

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 434 (Delegate Carr)
Environment and Transportation

Real Property - Backyard Gardens - Prohibition on Restrictions

This bill prevents local jurisdictions from prohibiting or limiting the installation or cultivation of backyard gardens on single-family property. The bill also prohibits property instruments, including contracts, deeds, or covenants, from prohibiting a homeowner or tenant from installing or cultivating a backyard garden on single-family property, and it specifies that the installation or use of a backyard garden is not prohibited by existing laws or property instruments.

Fiscal Summary

State Effect: The bill does not directly affect State finances or operations.

Local Effect: The bill is not expected to have a direct, material impact on local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, “garden” means an area in which vegetables, fruit, or herbs are cultivated and grown. A garden includes tilled soil, raised beds rising no more than 12 inches above the ground, free-standing potted soil, and the produce grown and cultivated in the soil.

The bill defines “single-family property” as including a single-family detached home; a townhouse; and properties subject to the Maryland Condominium Act, the Maryland Homeowners Association Act, and the Maryland Cooperative Housing Corporation Act.

A property that contains more than four dwelling units is excluded from the definition of single-family property.

Current Law/Background: State law does not limit the authority of local jurisdictions to prohibit the installation or cultivation of backyard gardens. Property instruments, such as contracts, deeds, and covenants, are generally permitted to limit the right of a homeowner or a tenant to engage in certain activity on the subject property, including the ability to install or cultivate a backyard garden.

Condominiums, homeowners associations, and housing cooperatives, collectively referred to as common ownership communities (COCs), frequently include, in contracts, deeds, covenants, or other agreements, restrictions on the use of property within the community. Common restrictions include limits on home modifications, the maximum height of fences, and the parking of vehicles in driveways or on COC-owned or -maintained streets. For more information on COCs generally, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: SB 62 (Senator Young) - Education, Health, and Environmental Affairs.

Information Source(s): Anne Arundel, Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; cities of Frederick and Havre de Grace; Maryland Municipal League; Office of the Attorney General (Consumer Protection Division); State Department of Assessments and Taxation; Secretary of State; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Community Law Center; Foundation for Community Association Research; homeguides.sfgate.com; Department of Legislative Services

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Appendix – Common Ownership Communities

When a person purchases a single-family home, a condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of COC.

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for unpaid fees are generally pursued by way of a landlord-tenant action.

Since registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, public offering statements for condominium regimes are required by law to be registered with the Secretary of State (SOS). Statewide for 2016, the SOS registration records show that there are 2,859 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 222,664 condominium units. The Foundation for Community Association Research estimated that there were 6,600 community associations in the State in 2015.

Task Force on Common Ownership Communities

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held five public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation intended to improve the operation of COCs. This legislation, enacted from 2007 through 2016, accomplished the following:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007);
- eased restrictions on the ability of certain older HOAs to amend their governing documents by allowing an amendment at least once every five years by a specified percentage of votes (Chapters 144 and 145 of 2008);
- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);
- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009 and Chapter 615 of 2010);
- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);

- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapters 448 and 449 of 2013);
- expanded the purposes for which a condominium's board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013);
- established meeting standards and standards for late charges for delinquent payments, eviction restrictions, an auditing process for books and records, and a dispute settlement mechanism for cooperatives under specified circumstances (Chapter 567 of 2014); and
- altered the contents of a required disclosure for the resale of a condominium unit, authorized the assessment of specified fees by a condominium council of unit owners or an HOA for providing specified information, set limits on those fees, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016).

The task force's report also featured findings and recommendations relating to the creation of an ombudsman in local governments. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of HOAs, residential condominiums, and cooperative housing corporations with education, training, and alternative dispute resolution. Charles and Montgomery counties have offices dedicated to COCs that predate the task force.

Finally, findings and recommendations of the report that have not been codified in statute include reserves of COCs, an insurance deductible cap for unit owners, and the uniformity of COC depository requirements.