

Bill No. 28-22  
Concerning: Common Ownership  
Communities – Duties,  
Requirements and Procedures  
Revised: 03/21/2023 Draft No. 2  
Introduced: October 18, 2022  
Enacted: March 21, 2023  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive

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**AN ACT** to:

- (1) require regular periodic training of members of a governing board of a common ownership community;
- (2) clarify common ownership community registration, voting and dispute resolution procedures;
- (3) outline criteria that the County’s Commission on Common Ownership Communities (CCOC) considers in accepting jurisdiction over a dispute involving a common ownership community; and
- (4) generally, revise County law regarding common ownership communities.

By amending

Montgomery County Code  
Chapter 10B, Common Ownership Communities  
Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-11, 10B-12, 10B-13, 10B-17, and 10B-18.

By adding

Montgomery County Code  
Chapter 10B, Common Ownership Communities  
Section 10B-9B.

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>           | <i>Added to existing law by original bill.</i>             |
| [Single boldface brackets]   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>    | <i>Added by amendment.</i>                                 |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                        | <i>Existing law unaffected by bill.</i>                    |

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Sections 10B-2, 10B-3, 10B-6, 10B-7, 10B-7A, 10B-8, 10B-9A, 10B-**  
2 **11, 10B-12, 10B-13, 10B-17, and 10B-18 are amended, and Section 10B-9B is**  
3 **added, as follows:**

4           **10B-2. Definitions.**

5                                   \*     \*     \*

6           *Common ownership community* includes:

- 7           (1) a residential development subject to a declaration enforced by a  
8                                   homeowners’ association, as those terms are used in state law;

9                                   \*     \*     \*

10           **10B-3. Commission on Common Ownership Communities.**

11                                   \*     \*     \*

- 12           (d) Prior to participation in any Commission matter, each voting member  
13                                   must complete:

- 14           (1) training required of common ownership community board  
15                                   members under Section ~~[[10-17(h)]]~~10B-7(c); and  
16           (2) training in the State and local laws on matters within the  
17                                   jurisdiction of the Commission provided or otherwise  
18                                   approved by the County Attorney.

19                                   \*     \*     \*

- 20           (g) The Commission must elect one voting member as [chair] Chair  
21                                   and another as [vice chair] Vice Chair, to serve at the pleasure of  
22                                   the Commission, and may elect other officers as it determines.

23                                   \*     \*     \*

- 24           (i) The Commission meets at the call of the [chair] Chair as often as  
25                                   required to perform its duties, but at least once each month. A  
26                                   majority of the voting members are a quorum for the transaction

of business, and a majority of the [voting members] quorum present at any meeting may take any official action.

\* \* \*

**10B-6. Duties of the Commission on Common Ownership Communities.**

The Commission must:

\* \* \*

(f) provide training on the responsibilities of a board member for members of the governing body of a common ownership community by:

(1) developing an educational curriculum for new members; [and]

(2) offering training for Board Members, either in person, on-line, or by other electronic means; and

~~[(2)]~~(3) approving an alternative educational curriculum for new members administered by other organizations.

(g) establish hearing panels to adjudicate cases on which the Commission accepts jurisdiction.

**10B-7. Requirements for [Registration] registration; fees, and board training.**

(a) Association registration.

(1) Each common ownership community must register with the Commission annually, and [identify its elected leadership and managing agents,] submit the information required on [a] the registration form provided by the Commission.

\* \* \*

(c) Training.

- 53                   (1) Within 90 days after being elected or appointed to the  
 54 governing body for the first time, a member of the  
 55 governing body of a common ownership community must  
 56 successfully complete the educational curriculum approved  
 57 by the Commission. The governing body must:  
 58                   (A) certify that each member has successfully completed  
 59 this training to the Commission;  
 60                   (B) retain a copy of the training certificate for inspection  
 61 by the members of the association for the duration of  
 62 the governing body member’s service; and  
 63                   (C) report to the Commission that each member has  
 64 successfully completed the training within 90 days  
 65 after each member has been appointed or elected.  
 66                   (2) Each member of the governing body must maintain a  
 67 training certificate. A training certificate issued under this  
 68 Section is valid for 3 years.  
 69                   (3) A failure to satisfy the training requirement in this  
 70 subsection does not:  
 71                   (A) remove the member from the governing body; or  
 72                   (B) invalidate a vote made by the member.  
 73                   (d) A hearing panel or a hearing examiner may consider a board  
 74 member’s failure to complete the training required under this  
 75 Section, if relevant, in deciding a dispute under Section 10B-13.

76 **10B-7A. Notification requirements.**

77 The governing body of a community association must, at least annually,  
 78 distribute information [in a form reasonably calculated to notify] to all owners  
 79 about the availability of dispute resolution, education, and other services to

80 owners and residents of common ownership communities through the  
81 Department and the Commission. The governing body may satisfy this  
82 requirement by including with any annual notice or other mailing to all members  
83 of the community association [any written materials] the form developed by the  
84 Department to describe the Commission’s services.

85 **10B-8. Defined terms.**

86 In this Article and Article 3, the following terms have the following meanings:

87 \* \* \*

88 (4) *Dispute* means any disagreement between 2 or more parties that  
89 involves:

90 \* \* \*

91 (B) the failure of a governing body, when required by law or an  
92 association document, to:

- 93 (i) properly conduct an election;
- 94 (ii) give adequate notice of a meeting or other action;
- 95 (iii) properly conduct a meeting;
- 96 (iv) properly adopt a budget or rules;
- 97 (v) maintain or audit books and records;
- 98 (vi) allow inspection of books and records;
- 99 (vii) properly maintain or repair a common element if the  
100 failure results in significant personal injury or  
101 property damage; or
- 102 (viii) exercise its judgment in good faith concerning the  
103 enforcement of the association documents against  
104 any person that is subject to those documents.

105 \* \* \*

106 **10B-9A. Request for relief from stay.**

107 (a) At any time after a dispute is filed under Section 10B-9, a  
 108 [community association] party to the dispute may submit a request  
 109 to lift the automatic stay required under Section 10B-9(e) to a  
 110 hearing panel appointed under Section 10B-12, or if no hearing  
 111 panel has been appointed, a special standing panel authorized to  
 112 consider requests for relief from stays.

113 \* \* \*

114 (c) [An] A [association] party that requests relief from a stay must  
 115 serve a copy of its request on any other party named in the dispute  
 116 by certified mail or personal service. A certificate of service must  
 117 accompany any request submitted under this Section. A party  
 118 served with a copy of the request must file its opposition, if any,  
 119 within 10 days after receiving service.

120 \* \* \*

121 (e) Except as provided in subsection (d), a request for relief from stay  
 122 may only be granted if the assigned panel finds that:  
 123 (1) enforcing the stay would result in undue harm to [the] a  
 124 [community association] party; and  
 125 (2) lifting the stay [will] would not result in undue harm to the  
 126 rights or interests of any opposing party.

127 **10B-9B. Acceptance of jurisdiction of complaints.**

128 (a) If the Commission does not accept jurisdiction of a complaint, the  
 129 Director must notify the parties in writing of the decision and the  
 130 reason for the Commission's denial of jurisdiction within 10  
 131 business days after the decision.

132 (b) [[The Commission may accept jurisdiction of a complaint if a party  
 133 fails to comply with an agreement reached during mediation.

134 (c)]] The Commission's decision not to accept jurisdiction of a  
135 complaint is not subject to judicial review.

136 **10B-11. Mediation; dismissal before hearing.**

137 \* \* \*

138 (b) If the Director, after reviewing a dispute, finds that, assuming all  
139 facts alleged by the party that filed the dispute are true, there are  
140 no reasonable grounds to conclude that a violation of applicable  
141 law or any association document has occurred, the Director [may]  
142 must so inform the Commission. The Commission must dismiss a  
143 dispute if it finds that there are no reasonable grounds to conclude  
144 that a violation of applicable law or any association document has  
145 occurred, or it may order the Director to investigate further. The  
146 Commission may reconsider the dismissal of a dispute under this  
147 subsection if any party, in a motion to reconsider filed within 30  
148 days after the dispute is dismissed, shows that:

- 149 (1) the Commission erroneously interpreted or applied  
150 applicable law or an association document; or  
151 (2) material issues of fact that are necessary to a fair resolution  
152 of the dispute remain unresolved.

153 \* \* \*

154 (e) The Commission must promptly schedule a hearing under Section  
155 10B-13 if [either] either: (1) mediation has not occurred within 90  
156 days after the Director found reasonable grounds to believe a  
157 violation occurred; [or] or (2) the Director decides at any time that  
158 mediation would be fruitless[; or (3) the Commission has  
159 accepted jurisdiction]]. The Director may extend the mediation  
160 deadline by mutual consent of the parties.

161 (f) If a dispute is resolved by mediation, the terms of mediation agreed  
 162 to by the parties must be reduced to writing and incorporated into  
 163 a consent agreement to be signed by the parties. The agreement  
 164 must be for mediation purposes only and is not an admission by  
 165 any party that a violation of applicable law or an association  
 166 document has occurred.

167 (g) In addition to any other penalty allowed by law, failure to adhere  
 168 to any provision of a consent agreement is a class A violation. Any  
 169 failure by the Director to enforce any provision of a consent  
 170 agreement does not waive any private right of action against the  
 171 violating party.

172 **10B-12. Hearing panel.**

173 (a) If a hearing is scheduled, the [chair] Chair of the Commission must  
 174 convene a 3-member panel to hear the dispute.

175 (b) The [chair] Chair must choose two members of the panel from the  
 176 voting members of the Commission. The persons selected must  
 177 represent the two different membership groups of the Commission.  
 178 The [two] Chair of the Commission [members] must designate the  
 179 third member from a list of volunteer arbitrators trained or  
 180 experienced in common ownership community issues maintained  
 181 by the Commission. The third member must [chair] Chair the  
 182 panel. If a suitable arbitrator is not available, the [chair] Chair of  
 183 the Commission must designate the third panelist from among the  
 184 voting members of the Commission, and must designate the [chair]  
 185 Chair of the panel.

186 \* \* \*



187 (e) If the Commission [chair] Chair decides that a hearing should be  
 188 held by a hearing examiner instead of a hearing panel, the [chair]  
 189 Chair, with the approval of the Commission, may designate the  
 190 Office of Zoning and Administrative Hearings to conduct the  
 191 hearing.

192 [(f) If the parties to a dispute agree that the hearing should be held and  
 193 the dispute decided by a hearing examiner instead of a hearing  
 194 panel, the chair must designate the Office of Zoning and  
 195 Administrative Hearings or another hearing examiner to conduct  
 196 the hearing and issue a decision.]

197 **10B-13. Administrative hearing.**

198 \* \* \*

199 (b) [Sections 2A-1 through 2A-11] The Administrative Procedures  
 200 Act (Article I of Chapter 2A) [apply] applies to a hearing held  
 201 under this Section. However, the parties need not be given more  
 202 than 15 days' notice before the hearing is held, if the Commission  
 203 finds that an expedited hearing is necessary. At any hearing, a party  
 204 or a witness may be advised by counsel.

205 \* \* \*

206 (d) The hearing panel may award costs, including reasonable  
 207 attorney's fees, to any party if the other party:

208 (1) filed or maintained a frivolous dispute, or filed or  
 209 maintained a dispute in bad faith;

210 (2) refused to participate in mediation of a dispute[;],  
 211 unreasonably withdrew from mediation[[, or failed to  
 212 comply with the terms of an agreement reached in  
 213 mediation]]; or

214 (3) substantially delayed or hindered the dispute resolution  
215 process without good cause.

216 \* \* \*

217 **10B-17. Voting procedures[; training].**

218 \* \* \*

219 (c) *Absentee ballots or directed proxies.* Any unsigned absentee  
220 ballot or directed proxy, to be valid, must be:

221 (1) received in a signed, sealed envelope, bearing the  
222 identification of the dwelling unit and proportional voting  
223 percent, if any, on the outside; and

224 (2) opened only at a meeting at which all candidates or their  
225 delegates have a reasonable opportunity to attend.

226 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid  
227 under state law may be used at any association meeting. However,  
228 [a] any proxy [and any] or power of attorney [created] containing  
229 votes for [the purpose of] candidates for a governing body's  
230 election [must] may be [appointed] counted only to meet a quorum  
231 or to vote on matters other than an election for a governing body  
232 unless the proxy or power of attorney contains a directed vote on  
233 the election. If a proxy or power of attorney form must be approved  
234 before it is cast, the approving authority must not unreasonably  
235 withhold its consent. A general power of attorney valid under state  
236 law may be used for any purpose at an association meeting that is  
237 consistent with the provisions of the general power of attorney,  
238 including for an election of the governing body.

- 239 (e) *Cumulative voting prohibited.* In an election for a governing body,  
 240 for each unit that a [members] member owns the member must not  
 241 cast more than one vote for each candidate.
- 242 (f) *Counting votes.* Until the time for voting closes, an association  
 243 must not open or count election ballots, absentee ballots or directed  
 244 proxies, and must keep all such documents in a sealed container  
 245 which must not be opened or counted until the election. If an  
 246 election is conducted electronically, the votes must not be  
 247 disclosed or counted by anyone until the election. The individuals  
 248 counting absentee ballots or directed proxies must insure that the  
 249 individual who has been directed to cast the proxy vote was in fact  
 250 in attendance at the meeting.
- 251 (g) *Terms of office.* Unless the association documents provide for  
 252 other terms of office:
- 253 (1) a member elected to the governing body of an association is  
 254 elected for a term of [two 2] three (3) years; and
- 255 (2) the individual terms of the entire governing body are  
 256 staggered, so that as close to one-third as possible are  
 257 elected each year.
- 258 [(h) A member of the governing body of a common ownership  
 259 community must successfully complete the educational  
 260 curriculum developed by the Commission or a similar educational  
 261 curriculum administered by another organization that is approved  
 262 by the Commission within 90 days after being elected or appointed  
 263 to the governing body for the first time. The governing body must:
- 264 (1) certify that each member has successfully completed this  
 265 training to the Commission;

- 266 (2) retain a copy of the certificate of completion for inspection
- 267 by the members of the association for the duration of the
- 268 governing body member's service; and
- 269 (3) report to the Commission no later than December 31 of each
- 270 year membership data required by the Commission,
- 271 including
- 272 (A) the name and address of each member of the board;
- 273 (B) the date each member completed the required
- 274 training;
- 275 (C) the number of vacancies on the board; and
- 276 (D) the length of time each vacancy existed.
- 277 (i) A failure to satisfy the training requirement in subsection (h) does
- 278 not:
- 279 (1) remove the member from the governing body; or
- 280 (2) invalidate a vote made by the member.
- 281 (j) The Commission may exercise its authority under Section 10B-
- 282 19(a) to ensure compliance with the training required by
- 283 Subsection (h).
- 284 (k) A hearing panel or a hearing examiner may consider a board
- 285 member's failure to complete the training required by Subsection
- 286 (h), if relevant, in deciding a dispute under Section 10B-13.]

**10B-18. Budget.**

Unless the association documents provide otherwise:

\* \* \*

- 290 (b) the governing body must provide members of the association with
- 291 any proposed amendment to the budget at least 30 days before the
- 292 governing body votes on the amendment, if the amendment will

293 result in an increase or decrease of more than 15 percent of the  
294 approved budget. This requirement does not apply to expenditures  
295 made to respond to an imminent threat to health or safety or of  
296 serious property damage, or to properly fund the most recent  
297 reserve study conducted for the association.

298 **10B-19. Enforcement.**

299 (a) The Department may enforce this Article by appropriate legal  
300 action.

301 \* \* \*

*Approved:*



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Evan Glass, President, County Council

3/24/2023

Date

*Approved:*

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Marc Elrich, County Executive

Date

*This is a correct copy of Council action.*

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Judy Rupp, Clerk of the Council

Date