

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 721 (Senator Benson)
 Judicial Proceedings

Real Property - Common Ownership Communities - Registration

This bill establishes a Common Ownership Community Registry within the State Department of Assessments and Taxation (SDAT) and requires the governing body of specified cooperative housing corporations, condominiums, and homeowners associations (collectively defined as common ownership communities (COCs) under the bill) to register with SDAT by January 1 each year.

Fiscal Summary

State Effect: General fund revenues increase minimally, beginning in FY 2020, due to collection of registration fees. General fund expenditures increase by \$150,000 in FY 2020 for SDAT to develop and implement an online registry and database for COCs, as discussed below. Future year expenditures reflect the cost of maintaining the online registry and database.

| (in dollars) | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 |
|----------------|-------------|------------|------------|------------|------------|
| GF Revenue | - | - | - | - | - |
| GF Expenditure | \$150,000 | \$30,000 | \$30,000 | \$30,000 | \$30,000 |
| Net Effect | (\$150,000) | (\$30,000) | (\$30,000) | (\$30,000) | (\$30,000) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government operations or finances, and Montgomery and Prince George’s counties can share information with SDAT with existing budgeted resources.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: SDAT must establish a registration fee for a COC that may not exceed \$10 per year, and the required information must be submitted on a form developed by SDAT. The bill exempts COCs that are registered as required by county law; however, SDAT is required to work with any county that maintains a local COC registry to facilitate the transmittal of information from the county.

Required Registration and Information

Failure to register is a civil violation and carries a \$50 fine. SDAT may waive the imposition of the fine under specified circumstances.

The bill specifies that a COC must provide the following information on the registration form:

- the name and address of the COC, including the county in which it is located;
- the number and type of residential units in the COC;
- if applicable, the name and address of any other COC that is governed by the COC; and
- the name and contact information of (1) the property manager or other person employed to provide property management services for the COC or (2) if the COC does not employ a property manager, one or more individuals designated by the board of directors or governing body to answer inquiries on behalf of the COC.

Exemptions from Registration Requirement

The registration requirement does not apply to:

- a COC that is (1) located in a county that maintains a registry of COCs and regularly shares information from the county registry with SDAT and (2) registered in the county in which the COC is located;
- a cooperative housing corporation until one year after the first initial sale in the cooperative housing corporation;
- a condominium until one year after the developer has recorded the declaration for the condominium in the land records of the county in which the condominium is located;
- a homeowners association until one year after the declaration for the homeowners association has been recorded in the land records of the county in which the homeowners association is located; and

- a homeowners association, or a village community association affiliated with the homeowners association, that manages more than 3,000 acres of open space land and more than 20,000 lots.

Access to Registry Information

The registry is not a public record as defined by the General Provisions Article and is, therefore, exempt from public access requirements. However, the bill authorizes SDAT to provide access to the registry to local jurisdictions, their agencies, their representatives, and State agencies. The bill also authorizes SDAT or a local jurisdiction to provide information for a specific COC in the registry to a person who owns property in the COC or to the governing body or property manager of, or the attorney representing, another registered COC.

Reporting Requirements

By December 31, 2019, SDAT, in consultation with the Department of Labor, Licensing, and Regulation, the Montgomery County Office of Consumer Protection, and the Prince George's County Office of Community Relations, must report to the General Assembly on recommendations for training programs for members of governing bodies and property managers in COCs. The bill also requires SDAT to report to the General Assembly, by January 1, 2021, and each January 1 thereafter, on (1) the implementation of the bill and (2) any data obtained from the registration requirements and any county that shares COC information with SDAT.

Current Law/Background: Registration of COCs is not required statewide, and the exact number of COCs in Maryland is unknown. The Secretary of State advises that, as of December 2018, 2,691 condominium regimes have been registered with the State. The State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 229,859 condominium units in the State as of December 2018. The Foundation for Community Association Research estimated that there were 6,750 community associations in the State in 2017. For more information on COCs, see the **Appendix – Common Ownership Communities**.

Currently, only Montgomery and Prince George's counties require COC registration. In Montgomery County, approximately 1,100 COCs containing 139,000 units are registered annually; the county assesses a \$5 fee *per unit* within the COC. Thus, revenues from registration fees in Montgomery County totaled approximately \$695,000 to date in fiscal 2019. In Prince George's County, based on data provided in 2017, approximately 700 COCs register annually; however, the county collects the \$100 registration fee only from the property management companies that operate COCs, of which there are approximately 60 in the county.

State Revenues: General fund revenues increase minimally beginning in fiscal 2020 to reflect the collection of annual registration fees. As the total number of COCs in the State is unknown, revenues cannot be reliably estimated at this time. However, based on the number of condominium regimes and community associations believed to be in the State as well as those that already register in Montgomery or Prince George’s counties (and are, thus, exempt under the bill), revenue accrual is likely to be minimal – even if the annual registration fee is set at the maximum allowable (\$10).

State Expenditures: General fund expenditures increase by \$150,000 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of establishing an online registration system and corresponding database. Future year expenditures reflect the cost of maintaining the registry and database.

SDAT advises that implementation of the program would require it to hire two full-time staff and two contractual employees to communicate with COCs, maintain the required database, and oversee the COC registration program. The Department of Legislative Services (DLS) advises that, because most registrations are likely to occur at year-end, and because SDAT advises that it intends to pursue an online system of registration, an online registry likely allows existing staff to absorb oversight of the registry and database. SDAT further advises that the additional staff are also necessary to contact COCs and ensure compliance. DLS notes that the bill specifies that the governing body of the COC is responsible for satisfying the bill’s requirements. To the extent that additional support is required, general fund expenditures may increase minimally to hire contractual support on an as-needed basis.

SDAT advises that special funds may be available to help cover costs. Specifically, according to SDAT, costs could be divided among a special fund within SDAT and the general fund, based on the mix of COCs registered under the bill. According to SDAT, a proportion of the total expenditures equal to the proportion of condominiums and homeowners associations registered could be paid for using general funds (50%) and local-county cost reimbursement special funds (50%). The local-county cost reimbursement fund is used to fund activities that impact counties and is capitalized through an assessment collected by SDAT from the counties on a quarterly basis. DLS advises that it is unclear as to whether these special funds may be used for the registry and that general fund support may be necessary for all years.

Additional Information

Prior Introductions: HB 41 of 2017 and HB 1061 of 2016 both passed the House as amended and were heard in the Senate Judicial Proceedings Committee, but no further action was taken on either bill.

Cross File: HB 737 (Delegates Holmes and D.E. Davis) - Environment and Transportation.

Information Source(s): Montgomery and Prince George's counties; Maryland Association of Counties; Department of Labor, Licensing, and Regulation; State Department of Assessments and Taxation; Secretary of State, Foundation for Community Association Research; Department of Legislative Services

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Appendix – Common Ownership Communities

When a person purchases a single-family home, 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 a 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). SOS registration records show that, as of December 2018, 2,691 condominium regimes have been registered with the State.¹ The State Department of Assessments and Taxation, which maintains

¹ This number is lower than the 2,875 condominium regimes reported by SOS in 2017. The inflated number was the result of a miscalculation, and the revised number does not reflect a decrease in the number of regimes.

assessment records based on class of property, reports that there are 229,859 condominium units in the State as of December 2018. The Foundation for Community Association Research estimated that there were 6,750 community associations in the State in 2017.

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 2017:

- 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 condominiums and HOAs to amend their governing documents (Chapters 144 and 145 of 2008 and Chapter 480 of 2017);
- 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, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016 and Chapter 817 of 2017).

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 County and Montgomery County have offices dedicated to COCs that predate the task force.

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