

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 686

(Senator Smith)

Judicial Proceedings

Environment and Transportation

Real Property - Condominiums, Homeowners Associations, and Cooperative
Housing Corporations - Virtual Meetings

This bill generally permits the applicable governing body for a cooperative housing corporation, condominium, or homeowners association (HOA) to authorize any meetings to be conducted or attended by telephone conference, video conference, or similar electronic means subject to specified standards. The bill also (1) addresses the use of such electronic means for meeting quorum and voting purposes and the inability for individuals to attend due to technical difficulties and (2) establishes that floor nominations are generally not required if at least one candidate has been nominated to fill each open position on a board or governing body. **The bill takes effect June 1, 2021.**

Fiscal Summary

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

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The members, unit owners, or lot owners, as applicable, do not need to provide any specific authorization for the associated entity to hold a meeting electronically. If any meeting is conducted through electronic means, then (1) the equipment or system used must permit any meeting participant in attendance to hear and be heard by all other participants in the meeting and (2) a link or instructions on how to access the meeting must be included in the meeting notice.

An authorized participant attending through electronic means is deemed present for quorum and voting purposes. The bill establishes that matters may be scheduled for a vote during such meetings and ballots may be delivered to members/owners with notice of the meeting. Only those present during a meeting through electronic means may vote a ballot in accordance with these provisions; authorized individuals who are not present may otherwise vote by (and be considered present for quorum purposes) proxy, as specified. A reasonable deadline may be set for return of a ballot, including through electronic transmission, subject to the limitation that the deadline be within 24 hours after a meeting concludes.

The inability of a member, unit owner, or lot owner to join a meeting due to technical difficulties with the participant's telephone, computer, or other electronic device does not invalidate the meeting or any action taken at the meeting.

Current Law: Statutory provisions under the Maryland Cooperative Housing Corporation Act, the Maryland Condominium Act, or the Maryland Homeowners Association Act do not specifically address meetings via the methods established in the bill. However, statutory provisions do establish some general meeting requirements. For example, the governing body of a condominium and HOA must convene at least one meeting annually at which the agenda is open to any matter relating to the entity. Other provisions address meetings that must be held within specified timeframes in order to transition control from a developer or declarant and to elect a governing body. The Maryland Cooperative Housing Corporation Act does not include provisions regarding the frequency of meetings, but it does establish that all members must be given reasonable notice of all regularly scheduled open meetings and set forth requirements regarding permissible meetings in closed session.

For more information on cooperatives, condominiums, and HOAs (commonly known as common ownership communities or COCs), see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1023 (Delegate Holmes) - Environment and Transportation.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History:
rh/jkb

First Reader - February 21, 2021

Third Reader - March 23, 2021

Enrolled - April 7, 2021

Revised - Amendment(s) - April 7, 2021

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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 2020, 2,739 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 221,999 condominium units in the State as of July 2020. The Foundation for Community Association Research

estimated that there were 6,785 community associations with an estimated 1 million residents in these associations in the State in 2019, the most recent information available.

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 2020:

- 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);
- 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); and
- increased to \$10,000 the maximum amount of the council of unit owners' property insurance deductible for which a specific unit owner is responsible if the cause of any damage to or destruction of the common elements or units of a condominium originates from an event inside that owner's unit (Chapters 56 and 57 of 2020).

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 and the uniformity of COC depository requirements.