

MEMORANDUM

January 22, 2015

TO: Planning, Housing and Economic Development Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Bill 45-14, Common Ownership Communities – Governing Body – Training

Expected attendees:

Eric Friedman, Director, Office of Consumer Protection
Peter Drymalski, Office of Consumer Protection and Staff for CCOC
Rand Fishbein, CCOC Chair

Bill 45-14, Common Ownership Communities – Governing Body – Training, sponsored by Council Vice President Leventhal, was introduced on September 23, 2014. A public hearing was held on October 21.

Background

Bill 45-14 would require the Commission on Common Ownership Communities to develop an educational curriculum to train a member of the governing body of a common ownership community on the responsibilities of directors. It would also require a member of the governing body of a common ownership community to complete this training or similar training approved by the CCOC within 90 days of their election or appointment.

Individuals are often appointed or elected to the governing body of a common ownership community without receiving appropriate training on the responsibilities of this volunteer position. Although it is important to avoid discouraging individuals from volunteering to serve their community, it is equally important to ensure that those individuals who volunteer to serve are prepared to carry out their responsibilities as a board member.

Public Hearing

There were 13 speakers at the October 21 public hearing. Elizabeth Molloy, Chair of the Commission on Common Ownership Communities or CCOC (©10-12), Ilanya Branda, on behalf of the Montgomery Housing Partnership (©13-14), Jordan Harding (©15-16), Jane Wilder (©17), Richard Wilder (©18), Lawrence Dorney (©19-21), Eliot Chabot, Janet Schlosser, and Sheryl Katzman, President of “JustUs” in Leisure World (©22-23) each supported the Bill as introduced. Ms. Katzman added that the training requirement should be expanded to include alternate board members. Gordon Klang (©24-26) supported the Bill, but suggested that additional enforcement tools be added to the Bill.

John Driscoll, President of the Montgomery Village Foundation Board of Directors (©27) and Tim Knobloch, testifying for the Greater Capital Area Association of Realtors (©28-29) supported training for board members, but were concerned that mandatory training would discourage people from volunteering to serve. Mr. Knobloch suggested that only some of the board members be required to participate in the mandatory training, and Mr. Driscoll suggested adding a sunset provision to the Bill. Both Mr. Knobloch and Mr. Driscoll were concerned that mandatory training would result in an increase in the fees common ownership community associations pay for the CCOC. Finally, Vicki Vegagni, President of the Board of Directors for Glen Way Gardens Condominium (©30-32) and Ruth Katz, speaking for the Washington Metropolitan Chapter for the Community Associations Institute (©33-35) opposed the Bill arguing that mandatory training would discourage people from volunteering to serve on a board.

Issues

1. What is the fiscal impact of the Bill?

OMB estimated a one-time expenditure of \$30,000 to develop an online training course for board members and an annual recurring cost of \$47,780 for one additional half-time Administrative Specialist II to keep records and \$3000 for miscellaneous materials. (©5-9) OMB estimated that an increase in the licensing fee from \$3 to \$3.50 per unit would raise \$67,000 annually. Finance estimated that the Bill would have no economic impact.

2. Should the Bill be amended to clarify what happens if a board member fails to complete training?

Associate County Attorney Walter Wilson, in his bill review memo (©36-37), pointed out that it was unclear what happens to a board member who fails to complete the required training within 90 days after being elected or appointed. Does the failure to complete training remove a board member or invalidate a board member's vote? Several speakers also pointed out that it is already difficult to get volunteers to serve as board members.

Automatic removal from the board or invalidating votes due to failure to complete training is likely to create an administrative nightmare for those boards. While the training would be designed to improve the qualifications of each board member, it does not necessarily follow that a board member who does not complete a two-hour online training course is unqualified to serve. **Council staff recommendation:** amend the Bill by clarifying that failure to complete training does not remove a member from the board or invalidate a vote by that member. This can be accomplished as follows:

Add the following after line 35:

- (i) A failure to satisfy the training requirement in subsection (h) does not:
 - (1) remove the member from the governing body; or
 - (2) invalidate a vote made by the member.

3. How should the training requirement be enforced?

The Bill is silent on enforcement of the training requirement. Code §10B-19(a) already authorizes the Commission on Common Ownership Communities to enforce the law by legal action. This would require the County Attorney's Office to file suit in Court on behalf of the CCOC to enforce this requirement. Code §10B-13 authorizes the CCOC to order compliance with the law as part of an administrative decision on a dispute and enforce the order in Court through the County Attorney's Office. Finally, Code §10B-13(j) makes a failure to comply with a final CCOC order a Class A civil violation.

The enforcement provisions of §10B-13 require a full evidentiary hearing on a dispute. Filing an original enforcement action in court under §10B-19(a) is cumbersome and expensive. Amending the Bill to expressly authorize the issuance of a Class C civil citation with a maximum fine of \$50 for the first offense and \$75 for a subsequent offense would be a reasonable enforcement mechanism. **Council staff recommendation:** amend the Bill to make failure to complete training a Class C civil violation. This can be accomplished as follows:

Add the following after line 35:

10B-19. Enforcement.

- (a) The Commission may enforce this Article by legal action.
- (b) Any person who does not comply with the training requirement in Section 10B-17(h) has committed a Class C civil violation. Each day that a person does not comply with a Commission Order enforcing this requirement is a separate offense.
- (c) In addition to any action by the Commission and any other action authorized by law, including the filing of a dispute under Article 2, any person may file an action:
 - (1) for injunctive relief to enforce this Article or correct any violation of it, and
 - (2) to recover damages for a loss sustained as a result of a violation of this Article.

4. Should current board members be grandfathered?

The Bill would require a board member who was elected or appointed before the law takes effect to complete the training within 90 days after the law takes effect. This transition would give current board members the same 90 days to complete training as new members. Although training would hopefully benefit many current board members, requiring all current board members to obtain training at the same time might cause some administrative problems for governing bodies. Council President Leventhal plans to introduce an amendment to the Bill that would require current board members to obtain training within 90 days after being elected for a new term of office that begins after the law takes effect. See Leventhal Amendment 1 at ©38.

5. Should the training be mandatory?

Several speakers at the public hearing supported additional training for board members, but opposed the Bill because it would make the training mandatory. These speakers cited existing problems recruiting volunteers to serve on a governing board and argued that mandatory training would make it more difficult to recruit volunteers. However, the CCOC already has the authority to offer voluntary training for board members. Bill 45-14 would not be needed to provide voluntary training. The CCOC staff anticipates creating an online learning module that can be completed on a computer at any location in approximately two hours. Would a governing board be well served by a potential board member who refuses to devote two hours to training in the first 90 days after being elected? We think not. **Council staff recommendation:** With the amendments discussed above, including the grandfather clause, the Bill is a reasonable effort to help board members perform their voluntary duties for the governing body.

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Bill No. 45-14
Concerning: Common Ownership
Communities - Governing Body -
Training
Revised: September 12, 2014 Draft No. 2
Introduced: September 23, 2014
Expires: March 23, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Vice President Leventhal

AN ACT to:

- (1) require the Commission on Common Ownership Communities to provide training for a member of the governing body of a common ownership community;
- (2) require a member of the governing body of a common ownership community to complete certain training; and
- (3) generally amend the laws governing common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-6 and 10B-17

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

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

Sec. 1. Sections 10B-6 and 10B17 are amended as follows:

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

The Commission must:

- (a) adopt rules and procedures as necessary to carry out the purposes of this Chapter;
- (b) keep a record of its activities and minutes of all meetings, which must be kept on file and open to the public at reasonable business hours upon request;
- (c) cooperate with the County Executive and all government agencies concerned with matters within the jurisdiction of the Commission;
- (d) examine by means of public or private meetings, conferences, and public hearings, conditions in common ownership communities which may result in unmet community, resident, or public needs; [and]
- (e) advise the citizens of the County, the County Council, and the County Executive, and County, state, and federal agencies on matters involving common ownership communities, and recommend such programs, procedures, or legislation as it finds necessary; and
- (f) provide training on the responsibilities of a board member for members of the governing body of a common ownership community by:
 - (1) developing an educational curriculum for new members; and
 - (2) approving an alternative educational curriculum for new members administered by other organizations.

10B-17. Voting procedures; training.

* * *

- (h) A member of the governing body of a common ownership community must successfully complete the educational curriculum developed by the Commission or a similar educational curriculum administered by

28 another organization that is approved by the Commission within 90
29 days after being elected or appointed to the governing body for the first
30 time. The governing body must:

31 (1) certify that each member has successfully completed this training
32 to the Commission; and

33 (2) retain a copy of the certificate of completion for inspection by the
34 members of the association for the duration of the governing
35 body member's service.

36 **Sec. 2. Transition.**

37 Each member of the governing body of a common ownership community who
38 was appointed or elected before this law takes effect must successfully complete the
39 training requirements contained in Section 1 within 90 days after this law takes
40 effect.

41 **Sec. 3. Effective date.** This Act takes effect on January 1, 2016.

42 *Approved:*

43

Craig L. Rice, President, County Council

Date

44 *Approved:*

45

Isiah Leggett, County Executive

Date

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

47

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 45-14

Common Ownership Communities – Governing Body - Training

DESCRIPTION:	Bill 45-14 would require the Commission on Common Ownership Communities to develop an educational curriculum to train a member of the governing body of a common ownership community on the responsibilities of directors. It would also require a member of the governing body of a common ownership community to complete this training or similar training approved by the CCOC within 90 days of their election or appointment.
PROBLEM:	Individuals are often appointed or elected to the governing body of a common ownership community without receiving appropriate training on the responsibilities of this volunteer position.
GOALS AND OBJECTIVES:	Provide appropriate training for members of governing boards.
COORDINATION:	Consumer Protection, CCOC
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney, 240-777-7895
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Not Applicable.



ROCKVILLE, MARYLAND

MEMORANDUM

December 18, 2014

TO: George Leventhal, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: FEIS for Bill 45-14, Common Ownership Communities – Governing Body - Training

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Eric Friedman, Director, Office of Consumer Protection
David Platt, Department of Finance
Helen Vallone, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Felicia Zhang, Office of Management and Budget
Nacem Mia, Office of Management and Budget

**Fiscal Impact Statement,
Council Bill 45-14 & Governing Body - Training**

1. Legislative Summary.

The purpose of this legislation is to require the Commission on Common Ownership Community (COC) to provide training for a member of the governing body of a common ownership community; require a member of the governing body of a common ownership community to complete certain training; and generally amend the laws governing common ownership communities.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Proposed expenditures include an appropriation of \$20,000-\$30,000 in the first year for an outside vendor/university to create an online program which may include the following: the visuals, the flow, the monitoring of the answers to the questions, etc. and the university will host the program on its own servers and maintain it in working condition. In addition, the Office of Consumer Protection (OCP) requests a part-time Administrative Specialist II (grade 21, 0.5 full time equivalent, 20 hours per week) position at an annual cost of \$47,780 (additional details provided in answer to question #7).

The COC will develop the text of the program but does not have the resources to create the online program itself. The online class is estimated to take at least two hours.

An increase in the annual licensing fees imposed by COC per unit (house or condominium) from \$3.00 to \$3.50 per license is being considered in order to generate funds corresponding with the development, maintenance, and administration expenditures associated with the application and staffing. The increase in licensing fees would generate an additional \$67,000 annually (134,000 residential units currently licensed x .50).

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

A concrete estimate is difficult to project at this stage as this bill is a new project which has no equivalent elsewhere in the country. Expenditures may include the following: \$20,000-\$30,000 to create the online class in the first year; material costs such as handouts especially for those who cannot use computers or cannot access the online training due to having older computers etc., costs to modify the existing class if the Legislature makes significant changes to the law; a part-time Administrative Specialist II position, \$47,780 annually.

Expenditure estimates = \$77,780 in the first year (\$30,000 for online program + \$47,780 personnel costs) and \$50,780 in out years (\$3,000 material costs/ongoing costs + \$47,780 personnel costs) = \$331,680

Revenue estimates = \$67,000 annually for a 6 year total of \$402,000.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable

6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable

7. An estimate of the staff time needed to implement the bill.

Current COC staff, consisting of 1.0 full-time investigator and .90 administrative support staff would not be able to absorb the additional duties associated with procuring, implementing, and administering the training program on an on-going basis due to current duties (see answer to question #8).

A part-time Administrative Specialist II (grade 21, 0.5 full time equivalent, 20 hours per week) position at an annual cost of \$47,780 which includes salaries, fringe benefits, and group health costs, for the following work: function as a registrar, be the official record-keeper of approximately 5,000 board members and maintain board member's credentials, identify and notify board members of initial training and re-training requirement.

In addition, this position will monitor and manage the vendor contract, monitor and update the program and processes, update the training module as needed, and provide program measures and reports to monitor success of the program.

8. An explanation of how the addition of new staff responsibilities would affect other duties. Without additional human resources, current staff would not be able to process complaint cases in a timely manner; provide consumer consultations that address issues before a formal complaint is needed; adequately support the COC and the hearing process; and plan and coordinate training and education of the boards.

9. An estimate of costs when an additional appropriation is needed.

Expenditure estimates = \$77,780 in the first year (\$30,000 for online program + \$47,780 personnel costs) and \$50,780 in out years (\$3,000 miscellaneous materials/ongoing costs + \$47,780 personnel costs) = \$331,680

Revenue estimates = \$67,000 annually for a 6 year total of \$402,000.

10. A description of any variable that could affect revenue and cost estimates.

Number of members trained per year, length of training, term of training, required performance measures for members, etc. will be determined when the program curriculum is developed.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Revenues and expenditures are difficult to project as the Office of Consumer Protection does not have a firm cost quote yet from the outside vendor and the detailed text/development for the training is still under development.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable

13. Other fiscal impacts or comments.

None

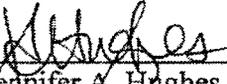
14. The following contributed to and concurred with this analysis:

Eric Friedman, Director, Office of Consumer Protection

Marsha Carter, Management and Budget Specialist III, Office of Consumer Protection

Peter Drymalski, Investigator, Office of Consumer Protection

Helen P. Vallone, Senior Management and Budget Specialist, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

12/18/14
Date

Economic Impact Statement
Bill 45-14, Common Ownership Communities – Governing Body - Training

Background:

This legislation would require the Commission on Common Ownership Communities to provide educational training for a member of the governing body of a common ownership community on the responsibilities of directors and require a member of the governing body of a common ownership community to complete certain training. Since Bill 45-14 requires training for a member of a governing body, it will have no economic impact.

1. The sources of information, assumptions, and methodologies used.

Not applicable

2. A description of any variable that could affect the economic impact estimates.

Not applicable

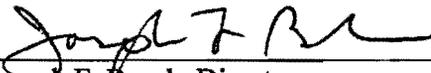
3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

Because Bill 45-14 requires the Commission on Common Ownership Communities to provide educational training to a member and requires a member to complete certain training, there is no economic impact on employment, spending, saving, investment, incomes, and property values in the County.

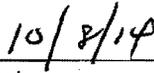
4. If a Bill is likely to have no economic impact, why is that the case?

See paragraph #3

5. The following contributed to or concurred with this analysis: David Platt and Rob Hagedoorn, Finance.



Joseph F. Beach, Director
Department of Finance



Date

**Testimony before the Montgomery County Council Regarding Bill 45-14
Common Ownership Communities – Governing Body - Training**

October 21, 2014

Good evening. My name is Elizabeth Molloy and I am the current chair of the Commission on Common Ownership Communities. I am also the current president of Sherbrooke Homeowners Association in Silver Spring.

As you know, the CCOC is made up of 15 volunteer commissioners (eight of whom are residents of common-owned communities and seven of whom are professionals in the field). The CCOC is pleased that the council is seeking solutions to the very important matter of educated boards. The CCOC believes that education for members of boards of common ownership communities is an important aspect of good governance and we have committed ourselves to making such education available in many forms.

Since I was appointed to the CCOC in 2009, we have finalized and revised our Manual and Resource Guide. We have posted all panel decisions on our website and finalized a topical guide to those decisions to aid homeowners and boards on the types of issues that have come before the CCOC. We have also produced 15 YouTube video segments on various topics of importance to living in and governing a common owned community. We are currently working on 15 more. We have held annual forums on topics of interest to communities, including this past fall, a forum on the issue of Reserves. We have sponsored classes in Bethesda and Rockville on the functions of a board and are looking to have additional classes in other parts of the county. And we issue a quarterly newsletter that we post on our website and send to those who have eSubscribed to the CCOC.

As you can see, the CCOC and the staff and volunteers who assist it have committed a great deal of time to make information as accessible as we can in as many formats as we can.

However, the Commission is split on whether education of board members should be mandatory. While several commissioners strongly support a mandatory educational requirement, several others are concerned that if training is made obligatory, it will discourage members of the communities from volunteering to serve on their communities' boards of directors. We urge you to keep in mind that all associations require their directors to serve without pay, and that the time required of the directors to manage their associations can be considerable.

One alternative that we would ask be considered would be that instead of mandating training, require boards to annually report (with their annual registration) on what training the board and individual members have taken in the previous year. This would serve to remind boards of the importance of training and inform the CCOC of both what training is effective and where gaps exist. Another alternative to consider would be requiring that a certain number of board members have training (it could be one director or a quorum of directors) who could be available as a resource to the other board members.

If education of all board members is mandated, we would ask that it be made clear that decisions made by a board not be invalidated by the fact that a board member did not obtain training. Without this provision there is the potential for unnecessary conflict.

In addition, we would recommend that it be made clear that existing board members would not be required to take training until the first time they are elected again after the effective date of the bill. Further we believe that board members who are appointed to complete unfinished terms should not be required to take training until after they are elected to a complete term.

We also recommend that that you consider adding a provision that any board member who has already taken the approved training prior to being elected need not take it again for up to 6 years from the date of the training, and that the certificate of training be valid for 6 years.

To assist the CCOC staff, we ask that the certification to be filed with the CCOC should be filed with the annual registration information.

We are pleased that there is time to establish a class/curriculum built into the legislation. We have already begun work on developing an online board basics training program that can be available to board members, and homeowners as well, for no charge. We hope that the County will agree to fund it. The exact cost has yet to be determined, but should become known before the end of the year once the exact parameters of course are ironed out. We will let the Council know as soon as a cost estimate is worked out.

Regardless of the path chosen, it is important the that the CCOC (and the County Council) be able to monitor the implementation of the law and to determine as quickly as possible whether or not associations are having trouble filling the board positions. To that end we ask that you include a provision that makes it mandatory for common owned communities to respond to surveys that we send out. We are planning on regularly including a survey on relevant matters with the annual registration notice. Receiving responses to our surveys will assist the CCOC to better target its efforts to improve the common ownership community experience.

Comments by the CCOC on Bill No. 45-14
October 21, 2014

As a final note, we understand that there are discussions underway about possible changes to the CCOC. Before any changes are proposed we would urge the council to wait until a review of the CCOC's functions and resources is completed by the Office of Legislative Oversight. We ask that the CCOC be included in any process to modify it and that we be kept informed of any such proposals.

Thank you for looking for ways to improve the County's common ownership communities.



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12200 Tech Road, Suite 250, Silver Spring, Maryland 20904-1983 Phone: 301-622-2400 Fax: 301-622-2800 www.MHPPartners.org

October 21, 2014

The Honorable Craig Rice
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Rice:

On behalf of Montgomery Housing Partnership (MHP), please allow me to take the opportunity to share some thoughts on the Bills 44-14 and 45-14. MHP fully supports the Council's critically needed focus on the struggles and issues facing many of our County's common ownership communities. Bills 44-14 and 45-14 are both important first steps to begin to provide additional support and security for our common ownership communities.

Many of you are familiar with MHP's role within the County as a developer of affordable rental multi-family communities, but might not be as familiar with some of neighborhood work. Neighborhood revitalization is a cornerstone of MHP's mission. MHP has been working in various communities throughout the County for over twenty years. These include the greater Glemont area, Long Branch, Germantown, and Gaithersburg. On behalf of the County, we have tackled such issues as: vacant and distressed property, small business development, crime and safety, health and well-being, and environmental stewardship. In 2011, MHP worked with home owner associations (HOAs) in Germantown dealing with high rates of foreclosures and the inability to collect dues and assessments. MHP worked closely with Cinnamon Run, a 600 plus unit association on conducting a capital reserve study and providing technical assistance and support to establish a financial planning strategy for the future. With 25 other HOAs in the area, MHP conducted a best practices report, including site surveys, neighborhood profiles, and individual meetings with HOA representation. We worked with the associations and the County to ensure both sides understand their maintenance responsibilities. Additionally, in 2004, we worked with the Ken-Gar, Bailey's Court, and Badger Drives HOAs to undertake a similar analysis, which included surveying the residents and analyzing market and demographic data.

MHP is also an owner of many individual units scattered throughout the County. We purchase most of these units within ownership communities to create the opportunity for affordable rental housing where it was previously not available. Recently, we have begun to purchase units for very different reasons – to support sellers who can't find buyers. Buyers can't purchase in those communities. Why? Because too many of our communities, at least 250 out of 400 who at one point had FHA certification have allowed their FHA certification to lapse, or been rejected. Without FHA certification many first time homebuyers are unable to find alternative financing to support purchases within these communities, leaving sellers without buyers and

creating additional problems within the community. There are three main factors that contribute to FHA certification eligibility – delinquency rates, investor rates, and existing concentration of FHA loans.

These bills begin to address two of the main reasons why our communities have lost their FHA certification – education and delinquency rates. Bill 45-14 goes to the heart of the education issues. We have very vested, passionate residents who are willing to dedicate their time and energy to support their community associations. However, their professional skills don't always align with the necessary skills to successfully support and manage their association. We need to ensure all boards have the skills to understand and craft a budget, to select and manage their management company, to understand how and when to apply for FHA financing, and to deal with residents who are delinquent, among others areas. Providing such training is the first step in developing resident leaders who will serve to mitigate the challenges their community may encounter.

The second bill, Bill 44-14, begins to get to the heart of some of the issues the communities are facing today. The high rate of delinquencies among our common ownership communities are preventing proper upkeep and maintenance, limiting our communities' ability to put money away for a rainy day, and are preventing many communities from obtaining FHA financing, as outlined above. We fully support preventing owners from renting out their units, when they are not properly supporting their community. We would like to suggest one tweak – instead of allowing owners to self-certify that their payments are up to date we would recommend that rental license applicants furnish a letter from their board or management company certifying that they are up to date with all fees and assessments.

I thank the Council for working to support our common ownership communities. We need to ensure that our communities are on solid financial footings, that they have the tools and knowledge to support themselves, and are positioned for turnover. We must also recognize that some of these challenges potentially require changes on a State and/or Federal level. For example, per State legislation when a bank has foreclosed on a unit in a common ownership community the bank is only responsible for \$1,000 or four months of fees, even if the owner had been delinquent for years.

Thank you for taking the time to consider these thoughts and for always keeping the needs of Montgomery County citizens at the forefront of your mind. We look forward to the opportunities to continue to work with the County ensuring all our residents live in quality communities.

I welcome the opportunity to discuss this issue with you further. Please feel free to reach me at rgoldman@mhpartners.org or 301-812-4114.

Sincerely,



Robert A. Goldman, ESQ.

President

Montgomery Housing Partnership
Bills 44-14 and 45-14

Mr. Chairman and Members of the Council:

I am Jordan Harding, an 8 year resident of Leisure World, a unit owner and member of the HOA. I appear today in strong support of CB 45-13⁴ and warmly commend councilmember George Leventhal for his vision in remedying the compelling issues the bill addresses.

Volunteer leaders have to understand their responsibilities. Too often assn. boards forget that the assn. does not belong to them - - it belongs to the members. A fundamental right of membership is self-determination.

A Task Force on COCs, created by the General Assembly, in its final report stated a prevailing theme in testimony that HOA boards clearly lack education and training in the conduct of meetings and in the overall administration and governance of HOAs. And I am informed that the governance and operation of HOAs will be discussed in the upcoming session of the General Assembly. Moreover, three formal complaints filed with the MC CCOC by two high profile corporate attorneys and a former member of the MC Human Relations Commission, all residents of LW, specifically called for education and training of members of the LWCC board of directors. Thus the LWCC BOD is "poster boy" for the need of BOD certification the bill requires.

The LW BOD controls multi-million dollar budgets and decides on facility and major public works projects yet many board members lack business experience and resumes in management and finance. The BOD further suffers from lack of written qualifications for membership, poor orientation of new members, scanty board education and development, and confusion over policy-making responsibilities versus controversial management decisions. Clearly there is need for formal training and instruction in the certification

Harding

process proposed in CB 45-1⁴. I urge your support and enactment of this important bill.

Importantly, I further urge the County Council to hold a public hearing on HOA governance, board of director practices, and management reforms to determine beneficial amendment to local laws that will enhance and promote more democratic and resident friendly process in the conduct of HOA business and re-establish confidence of residents in those processes.

10/21/14

Testimony to support Bill 45-14 Common Ownership Communities- Governing Body-
Training by Jane Ann S. Wilder representing Citizens to Save South Valley Park and
Whetstone Run in Montgomery Village

Dear County Council:

I have been trying for over a year to get my Homeowners Association, South Village,
managed by Montgomery Village to follow the Maryland Homeowners Association Act
and allow me Access to Books and Records of the HOA under Title 11-116 and/or 11B-
112 Annotated Code of Maryland, for me to evaluate their improper activities, in order to
have a requested hearing on such issues as illegal towing of my car and the virtual
destruction of our iconic cherry tree on private property (7/15/13). (Exhibit A) I requested
a hearing on the cherry tree shortly after it was badly damaged due to trespassing on my
private property for improper pruning. I filed an Access to Books and Records request on
the South Village / Montgomery Village form, which virtually states the whole law
allowing access to books and records. I have 5 items on this document, however only
one information item was provided despite numerous requests. (The law gives them 21
days to respond.)

I timely filed several information requests regarding the illegal towing of my officially
historic car towed on 1/7/14, which they falsely stated was parked too long or so called
"stored" next to our house. (Exhibit B) The car was properly and regularly moved in
contradiction to their allegations. In addition they did not sticker the car as required in
their own regulations! They never gave us a requested hearing and out of hand believed
the word of the security company who profits from such activity. (Although we had at
least 2 witnesses ready, nor would they provide documents to oppose or support our
position.) None of the information requested was provided and no exceptions to the state
law were claimed. They simply ignored the request!

I would therefore like to add this issue of following the Maryland Homeowners
Association Act regarding Access to Books and Records of a Homeowners Association to
the lists of educational requirements HOA boards should be cognizant of and followed
under Mr. Leventhal's bill 45-14. Only this will serve the Substantive Interest of Justice
and help prevent these quasi government groups from ignoring State and County Law.

Jane Ann S. Wilder
9969 Lake Landing Rd.
Montgomery Village, MD 20886
301-208-1828
RWi3206724@aol.com

Exhibits

10/21/14

**Testimony on Montgomery Council Bill 45-14 Common Ownership Communities – Governing Body-
Training by Richard D. Wilder for Potomac Valley Environmental Group**

We support Bill 45-14 for the following reasons:

We as members of the Montgomery Village Foundation South Village Homeowners Association have experienced many homeowners association problems which could be mitigated or prevented with proper governance training.

1. Some Board members had never been to a Board or Committee meeting prior to being elected or appointed.
2. Because of no term limits or no rotation of Board officers, some Board members had little or no experience with governing.
3. Board members were often influenced by management staff members who controlled information made available to Board members. Management staff refused to print letters as submitted by residents to the MVF News. These letters were often either censored or not printed in their entirety.
4. Board members were sometimes restricted from hearing resident input by management staff or Board officers. Some Board meetings were held with no Residents Time. The number of committee meetings for Environment and Transportation/Development/Public Facilities committees were reduced from 6 to 4 per year and the Board Executive Committee was eliminated.
5. Board members had little or no knowledge of Maryland Homeowner and Condominium open meeting requirements and therefore conducted meetings by e-mail or a special Board meeting retreat not advertised to resident members.
6. Board members were not familiar with the Bylaws and Board member responsibilities. They seldom asked questions before a vote was taken and often seemed afraid to vote in opposition to the rest of the Board or management staff. Some Board members were often absent or continually arrived late for Board meetings.
7. Board members had little or no knowledge of Freedom of Information Laws and how to respond to them. We submitted requests for information on illegal car towing and destruction of a cherry tree on private property and received inadequate or no response.
8. Board members were not familiar with Standards of Conduct or Roberts Rules of Order and made arbitrary decisions not treating resident members fairly. Some resident members were arbitrarily kicked off committees that they had been on for many years for reasons that were never before used and those residents were never allowed to respond to false allegations against them.
9. Recently a ground maintenance contractor was told to "bush hog" wetland plants and stream buffers by senior staff who responded to one complaint by a resident and did not notify authorized staff, committees or Board members. This activity was in violation of Montgomery County and State environmental guidelines, and could have been avoided by proper communication to authorized staff, committees or Board members.

Richard D. Wilder, 9969 Lake Landing Rd., Montgomery Village, MD 20886, 301-208-1828,
RWi3206724@aol.com

COVER LETTER

15

MY COMMENTS ON PROPOSED BILLS 44-14 and 45-14 SUBMITTED ON
OCTOBER 21, 2014 AT THE COUNTY COUNCIL PUBLIC HEARING

FROM: LAWRENCE DORNEY
10204 ROCKVILLE PIKE, UNIT 202
NORTH BETHESDA, MD 20852-3304
TEL: (301) 564-6240
FAX: (301) 564-6240
email: larrydorney@aol.COM

TOTAL PAGES: 7 W/O ATTACHMENTS

TESTIMONY: BILL 44-15

THIS IS MY TESTIMONY TO THE COUNTY COUNCIL
REGARDING PROPOSED BILL 45-14

I HAVE BEEN A CONDOMINIUM OWNER SINCE 1990.

Dear Council Members:

Thank you for the opportunity to testify. I support proposed Bill 45-15

I have lived in common owned communities in Montgomery County for 45 years since 1969 to date.

In November 2005, the late Dan Wilson filed CCOC Complaint 839-0 against the GPIV Condominium.

On May 1, 2006 Wilson signed a Consent Agreement with the GPIV Condominium in which GPIV would purchase Communities Association Institute (CAI) training DVDs and the GPIV Board Members would view them.

No Board Member has ever viewed these DVDs since the DVDs were never checked out of the Site Office where the DVDs were stored.

ATTACHMENT: MY email DATED 10/9/2014 "WHERE ARE THE CAI TRAINING DVDs?"

LAWRENCE DORNEY

Subj: **Where are the CAI training DVD's**
Date: 10/9/2014 6:25:41 A.M. Eastern Daylight Time
From: LARRYDORNEY@aol.com
To: gp4grosvenorpark@gmail.com, enoeh2@yahoo.com, pmechak@comsource.com
CC: inbluewaters@hotmail.com, rp20852@yahoo.com, zbclay@gmail.com, gail.greentree@gmail.com,
ATHANASO@COMCAST.NET

Date: October 9, 2014

From: Lawrence Dorney, GPIV Resident Unit Owner 10204-202

To:
Ernest Tremmel, President, Grosvenor Park IV Condominium
Peter Mechak, CMI Principal & President, Property Manager
Roxana Rizzone, Site Manager, Grosvenor Park IV Condominium

Subject: Where are the CAI training DVD's

In Dan Wilson v GPIV Condominium CCOC Complaint #869-0, Wilson charged that the GPIV Board members did not know their job or their legal requirements. Wilson requested the CCOC train the Board members so that the members would know their jobs and legal requirements.

In the Consent Degree resolving Complaint #869-0, the GPIV Association agreed to purchase the CAI training DVD's so that the GPIV Directors could train themselves.

CMI purchased the CAI training DVD's for GPIV using their CAI membership discount. Also, Jeanne Krause, a long time resident owner, asked CMI to purchase a set for herself.

The Consent Agreement was signed by Dan Wilson, representing the Complainant, and GPIV President Patricia Wigginton, representing the Respondent, on May 1, 2006.

Providing the current GPIV Directors are not using these CAI training DVD's, when can I borrow these DVD's from the GPIV Site Office. After all, these CAI training DVD's are the property of the GPIV Condominium Association - the GPIV Council of Unit Owners.

They are in the Site Office, aren't they?

GPIV President Tremmel, would you please poll the six members of the GPIV Board to determine how many Directors have viewed these DVD's. None?

Yours Respectfully,
Lawrence Dorney

As President of the Leisure World of Maryland resident advocacy organization "JustUs", I want to thank Councilman Leventhal and his staff for honoring my request and introducing this most significant legislation. The origins of this landmark legislation are addressed within the attached article: "Grade "A" Certified: R-E-S-P-E-C-T, Truthfulness and Advocacy".

Fiduciary responsibility demands representatives have prior knowledge of all legally defining documents before voting to expend resident funds.

Only the State of Florida has had the foresight to mandate HOA member certification. This instant legislation further protects Montgomery County HOA residents, by requiring HOA board members complete a prescribed and mandatory training curriculum. However, the training should also include the State of Maryland Homeowners Association Act, as well as each HOA's Bylaws/Articles of Incorporation/Master Deed/Amendments/ Policies, Rules and Regulations.

Additionally, Bill 45-14 need be amended to include HOA' BOD alternates. In Leisure World by example, each BOD representative has one or more designated alternates, who "take their place at the table" when the assigned representative is unable to attend. The Leisure World Board of Directors votes on a \$25 Million + budget. Alternates could be voting to spend resident funds without any assurance of their knowledge or background on requisite legalities and/or the subject matter about which they vote upon.

The sole negative voice against this proposal cites the "red herring" argument that if volunteers are required to be educated, no one will be willing to run for a seat. On the other hand, those without a vested interest have said with requisite training, they would be inclined to serve knowing they were in the midst of others who have been equally informed and educated.

Assuredly, by setting this educational standard, those who have for so long merely waded through will recognize their educational responsibility or step aside and let the cream rise to the top.

"Wisdom is supreme; therefore get wisdom. Though it cost all you have, get understanding."

-Proverbs 4:7

Sheryl Katzman

President,

"JustUs"

(Justice: giving voice to all residents)

"JustUs" advocates to enhance the quality of life for all Leisure World residents

"JustUs" (Justice: giving voice to all residents)

The "JustUs" mission is to improve the quality of life for all Leisure World residents

by S.J. Katzman, co-convenor

Grade "A" Certified: R-E-S-P-E-C-T, Truthfulness and Advocacy

As more and more residents seek to understand their legal rights under the prevailing state of Maryland Homeowners Association Act, a flood of awareness is arising within the Leisure World of Maryland population. Simply by virtue of being a community member, each deserves "A Seat @ The Table." Each is entitled to respect, expressed truthfulness, ethics, and advocacy by those representing us. Unless there is a valid and comprehensive reason, the answer by "volunteer" governance and paid management staff should be "yes."

The Problem: Many times has the mantra "that's the way we do it" been uttered by members of the multi-faceted levels of Leisure World governance. Historically displaying the attitude that by rebuffing the "little old lady," she will just go away and not be heard from again, those afraid to pursue their inquiry or complaint, lend credence to that method of operation. Many board of director "elected volunteers" are of the opinion that the overall resident sensibility is: "as long as the lights, tv, water, AC and heat turn on and they don't raise our fees, don't bother me do as you please."

We have received emails and had many conversations with residents expressing their dismay, frustration and fear at the way in which they are treated when presenting their opinions and concerns before their mutual BOD. Many report examples of disrespect, attempts by "volunteer" board members to have them silenced while speaking their concerns, and avoidance or refusal to answer their concerns. Some residents express feeling an air of intimidation, causing them to "back off," hence being unable to obtain a satisfactory resolution.

Documented on YouTube.com is an extraordinary example of embarrassingly unprofessional conduct displayed last year by the members of the Leisure World board of directors. Upon being recognized to speak, a resident made his plea that use of lethal means for population control of deer on our premises be forever stricken from Leisure World of Maryland. When suggesting those who would vote to allow such carnage should bring their children and grandchildren to witness the legacy they would impose upon Leisure World of Maryland, the resident was loudly greeted with loud boos, usually heard only in the British House of Commons. The gentleman accurately responded, "You are all acting like children."

"elected or appointed board member is required to take an approved educational curriculum once elected to qualify for board service." Any director failing to do so is "suspended from service on the board until he or she complies."

In his 2012 presentation to the Montgomery County Commissioners of the Commission on Common Ownership Communities (CCOC) Maryland Homeowners Association First Vice-President Rand H. Fishbein, Ph.D. stated, "The Education Imperative: At the heart of the problem is the fact that many, if not most, residents elected to association boards come to the job without any fundamental understanding of best practices or even the requirements of their community's own governing documents. While Americans expect that everyone from doctors to attorneys and engineers to plumbers will undergo extensive training and certification before being initiated into their respective professions or trades, there are no such requirements when it comes to administering common ownership communities, whose assets may run into the tens of millions of dollars." Fishbein said, "they shoulder a fiduciary responsibility to manage their communities in conformance with their governing documents and in compliance with applicable state and local laws. When board members are uneducated in the hierarchy of these codes and the nuances they embody, the stage is often set for conflict."

Solution: Each mutual adopt rules that within 30 days after being elected or appointed to a board of directors, each member must certify that they have studied the Mutual Articles of Incorporation, Bylaws, Rules and Policies, and the State of Maryland Homeowners Association Act. Certification should contain a signed Code of Ethics and a pledge to "faithfully discharge their fiduciary responsibility to the Mutual owners/members." Uncertified directors should not be able to vote on any matter of fiduciary interest. Should there be a failure to do so, the BOD member would be suspended from the board until completion of the requirement.

Unlike the majority of examples where little attention is paid to what the resident says, at least he evoked a response rather than being merely considered "a voice in the wind." Being an "elected/selected volunteer" is no excuse for bad behavior and certainly does not preclude the display of dignity and respect towards those whom they are seated to represent.

Perhaps at the root of the problem, is a silent "sin of omission" within this community system of governance, that being the failure to require that all board members have the necessary prerequisite knowledge and certification before acting in a fiduciary capacity. By example, and most likely due to the large number of senior citizens, Florida has legally mandated "Board Member Education Certification." Each

"JustUs"

(Justice: giving voice to all residents)

The "JustUs" mission is to improve the quality of life for all Leisure World residents

MEMBERSHIP APPLICATION

Please provide the following information:

NAME: _____

ADDRESS: _____

MUTUAL NAME/ # _____

HOME #: _____

CELL #: _____

EMAIL: _____

To submit your membership application, please call or email:

Janet Nleck, Chairman
"JustUs" Membership Committee
301-598-4818
jbleck@verizon.net

justus.lw.mdr@gmail.com

Traffic Pattern Through Administration Parking Lot One-Way Only!!

All traffic lanes in the Administration parking lot are one-way. Vehicles must travel from the top of the lot to the bottom. No traffic is permitted to travel towards the Administration building. Drivers disregarding the established traffic pattern pose a serious risk to both pedestrians and vehicular traffic.

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Volunteers Needed!

Speed Windows

Comments On Bill 45-14 before the Montgomery County Council on October 21, 2014

**Gordon Klang
14000 Broomall Lane
Silver Spring, Maryland 20906**

My name is Gordon Klang. I have lived in the Strathmore Bel-Pre Community since moving from New York in 1970. I retired from the Federal Civil Service in 1997. My last quarter century with the Civil Service Commission and the Office of Personnel Management were as a senior policy advisor. (Some have referred to me as a policy wonk especially with regard to the Foreign Service and advisory work with foreign governments establishing new civil service systems.)

First, I must clearly state that I fully support the idea that directors or trustees as they are also known, of homeowner associations receive training and that such training be mandatory. CCOC has provided training up to now that has not been considered mandatory. I attended one such all day session about a year ago and found it very worthwhile. The materials used were excellent and speakers were first rate. We even got the treat of a visit by the County Executive during the session. Perhaps such special appearances could serve as an additional incentive to get people to take CCOC training. I took that training on my own initiative and expense. Although I've served on our Board twice, I was not a member of our Board at the time I took the class.

While the three month rule provided in the legislative proposal is a good thing and the bill contains a certification requirement, if people know there is no penalty for failure to conform to the rule you cannot expect adherence at the level you would wish for. You may want to consider a rule that would deny to any trustee who does not receive the required training the right to vote on issues before the Board. Further, it would not be wholly inappropriate to require adherence to the three month rule in order to be counted for a quorum. You do need some way to offset the fact that you will not provide a real enforcement mechanism for the training required under this bill. If this sounds harsh, it is because I take very seriously the trust responsibility required of such positions. The bonding requirement for directors provides a cushion of comfort for bad decisions. We need to assure that bad decisions are kept to a minimum by using whatever devices we can. In my case, I became a member of our board and brought about changes that stopped practices that had continued for decades but did not conform to the governing documents. Later in this document I mention a proposal to make it mandatory that association directors read the governing documents. I would add this requirement to this bill.

Last year I raised a question with the Montgomery County Ethics Commission, asking how it could be ok to have attorneys working for the CCOC who were permitted to represent clients before the Commission. I had tried two other places before the Ethics Commission and found little interest in either defending the practice or condemning it. Posing the question to the Ethics Commission, I found that it was not ok. In fact, it was clearly prohibited under Montgomery County's ethics rules. It had also been made clear in an advisory opinion to a Commissioner two decades earlier and the same restriction applied to the panel chair situation. In the end, the final decision communicated to CCOC was that they had to discontinue use of attorneys who represented clients before CCOC. This is pretty basic stuff and I had assumed that any attorney would have known that such a conflict of interest would be problematic. Yet, after the decision by

the Ethics Commission, which not only interpreted the current law but made it clear that it would oppose any amendment to the law to allow this use of attorneys, the Commissioners voted a couple of months ago to send a proposal up to change the law. It is truly distressing to find that the Commission does not understand the negative impact on credibility that comes with certain practices.

I have, in my years with the CSC and OPM, been deeply involved in adverse action cases. Although conflict of interest cases are rare because the restrictions are pretty straight forward, I did know one professional working for the State Department, who crossed the line by teaching a course in how to get a better score on the Foreign Service entrance exam. He was State's representative to the company that produces the exam. That was a line that when crossed resulted in an unfortunate decision to separate someone from the service. This man was not a lawyer and probably saw nothing wrong with what he was doing. I get much more upset when lawyers don't know where the lines are drawn.

I have attached to this document a copy of the minutes of the August 6 monthly CCOC meeting. I've reproduced copies for your use with highlighting to show the passages that concern me and I believe should concern the Council. I should note that as of yesterday these minutes were not posted on the CCOC web site.

You will note on the second page that the Associate County Attorney assigned responsibility for CCOC drafted an amendment to Chapter 10B that would allow the practice to continue that the Ethics Commission had ruled illegal. The nine CCOC commissioners present on that day voted unanimously to recommend the amendment to the County Executive. While unanimous votes may be seen as a strong show of support, I see, in this case, a sign of a complete lack of understanding of the importance of keeping a judicial system clean. I can't imagine a more misguided unanimity. And why didn't this attorney from the County Counsel's office guide the Commission through the shark infested waters rather than show them an impossible path. When you've been told that the Ethics Commission opposes what you've been doing do you really think it is appropriate to ignore their position? Not only are the optics very bad but the very important question of credibility is compromised.

Some may say that the conflict of interest prohibition represents a fix to only a theoretical problem. I suggest that there is no such thing as a theoretical problem when trying to protect the credibility of a justice system. This Pandora's Box should remain closed and any attempt to pick away at the substance of restrictions found in the current ethics codes should be rejected. I should note here that the Commission has refused to allow the public to witness discussions concerning the Ethics Commission letters. The State Attorney General's office has ruled that it can only lock out the public while receiving advice from their attorney and not when formulating policy that would result in a legislative initiative.

On the third page you will find a decision by the Commissioners that is in conflict with the overall need to assure that people who are directors (trustees) of their community homeowners associations be educated in what is required of them. But here we see that a staff proposal that board members certify that they have read their governing documents met with a cold reception. I can tell you that as strange as this sounds, it is an attempt to deal with a real problem. Our association continues to deal with questions related to how it can and can't spend funds collected via mandatory annual assessments. It is using governing documents that were written over four decades ago and there are ongoing disagreements about

how to interpret spending restrictions. Some of those who vote on the issue have never actually read the restrictions. The consensus among the commissioners was that encouragement to know governing documents should suffice; but requiring reading the documents “would discourage members from serving on their boards.” I cannot imagine why anyone would see such a requirement as unimportant. That is certainly the signal given by the Commission when it is viewed against the backdrop of a requirement to receive CCOC training.

I have seen a great expansion of information on CCOC’s web site over the last few years. It truly is a professional job in putting useful information out there for all who are interested. If there is any problem in this area it is that most people who should know about this information source don’t know about it or don’t care. Everything that can be done to put the word out should be done and incentivizing board members to increase their knowledge of this important governing function should be done. Efforts in this respect should include putting together a database of email addresses of all board members for those associations paying dues to CCOC and using that database to supplement any names that are already on the Commission’s email distribution list. I have seen references to Mr. Friedman’s initiatives to help the board function more in line with the original intention for CCOC. His heart is in the right place and he should be given the authority necessary to have an impact on the operations of the Commission. Its operations have become overly legalistic and the vision of a place to go where you could bring a complaint without having to deal with lawyers has been lost. Even the Ethics Commission noted the inappropriate use of previous panel decisions as if they were precedents binding on subsequent decisions. Another MC commission has noted that the playing field is not even at CCOC because of the use of lawyers common only for the association and not for community members who generally are not represented by attorneys. Proper training of Board members may be the real value of CCOC rather than its adjudicatory function, especially if confidence in the process is compromised.

Thank you for this opportunity to speak to you on the bill before the Council and matters related to it. I would be happy to answer any questions that the Council members may have.

Testimony before the Montgomery County Council

By John Driscoll, President, Montgomery Village Foundation Board of Directors

October 21, 2014

Bill 45-14

Common Ownership Communities – Governing Body – Training

Good evening, I am John Driscoll, President of the Montgomery Village Foundation Board of Directors. I am here to provide qualified support for Bill 45-14, which would require the Commission on Common Ownership Communities to develop an educational curriculum to train members of governing boards of common ownership communities on the responsibilities of directors.

MVF believes that educating Board members is a noble and worthy idea, but we have two big concerns about the bill's implementation and its effects.

Our biggest concern is that the bill will discourage volunteers from serving on boards at a time when it is already difficult to get enough residents to participate. MVF informally surveyed our HOA and COA presidents (21 associations in addition to our own Board), and the comments we received voiced real concern that community members will not volunteer for a position that requires mandatory training.

After learning from CCOC of its plan to implement a two-hour online course, our Board has somewhat less concern, but the question still remains, and we would like the Council to consider the possibility of building a "sunset" date into the legislation so that the requirement will end if it does not achieve the benefits intended.

Our second concern is whether implementing mandatory training will increase costs for associations. To put it succinctly, we do not want to see our CCOC annual fee raised as a result of this legislation. We trust that the CCOC, as an option to CCOC's having to monitor the training, would authorize an association's attorney or manager—or another organization—to train board members using an approved curriculum. In fact, if the curriculum was well prepared and course materials were provided, a Board member could lead the training. With other mounting government fees, our associations simply cannot be expected to fund another unfunded mandate.

In summary, we all want better education to serve our associations. However, there are real questions about the practicality of doing so in a mandatory fashion. Many practical details still remain to be worked out.

Thank you again for the opportunity to testify.



**TESTIMONY OF THE GREATER CAPITAL AREA ASSOCIATION OF REALTORS®
BEFORE THE MONTGOMERY COUNTY COUNCIL ON
Bill 45-14, “Common Ownership Communities- Governing Body – Training”
Position: Support, with certain Modifications and Suggestions
October 21, 2014**

Council President Rice and members of the County Council, my name is Tim Knobloch and I am the 2014 Treasurer for the Greater Capital Area Association of REALTORS® (“GCAAR”) – the voice of Montgomery County and the District of Columbia’s more than 9,000 REALTORS®, property managers, title attorneys and other real estate professionals. GCAAR is also a voice for many homeowners throughout the entire DC metro region on important property rights and land use issues. On behalf of GCAAR, I would like to voice our support for Bill 45-14, “*Common Ownership Communities- Governing Body – Training*,” with certain modifications and suggestions to improve the legislation.

As a large percentage of GCAAR’s membership is involved with common ownership communities (“COCs”), either for personal or business purposes, we recognize the important role those accountable for their governance can have. Their actions directly impact thousands of County residents and can affect the livelihood of entire communities. A well-trained board of directors can have extremely positive effects on the residents they represent.

GCAAR agrees with the Council’s concern that individuals often serve on governing bodies of COCs without appropriate training and a strong understanding of the responsibilities. We understand Bill 45-14 strives to remedy this potentially serious problem by requiring the Commission on Common Ownership Communities to develop an educational curriculum, or approve a similar curriculum, to provide training on the responsibilities of directors within 90 days of their election or appointment. Overall, GCAAR supports Bill 45-14 and its intended purposes.

GCAAR nevertheless maintains certain changes are necessary to make Bill 45-14 more effective and easier to administer. First, it is important to consider that members of the governing bodies of COCs are volunteers with very busy schedules and are giving their own personal time without compensation. Any additional educational curriculum mandated by the County should not have significant costs associated, and, ideally, would be free. It is quite likely that members of such boards will already be paying dues and fees for various other aspects of their lives, and any added costs associated with Bill 45-14 may discourage well-qualified candidates from volunteering entirely. Particularly for smaller boards that do not have the resources to develop their own curriculum, the financial aspect of the legislation is an important consideration.

Next, GCAAR believes that it is unnecessary for every member of a volunteer board to complete the type of training Bill 45-14 would instate. Instead we feel it would be more prudent and

efficient that only the executive members, such as President and Treasurer, to be the ones required to actually go through the training. In turn, they could bring back this knowledge and instill it upon the other members of their respective boards. Requiring every new member to undergo training is too onerous of a commitment for those not involved with the leadership aspects of the position.

Finally, GCAAR would like to be directly involved with developing the educational curriculum. Our members could bring a great deal of institutional knowledge to such a process and help create a course that is truly beneficial for those required to take it. REALTORS® are able to see the how many units are turning over in the COC's and can help the County better understand the buy and sell process, the renting process, and more importantly some of the financing problems with many of these properties as well. We also believe this collaborative approach between government and practitioners ensures the practical difficulties COC board members may encounter throughout their tenure would be addressed.

In conclusion, GCAAR commends the Council for proactively seeking to instill a greater level of professionalism to those charged with leading common ownership communities. We see Bill 45-14 as a great opportunity to work together towards more effective and efficient boards. GCAAR sincerely thanks the members of the County Council for consideration of our Association's perspective on this very important issue.

4

**Testimony for the Montgomery County Council
Tuesday, October 21, 2014**

Bill 44-14 – Common Ownership Community Unpaid Fees by Landlords – FOR

Bill 45-14 – Common Ownership Community Governing Body Training – AGAINST

**Vicki Vergagni
President, Board of Directors and
On-Site Community Manager
Glen Waye Gardens Condominium**

My name is Vicki Vergagni. I represent 214 condominium units in Glen Waye Gardens. My comments are based on 39 years of owning and living in a condominium, 14 years of leading the community as the Board president and serving as its on-site manager, and five years of serving as a Commissioner on the County's CCOC – with two years as Vice Chair.

First I must thank the Council for looking at two issues of some import to our communities – a collections tool related to landlords who collect rent but do not pay their community fees, and the lack of knowledge of elected members of these communities' governing bodies.

I am here on behalf of a condominium and trust that the Council understands that, although most condominiums come in the form of apartments, the Apartment and Office Building Association does not speak for condominium owners who are charged with all of the responsibilities of homeownership, but who under this County government reap very little in return for the taxes and fees that they pay. Not only are condominiums required to provide free data collection services for County agencies (*e.g.*, recycling, leased units), they also are required to purchase more permits than single-family homes, and to pay higher fees than those paid by single-family homes for the same service – all while being shut out of nearly every well-intended County rebate program. This occurs because most legislation assumes that all residences are single-family in nature. But when condominiums are included, County folk do not understand them operationally so the condominiums cannot apply for and receive the rebates to which they are entitled (*e.g.*, rain tax, energy efficiency by both unit owners and by the association). You will continue to hear from me as our communities try to survive in spite of poor public policy in more than twenty areas for which the County is responsible.

First I will address Bill 44-14 related to rental licenses. I must speak in favor of this bill with the modifications suggested by the Washington Metropolitan Chapter of the Community Associations Institute. However, based on my experience with the County, I am very concerned

about implementation. Will DHCA be reviewing a landlord's judgments via the Maryland Judiciary Case Search prior to issuing a license just to keep him/her honest? If the rental unit is occupied but is not licensed, who will check to see that it is no longer rented – the County, or will the County require the property managers to contact them re occupancy as they currently do for “condemned” units? And what will the procedure be to remove the occupants of an unlicensed rental property? Hopefully there will not be an endless timeline for a delinquent owner to pay up and there will not be yet additional burden on our communities.

Now I will address Bill 45-14 related to mandatory training for members of our governing boards. I surveyed both current and former members of my boards, and they strongly advised against this bill.

I learned a long time ago that I should not expect from others what I do not expect from myself. How many Federal, state and local governments require that elected officials be trained on the subject matter on which they will be making decisions? Montgomery County certainly does not. Yet, elected officials are considering mandatory training for us whose decisions are far less comprehensive than theirs?

While theoretically a great concept, this bill will have a chilling impact on recruiting volunteers for our governing bodies. We already have difficulty finding volunteers to serve on the Board. And finding volunteers is a repetitive task, as Boards have staggered terms of office with one or more positions expiring annually. To pass this bill without having firm training requirements and options is putting the cart before the horse. And how would the law be enforced? Would the one staff person at the CCOC have to review monthly a list of thousands of board members that constantly changes– and to then send out reminder notices and/or report those uneducated folks to a County official? Is the County going to fine the uneducated individual or the Board that has an uneducated member or two? Would such a law put boards out of business because the volunteers have no need for additional mandatory requirements when they already serve in a politically difficult and thankless environment?

In the alternative, I would suggest that the County encourage companies that provide officer and director liability insurance to give discounts to “educated” boards. CCOC also could develop an itemized list of issues about which a Board member should be knowledgeable which will vary considerably since HOAs are not the same as condominiums which are not the same as cooperatives. And even each condominium is unlike the next. This list could highlight issues

for which each community could provide information to its incoming Board members, such as for what portions of the property is the association responsible for maintenance, repair and replacement. The CCOC also could provide a reference list of education courses and publications from which Board members could select as they felt the need. And it might be fairly easy for the CCOC staff person to e-blast all board members with relevant information as it becomes available.

I look forward to exploring later with each of you Maryland's priority lien bill for condominiums that requires a lender to foreclose on a property before a community can collect up to \$1,200 in delinquent fees -- when that delinquency may be \$600 monthly with master-metered utilities included with delinquent accounts frequently exceeding \$20,000 and some up to \$40,000+. Lenders don't foreclose because they will have to pay condominium fees as the property owner. With the lenders leaving virtually hundreds of vacant, non-paying condominium units in the County, paying community members picking up all the bills for the non-paying members. And many communities are nearly insolvent. Property values in these communities have plummeted and are not recovering -- \$60,000 for a spacious two-bedroom in Gaithersburg in Montgomery County -- and with one unpaid water/sewer bill, virtually hundreds of families will be homeless since their homes will be condemned.

Thank you for the opportunity to speak on these issues of concern.



October 2, 2014

Montgomery County Council
 c/o Mr. Craig Rice, President
 100 Maryland Avenue
 Rockville, Maryland 20850

**Re: Bill 45-14, Common Ownership Communities – Governing Body – Training
 (Hearing: October 14, 2014, 1:30 p.m.)**

Dear Council members:

I serve as co-chair of the Maryland Legislative Committee of the Washington Metropolitan Chapter Community Associations Institute (“WMCCAI”). WMCCAI is a 501(c)(6) organization that serves the educational, business and networking needs of the community associations industry in Maryland, Virginia and the District of Columbia. Members include professional managers and community association volunteer leaders from condominium, cooperative and homeowners associations, as well as those who provide products and services to associations. I am writing to provide the Chapter’s comments on the above-referenced Bill.

For reasons further articulated below, WMCCAI supports Board member training, however, requiring mandatory Board member training without knowing the impact it may have on members’ willingness to serve on their Board of Directors appears to be premature. As such, it may be beneficial to table this matter for now and develop a task force to study these issues more thoroughly. In doing so, the task force could have participation or seek input from existing community board members, managers, the Commission on Common Ownership Communities (“CCOC”) and attorneys that practice in this area who could provide input on the proposal or possible alternatives that achieve the desired goal.

There is no question that Board member education is beneficial and desirable to support effective community governance. A better understanding of community associations, not just by Board members but by all community members, would help members gain a better understanding of assessments, the budget process, the need for reserves and meeting procedures among other community association issues. Furthermore, having resources available, especially ones that are available free of charge, would be helpful as a tool that Board members or association managers can refer to those members who have questions or issues with their associations. Providing such education would also hopefully limit controversy among associations and members.

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c/o Mr. Craig Rice, President
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There are, however, practical concerns with making Board member training mandatory. Requiring Board member training, and further, attaching a fine or other sanctions to that training if not completed, may detract from those limited members willing to serve on their Boards. Based on discussions with community managers, Board members and other industry leaders, many communities currently have difficulty in finding members willing to serve on their Board of Directors. As such, many Board seats remain vacant and/or Board elections are uncontested. There is already difficulty getting people to volunteer for a position that requires the dedication of a lot of time and energy, with no pay, and many times little to no reward. It should therefore be our goal to retain these volunteers and offer them as many resources as possible, but at the same time, not create additional hurdles in members' willingness to serve.

Furthermore, the way the Bill is currently written, if Board member training becomes mandatory and Board members fail to take such training, the validity of any Board action may become subject to challenge. Therefore, the effect of this Bill may create additional controversy and litigation.

Proposed Alternatives for the Task Force to Review

Making the training optional yet accessible will likely be more desirable to Board members and achieve the Council's goal of providing education to Board members without penalizing or disincentivizing members from running for their Boards. For example, offering Board members lower rates on Director and Officer insurance policies or other CCOC or WMCCAI discounts for training completion, may incentivize Boards to participate in training. WMCCAI currently offers Board member training and furthering a relationship between the CCOC and WMCCAI may help facilitate and make training available for all community members. Additionally, offering Board members certificates for those who complete the training may also be used by Board members, and potential Board members, for leverage in their Board member election campaign.

Florida has a similar law which requires Board members to either attend and certify that they attended a training session, or alternatively, certify that they have read the association's governing documents and will work to uphold those documents. A Board member who certifies that they have fulfilled either one of the above criteria has fulfilled the certification requirement. While Florida's law is also not ideal and may lower Board member involvement, it does provide Board members with several options and therefore may potentially lower the impact of detracting from Board member participation. WMCCAI has already developed a Model Code of Ethics for Community Association Board Members, which is enclosed for reference, which can be incorporated into a certification process. In essence, each Board member can achieve their

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certification requirements if they take a training course, or alternatively, certify that they will abide by the Model Code of Ethics for Community Association Board Members.

While WMCCAI does not support mandatory Board member training at this juncture, another alternative is only requiring one Board member to have mandatory training. Doing so, may have the desired effect of educating Boards, but at the same time make the training less burdensome and potentially have a lower impact on decreasing Board member involvement.

Accordingly, WMCCAI supports Board member education, but believes that this legislation is premature and that a task force should be created to further review the alternatives mentioned above as well as other options for furthering the goal of Board education without decreasing Board member involvement.

Thank you for your consideration.

Sincerely,



Ruth O. Katz, Esq.

Enclosure

cc: Matt Rankin, Executive Director, WMCCAI (via email)
Ronald M. Bolt, Esq., Co-Chair, Maryland Legislative Committee (via email)
Peter Drymalski, Esq., Staff, CCOC (via email)
Councilmember George Leventhal (via e-mail)



Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

October 2, 2014

To: Eric Friedman, Director
Office of Consumer Protection

From: Walter Wilson
Associate County Attorney

Via: Marc Hansen *MPH*
County Attorney

Re: Bill 45-14 (Common Ownership Communities—Governing Body—Training)

The County Executive's Office has requested that this office forward you our comments concerning Bill 45-14. The proposed legislation would amend County law by requiring the Montgomery County Commission on Common Ownership Communities (the "CCOC") to develop a training curriculum to educate the persons elected or appointed to serve on the governing boards of common ownership communities about their responsibilities as board members. Within 90 days after being elected or appointed, a new board member would be required to complete either the educational curriculum developed by the CCOC or a comparable CCOC-approved course of training. Once the law takes effect, anyone already serving on a community association's board would have 90 days to complete the training requirements. Finally, every community association's board would have to certify to the CCOC that each board member has successfully completed the training requirements and, for the duration of a board member's service, maintain a copy of a certificate documenting that completion among the association's records.

Having reviewed Bill 45-14, I make the following observations:

- It is not clear what happens where an individual serves on the governing board of a community ownership community for at least 90 days without completing the training that this legislation would mandate. Could that member continue to serve and risk being subject to a code enforcement action by the County or would a new board

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member need to be appointed to replace a noncompliant board member? Also, how feasible is it for the County to enforce this requirement against potentially hundreds of community association board members throughout the County that might be noncompliant at any given time? How would compliance be monitored effectively; particularly in light of the fact that County Code Section 10B-17 (g) (2) calls for staggered terms among the board members?

- Although the proposed law would require a community's governing board to certify to the CCOC that all of its members have completed the training requirements (see lines 31-32), the legislation fails to specify any particular means of providing that certification. Nor is there any specific guidance to indicate what type of certification would be considered acceptable. Would an association need, for instance, to provide a copy of each board member's certificate of compliance to the County to be kept on file with Office of Consumer Protection for the duration of each member's service on the board? Also, since the legislation is silent on the question of when an association would have to certify the completion of training by all of its board members, the timeframe for compliance with Section 10B-17 (h) (1) is unclear. Also, if a homeowner's inspection of the association's books and records reveals that the association does not have a certificate of completion for some of the board members currently serving what happens then?

While the bill addresses matters that fall within the scope of the County's authority to regulate, its mandates raise some issues that need to be resolved before the legislation becomes final. If you have any questions or concerns regarding this memorandum, please call me at (240) 777-6759.

cc: Bonnie Kirkland, Office of the County Executive

Leventhal Amendment 1

Amend lines 36-40 as follows:

Sec. 2. Transition.

Each member of the governing body of a common ownership community who was appointed or elected before this law takes effect must successfully complete the training requirements contained in Section 1 within 90 days after being elected for a new term of office that begins after this law takes effect.