

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1072 (Delegate Holmes)  
Environment and Transportation

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Assisted Living Program Licensing - Notice of Applicant Located in Common  
Ownership Community

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This bill requires the Secretary of Health to notify the applicable county health officer upon receipt of an assisted living program license application. After receiving notice, the county health officer must determine whether the program is to be operated within a “common ownership community” (COC), and if so, the county health officer must send notice of the application to the governing body of the county and the governing body of the COC.

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Fiscal Summary

**State Effect:** The Office of Health Care Quality (OHCQ) can develop a system to notify county health officers regarding assisted living program applications using existing budgeted resources. Revenues are not affected.

**Local Effect:** Potential increase in expenditures for local health departments beginning in FY 2023, as discussed below. Revenues are not affected.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** “Common ownership community” means a condominium, homeowners association, or cooperative housing corporation.

**Current Law:** An “assisted living program” is a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance,

health-related services, or a combination of such services that meets the needs of individuals who need assistance with the activities of daily living. In Maryland, assisted living programs are licensed by OHCQ within the Maryland Department of Health (MDH). OHCQ must conduct an annual unannounced on-site inspection of each assisted living facility. Maryland regulations (COMAR 10.07.14) set the minimum, reasonable standards for licensure of assisted living programs in Maryland.

Under the Real Property Article, a “condominium” is a property subject to the condominium regime established by the Maryland Condominium Act. “Homeowners association” means a person having the authority to enforce provisions of a declaration, including an incorporated or unincorporated association.

Under the Corporations and Associations Article, “cooperative housing corporation” means a domestic or foreign corporation qualified in the State, either in stock or nonstock, having only one class of stock or membership, in which each stockholder or member, by virtue of such ownership or membership, has a cooperative interest in the corporation.

For more information on COCs, see the **Appendix – Common Ownership Communities**.

**Local Expenditures:** Under the bill, if notified by OHCQ of an assisted living program license application in the county, the health officer must determine whether the program is to be operated within a COC, and if so, send notice of the application to the governing body of the county and the governing body of the COC. Health officers currently have no role in determining the operations of assisted living facilities. Thus, additional personnel may be needed, particularly in those jurisdictions with greater numbers of assisted living program applications, to gather information about an applicant, determine if the program will be operated within a COC, obtain contact information for a COC, and make any required notifications.

**Additional Comments:** As of July 1, 2021, there were 1,672 licensed assisted living programs in the State, 14 of which were newly licensed in fiscal 2021. MDH advises that between 200 and 300 assisted living license applications are received each year. Most assisted living programs in the State are small businesses with 16 beds or fewer.

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### **Additional Information**

**Prior Introductions:** HB 623 of 2021, a similar bill, was referred to the House Environment and Transportation Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Maryland Association of County Health Officers; Maryland Department of Health; State Department of Assessments and Taxation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2022  
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## **Appendix – Common Ownership Communities**

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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 2021, 2,768 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 more than 225,000 condominium units in the State as of July 2021. The Foundation for Community

Association Research estimated that there were 6,850 community associations with an estimated 1 million residents in these associations in the State in 2020, 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 2021:

- 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);
- 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); and
- established that specified COCs in Montgomery and Prince George's counties generally conduct a reserve study every five years to determine the amount and necessity of reserves for anticipated capital replacements, repairs, and improvements. COCs must also adequately fund the recommended reserves, as specified (Chapter 138 of 2020 and Chapter 433 of 2021).

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 pertain to statewide requirements for reserves of COCs and the uniformity of COC depository requirements.