

PS COMMITTEE #5  
July 23, 2009

**MEMORANDUM**

July 21, 2009

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst *SJF*

SUBJECT: **Executive Regulation 12-09 to Establish Fee Schedule for Registration of Common Ownership Communities**

Today the Public Safety Committee will consider the Executive's proposed amendments to the Montgomery County Code of Regulations, Section 10B-7(b)(1), changing to annual registration fee for a home within a common ownership community from \$2.25 per year to \$2.75 per year. While the fee is collected by the Department of Housing and Community Development (DHCD), the funds are transferred to the Office of Consumer Protection (OCP) to help staff the Commission on Common Ownership Communities (CCOC).

The Executive's transmittal memorandum says that the regulation was advertised in the May 2009 issue of the Montgomery County Register and the comment period expired May 31, 2009. No comments were received.

A fiscal impact statement was also included, indicating that the \$0.50 increase per unit will result in additional revenues of \$64,700.

The Executive's transmittal memorandum is on circle 1. The bracketed and underlined copy of the proposed regulation as submitted by the Executive is included on circles 2-3, and a clean copy is included on circles 4-5. The fiscal impact statement is on circles 6-7.

**BACKGROUND**

Approximately one third of all homes in Montgomery County are in common ownership communities. In FY08, there were 942 common ownership communities, serving 121,555 homes. Common ownership communities are designed to give homeowners control over services and amenities that might otherwise be provided by local governments. As such, they function as quasi-governmental entities and are often a resident's first line of assistance or information.

As COCs become more prevalent in the County, there have been increasing complaints by homeowners that COCs and/or management companies have not complied with state and local laws regarding their fiduciary duties, open meetings laws, and other responsibilities. The CCOC was established in 1991 to advise the Council, Executive, and offices of County government on ways to ensure the proper establishment and operation of homeowners associations, condo associations, and other types of cooperative housing corporations. In order to fund many of its activities, the CCOC is permitted to charge an annual fee to each unit within a COC. Currently, that fee is \$2.25 per unit, per year.

## **CCOC EXPENDITURES**

According to the Office of Consumer Protection, CCOC expenditures in FY10 are estimated to be \$352,220, which includes both CCOC personnel and operating costs, as well as personnel costs within the Department of Housing and Community Development (DHCD), which assesses and collects the fees. A chart is attached on circle 8 that projects a \$60,080 deficit in FY100 if fees are not increased. The chart on circle 9 illustrates how a \$0.50 increase will cover administrative costs, with a small remaining fund balance.

## **ISSUES FOR DISCUSSION**

The Committee has been briefed on CCOC's functions several times over the past year. Discussion focused on a need to increase educational outreach to COCs in an effort to help prevent incidences that result in complaints and reduce the need for mediation. As the Committee is aware, the Office of Consumer Protection's staff has been reduced significantly over the past several fiscal years, and its budget has remained flat, leaving little room to try and increase any CCOC outreach activities. The recommended fee increase of \$0.50 is enough to cover current initiatives, accounting for inflation, but would not enable CCOC to consider and implement any new initiatives. **The Committee may wish to ask OCP whether a larger fee increase would be tolerated and if such an increase could demonstrably assist in reducing complaints from homeowners.**

### **This packet contains:**

### **circle #**

Transmittal memorandum	1
Regulation 12-09, bracketed and underlined	2-3
Regulation 12-09, clean copy	4-5
Fiscal Impact Statement	6-7
COC Fees – Without Increase	8
COC Fees – With Increase	9
Montgomery County Code of Regulations Sec. 10B-7	10

Exec Reg



LAM  
CC  
SBF  
has  
H  
CB

OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

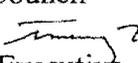
Isiah Leggett  
County Executive

MEMORANDUM

Method 2

June 22, 2009

TO: Phil Andrews, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive  (Acting)

SUBJECT: Executive Regulation 12-09 to Establish Fee Schedule for Registration of  
Common Ownership Communities

Transmitted for your review is a proposed executive regulation to establish the annual registration fee for Common Ownership Communities effective July 1, 2009. The regulation proposes a registration fee increase from \$2.25 to \$2.75 per unit. This is the first increase since July 1, 2002. The \$0.50 increase is needed to fund the cost of the administration of the Montgomery County's Office of Common Ownership Communities. Executive Regulation 12-09 was advertised in the May 2009 issue of the *Montgomery County Register* and the comment period expired May 31, 2009. No comments were received.

This proposed regulation is being promulgated by the Department of Housing and Community Affairs under Method 2 of Section 2A-15 of the Montgomery County Code. If you have any questions or would like additional information, please contact Richard Y. Nelson, Jr., Director, Department of Housing and Community Affairs, at 240-777-3600.

RYN:cg

Attachment

2009 JUN 22 AM 11:23

EXECUTIVE  
COUNCIL



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Establishment of Annual Registration Fee for Common Ownership Communities	<b>Number</b> 12-09
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

## ESTABLISHMENT OF ANNUAL REGISTRATION FEE FOR COMMON OWNERSHIP COMMUNITIES

### DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued By: County Executive  
Regulation No. 12-09

Authority: Code Section 10B-7(b)  
Supersedes: [9-02]

Council Review: Method (2) under Code Section 2A-15  
Register Vol. 26 NO. 5  
Comment Deadline: May 31, 2009

Effective Date:

**SUMMARY:** The proposed regulation establishes the annual registration fee for common ownership communities. The fee must be set at an amount sufficient to fund the provision of dispute resolution and technical assistance by the [Department of Housing and Community Affairs]Office of Consumer Protection.

**ADDRESSES:** Additional information and copies of the regulation are available from Cynthia Gaffney, Division of [Consumer Affairs]Housing and Code Enforcement, 100 Maryland Avenue, Room [330]260, Rockville, Maryland 20850 (240-777-[3636]3799).

The County Executive may establish reasonable annual fees in amounts sufficient to fund the provision of dispute resolution and technical assistance by the [Department of Housing and Community Affairs]Office of Consumer Protection.

2



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Establishment of Annual Registration Fee for Common Ownership Communities	<b>Number</b> 12-09
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

An annual registration fee of \$[2.25]2.75 per unit is hereby established.

A unit shall be assessed only one registration fee, regardless of the number of common ownership communities that govern that unit.

Registration fees shall not be pro-rated and must be made payable to Montgomery County, Maryland.

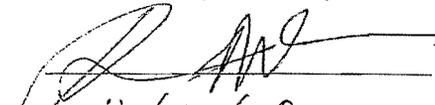
Failure to register is a Class A violation under Section 1-19 of the Montgomery County Code and also makes the community ineligible to file a dispute under Chapter 10B of the Code.

Approved:

 (Acting)  
Isiah Leggett  
County Executive

6/20/2009  
Date

Approved as to Form and Legality  
Office of the County Attorney

By:   
Date: 4/6/09  
Walter E. Wilson



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Establishment of Annual Registration Fee for Common Ownership Communities	<b>Number</b> 12-09
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

## ESTABLISHMENT OF ANNUAL REGISTRATION FEE FOR COMMON OWNERSHIP COMMUNITIES

### DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Issued By: County Executive  
Regulation No. 12-09

Authority: Code Section 10B-7(b)  
Supersedes: 9-02

Council Review: Method (2) under Code Section 2A-15  
Register Vol. 26 NO. 5  
Comment Deadline: May 31, 2009

Effective Date:

**SUMMARY:** The proposed regulation establishes the annual registration fee for common ownership communities. The fee must be set at an amount sufficient to fund the provision of dispute resolution and technical assistance by the Office of Consumer Protection.

**ADDRESSES:** Additional information and copies of the regulation are available from Cynthia Gaffney, Division of Housing and Code Enforcement, 100 Maryland Avenue, Room 260, Rockville, Maryland 20850 (240-777-3799).

The County Executive may establish reasonable annual fees in amounts sufficient to fund the provision of dispute resolution and technical assistance by the Office of Consumer Protection.

4



# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

<b>Subject</b> Establishment of Annual Registration Fee for Common Ownership Communities	<b>Number</b> 12-09
<b>Originating Department</b> Department of Housing and Community Affairs	<b>Effective Date</b>

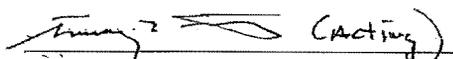
An annual registration fee of \$2.75 per unit is hereby established.

A unit shall be assessed only one registration fee, regardless of the number of common ownership communities that govern that unit.

Registration fees shall not be pro-rated and must be made payable to Montgomery County, Maryland.

Failure to register is a Class A violation under Section 1-19 of the Montgomery County Code and also makes the community ineligible to file a dispute under Chapter 10B of the Code.

Approved:

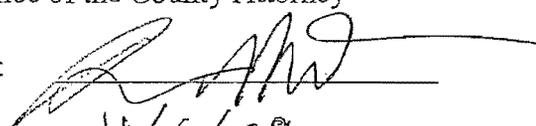
  
Isiah Leggett  
County Executive

6/20/2009  
Date

Approved as to Form and Legality  
Office of the County Attorney

By:

Date:

  
4/6/09  
Walter E. Wilson



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett  
County Executive

Joseph F. Beach  
Director

MEMORANDUM

June 9, 2009

TO: Joseph F. Beach, Director  
Office of Management and Budget

VIA: Angela Dizelos, Management and Budget Manager *AD*

FROM: Jennifer R. Bryant, Management and Budget Specialist *JRB*

SUBJECT: Executive Regulation No. 12-09, Establish Registration Fee for Common  
Ownership Communities

---

**REGULATION SUMMARY**

This regulation supersedes regulation 9-02 by authority of County Code Section 10B-7(b). The proposed executive regulation is to establish the annual registration fee for Common Ownership communities effective July 1, 2009. The regulation proposes a registration fee increase from \$2.25 to \$2.75 per unit. This is the first increase since July 1, 2002. The \$0.50 increase is needed to fund the cost of the administration of Montgomery County's Office of Common Ownership Communities.

**FISCAL SUMMARY**

The proposed regulation establishes a \$.50 increase per unit in the annual registration fee for common ownership communities. This increase will result in increased revenues of \$64,700; there is no other fiscal impact on the County.

The following contributed to and concurred with this analysis: Fred Wilcox, Department of Housing and Community Affairs.

JFB:jrb

Attachment

cc: Kathleen Boucher, Assistant Chief Administrative Officer  
Richard Y. Nelson, Jr., Director, Department of Housing and Community Affairs  
Caroline Darden, Office of the County Executive  
Brady Goldsmith, Office of Management and Budget

(6)

Office of the Director

---

OMB REVIEW

Fiscal Impact Statement approved Beryl L. Fowberg, for Joseph Beach,  
OMB Director

Fiscal Impact Statement not approved, OMB will contact department to remedy.

(7)

### COC Fees - No Increase

	FY09	FY10	FY11	FY12
Beginning Fund Balance	122,190	56,720	1,650	(60,080)
Revenue	289,500	297,150	304,579	312,193
<i>Total</i>	411,690	353,870	306,229	252,113
Expenditures	317,320	314,820	327,413	340,509
Indirect Cost	37,650	37,400	38,896	40,452
<i>Total</i>	354,970	352,220	366,309	380,961
Ending Fund Balance	56,720	1,650	(60,080)	(128,848)

Assumptions

Revenue increases @ 2.5%

Expenditures increase @ 4.0%

Indirect cost rate FY09/10 .1288 of personnel costs

FY09 Revenue

126,000 @ 2.25 =	283,500.00
Filing Fees	5,000.00
Misc.	1,000.00
	289,500.00

FY10 Revenue

129,400 @ 2.25 =	291,150.00
Filing Fees	5,000.00
Misc.	1,000.00
	297,150.00

S:\files\2009\director\Fred\COC Fee Increase.xls (no increase)

⑧

### COC Fees - .50 Increase

	FY09	FY10	FY11	FY12
Beginning Fund Balance	122,190	56,720	66,350	70,937
Revenue	289,500	361,850	370,896	380,169
<i>Total</i>	411,690	418,570	437,246	451,106
Expenditures	317,320	314,820	327,413	340,509
Indirect Cost	37,650	37,400	38,896	40,452
<i>Total</i>	354,970	352,220	366,309	380,961
Ending Fund Balance	56,720	66,350	70,937	70,145

**Assumptions**

Revenue increases @ 2.5%

Expenditures increase @ 4.0%

Indirect cost rate FY09/10 .1288 of personnel costs

**FY09 Revenue**

126,000 @ 2.25 =	283,500.00
Filing Fees	5,000.00
Misc.	1,000.00
	<u>289,500.00</u>

**FY10 Revenue**

129,400 @ 2.75 =	355,850.00
Filing Fees	5,000.00
Misc.	1,000.00
	<u>361,850.00</u>

The Commission must:

- (a) adopt rules and procedures as necessary to carry out the purposes of this Chapter;
- (b) keep a record of its activities and minutes of all meetings, which must be kept on file and open to the public at reasonable business hours upon request;
- (c) cooperate with the County Executive and all government agencies concerned with matters within the jurisdiction of the Commission;
- (d) examine by means of public or private meetings, conferences, and public hearings, conditions in common ownership communities which may result in unmet community, resident, or public needs; and
- (e) advise the citizens of the County, the County Council, and the County Executive, and County, state, and federal agencies on matters involving common ownership communities, and recommend such programs, procedures, or legislation as it finds necessary. (1990 L.M.C., ch. 33, § 1.)

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

- (a) (1) Each common ownership community must register with the Commission annually, and identify its elected leadership and managing agents, on a form provided by the Commission.
  - (2) Failure to register, or making a false statement on a registration form, is a class A violation and also makes the community ineligible to file a dispute under Article 2.
  - (3) The governing body of a homeowners' association, the council of unit owners of a condominium, and the board of directors of a cooperative housing corporation are responsible for compliance with this subsection, including the payment of any registration fee.
- (b) The County Executive by regulation adopted under method (2) may establish reasonable fees in amounts sufficient to fund the provision of dispute resolution and technical assistance by the Commission and the Department. These fees may include:
- (1) a per unit annual charge to common ownership communities to renew registration;
  - (2) fees for service, that seek to recover the actual cost of the service, for technical assistance and dispute resolution; and
  - (3) a per unit charge to developers when documents are recorded. (1990 L.M.C., ch. 33, § 1; 1996 L.M.C., ch. 13, § 1.)

**Editor's note**-In Dumont Oaks Community Ass'n., et al. v. Montgomery County, 333 Md. 202, 634 A.2d 459 (1993), the Court of Appeals held that the County could validly impose under § 10B-7 a per-unit fee. Section 10B-7 does not impose a discriminatory burden on common ownership communities in violation of State law.

## Article 2. Dispute Resolution.

---

10