

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 423

(Delegates Holmes and Terrasa)

Environment and Transportation

Judicial Proceedings

Task Force on Common Ownership Communities

This bill establishes the Task Force on Common Ownership Communities, staffed by the Office of the Attorney General (OAG), to study numerous issues related to the operation of common ownership communities (COC). Members of the task force may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations. The task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2024. **The bill takes effect June 1, 2023, and terminates June 30, 2025.**

Fiscal Summary

State Effect: General fund expenditures increase by \$56,900 in FY 2024 for contractual staff. Future years reflect the elimination of the contractual position during FY 2025, after the final report is due. No effect on revenues.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	56,900	23,800	0	0	0
Net Effect	(\$56,900)	(\$23,800)	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill requires the task force to study:

- the education and training needs of COC boards and new and prospective owners of homes and dwelling units in COCs, including (1) the creation and dissemination of information on the best practices for COC governing boards and (2) options for providing appropriate classes and brochures through a State agency or an institution regulated by the Maryland Higher Education Commission on the responsibilities of members of COC governing boards and the obligations and rights of owners of homes and dwelling units in COCs;
- the feasibility of establishing statewide alternative dispute resolution services for COCs, including (1) providing resources to OAG for enforcement of laws related to COCs and (2) offering assistance and guidance to owners of homes and dwelling units in COCs prior to litigation;
- the advisability of creating a permanent State Commission on Common Ownership Communities;
- the feasibility of requiring COC managers to be licensed; and
- best practices related to COC election processes and governance.

The task force must elect a chair from among its members.

Current Law: Generally, State statute includes the Maryland Condominium Act, the Maryland Homeowners Association Act, and the Maryland Cooperative Housing Corporation Act, all of which regulate various aspects of COC operations.

For more information on condominiums, homeowners associations, and cooperative housing corporations, commonly known as COCs, see the **Appendix – Common Ownership Communities**.

State Fiscal Effect: General fund expenditures for OAG increase by \$56,881 in fiscal 2024, which reflects the costs of hiring one part-time contractual employee to staff the task force (and assumes a 30-day start-up delay from the bill’s June 1, 2023 effective date). It includes a salary, fringe benefits, one-time start-up costs and ongoing operating expenses.

Contractual Position	0.5
Salary and Fringe Benefits	\$49,737
Other Operating Expenses	<u>7,144</u>
Total FY 2024 State Expenditures	\$56,881

Future year expenditures reflect termination of the contractual position on December 31, 2024, when the task force's final report is due.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Any expense reimbursements for task force members are assumed to be minimal and absorbable within existing budgeted resources.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 894 (Senator King) - Judicial Proceedings.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2023
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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 2022, 2,788 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 227,000 condominium units in the State as of July 2022. The Foundation for Community

Association Research estimated that there were 6,910 community associations with an estimated 1 million residents in these associations in the State in 2021, 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. For example, legislation enacted from 2007 through 2022:

- 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 the State must conduct a reserve study satisfying specified requirements 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; Chapter 433 of 2021; and Chapter 664 of 2022).

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.