

SENATE BILL 274

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4lr0742

By: **Senators Kelley, Benson, and Forehand**

Introduced and read first time: January 17, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Business Occupations – Common Ownership Community Managers –**
3 **Registration**

4 FOR the purpose of prohibiting an individual from providing management services to
5 a common ownership community in the State unless the individual is registered
6 with the Department of Labor, Licensing, and Regulation; providing certain
7 exceptions to certain requirements of this Act; establishing certain application
8 requirements for registration; requiring the Department to assign a registration
9 number and issue a registration certificate to certain qualified applicants;
10 establishing the term of a registration and certain requirements for renewal;
11 requiring the Department to adopt certain regulations; requiring the
12 Department to develop a means for providing public access to certain
13 information; authorizing the Department to conduct certain investigations and
14 refer matters to the appropriate State’s Attorney’s Office for prosecution;
15 establishing certain penalties for a violation of this Act; requiring certain fines
16 collected under this Act to be paid into the General Fund of the State; requiring
17 the Department to report certain information to the Governor and General
18 Assembly on or before a certain date; defining certain terms; and generally
19 relating to the registration of common ownership community managers.

20 BY adding to

21 Article – Business Occupations and Professions
22 Section 17.5–101 through 17.5–110 to be under the new title “Title 17.5.
23 Common Ownership Community Managers”
24 Annotated Code of Maryland
25 (2010 Replacement Volume and 2013 Supplement)

26 Preamble

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, Increasing numbers of Maryland residents live in communities that
2 are governed by common ownership deed restrictions, including homeowners
3 associations, condominiums, or cooperative housing; and

4 WHEREAS, Property owners living in common ownership communities are
5 required to pay periodic fees for the operations and maintenance of their common
6 ownership communities; and

7 WHEREAS, Many common ownership communities employ managers to
8 manage community operations, including managing the finances of the common
9 ownership community; and

10 WHEREAS, Maryland law requires that the governing bodies of common
11 ownership communities above a certain size maintain fidelity insurance to indemnify
12 the community for losses resulting from fraud, dishonesty, or criminal acts by an
13 individual charged with the operation or maintenance of the community who controls
14 or disburses funds; and

15 WHEREAS, There is currently no central repository for information identifying
16 the manager of a common ownership community or whether the required fidelity
17 insurance policy of the community is in place; and

18 WHEREAS, Maryland currently lacks the ability to enforce the fidelity
19 insurance requirement and thus protect the funds of common ownership community
20 residents; now, therefore,

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Business Occupations and Professions**

24 **TITLE 17.5. COMMON OWNERSHIP COMMUNITY MANAGERS.**

25 **17.5–101.**

26 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
27 **INDICATED.**

28 **(B) (1) “COMMON OWNERSHIP COMMUNITY” MEANS:**

29 **(I) A CONDOMINIUM AS DEFINED IN § 11–101 OF THE REAL**
30 **PROPERTY ARTICLE;**

31 **(II) A COOPERATIVE HOUSING CORPORATION AS DEFINED**
32 **IN § 5–6B–01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR**

1 (III) A HOMEOWNERS ASSOCIATION AS DEFINED IN §
2 11B-101 OF THE REAL PROPERTY ARTICLE.

3 (2) “COMMON OWNERSHIP COMMUNITY” INCLUDES A
4 RESIDENTIAL AND COMMERCIAL MIXED DEVELOPMENT.

5 (3) “COMMON OWNERSHIP COMMUNITY” DOES NOT INCLUDE A
6 TIME-SHARE PROJECT AS DEFINED IN § 11A-101 OF THE REAL PROPERTY
7 ARTICLE.

8 (C) “PROVIDE MANAGEMENT SERVICES” MEANS:

9 (1) TO ACT WITH THE AUTHORITY OF THE COMMON OWNERSHIP
10 COMMUNITY IN ITS BUSINESS, LEGAL, FINANCIAL, OR OTHER TRANSACTIONS
11 WITH MEMBERS AND NONMEMBERS OF THE COMMON OWNERSHIP COMMUNITY;

12 (2) TO EXECUTE THE RESOLUTIONS AND DECISIONS OF A
13 COMMON OWNERSHIP COMMUNITY OR, WITH THE AUTHORITY OF THE COMMON
14 OWNERSHIP COMMUNITY, TO ENFORCE THE RIGHTS OF THE COMMON
15 OWNERSHIP COMMUNITY SECURED BY STATUTE, CONTRACT, COVENANT, RULE,
16 OR BYLAW;

17 (3) TO NEGOTIATE CONTRACTS OR OTHERWISE COORDINATE OR
18 ARRANGE FOR SERVICES OR THE PURCHASE OF PROPERTY AND GOODS FOR OR
19 ON BEHALF OF A COMMON OWNERSHIP COMMUNITY;

20 (4) TO COLLECT, DISBURSE, OR OTHERWISE EXERCISE DOMINION
21 OR CONTROL OVER MONEY OR OTHER PROPERTY BELONGING TO A COMMON
22 OWNERSHIP COMMUNITY;

23 (5) TO PREPARE BUDGETS, FINANCIAL STATEMENTS, OR OTHER
24 FINANCIAL REPORTS FOR A COMMON OWNERSHIP COMMUNITY;

25 (6) TO ARRANGE, CONDUCT, OR COORDINATE MEETINGS OF A
26 COMMON OWNERSHIP COMMUNITY OR THE GOVERNING BODY OF A COMMON
27 OWNERSHIP COMMUNITY; OR

28 (7) TO OFFER OR SOLICIT TO PERFORM ANY OF THE ACTS OR
29 SERVICES LISTED IN ITEMS (1) THROUGH (6) OF THIS SUBSECTION ON BEHALF
30 OF A COMMON OWNERSHIP COMMUNITY.

31 17.5-102.

1 **THIS TITLE DOES NOT PROHIBIT:**

2 **(1) AN INDIVIDUAL WHO IS A REGULAR, SALARIED EMPLOYEE OF**
3 **A REGISTERED COMMON OWNERSHIP COMMUNITY MANAGER FROM**
4 **PERFORMING ADMINISTRATIVE, INTERNAL, BOOKKEEPING, OR MINISTERIAL**
5 **FUNCTIONS IN SUPPORT OF THE REGISTERED COMMON OWNERSHIP**
6 **COMMUNITY MANAGER;**

7 **(2) AN INDIVIDUAL WHO IS ADMINISTRATIVE SUPPORT STAFF OR**
8 **AN ASSISTANT OF A REGISTERED COMMON OWNERSHIP COMMUNITY MANAGER**
9 **FROM INCIDENTALLY PROVIDING MANAGEMENT SERVICES IF THE INDIVIDUAL**
10 **IS DIRECTLY SUPERVISED BY A REGISTERED COMMON OWNERSHIP COMMUNITY**
11 **MANAGER;**

12 **(3) A RESIDENT OF A COMMON OWNERSHIP COMMUNITY WHO**
13 **ACTS WITHOUT COMPENSATION FROM PROVIDING MANAGEMENT SERVICES FOR**
14 **THAT COMMON OWNERSHIP COMMUNITY;**

15 **(4) A MEMBER OF THE GOVERNING BODY OF A COMMON**
16 **OWNERSHIP COMMUNITY WHO ACTS WITHOUT COMPENSATION FROM**
17 **PROVIDING MANAGEMENT SERVICES FOR THAT COMMON OWNERSHIP**
18 **COMMUNITY;**

19 **(5) AN ATTORNEY AT LAW FROM REPRESENTING A COMMON**
20 **OWNERSHIP COMMUNITY OR A REGISTERED COMMON OWNERSHIP COMMUNITY**
21 **MANAGER IN ANY BUSINESS THAT CONSTITUTES THE PRACTICE OF LAW;**

22 **(6) AN INDIVIDUAL LICENSED UNDER THIS ARTICLE FROM**
23 **PROVIDING TO A COMMON OWNERSHIP COMMUNITY THE SERVICES THAT THE**
24 **INDIVIDUAL IS LICENSED TO PROVIDE; OR**

25 **(7) A PERSON WHO ACTS AS A RECEIVER OR TRUSTEE IN**
26 **BANKRUPTCY IN THE PERFORMANCE OF DUTIES OR A PERSON WHO ACTS**
27 **UNDER A COURT ORDER FROM PROVIDING MANAGEMENT SERVICES FOR A**
28 **COMMON OWNERSHIP COMMUNITY.**

29 **17.5-103.**

30 **AN INDIVIDUAL MAY NOT PROVIDE MANAGEMENT SERVICES TO A**
31 **COMMON OWNERSHIP COMMUNITY IN THE STATE UNLESS THE INDIVIDUAL**
32 **REGISTERS WITH THE DEPARTMENT AND IS ISSUED A REGISTRATION**
33 **CERTIFICATE UNDER THIS TITLE.**

1 **17.5-104.**

2 **AN APPLICANT FOR REGISTRATION AS A COMMON OWNERSHIP**
3 **COMMUNITY MANAGER SHALL SUBMIT TO THE DEPARTMENT:**

4 **(1) AN APPLICATION ON THE FORM REQUIRED BY THE**
5 **DEPARTMENT;**

6 **(2) AN APPLICATION FEE SET BY THE DEPARTMENT;**

7 **(3) THE NAMES AND ADDRESSES OF ALL COMMON OWNERSHIP**
8 **COMMUNITIES FOR WHICH THE APPLICANT PROVIDES MANAGEMENT SERVICES;**
9 **AND**

10 **(4) A CERTIFICATION IN THE FORM REQUIRED BY THE**
11 **DEPARTMENT THAT THE APPLICANT IS CURRENTLY COVERED BY THE FIDELITY**
12 **INSURANCE REQUIRED UNDER § 11-114.1 OF THE REAL PROPERTY ARTICLE, §**
13 **11B-111.6 OF THE REAL PROPERTY ARTICLE, OR § 5-6B-18.6 OF THE**
14 **CORPORATIONS AND ASSOCIATIONS ARTICLE, AS APPROPRIATE.**

15 **17.5-105.**

16 **THE DEPARTMENT SHALL ASSIGN A REGISTRATION NUMBER AND ISSUE A**
17 **REGISTRATION CERTIFICATE TO EACH APPLICANT WHO MEETS THE**
18 **REQUIREMENTS OF § 17.5-104 OF THIS TITLE.**

19 **17.5-106.**

20 **(A) THE TERM OF A REGISTRATION IS 2 YEARS.**

21 **(B) A REGISTRATION MAY BE RENEWED BY SUBMITTING TO THE**
22 **DEPARTMENT:**

23 **(1) A RENEWAL APPLICATION ON THE FORM REQUIRED BY THE**
24 **DEPARTMENT;**

25 **(2) A CERTIFICATION IN THE FORM REQUIRED BY THE**
26 **DEPARTMENT OF THE REQUIRED FIDELITY INSURANCE; AND**

27 **(3) A RENEWAL FEE SET BY THE DEPARTMENT.**

28 **17.5-107.**

1 **THE DEPARTMENT SHALL ADOPT REGULATIONS THAT:**

2 **(1) ESTABLISH A FORM FOR THE APPLICATION FOR AND**
3 **RENEWAL OF REGISTRATION AS A COMMON OWNERSHIP COMMUNITY MANAGER;**

4 **(2) SET FEES FOR THE APPLICATION FOR AND RENEWAL OF**
5 **REGISTRATION;**

6 **(3) PROVIDE FOR THE ASSIGNMENT OF A REGISTRATION NUMBER**
7 **AND THE ISSUANCE OF A REGISTRATION CERTIFICATE TO EACH REGISTERED**
8 **COMMON OWNERSHIP COMMUNITY MANAGER; AND**

9 **(4) ESTABLISH ANY OTHER REQUIREMENTS AND PROCEDURES**
10 **NECESSARY TO IMPLEMENT THIS TITLE.**

11 **17.5-108.**

12 **THE DEPARTMENT SHALL DEVELOP A MEANS FOR PROVIDING PUBLIC**
13 **ACCESS TO RELEVANT INFORMATION RELATING TO EACH COMMON OWNERSHIP**
14 **COMMUNITY MANAGER REGISTERED UNDER THIS TITLE.**

15 **17.5-109.**

16 **THE DEPARTMENT MAY:**

17 **(1) INVESTIGATE A COMPLAINT ALLEGING A VIOLATION OF THIS**
18 **TITLE; AND**

19 **(2) REFER ANY MATTER TO THE APPROPRIATE STATE'S**
20 **ATTORNEY'S OFFICE FOR PROSECUTION.**

21 **17.5-110.**

22 **(A) A PERSON WHO VIOLATES ANY PROVISION OF THIS TITLE OR ANY**
23 **REGULATION ADOPTED UNDER THIS TITLE IS GUILTY OF A MISDEMEANOR AND**
24 **ON CONVICTION IS SUBJECT TO:**

25 **(1) FOR A FIRST VIOLATION, A FINE OF NOT LESS THAN \$500 BUT**
26 **NOT EXCEEDING \$1,000; AND**

27 **(2) FOR A SECOND OR SUBSEQUENT VIOLATION, A FINE OF NOT**
28 **LESS THAN \$1,000 BUT NOT EXCEEDING \$2,000.**

1 **(B) ANY FINES COLLECTED UNDER THIS SECTION SHALL BE PAID INTO**
2 **THE GENERAL FUND OF THE STATE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December 1,
4 2018, the Department of Labor, Licensing, and Regulation shall report to the Governor
5 and General Assembly, in accordance with § 2-1246 of the State Government Article,
6 on the Department's registration of common ownership community managers under
7 this Act, including:

8 (a) the number of common ownership community managers registered;

9 (b) the number of common ownership communities for which each registrant
10 serves as a manager;

11 (c) the number of potential violations the Department investigated and the
12 results of those investigations; and

13 (d) the Department's recommendation regarding the need for additional
14 oversight of common ownership community managers.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2014.