sup> The rule is a body of principles created by the Maryland Court of Appeals and Courts of Special Appeals that govern the degree to which a court can review the decisions of a corporation's board of directors, etc. Maryland recognizes three distinct business judgment rules.

- Protection of Individual Members of the Governing Body. Individual board members are protected from liability even if they make a decision that was later found to be a bad one or even if it is later found in violation of an association rule or law. Section 10B defines a dispute as a disagreement over the authority of a governing body to do or fail to do something. The Commission interprets this to mean the dispute must involve a decision of the entire board.<sup>10</sup>
- Protection of the Board's Business Judgments. When challenging a board's decision, the complainant must allege that the board either acted in bad faith or fraud, lacked legal authority to take action based on the association governing documents or County and/or State Law, or the decision was arbitrary and capricious. In addition, while the rule protects the board's right to make a decision, it does not protect against the board's failure to make a decision at all. Section 10B-8 recognizes that board's right to exercise judgment, but the board must make a decision when required to do so and within the scope of its legal authority and made in good faith.<sup>11</sup>
- Protection of the Board's Decisions to Enforce its Rules. When a board acts to restrict a resident's rights or penalize a member, it must have a reasonable basis for the decision and the reason must be related to the overall purpose of the association. When the governing body can prove that it acted within its authority and had a reasonable basis (related to the governing documents), the Commission usually respects and upholds the association's decision and will not substitute its own judgment. Further, the Commission has no jurisdiction over a board's decision about whether a person violated a rule or not, if the decision was made in good faith.<sup>12</sup>

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<sup>7</sup> § 5-6B-30.

<sup>8</sup> Md. Business Occupations and Professions Code Ann. § 10-206(b)(6).

<sup>9</sup> Office of the Commission on Common Ownership Communities, "The Staff's Guide to Procedures and Decisions of the Montgomery County Commission on Common Ownership Communities," (2014), pp. 84-91.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

## **B. Montgomery County Code and Regulations**

The County Code sets forth oversight activities and enhances State law in the governance of common ownership communities. This chapter examines the most relevant sections of the County Code and Executive Regulations as they relate to the Commission on Common Ownership Communities.

### **1. County Code Chapter 10B: Common Ownership Communities**

County Code Chapter 10B applies to developments subject to enforcement by homeowner associations, condominium associations, and cooperative housing corporations.<sup>13</sup> Through enactment, the County Council recognized the need for a County Commission to provide advice on a range of issues facing common ownership communities including:

- Ensuring proper establishment and organization of the associations and corporations;
- Promoting education, public awareness, and association membership awareness of the rights and obligations of living in a common ownership community;
- Reducing the number of disputes by encouraging informal dispute resolution;
- Assisting with and overseeing the development of coordinated community and government policies and programs to support these groups; and
- Preventing potential public financial liability for repair or replacement of common ownership community facilities.<sup>14</sup>

The Code lays out three articles pertaining to common ownership communities, including the Commission on Common Ownership Communities (Commission or CCOC); dispute resolution, and open conduct. The dispute resolution section will be discussed in tandem with a description of the process in Chapter Four.

**Commission on Common Ownership Communities.** The Commission consists of 15 appointed members, including property or unit owners in common ownership communities and professionals associated with common ownership communities (i.e. attorneys, developers, property managers). The Code delineates the responsibilities of the Commission as follows:

- Adopt rules and procedures to carry out provisions written in Code;
- Keep a public record of all meetings and minutes;
- Cooperate with the Executive Branch on matters within the jurisdiction of the Commission;
- Examine conditions of common ownership communities resulting in unmet needs through meetings, conferences, and public hearings; and
- Advise the county government and state and federal issues on matters involving common ownership communities and recommend programs and legislation.<sup>15</sup>

The Commission is to be supported by the Office of Consumer Protection. The Office is required to provide the Commission with staff, offices, and supplies and to consider the recommendations of the Commission when selecting staff. The Code delineates the responsibilities of the Office to include:

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<sup>13</sup> § 10B-2.

<sup>14</sup> § 10B-1.

<sup>15</sup> § 10B-6.

- Assemble, analyze, and disseminate data and education materials to assist the Commission;
- Plan and conduct educational programs to promote operations of the Commission;
- Maintain a master roster of homeowner associations, condominiums, and cooperatives and their leadership;
- Develop an information and referral system for all County services related to the Commission;
- Maintain and collect association documents to use as a model and reference;
- Provide technical assistance to governing bodies on elections, transition management, etc.;
- Develop and maintain a reference manual;
- Develop and maintain an operations manual;
- Advise the Commission and property managers on the changes in the law that effect their communities;
- Operate a dispute resolution process that includes mediation and administrative hearings; and
- Assist the Commission in carrying out its duties and implementing decisions under Article 2 Administrative Procedures Act.<sup>16</sup>

**Open Conduct.** This Article of the Code outlines voting procedures and budget document requirements for an association's governing body. Voting procedures include designated time frames for holding elections, election notification and materials, absentee and proxy voting requirements, vote tabulation, and office terms.<sup>17</sup> Budget requirements outline the time frame for informing association members of the proposed budget and the introduction of budget amendments which increase/decrease the budget by more than 15%.<sup>18</sup> This article grants relief via the Commission hearing process, injunctive relief to enforce this article or correct any violation of it, and recovery of damages for a loss sustained as a result of the violation.<sup>19</sup>

## **2. Administrative Procedures Act**

The Administrative Procedures Act (APA) only applies to a hearing held under Chapter 10B, not mediation.<sup>20</sup> Although not one of the enumerated administrative proceedings outlined by the APA, the County Executive, through law or regulation, is authorized to add or delete additional quasi-judicial authorities.<sup>21</sup> One differing application of the APA is that under Section 10B-13, if the Commission finds that an expedited hearing is necessary, parties may receive only a 15 day notice, not the minimum of 30 days granted by the APA.<sup>22</sup> APA procedures and the applicable executive regulations related to the dispute resolution process are discussed in Chapter Four of this report.

## **3. Homeowner Associations**

This provision of the Code establishes a program to assist homeowner associations with the maintenance of roadways that are continuously open to the public as if they were public roadways. The association signs an easement agreement with the County permitting public use of private roadways and the County assists with funding road maintenance. The easement is terminated when it is no longer in the public interest or the homeowner's association fails to comply with the agreement.<sup>23</sup> In 2010, the County terminated funding of this law.

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<sup>16</sup> § 10B-5.

<sup>17</sup> § 10B-17.

<sup>18</sup> § 10B-18.

<sup>19</sup> § 10B-19.

<sup>20</sup> § 10B-13(b).

<sup>21</sup> Montgomery County Code, Administrative Procedures Act, Chapter 2A, § 2A-2.

<sup>22</sup> § 10B-13(b).

<sup>23</sup> §§ 24B-1 - 24B-8.

#### 4. COMCOR Code of Montgomery County Regulations

COMCOR also outlines regulations for common ownership communities in three subject areas: dispute resolution, establishment of a dispute filing fee, and the establishment of an annual registration fee. The remaining regulations relating to the dispute resolution process are included in Chapter Four. These executive regulations also outline the payment of fees associated with common ownership communities:

- The cost to file a case with the CCOC is \$50 for each dispute and assists to fund the dispute resolution process and provision of technical assistance.<sup>24</sup>
- Regulations require an annual \$3.00 per unit registration fee. If an association fails to pay the fee and register, it is a Class A violation and renders the community ineligible to file a complaint under Chapter 10B.<sup>25</sup>

#### C. Ethics Commission Advisory Opinions

The Montgomery County Ethics Commission may issue either an advisory opinion or waiver on an issue relating to Section 19A-7 of the County Ethics Law. Advisory opinions may be requested by any person subject to the Ethics law, the Code of Ethics for the County Appeals Board, or County Procurement law. The Ethics Commission may grant a waiver of the prohibitions of the Ethics law and Procurement law, if in the Commission's opinion, certain statutory provisions are met. The Commission can also issue a Letter of Guidance in regards to the law and specific questions.

The Commission on Common Ownership Communities is considered a County administrative agency and Commission members are considered public employees. Due to this designation, Section 19A-12 of the County Ethics law states that a public employee must not be employed by any business that:

- Is regulated by the County agency with which the public employee is affiliated; or
- Negotiates or contracts with the agency with which the public employee is affiliated; or
- Hold any employment relationship that would impair the impartiality and independence of judgment of the public employee.<sup>26</sup>

The Commission may grant a waiver of the prohibited acts if it finds that a waiver is needed to ensure timely and available services; failure to grant a waiver may reduce the County's ability to hire or retain qualified employees; or the proposed employment is not likely to create an actual conflict of interest.<sup>27</sup>

Summarized below, the Ethics Commission has issued three advisory opinions, one waiver, and one letter of guidance regarding the Commission on Common Ownership Communities since the early 1990s. Each action by the Ethics Commission relates to the applicability of the Sections 19A-8(b) and 19A-12(b) to Chapter 10, which regulates the Commission's activities.

**Advisory Opinions.** The County Ethics Commission issued three advisory opinions relating to an individual's ability to either represent or participate in Commission on Common Ownership Communities' activities. Brief descriptions for each decision are provided below.

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<sup>24</sup> COMCOR 10B.07.01.01

<sup>25</sup> COMCOR 10B.07.02.01

<sup>26</sup> § 19A-12.

<sup>27</sup> § 19A-8(b).

- Advisory Opinion 1994-7. The question before the Ethics Commission was whether a member of the Commission, who was also a private attorney, could represent an HOA client in a matter before the Commission. In this case, the Ethics Commission ruled that a waiver was not necessary since the situation in question only occurred once in the prior four years, thus not meeting the need of timely delivery of services. Further, the Ethics Commission found that an actual conflict may occur as a result of the representation of the HOA client in front of the Commission. The Ethics Commission reasoned that if the case were on appeal, the attorney would be taking a position that was adverse to the Commission and the County, creating an actual conflict of interest. However, this decision “does not preclude [the attorney] from advising [his] client and assisting with a settlement of the dispute.”<sup>28</sup>
- Advisory Opinion 1998-12. There were two questions before the Commission in this case. The first was whether an attorney’s former partner or other attorneys at a firm could represent clients in matters before the Commission and other County Boards and the Commission ruled that the attorney’s former firm may represent clients before the Commission and other boards. The second question dealt with whether the attorney could continue to represent and advise clients on matters unrelated to Montgomery County Government even though his former firm is representing the client before other Montgomery County agencies. The Ethics Commission ruled that the attorney must recuse himself on all matters relating to County boards and commissions in which the firm is representing clients.
- Advisory Opinion 2000-5. This is a case in which a Commission board member was an officer of his homeowner association and another Commission member had a financial interest in the property management company that manages the same association. The first board member is also the chair of the committee on which the second member served. The Ethics Commission looked at two questions: (1) can the first board member vote on jurisdiction over cases or serve on a hearing panel involving the management company and (2) does the fact he votes on the association’s contract with the management company raise any concerns about voting on Commission issues. The Ethics Commission ruled in regards to both questions that the law does not prohibit him from participating in Commission matters, as long as he stays impartial.

**Waiver.** The only Ethics Commission waiver was issued in 1992 and concerns whether the Council representative to the Commission could also serve as the president of her homeowner’s association. The Ethics Commission waived the conflict of interest because the Council knew she was a member of the homeowner’s association upon appointment and she was a non-voting Commission member limited to participating in discussions only. Further, the Ethics Commission required her to disclose to the Commission that she held an elected position in her homeowner’s association to ensure that the association did not receive an unfair advantage.

**Letter of Guidance.** The Ethics Commission examined the applicability of Section 19A to the volunteer arbitrators who serve as Hearing Panel Chairs. The Ethics Commission found that the list of volunteers is almost exclusively comprised of lawyers who practice in Montgomery County and often represent homeowner associations and condominium associations. The Ethics Commission concluded that arbitrators are public employees because they exercise responsibility in adjudicating matters before the Commission, thus Section 19A applies.

In addition to excluding volunteer panel members from participating because their work is regulated by the County, the Ethics Commission took a broad approach to defining the conflict of interest. The Ethics Commission wrote that volunteer arbitrators may be able to influence the decision at hand in a way that

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<sup>28</sup> Montgomery County Ethics Commission, Advisory Opinion 1994-7.

favors their clients or may be influenced by the prospect of gaining clients due to their representation. While no claim has been filed by individuals to the Ethics Commission on this matter, the Commission is aware of four separate instances where individuals felt that there was bias between the volunteer panel chair and the associations.

The application of State and County law govern the formation and operation of common ownership communities and afford protections to both the association governing bodies and residents living in one of these communities.

## **CHAPTER IV. Dispute Resolution Process**

According to County Code, part of the Commission's mission is to advise the County government on ways to "reduce the number and divisiveness of disputes" between governing bodies and the residents of common ownership communities and to "encourage informal resolution of disputes."<sup>1</sup> While the County Code and Regulations govern the entire process, the Administrative Procedures Act only applies to the hearing. At the outset, County Regulations detail the rights and obligations of the Commission staff and the Commission.

This chapter details the dispute resolution process as outlined by Section 10B of the County Code and Executive Regulations. The current dispute resolution process is diagramed on page 16, which presents the responsibilities of each actor during the process and the applicable Sections of Chapter 10B and 2A of the County Code.

**Section A** of this chapter outlines the dispute resolution process, including:

- (1) Filing a complaint with the Commission;
- (2) Staff investigation and informal negotiation;
- (3) Presentation of complaint to Commission;
- (4) Appointment of a hearing panel;
- (5) Administrative hearing;
- (6) Written decision/order and appeal.

**Section B** of this chapter presents data on the number, types and lengths of disputes filed with the Commission from January 2012 through January 2015.

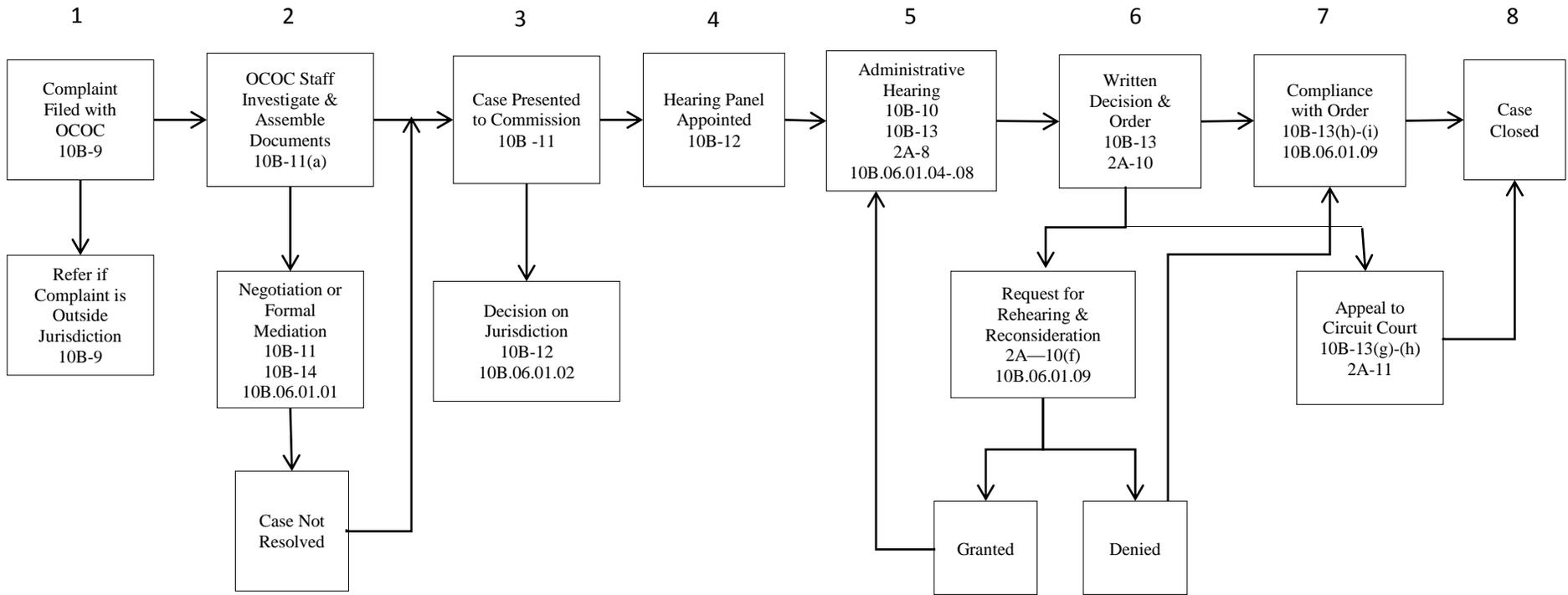
### **A. Dispute Resolution Process**

On the next page is a summary flowchart of the dispute resolution process. This section summarizes the dispute resolution process, including the laws associated with each step.

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<sup>1</sup> § 10B-1

**Commission on Common Ownership Communities Dispute Resolution Process**



## 1. Complaint Filed with the Commission

The dispute resolution process applies to homeowner associations, condominium associations, and cooperative housing corporations in the County. Prior to filing the complaint, the parties must make a good faith effort to exhaust all procedures or remedies provided by the association documents.<sup>2</sup> If the association does not have written complaint policies, it must:

- Provide the resident with written notice of the violation;
- Notify the resident of his or her right to a board hearing; and
- Provide the resident with a written copy of the Board's decision and notice of right to appeal to Commission.

The Maryland Condominium Act requires the same procedural steps detailed above, but also adds the requirement that the association allows the owner a reasonable amount of time to fix the problem or request a hearing.<sup>3</sup>

With respect to a claim initiated by a member against an association, the complainant must follow procedures or remedies provided in the association's documents or the Commission will not accept the complaint. The member must allow the association up to 60 days to resolve or deny the complaint. If the Association has no written complaint procedures, the member must first give the board written notice of the problem and a reasonable time to resolve it before filing a complaint with the Commission.

**Filing a Complaint.** In order to file a complaint with the Commission, a complainant must mail a paper complaint form (available on the Commission's website) to the Office of Common Ownership Communities. The complaint must be accompanied by a copy of the association's governing documents and the required \$50 filing fee.

The association may not take any action to enforce or implement the association's decision (other than civil action) until the Commission's dispute resolution process is complete; unless, the association can show that inaction will result in undue harm to the community and that any action taken would not cause undue harm to the rights of any opposing party.<sup>4</sup>

*Referrals to Other Dispute Resolution Options.* The Commission cannot accept complaints between neighbors, complaints for homes within the City of Gaithersburg and some other municipalities<sup>5</sup>, or class action complaints. If a complaint falls into one of these categories, Commission staff will make a referral to the appropriate dispute resolution option.

## 2. Commission Staff Investigate Complaint and Encourage Informal Negotiation

Once a complaint is filed, Commission staff mail the complaint (along with relevant information about the Commission) to the other party and the 30 day response period is started. Once the complaint is filed, all communication between staff and the party will be shared. To ensure minimal misunderstanding, Commission staff prefers that all communication be in writing.

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<sup>2</sup> § 10B-9.

<sup>3</sup> Md. Real Property Code Ann. § 11-113 (2014).

<sup>4</sup> § 10B-9,9A.

<sup>5</sup> Including Chevy Chase Village, Chevy Chase Town, Garrett Park, Kensington, Laytonsville, Somerset, and Washington Grove.

If the responding party does not reply to the complaint within the 30 days, staff will notify the complainant and inform him/her of the right to request an order of default. If the complainant files for judgment under the Commission's default judgment procedures, the Commission will hear and rule on the default case. Staff will send notice to the defaulting party of the decision.<sup>6</sup>

Prior to the initiation of a formal administrative hearing, the case can either be informally settled, mediated, or a party may be awarded a default judgment ruling.<sup>7</sup> The responding party can also file a motion to dismiss the complaint. If dismissal is requested, staff will refer the case to the Commission at its monthly meeting. Staff report that the Commission rarely grants motions to dismiss unless it is clear that the Commission does not have jurisdiction. The Commission typically gives the benefit of the doubt to the complainant when reviewing dismissal requests.

**Informal Negotiation.** Staff will first attempt to resolve the case through informal communication. In many cases, once a responding party receives a formal complaint (particularly a resident responding to a governing body complaint), the party will work directly with the complaining party to resolve the dispute. Negotiations can resolve a case at any point during the dispute resolution process. If the parties resolve the dispute, the case is closed.

**Mediation.** Mediation may be requested by either party, recommended by Commission staff, recommended by the Hearing panel, or by the Panel Chairperson at a prehearing conference.<sup>8</sup> Requests for mediation are made in writing and the Commission is required to arrange for a qualified mediator. The regulations enable the mediator to meet with all parties at once or each party separately, provide factual information and analysis to the parties, and inform the parties of applicable law and Commission decisions.<sup>9</sup> The Commission strongly encourages the use of mediation as a quicker, simpler, and cheaper process to resolve a dispute compared to a hearing. Commission staff reports that mediation often leads to compromises and restored relationships, compared with the "all or nothing" approach of an administrative hearing.

In prior years, the Commission used mediators from the Conflict Resolution Center of Montgomery County. Numerous stakeholders reported that the mediators lacked the necessary knowledge of common ownership communities to provide for effective mediation. Currently, the Commission uses the services of one part-time volunteer mediator, who conducts mediations two mornings per week. Stakeholders report that the current mediator provides effective mediation services.

If mediation is successful the case is closed. Mediation agreements are contracts and can be enforced in Circuit Court if necessary.<sup>10</sup>

### **3. Case Presented to the Commission**

If either party rejects the use of mediation or the mediation is unsuccessful, the case is presented to the Commission for a hearing.

Prior to presentation to the Commission, staff send a copy of the case summary to each party for review and includes each party's response comments (if provided) along with the summary. Staff report to OLO that some parties object to the case summary because it does not fully detail the complaint.

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<sup>6</sup> Commission on Common Ownership Communities Default Judgment Procedures.  
<http://www.montgomerycountymd.gov/OCP/Resources/Files/defaultjudgmentprocedures.pdf>

<sup>7</sup> § 10B-11.

<sup>8</sup> 10B.06.01.01.

<sup>9</sup> Ibid at (a)-(b).

<sup>10</sup> § 10B-14(a).

**Jurisdiction.** At the monthly meetings, Commission staff present all complaints to the Commission including a case summary of the complaint with parties' comments, relevant documents, and recommendation on whether the Commission has jurisdiction in the case. The County Attorney is also present to provide legal advice on jurisdiction. The Code specifically lists the types of disputes that the Commission can hear, shown below.<sup>11</sup>

<b>Constitutes a Dispute within the Commission's Jurisdiction</b>
Authority of a Governing Body, under law or association document to:
<ul style="list-style-type: none"> <li>• Require a person to take any action or not take an action involving a unit or common element;</li> <li>• Require payment of a fee, fine, or assessment;</li> <li>• Spend association funds; or</li> <li>• Alter or add a common element.</li> </ul>
Failure of a governing body, when required by law or association document, to:
<ul style="list-style-type: none"> <li>• Properly conduct an election;</li> <li>• Provide adequate notice of a meeting or action;</li> <li>• Properly conduct a meeting;</li> <li>• Properly adopt a budget or rules;</li> <li>• Maintain or audit books and records;</li> <li>• Allow inspection of books and records;</li> <li>• Maintain or repair a common element if failure results in significant personal injury or property damage; or</li> <li>• Exercise its judgment in good faith concerning the enforcement of association documents.</li> </ul>
<b>Does not Constitute a Dispute within the Commission's Jurisdiction</b>
<ul style="list-style-type: none"> <li>• Title to any unit or common element;</li> <li>• Percentage interest or vote allocable to a unit;</li> <li>• Interpretation or enforcement of any warranty;</li> <li>• Collection of an assessment validly levied against a party; or</li> <li>• Exercise of governing body's judgment or discretion in taking or declining not to take any legally authorized action.</li> </ul>

The Commission does not vote on the merits of the case, but whether the complaint is under the Commission's authority (County Code 10B). If the Commission accepts jurisdiction, it will select a date for a public hearing (at least 30 days out) and appoint a hearing panel.<sup>12</sup> At any point prior to the scheduled hearing, a party can request (in writing) a continuance for good cause.

If the Commission dismisses a dispute without a hearing because it believes there is no reasonable ground to conclude a violation of law or association rules has taken place, the complainant has the right to file a motion asking for reconsideration of the dismissal within 30 days.

#### **4. Hearing Panel Appointed**

In conjunction with the Administrative Procedures Act, Chapter 10B outlines core requirements for the selection of the hearing panel and production of evidence. Hearing panels are comprised of three members: two Commission members (one resident representative and one professional representative)

<sup>11</sup> § 10B-8(4)-(5), (8).

<sup>12</sup> § 10B-13.

and a designated volunteer arbitrator. The arbitrator may be a commission member, but most are local attorneys who specialize in community association law.

Each panelist is not to have any interest in the dispute to be heard.<sup>13</sup> As discussed in Chapter Three, a recent Ethics Commission letter advised that volunteer panel chairs cannot be attorneys who regularly represent clients in front of the Commission. This decreased the number of volunteer panel chairs on the list from 15 to 8 possible volunteers. Either party may challenge a member of the panel for good cause. A mere showing of bias is insufficient and the party must have a persuasive and supportable reason to believe that the panel member is personally biased against the party or maintains a close relationship to the other party as to make the panelist incapable of being fair.

In addition, if the panel chair determines that the hearing should be held by a hearing examiner, the Commission may designate the Office of Zoning and Administrative Hearings to conduct the hearing (OZAH).<sup>14</sup> Typically, the Commission refers a complaint to OZAH when the dispute involves a Commissioner or when the Commission has a heavy caseload. OZAH's hearing officers apply the laws governing common ownership communities and recommend a decision. This decision may be accepted, rejected, or modified by the Commission.<sup>15</sup> After review by the Commission, the decision is final.

After the hearing is scheduled and a panel is selected, Commission staff send out a "Summons and Notice of Hearing" to both parties. The summons provides hearing information and outlines the parties' rights, including the right to discovery. The Code permits the Commission to compel witness attendance or the production of up to 20 documents. In addition to request for documents, parties are also permitted, with Panel Chair approval, submission of interrogatories and depositions. Parties are required to serve document requests and interrogatories within 15 days of the Commission's decision on jurisdiction.<sup>16</sup> Commission staff reported to OLO that most parties waive their right to discovery.

If a person fails to comply with the order, the County Attorney may enforce the summons, and a court can require compliance with the summons or attendance.<sup>17</sup> Additionally, if a person fails to attend the hearing, the panel may order relief to the other party based on the warranted facts.<sup>18</sup>

Either party or the panel chair can request a pre-hearing conference to clarify the issues, determine the admissibility of evidence or a witnesses, or rule on motions submitted. Pre-conferences are often used in more complex cases. As part of the pre-hearing conference, parties may be required to submit statements including a brief summary of the case, statement of claims made by the complainant, and defenses made by the respondent, list of witnesses, list of exhibits, itemization of damages, and request for other relief sought by the complainant (including attorney's fees).<sup>19</sup>

After sending the summons, Commission staff prepare the "Commission Exhibit 1 (CE1)" - the official file of the dispute. The CE1 contains the complaint/response, history of the dispute, relevant documents, association governing documents, and official Commission documents. Once completed, staff post the CE1 online (a hard copy is available at the hearing) for the parties and panel.

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<sup>13</sup> § 10B-12.

<sup>14</sup> Ibid.

<sup>15</sup> § 10B-13, 10B-14.

<sup>16</sup> 10B.06.01.04.

<sup>17</sup> § 10B-10.

<sup>18</sup> § 10B-13(c).

<sup>19</sup> 10B.06.01.06.

## 5. Administrative Hearing

Commission hearings typically occur on weekday evenings and last two to four hours. At the hearing, the three panel members, a court reporter, and both parties are present. County staff used to serve as clerk for the panel, but with budget cutbacks, panel members now must serve as clerk. Both parties may be represented by an attorney or may represent themselves (pro se litigants). Associations must be represented by an association board member and are not allowed to be represented by the property managers.<sup>20</sup> During the hearing, each side has the opportunity to present its case and ask questions of the other party's witnesses. Parties are able to introduce new documents not part of the CE1, but must bring five copies for distribution and the official record.

The Administrative Procedures Act details specific requirements for the hearing process. The list below details important provisions of the Act.<sup>21</sup>

- Section 19A-15(b) of the County's Ethic law mandates that ex parte communications must be included in the official record. The hearing panel may use the communications as basis for the decision.
- The hearing panel is responsible for maintaining and supervising the custody of the official record in each case, including testimony and exhibits.
- Hearsay Rule does not apply to the hearing.

If a party requests a continuance within 24 hours of the hearing, they must pay the Commission's court reporter fee, around \$100. If a hearing panel member is unable to attend, the parties may waive the presence of the third member, conduct the hearing, and allow the third member to participate in the decision. Otherwise, the hearing may be rescheduled so that all three panelists are in attendance.

## 6. Written Decision and Order

The Commission panel has 45 days to issue its Decision and Order. The panel chair drafts the opinion and submits it to the County Attorney for review. After approval, Commission staff will send it to the parties by certified mail. The final decision is legally binding on both parties, with the panel usually allowing the losing party 30 days to obey the order. Disputes are closed only after full compliance is verified.

If a Commission decision is not obeyed, the Commission staff can request the County Attorney to file a civil citation in the County District Court.<sup>22</sup> If the offending party loses in the District Court trial, the Court can impose a fine up to \$500 per day and issue an Order of Abatement. The District Court does not consider whether the Commission's decision was correct, but rather whether the offending party was informed of the Commission's decision and whether the decision was obeyed.

*Attorney Fees.* The Commission panel may award payment of damages, including reasonable attorney fees if a party filed or maintained a frivolous dispute, unreasonably refused to accept mediation of a dispute or withdrew from ongoing mediation, or substantially delayed or hindered the dispute resolution process without good cause. Decisions are subject to judicial review under Section 2A-11.<sup>23</sup>

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<sup>20</sup> Md. Business Occupations and Professions Code Ann. § 10-206(b)(6). Prior to this change in State Law governing associations were required to be represented by attorneys during Commission hearings.

<sup>21</sup> § 2A-8

<sup>22</sup> § 10B-13.

<sup>23</sup> § 10B-13.

In any dispute decided by the Commission, the hearing Panel may retain jurisdiction over the dispute to ensure that the relief granted is completed by the appropriate party. When the relief requested is complete, the hearing panel issues a final order and the Panel no longer retains jurisdiction.

*Appeal of Decision.* Requests for rehearing and/or reconsideration are permitted and governed by Section 2A-10(f).<sup>24</sup> Parties have several courses of action for appeal.

Request for Rehearing and Reconsideration. The party may file a motion for reconsideration under Section 2A-10(f) of the County Code. A motion for reconsideration must be filed within 10 or 30 days after the Decision and Order is issued (depending on the reason for the request), and the motion suspends the running of the time in which an appeal must be filed.

Appeal to Circuit Court. The Commissions' decision can be appealed. Unless there is a finding by the Circuit Court that decision is inconsistent with the law, not supported by evidence, or arbitrary and capricious, it will be upheld. Parties can file an appeal of the decision within 30 days of the issuance of the Commission decision. The case can be appealed "on the record," with the Circuit Court reviewing the record of the hearing panel to determine if the panel correctly applied the law and had sufficient facts to support its decision. Commission staff estimate that there are approximately three appeals per year.

## **B. Summary of Data on Complaints Filed with the Commission**

OLO reviewed case files of all complaints which were filed with the Commission on Common Ownership Communities from January 23, 2012 through the writing of this report (February 3, 2015). OLO reviewed paper files for all closed and open cases, as there is a limited number electronic files.

### **1. Closed Cases**

The next table summarizes key findings for 178 closed cases in which OLO was able to find relevant information. Of the total 178 cases, 47% of cases were resolved prior to the use of mediation or a Commission hearing. Twenty nine percent of cases were resolved through mediation, another 12% were resolved through a hearing, and, and the remaining 11% of cases either withdrawn or transferred due to lack of jurisdiction.

The average number of days to close Commission complaints was 169 workdays. Cases resolved without mediation or a hearing and those resolved by mediation closed in less than the 169 day average. In contrast, cases resolved by an administrative hearing took almost double the amount of time to close as the informal resolution of the complaint or mediation.

**Complaint Issues.** Seventy eight percent of all cases reviewed were regarding maintenance, architectural review of home modifications, or landscaping needs, compared with association governance (22% of all complaints). Cases resolved through informal resolution or resolved during mediation revealed similar patterns, with 85% and 76%, respectively, of these cases relating to maintenance/architecture/landscaping. However, cases resolved in a hearing included more cases concerning association's governance (41% of cases).

**Representation by Attorneys.** In approximately 58% of all closed cases, neither party was represented by an attorney. Associations were the only party represented in 32% of all closed cases, including 13% of cases closed prior to mediation or a hearing, 47% of mediations, and 52% of hearings. Owners were rarely the only party represented (6% of all cases).

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<sup>24</sup> 10B.06.01.09.

**Summary of Closed Commission Cases, January 2012 to January 2015**

<b>Total Closed Cases</b>	<b>All Closed Cases*</b>	<b>Cases Closed Premediation or Prehearing</b>	<b>Cases Closed by Mediation</b>	<b>Cases Closed by Hearing</b>
Total Cases	178	84	51	22
Average Days Open	169	156	153	299
Range of Days Open	7-537	9-532	23-410	32-537
<b>Number of Complaints Filed by:</b>				
Owner	104	27	43	18
Association	74	57	8	4
<b>Number of Complaints by Type:</b>				
Governance/Non Enforcement of Rules/Fees or Fines	40	13	12	9
Maintenance/Architectural Review/Landscaping	138	71	39	13
<b>Which Party was Represented by an Attorney:</b>				
Association Represented by Attorney	57	11	25	12
Owner Represented by Attorney	6	3	2	1
Both Represented by Attorney	11	3	4	3
Neither Represented by Attorney	104	67	22	6

\*The data in this column includes cases that were withdrawn or determined to be no under the jurisdiction of the Commission.

**2. Currently Open Cases**

OLO also reviewed a total of 50 Commission cases that are currently open, summarized on the next table. OLO did not review the circumstances of these cases and therefore does not know the reason why the cases are open. The earliest case in this group was filed in March 2012 (747 days open as of this writing<sup>25</sup>) and the most recent was filed on January 14, 2015 (13 days open as of this writing). OLO found that:

- Complaints were filed equally by individual owners and associations.
- Maintenance/architectural review/landscaping complaints are almost double that of governance complaints for the currently open complaints.

<sup>25</sup> Commission staff report that case closure is defined by whether staff needs to complete future case work, not by the date the Commission issues the decision. In the case OLO found to be open for 747 days, an appeal is pending in Federal Court, as a result Commission records reflect that the case is open until the Court issues a ruling.

**Summary of Open Commission Cases, as of February 2015**

<b>Total Open Cases</b>	<b>50</b>
Average Days Open	164 days
<b>Number of Complaints Filed by:</b>	
Owner	25
Association	25
<b>Number of Complaints by Type:</b>	
Governance/Non Enforcement of Rules/Fees or Fines	17
Maintenance/Architectural Review/Landscaping	33

## **CHAPTER V. Summary of Feedback on Experience with the Commission on Common Ownership Communities**

In order to evaluate the experiences of property owners, association members, and other stakeholders with the Commission on Common Ownership Communities and the dispute resolution process, OLO conducted numerous interviews and distributed two surveys. OLO used the survey development website SurveyMonkey to design, organize, and distribute two electronic surveys: one survey on the overall experience with the Commission and its services and the second survey specifically addressing the dispute resolution process.

Both surveys included both multiple choice and open-ended questions intended to assess the experiences of stakeholders with the Commission and the effectiveness of the services provided. The full set of survey questions and results are available from OLO upon request.

A list of survey recipients came from several databases maintained by the Commission on Common Ownership Communities and the Department of Housing and Community Affairs (DHCA). OLO distributed the survey to the DHCA database, the Commission's newsletter distribution list, and a contact list maintained by Commission staff.

This chapter includes a summary of:

- **Section A** summarizes survey results on the satisfaction with available Commission services and staff;
- **Section B** summarizes survey results on the dispute resolution process including filing or responding to a complaint, the mediation process, and participation in a Commission hearing; and
- **Section C** discusses common themes about the operations of the Commission identified by OLO through open-ended survey questions and interviews with stakeholders.

### **A. Results from Survey on Commission on Common Ownership Communities**

This section summarizes the results of OLO's survey on the Commission on Common Ownership Communities and all of the services it provides. There were 211 respondents for this survey, approximately a 16% response rate. Of those who responded, 76% of participants identified as either homeowners or tenants of a property in a common ownership community and 43% identified as a representative or board member of a common ownership community. Participants could identify as both property owners and representatives of a common ownership community.

Familiarity with the Commission. Of the 211 respondents to the survey, 81% were familiar with the Commission of Common Ownership Communities. For participants who were familiar with the Commission, the most prevalent method in which they heard about the Commission was through their governing association (33% of participants), followed by 18% of participants who heard about the Commission from a neighbor/friend, and 12% who found the Commission through a web search. Additionally, of all survey participants who were familiar with the Commission, 58% report that they did not receive information on the Commission from their governing association.

Frequency of Resource Use. Participants were surveyed on how often they utilized the various resources available through the Commission website (see next table). Some resources appear to be used fairly

frequently by most users such as: the guides/manuals, the newsletter, and the website. The YouTube educational video series appear to be least used by participants: 65% of participants never or rarely use them and another 12% of participants were unaware of the videos.

Type of Resource	Number of Respondents	How Often Do You Use the Resource?			
		Never/Rarely	Sometimes	Often/Very Frequently	Not Familiar with Resource
Association Guides and Manuals	95	18%	41%	38%	3%
Homeowner Guides and Manuals	87	28%	43%	26%	3%
Educational YouTube Video Series	85	65%	14%	9%	12%
Documents on Filing a Complaint	90	42%	37%	19%	2%
Commission Frequently Asked Questions	91	37%	40%	21%	2%
Laws and Policies	92	18%	38%	41%	2%
Newsletter	94	5%	15%	79%	1%
Website	104	24%	50%	26%	0%

OLO also surveyed respondents about participation in the classes offered by the Commission and the Annual Forum. Of all respondents, 25% (38 respondents) reported that they participated in classes offered and 15% (23 respondents) attended the Annual Forum.

**Satisfaction of Commission Resources.** Of 144 respondents, 62% were satisfied with the services provided by the Commission and staff overall.

How satisfied are you with the services provided by the Commission?	Percent of Respondents
Dissatisfied	9%
Somewhat Dissatisfied	8%
Neither Dissatisfied nor Satisfied	22%
Somewhat Satisfied	18%
Satisfied	44%
<b>Total Respondents</b>	<b>144</b>

The next table summarizes the percent of participants who are satisfied with the resources provided by the Commission, including the content, relevancy, and length of the resources. Overall, OLO found that participants are satisfied with all resources provided by the Commission, particularly the newsletter and the classes. Resource documents and the website had the lowest rates of satisfaction; however, 70% of participants were satisfied with these resources.

Type of Resource	Number of Respondents	Percent Dissatisfied/ Somewhat Dissatisfied	Percent Neither Satisfied nor Dissatisfied	Percent Satisfied/ Somewhat Satisfied	Percent Not Familiar with Resource
<b>Resource Documents</b>					
Content	95	5%	12%	78%	5%
Relevancy	94	5%	12%	78%	5%
Length	90	3%	17%	70%	10%
Overall Satisfaction	94	6%	13%	74%	6%
<b>Newsletter</b>					
Content	90	0%	9%	90%	1%
Relevancy	90	0%	9%	90%	1%
Length	89	0%	13%	85%	1%
Delivery Method	89	2%	11%	84%	2%
Overall Satisfaction	88	0%	9%	90%	1%
<b>Website</b>					
Accessibility	103	7%	15%	74%	5%
Ease of Navigation	103	8%	15%	73%	5%
Appearance	102	6%	20%	70%	5%
Services Offered	101	6%	15%	74%	5%
Overall Satisfaction	103	7%	14%	75%	5%
<b>Classes</b>					
Content	35	0%	3%	91%	6%
Relevancy	34	0%	3%	94%	3%
Length	35	0%	3%	91%	6%
Overall Satisfaction	34	0%	3%	91%	6%
<b>Annual Forum</b>					
Content	25	0%	12%	84%	4%
Relevancy	25	4%	8%	84%	4%
Length	25	4%	8%	84%	4%
Overall Satisfaction	25	8%	4%	84%	4%

Satisfaction of Commission Staff. OLO found that participants reported an 81% overall satisfaction rate with Commission staff. The table shows that over 80% of participants were satisfied with all aspects of Commission staff such as knowledge and courtesy.

	Number of Respondents	Percent Satisfied
Helpfulness	69	86%
Knowledge	69	86%
Professionalism	69	87%
Responsiveness	68	85%
Accessibility	68	81%
Courtesy	67	90%
Overall Satisfaction	70	81%

**B. Results from Survey on Commission's Dispute Resolution Process**

This section summarizes the experience of survey respondents who participated in the dispute resolution process, from filing/responding to a complaint to the mediation and hearing processes. OLO identified and sent out the survey to 211 parties who participated in the dispute resolution process from January 2012 through December 2014.<sup>1</sup> Requesting information on the most recent experience with the process, OLO received 56 responses to this survey.

Of those who responded, 28 respondents (50%) were either owners or tenants of a property in a common ownership community, 22 respondents (39%) represented an association (management or legal), with the remaining 11% being other stakeholders (i.e. renters in common ownership property or former Commission members). The remainder of this section summarizes the survey responses for filing or responding to a complaint along with participating in the mediation or hearing process.

Filing or Responding to a Complaint. Thirty of the 56 survey respondents were complaint filers and the table below summarizes the experience of those parties. Overall, respondents were satisfied with the filing process – about two thirds reported that they had adequate and clear information and it was easy to file a complaint. However, almost a third of respondents did not feel it was easy to contact Commission staff.

Experience with Commission Filing a Complaint	Number of Respondents	Percent of Respondents who Disagree	Percent of Respondents who Neither Disagree or Agree	Percent of Respondents who Agree
I was provided sufficient information to file a complaint.	30	13%	7%	80%
It was easy to file a complaint.	30	13%	13%	73%
It was easy to file supporting documentation.	29	17%	17%	66%
All forms were clear.	29	14%	17%	69%
I was easily able to contact County staff.	28	32%	11%	57%
County staff responded in a timely manner.	28	21%	11%	68%
After I filed a complaint, I understood the next steps.	29	24%	14%	62%
I had knowledge of all possible dispute resolution options.	29	28%	10%	62%

OLO also examined the experience of 21 survey participants who responded to the complaint. Over three quarters of survey participants reported that they were provided with adequate and clear information and understood the steps and options of dispute resolution with the Commission.

<sup>1</sup> To compile email addresses of parties who participated in the dispute resolution process, OLO reviewed the individual case files of complaints to the Commission.

Experience with Commission Responding to a Complaint	Number of Respondents	Percent of Respondents who Disagree	Percent of Respondents who Neither Disagree or Agree	Percent of Respondents who Agree
I was provided sufficient information to respond.	20	5%	20%	75%
All forms were clear.	20	5%	20%	75%
I was easily able to contact County staff.	20	5%	25%	70%
County staff responded in a timely manner.	21	10%	14%	76%
After I received a complaint, I understood the next steps.	21	5%	10%	86%
I had knowledge of all possible dispute resolution options.	21	10%	14%	76%

Dispute Resolution through Mediation or a Hearing. This section summarizes the experiences of respondents who resolved a complaint through mediation or a hearing. Of those respondents who resolved a complaint:

- Seven disputes were resolved prior to mediation;
- 15 respondents participated in mediation;
- 14 respondents went to a Commission hearing;
- Five participants participated in both mediation and a Commission hearing; and
- Two cases went into default or were withdrawn.

One quarter of respondents (a total of 43 respondents) reported that the length of time from initial contact to final resolution of their dispute was over 12 months.

Length of Dispute Resolution Process from Initial Contact to Final Resolution	0-3 Months	3-6 Months	6-9 Months	9-12 Months	12+ Months
Percent of Respondents	14%	30%	16%	14%	26%

*Experience with Mediation.* There were 24 respondents who participated in the Commission’s mediation process. Of these respondents, 15 reported that the mediation outcome was “not in their favor.” The table summarizes the mediation experience data of survey participants. Overall, OLO found that about 50% of respondents were satisfied with the mediation process.

Experience with Commission - Mediation	Number of Respondents	Percent of Respondents who Disagree	Percent of Respondents who Neither Disagree or Agree	Percent of Respondents who Agree
Information about the mediation process was readily available.	24	12%	20%	64%
Information about the mediation process was sufficient.	24	12%	20%	64%
The mediation was conducted in a timely manner.	23	12%	24%	56%
The mediator was fair and impartial.	23	16%	16%	60%
The mediator did not unduly pressure me.	23	8%	24%	60%
The mediator was helpful in resolving this case.	24	20%	20%	56%
Overall, I was satisfied with the mediation process.	24	24%	20%	52%

\*Does not include those who reported that the question was not applicable.

*Experience with Hearing.* There were 18 respondents to the survey who participated in the Commission’s hearing process (see table below). Of these respondents, half reported that they had a favorable outcome from the hearing process. Noting the small sample, OLO found that about 60% of respondents were generally happy with the information provided and their treatment during the process was professional. However over 40% of respondents reported that the hearing was not scheduled in a reasonable amount of time and the Commission was not fair and impartial.

Experience with Commission - Hearing	Number of Respondents	Percent of Respondents who Disagree	Percent of Respondents who Neither Disagree or Agree	Percent of Respondents who Agree
Information about the hearing process was readily available.	18	11%	17%	72%
Information about the hearing process was sufficient.	18	17%	22%	61%
County staff were accessible if needed.	18	33%	6%	61%
County staff were responsive in a timely manner if needed.	18	28%	11%	61%
The hearing was scheduled in a reasonable amount of time.	17	41%	18%	41%
I was treated with courtesy and respect during the hearing.	17	24%	12%	65%
I had a fair and ample opportunity to present my case.	17	35%	12%	53%
The Commission was fair and impartial.	17	41%	29%	29%
The case decision was received in a timely manner.	17	18%	29%	53%
The judgment was clear and easily understood.	16	31%	31%	38%

**C. Summary of Feedback from Stakeholders**

This section summarizes major themes identified by OLO through meetings with stakeholders and responses to open-ended survey questions.

**Commission staff is knowledgeable, helpful, and courteous.** There were consistent remarks during the course of OLO’s meetings, reiterated by survey responses, about the excellence of Commission staff. Stakeholders reported that the staff provided well-informed and useful information in a professional manner. Some specific survey respondents detailed:

- “The Commission Staff was wonderful.”
- “Staff is highly knowledgeable, professional and [is] always pleasant to interact with.”
- “Delighted with the information I received: focus, utility, and precision.”

**There is a need for more personnel to support the Commission.** As mentioned above, a majority of stakeholders reported that Commission staff does an outstanding job supporting the Commission. However, a majority also reported that there needs to be increased personnel capacity for the Commission to meet its goals. One survey respondent reported a need for “more staff [in order for users of Commission resources to receive] timely support [of] response [and] answers.” Related to additional personnel support, several stakeholders also reported a need for succession planning. Institutional knowledge is reliant on a single staffer which would make it difficult for the Commission to continue operations if/when the staffer leaves County employment.

**The role of the Commission staff needs to be clearly defined.** Several stakeholders, including current Commissioners, remarked that homeowners and homeowner associations are unclear on the role of Commission staff. There is debate as to whether staff are advocates for homeowners and may provide

interpretive advice or whether staff fulfills the role of the Commission's clerk. In some circumstances, when advice is provided by staff, stakeholders reported that the advice is relied upon by the parties even though it may conflict with Commission opinions.

**There is a need for more education for common ownership communities associations and homeowners.** Numerous stakeholders, including current Commissioners, have identified the need for more education for association governing bodies. Aligning with the Commission's original education mission, stakeholders stated that many associations require basic training, such as: how to run organizations including writing bylaws, conducting a meeting, and reviewing budget documents. Similarly, feedback indicates that the Commission should provide educational materials for homeowners on the rights and responsibilities of living in common ownership communities.

**There is a need for Commission member education.** Stakeholders, including current Commission members, acknowledge that new Commission members enter their appointments with varying degrees of familiarity with common ownership community laws and policies (e.g. Business Judgment Rule). These stakeholders reported a need to offer training to new Commission members prior to their first meeting, especially for resident members of the Commission who may have very little knowledge of common ownership communities.

**There are concerns about the impartiality of Commission Panel Chairs.** Survey respondents reported concerns over the impartiality of the volunteer panel chairs. One respondent wrote that the services provided by the Commission were not objective or impartial, rather it appeared the chairs were "champions [for the] association boards and their lawyers." To address these issues, the Montgomery County Ethics Commission issued a Letter of Guidance stating that volunteer panel chairs cannot represent a client in a Commission hearing for a few years prior to volunteering as a panel chair. However, some stakeholders believe that the use of these attorneys as panel chairs is beneficial to the hearing process. These stakeholders state that the attorneys have a knowledge of common ownership law which is crucial to providing an efficient, effective, and fair hearing.

**Scheduling delays lengthen the dispute resolution process.** Most stakeholders, including the Commission and staff, have stated that the dispute resolution process is too long. Some survey responses indicated that "[required] timelines should be enforced" and there is a general "frustrate[ration] with [the Commission's] willingness to allow complainant to...push off the meeting." Staff report that the length of the process is often due to scheduling delays as the result of coordinating numerous parties for mediation or a hearing and the frequent requests for postponements. Stakeholders presented the idea of having dedicated hearing nights to eliminate scheduling difficulties and postponements.

**There is a demonstrated need to streamline the dispute resolution process.** Stakeholders reported that hearings can last for multiple nights, often over several months. Stakeholders presented the idea of triaging complaints to determine which dispute route would be most effective. Further, some stakeholders reported that pre-hearing conferences can speed up the process, but they are inconsistently used by Commission hearing panel chairs. Stakeholders would like to see mandatory pre-hearing conferences to determine contested facts and matters of law and that these could be held over the phone to ease scheduling difficulties. Overall, stakeholders mentioned strengthening the structure of the overall dispute process, specifically in regards to homeowner resources on how to present a case.

**Jurisdiction decisions should be made at the start of the dispute process.** Some stakeholders report that jurisdiction decisions are made too late into the dispute resolution process. In some cases, parties engage in mediation before a decision is made as to whether the Commission has jurisdiction over the complaint. Additionally, when a case reaches the hearing panel, stakeholders reported that jurisdiction arguments are still heard. This can cause confusion over the validity of the original jurisdiction decision

and in some cases, stakeholders reported that the hearing panel ultimately rules that there is a lack of jurisdiction. To shorten the process and further limit the Commission's case load, stakeholders would like to an immediate decision on jurisdiction, particularly if the issue is raised in the response.

**There needs to be better search functionality of Commission decisions and/or the Commission website.** Overall, stakeholders found the availability of past Commission decisions on the Commission's website useful when researching common ownership community issues. However, numerous stakeholders reported that they would like additional search functionality by decision topic. Some stakeholders reported that, very brief case summaries would also be beneficial.

**The Commission website does not provide legal updates or recent Commission decisions.** Numerous stakeholders reported that Commission decisions posted on the website are not up to date. The most recent posting is from nine months ago. Additionally, information on relevant State and County Codes do not include the most recent legal changes. In a particular instance, stakeholders reported that the Commission's website references an outdated version of the County Code that permits the award of attorney fees. Stakeholders reported that education efforts are in part dependent on users having access to current information.

**Technology resources are needed to effectively fulfill Commission duties.** Stakeholders reported that the use of antiquated technology resources (e.g. black and white scanners) are inhibiting Commission members from fulfilling their duties. Some Commission members stated that the Commission Exhibit One is distributed via a scanned black and white document. Members remarked on the difficulty of using this document particularly in regards to cases that hinge on color (e.g. painting of a front door or house). Additionally the documents are often too large to be downloaded and printed by Commission members. One stakeholder reported that documents could be upwards of 400 pages.

**The Commission needs to be more active in helping associations with foreclosure and financial issues.** Numerous stakeholders reported that the Commission needs to expand its efforts to support the financial health of common ownership communities, particularly those of condominium associations struggling to recover from the recession. Specific financial issues discussed through the course of this report include:

- Permitting the creation of associations that are too small to be financially viable;
- Foreclosures that result in delinquency of association fees, leading to limited resources;
- Impact of fee delinquency on Federal Housing Authority (FHA) funding and approval; and
- Lack of consideration during legislative drafting for master-metered communities.

**There are mixed views on whether the current dispute resolution process is too formal and not in line with the original mission of the Commission.** Stakeholders who believe the process works well state that cases handled by the Commission are complex and therefore need to be more aligned with an administrative hearing. In contrast, other stakeholders feel that the hearing process unnecessarily duplicates Circuit Court. Additionally, stakeholders report that the inability of the Commission to award attorney's fees, causes some complainants to bypass the Commission's hearing process and move to the Circuit Court where attorney's fees could be awarded.

Regardless of views, all stakeholders agreed that informal dispute resolution should be encouraged, for some even to the point of making mediation mandatory. This would promote a less costly alternative and provide parties with more influence over the decision outcome as opposed to a hearing.

**Commission members would like to be more involved in the budgeting process for the Commission.** Commission members report that they have no role in the development of the Commission’s budget or the allocation of the budget. Commission members report that they have not been given the opportunity to advocate to the Council on budget matters. Further, some stakeholders acknowledged that an increased role in budget development would allow Commission members the ability to prioritize programming and resources.

**Commission members believe that the Ethics Commission opinion regarding volunteer hearing panel chairs has had a significant impact on Commission operations.** In February 2014, the Ethics Commission released an opinion that volunteer Commission panel chairs should not be attorneys who represent clients in front of the Commission. The Commission reports that this reduced the pool of volunteer attorney panel chairs by half. Members of the Commission believe that there have been no instances of conflict of interest and that all previously approved attorneys should be allowed to resume their duties. The Commission has formed a Committee to look into this matter and are working on creating “filters” for volunteer panel chairs to protect against conflicts of interest.

**Efficient and timely hearings rely on panelists with expertise in common ownership law.** In conjunction with the Ethics Commission opinion, stakeholders identified difficulties in recruiting volunteer attorneys with expertise in common ownership law. Several stakeholders reported that use of attorneys, practicing in other legal subjects, often leads to difficulties in drafting decisions. Hearing panelists may need to take additional time to train the volunteers on aspects of property and common ownership law, resulting in decision delays.

**Commission decisions often lack enforceability.** Despite issuing binding decisions, numerous stakeholders reported that Commission decisions are not always enforced by the County due budget constraints and a lack of resources. When this occurs, stakeholders report that private parties are often left having to enforce a decision on their own. According to some stakeholders enforcement of decisions can drag on for months or years.

## CHAPTER VI. OLO Findings and Recommendations

The Commission on Common Ownership Communities was created to (1) ensure proper establishment and operation of common ownership communities; (2) provide education on the rights and responsibilities of the communities and their residents; (3) reduce disputes and encourage informal dispute resolution; and (4) provide support for the development of policies that affect these communities. This chapter presents OLO's findings on the Commission and recommendations for next steps.

### General Findings

**1. 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.**

Over 80% of survey respondents reported that they were satisfied with the helpfulness, knowledge, professionalism, responsiveness, accessibility, and courtesy of the Commission's staff. Respondents reported that staff provided well-informed and useful information. Specific remarks included "The Commission staff was wonderful" and "delighted with the information I receive: focus, utility, and precision." OLO also heard similar remarks about the effectiveness of Commission staff from a majority of stakeholders throughout the course of this project.

Approximately 40% of County residents reside in common ownership communities; many stakeholders reported that one full-time staffer is insufficient to meet the full mandate of dispute resolution, education, and policy work for these residents. In prior years, the Commission had an additional part-time supervisor, an administrative aide, and a part-time investigator to carry the workload.

Stakeholders reported that the heavy workload can sometimes cause delays in processing, resulting in a lengthy dispute resolution process. Further, the institutional knowledge of the Commission is reliant on this one staffer, which can potentially lead to a difficult transition if/when the staffer leaves County employment.

**2. 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.**

Common ownership communities are required to pay the Commission an association fee of \$3 per property unit. This revenue funds one full-time Commission staff position, along with the following employees who have additional duties outside of work related to the Commission. OLO did not perform a desk audit to determine their workload related to the Commission.

- Administrative aide who schedules hearings and mediations, prepares hearing packages, and completes data entry (.3 WYs);
- Program aide who replies to citizen requests and distributes education materials (.3 WYs);
- A manager who provides program oversight (.2 WYs); and
- An investigator who is responsible for webpage maintenance (.1 WYs).

In FY14, approximately 16% of Commission fees went to the Department of Housing and Community Affairs to fund part of the salary (.6 WYs) of staff responsible for the annual registration and collection of registration fees from the member associations. The Commission reports that it does not participate in the formation of the Commission’s budget.

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

**3. Stakeholders are generally satisfied with the informational services provided by the Commission.**

Overall, OLO found that stakeholders were generally satisfied with the resources and services provided by the Commission, including documents and education services. Of 144 respondents to OLO’s survey, 62% were satisfied with the overall services provided by the Commission. OLO found that the Commission’s newsletter and education classes received the highest level of satisfaction, while respondents were less satisfied with available resource documents and the Commission’s website (although satisfaction rates were above 70%).

<b>Type of Resource</b>	<b>Number of Respondents</b>	<b>Percent Dissatisfied/ Somewhat Dissatisfied</b>	<b>Percent Neither Satisfied nor Dissatisfied</b>	<b>Percent Satisfied/ Somewhat Satisfied</b>	<b>Percent Not Familiar with Resource</b>
<b>Overall Satisfaction with Commission</b>	<b>144</b>	<b>17%</b>	<b>22%</b>	<b>62%</b>	<b>NA</b>
Resource Documents	94	6%	13%	74%	6%
Newsletter	88	0%	9%	90%	1%
Website	103	7%	14%	75%	5%
Classes	34	0%	3%	91%	6%
Annual Forum	25	8%	4%	84%	4%

**4. 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.**

Stakeholders, including Commissioners, have acknowledged that the Commission’s main focus in recent years is on the dispute resolution process. However, all stakeholders recognized the need for increased effort in conducting education programs and legislative advocacy efforts on issues that affect common ownership communities.

*Education.* Stakeholders stated that the many association governing bodies require basic training on how to run an organization, including: drafting bylaws, conducting a meeting, and reviewing budget documents. Similarly, feedback indicated that one of the Commission’s educational outreach programs

should be directed towards increasing the homeowners' knowledge of their rights and responsibilities when living in common ownership communities.

*Policy.* Numerous stakeholders reported that the Commission should expand its involvement in the formation of policies that directly affect the stability of common ownership communities, particularly relating to financial issues. Specific policy issues discussed by stakeholders included:

- The creation of associations, particularly condominium associations, that are too small to be financially viable;
- Foreclosures that result in delinquency of association fees, leading to limited resources;
- The impact of fee delinquency on Federal Housing Authority (FHA) funding and approval; and
- The impact of County and State legislation on master-metered communities.

### **Dispute Resolution Findings**

- 5. There are differing views on whether the current dispute resolution process is too formal, failing to align with its original mission to "encourage informal resolution of disputes." However, stakeholders agree that informal resolution should be promoted with Commission hearings limited to complaints involving significant issues.**

One of the original missions of the Commission is to encourage informal dispute resolution between owners and governing bodies in common ownership communities. During the course of this report, stakeholders varied on their views of whether the current dispute resolution process, in particular that the Commission hearing, is too formal and adversarial.

Stakeholders, who believe the hearing process works well, state cases reaching the Commission are complex and require more than simple negotiation. In contrast, other stakeholders feel that the hearing process unnecessarily duplicates Circuit Court. Regardless of views, all stakeholders agreed that informal dispute resolution should be encouraged, for some even to the point of making mediation mandatory. This would promote a less costly alternative and provide parties with more influence over the decision outcome as opposed to a hearing.

- 6. 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.**

The dispute resolution process for the Commission is paper-based: complaints must be filed on paper; only paper records are kept for each case, and there is a lot of associated documents for Commission cases (for example, each complaint must be accompanied by the association's governing documents). Although staff use a combination of hard copy case records and computer based records, there is limited electronic information available on individual cases. Staff report that they would like to use electronic case management, but lack the resources or personnel to do so.

Staff and stakeholders report that there is a need for a database that contains more detailed association information. In accordance with County Code, DHCA updates a list of all common ownership communities in County during the required annual registration. This list contains the name of the associations, property management groups, and board presidents, along with contact information. This expanded database, including all board members, could help with education and outreach of common

ownership communities and could be very beneficial for the Commission in managing the new training requirements of association board members required by recently passed Council Bill 45-14.

**7. 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.**

Authorized by County Code Chapter 10B, the Commission currently offers three methods of dispute resolution: informal negotiation, mediation, or an administrative hearing. OLO reviewed the paper case files of all complaints which were filed and closed with the Commission from January 23, 2012 through the writing of this report (February 3, 2015), totaling 178 complaints.

In addition to finding that the majority of the cases are resolved either through informal negotiation or mediation, OLO also found:

- Property owners filed slightly more complaints than associations (58% of complaints) and were more likely to have their complaint resolved through mediation or a Commission hearing;
- Maintenance/architectural review/landscaping complaints represented almost 78% of all complaints filed;
- Cases involving governance issues were more likely resolved in a hearing (22%); and
- In 58% of all cases, neither party was represented by an attorney, however, attorneys were used more often in cases that went to mediation (58% of cases) and a hearing (74% of cases).

<b>Total Closed Cases</b>	<b>All Closed Cases*</b>	<b>Cases Closed Premediation or Prehearing</b>	<b>Cases Closed by Mediation</b>	<b>Cases Closed by Hearing</b>
Total Cases	178	84	51	22
Average Days Open	169	156	153	299
Range of Days Open	7-537	9-532	23-410	32-537
<b>Number of Complaints Filed by:</b>				
Owner	104	27	43	18
Association	74	57	8	4
<b>Number of Complaints by Type:</b>				
Governance/Non Enforcement of Rules/Fees or Fines	40	13	12	9
Maintenance/Architectural Review/Landscaping	138	71	39	13
<b>Which Party was Represented by an Attorney:</b>				
Association Represented by Attorney	57	11	25	12
Owner Represented by Attorney	6	3	2	1
Both Represented by Attorney	11	3	4	3
Neither Represented by Attorney	104	67	22	6

\*The data in this column includes cases that were withdrawn or determined to be no under the jurisdiction of the Commission.

**8. 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.**

In the case files that OLO reviewed, the average case was open for 169 workdays or approximately 35 weeks. Cases resolved through informal negotiation or mediation were closed in an average of 31 weeks compared with cases that went through the hearing process closed in an average of 60 weeks.

	Number of Cases	Average Workdays Open
<b>All Closed Cases</b>	<b>178</b>	<b>169</b>
Cases Closed Premediation or Prehearing	84	156
Cases Resolved by Mediation	53	153
Cases Resolved by Hearing	23	299
<b>Open Cases</b>	<b>50</b>	<b>164</b>

Both survey respondents and stakeholders, including Commission members reiterated that the process takes too long. In particular, some survey responses recommended that “timelines should be enforced” and shared “frustrat[ration] with [the Panel’s] willingness to allow complainant to keep pushing off the meeting.”

Commission staff report that the length of the process is often a result of scheduling issues, particularly in difficulty in scheduling all parties involved in the process (disputing parties, Commission staff and volunteers) and frequent requests for postponements by one or both of the disputing parties. The recent Ethics Commission Letter of Guidance that reduced the number of eligible volunteer panel chairs has attributed to further scheduling delays.

**9. A little more than half of surveyed participants in the mediation and hearing process were satisfied with the processes.**

OLO asked survey respondents about their experiences with mediation and the hearing process, including filing or responding to a complaint:

- **Filing a Complaint.** Thirty six respondents were generally satisfied with the process – about two thirds reported that they had adequate and clear information and it was easy to file a complaint. However, about 44% of respondents did not feel it was easy to contact Commission staff.
- **Responding to a Complaint.** Of the 21 respondents, about 75% of survey participants reported that they were provided with adequate and clear information and understood the steps and options of dispute resolution with the Commission.

*Experience with Mediation.* There were 24 respondents who participated in the Commission’s mediation process, of which 15 reported that the mediation outcome was “not in their favor.” Overall, about 52% of respondents were satisfied with the mediation process. Respondents who were not satisfied reported that the mediator was not helpful or impartial.

*Experience with Commission Hearing.* Of the 18 survey respondents who participated in the Commission’s hearing process, half reported that they had a favorable outcome. Noting the small sample size, OLO found that about 60% of respondents were generally satisfied with the hearing. In particular, about 60% were satisfied with the information provided and their treatment during the process but more

than 40% reported that the hearing was not scheduled in a reasonable amount of time and the Commission was not fair and impartial. This aligns with the Montgomery County Ethics Commission Letter of Guidance that volunteer panel chairs cannot be attorneys who have practiced in front of the Commission due to a conflict of interest.

### **OLO Recommendations**

The following are OLO's recommendations on the Commission on Common Ownership Communities. OLO recommends that the Executive report on the developments made on all recommendations by September 2015.

#### **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 on Common Ownership Communities was created in part to meet four objections: (1) ensure proper establishment and operation of common ownership communities; (2) provide education on the rights and responsibilities of common ownership communities and their residents; (3) reduce disputes and encourage informal dispute resolution; and (4) provide support for the development of policies that affect these communities.

Due to the lack of resources and concentration on dispute resolution, the Commission has not fully realized initiatives related to the training, legislative, and education mandates. While the Commission provides a considerable amount of information on the dispute resolution process on its website, the Commission should expand its educational outreach and policy work on issues impacting common ownership communities. Efforts could include:

- Guidance on all available dispute resolution options;
- Education on managing and living in a common ownership community; and
- Participation in the legislative process on laws and policies that may affect the financial and operational administration of common ownership communities.

*Council Bill 45-14.* The implementation of Council Bill 45-14, requiring mandated training for association board member on good governance and management, will require additional funding and staff resources for the Commission. To meet legislative requirements, the Commission is currently in the process of developing an online training course with the University of Maryland. The Commission estimates that there are currently about 5,000 association board members in the County, with an approximate 20% turnover each year, all of who will have to take the training.

The Commission only has one full time employee, which is not sufficient for this workload. During the course of this report, suggestions for additional personnel included (these job responsibilities could be combined):

- Administrative or information technology staff to support current Commission staff;
- An "intake" staff member who counsels disputing parties on all available resolution options and offers recommendations on what would be in the best interest of both parties;
- A position dedicated to community education, both for associations and residents in common ownership communities, as well as working with policy makers on the impact of policies on these communities;
- A staff member to serve as a "court clerk" who can schedule mediation sessions and hearing panels, handle case documentation, and preserve the chain of custody of case evidence;

- An ombudsman to investigate complaints and attempt to resolve them,
- An investigator position who can assist disputing parties file and respond to complaints; or
- A position to monitor the mandatory training for association board members required under the recently passed Council Resolution 45-14.

Additionally, the Commission received over 1,200 requests for information relating to common ownership communities (about 19% of all information requests in Consumer Protection). The County Executive could review the scope of these inquiries to assess whether MC311 would be a more efficient method to answer at least some of these requests.

**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. Complaints are filed in paper, only paper records are kept on each case, and there is a lot of associated documentation for Commission cases. Commission members report that the Commission currently lacks digital case management, survey capabilities, capacity to collect and disseminate performance metrics, digital messaging/scheduling, or the ability to host interactive online courses. The creation of an electronic case management and tracking system could improve administrative efficiency and permit the availability of data to conduct analyses on complaint information and resolutions.

In addition, there is no single database for all common ownership community contract information. In accordance with County Code, DHCA updates a list of all common ownership communities in County during the required annual registration and collection of registration fees from the member associations. This list contains the name of the associations, property management groups, and board presidents. However, associations are not required to provide contact information (phone or email). This information will be crucial to the implementation of Council Resolution 45-14, which requires all newly-elected board members to complete an education course on the responsibility of association directors. Additionally, this database could further educational outreach initiatives.

OLO acknowledges that the creation of these data management tools would require additional Commission resources.

**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).**

With program touch points in consumer protection, housing, and community issues, OLO acknowledges that the Commission on Common Ownership Communities is not a perfect fit in any County department. Although currently organized under Consumer Protection, the Commission has also been located in DHCA, which currently registers associations and collects the Commission fees. In FY14, about 16% of Commission fees funded part of a DHCA staff position that is responsible for the annual registration and collection of registration fees from the member associations.

In FY15, DHCA has an approved budget of over \$40 million and 77 full-time equivalent employees compared with a \$2.6 million budget and 16.6 full-time equivalents in Consumer Protection. 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. These resources could help support the current Commission staff, especially if education and policy programming is expanded.

However, OLO did not complete extensive interviews with DHCA to determine the capacity and organizational fit of the Commission on Common Ownership Communities. The Executive recently appointed a new Director for the department, and the relocation of the Commission would have to align with the new Director's vision of the department. Further, as stated in Recommendation #1, DHCA would need additional resources to provide the expanded Commission services.

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.

## **CHAPTER VII. Agency Comments**

The Office of Legislative Oversight circulated a final draft of this report to the Chief Administrative Officer for Montgomery County and to the Commission on Common Ownership Communities. OLO appreciates the time taken by County Government and Commission representatives to review the draft report and provide comments.

OLO's final report incorporates technical corrections provided by County staff. The written comments from the County Executive were not available at the printing of this report and will be available in future Council packets.