

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 281

(Delegate Holmes)

Environment and Transportation

Judicial Proceedings

Cooperative Housing Corporations, Condominiums, and Homeowners
Associations - Funding of Reserve Accounts and Preparation of Funding Plans

This bill makes numerous changes to statutory provisions that govern required reserve studies for cooperative housing corporations, residential condominiums, and homeowners associations (HOA), collectively known as common ownership communities (COC). Among other provisions, the bill (1) extends, from three years to five years, the amount of time after an initial reserve study that COCs have to attain the annual reserve funding level as recommended in the study; (2) establishes a definition for an “updated reserve study”; (3) requires COCs to develop a specified funding plan to determine how to fully fund the necessary reserves; and (4) explicitly requires HOAs and residential condominiums to review the reserve study annually *for accuracy*.

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/Current Law: Pursuant to legislation enacted over the last several years, COCs (subject to limited exception) in the State are required to conduct reserve studies; statutory provisions specify the time by which initial and updated reserve studies must be completed.

Under current law, a reserve study means a study of the reserves required for future major repairs and replacement of the common elements of a cooperative or condominium, or the common areas of an HOA, that:

- identifies each structural, mechanical, electrical, and plumbing component of the common elements or common areas and any other components that are the responsibility of the COC to repair and replace;
- states the normal useful life (for cooperatives and condominiums) and the estimated remaining useful life of each identified component;
- states the estimated cost of repair or replacement of each identified component; and
- states the estimated annual reserve amount necessary to accomplish any identified future repair or replacement.

Under the bill, an “updated reserve study” means, for the common elements since the prior reserve study was completed (1) analyzing any work performed; (2) revising replacement cost, remaining life, and useful life estimates; and (3) identifying work performed and amounts spent and whether any maintenance contracts are in place.

Under current law, each reserve study must:

- be available for inspection and copying by any unit owner or lot owner;
- be reviewed by the governing body of the COC in connection with preparing the annual budget (cooperatives must also explicitly review the study annually for accuracy); and
- be summarized for submission with the annual proposed budget to the unit owners or lot owners.

The bill explicitly extends these requirements to updated reserve studies.

Under current law, each reserve study must be prepared by a person who meets specified requirements (generally related to licensure, professional designation as a reserve specialist/analyst by specified organizations, *or* the preparation of a minimum number of reserve studies within the prior three years). The bill also requires each *updated* reserve study to be prepared by a person who meets such requirements.

Under current law, the governing body of a COC generally must provide for reserves in the annual budget in accordance with the most recent reserve study and has the authority to increase an assessment levied to cover the reserve funding amount required – despite any provision of the articles of incorporation, declaration, bylaws, or proprietary lease, as applicable, restricting assessment increases or capping the assessment that may be levied in a fiscal year. The bill generally requires that these funds be *deposited* in the reserve

account on or before the last day of each fiscal year. The bill further specifies that such funds are to be in accordance with the most recent reserve study *and the funding plan* (as required under the bill and discussed below). Furthermore, under the bill, the reserves provided in the annual budget must include replacement costs if the estimated replacement cost is greater than \$10,000 (as determined by the most recent reserve study or updated reserve study).

Under current law, the governing body of a COC, if the most recent reserve study was an initial reserve study, must attain the annual reserve funding level recommended by the reserve study within *three* fiscal years following the fiscal year in which the initial reserve study was completed. The bill increases this period from three to five fiscal years.

The bill requires the governing body of a COC, in consultation with a person who meets specified requirements related to the preparation of a reserve study (as referenced above), to develop a funding plan to determine how to fully fund the necessary reserves. The funding plan must consider certain methods to achieve the reserve funding, as specified. The funding plan must prioritize adequate amounts for repair and replacement of common elements with consideration given to the health and safety of members of the COC. Progress toward compliance with the funding plan must be reviewed at each annual meeting, as specified.

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

Additional Information

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

Designated Cross File: SB 1157 (Senator Carozza) - Rules.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); 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. Because registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, the Foundation for Community Association Research estimated that there were 7,100 community associations with an estimated 1 million residents in these associations in the State in 2023.

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; instead, 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 outstanding fees are generally pursued by way of a landlord-tenant action.

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 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.

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.