

Clerk's Note: The following technical changes have been made to the bill: Line 38, "Members" is no longer capitalized. Line 41, period has been replaced with semi-colon. Line 122 (now Line 123), has been changed to underline "a".

CORRECTED COPY

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: April 3, 2023
Effective: July 3, 2023
Sunset Date: None
Ch. 7, Laws of Mont. Co. 2023

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the request of the County Executive

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.

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

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

Sec. 1. 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 are amended, and Section 10B-9B is added, as follows:

10B-2. Definitions.

* * *

Common ownership community includes:

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

* * *

10B-3. Commission on Common Ownership Communities.

* * *

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

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

* * *

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

* * *

(i) The Commission meets at the call of the [chair] Chair as often as required to perform its duties, but at least once each month. A

26 majority of the voting members are a quorum for the transaction
27 of business, and a majority of the [voting members] quorum
28 present at any meeting may take any official action.

29 * * *

30 **10B-6. Duties of the Commission on Common Ownership Communities.**

31 The Commission must:

32 * * *

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

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

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

40 [(2)](3) approving an alternative educational curriculum for
41 new members administered by other organizations[.]

42 ;

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

45 **10B-7. Requirements for [Registration] registration; fees, and board**
46 **training.**

47 (a) Association registration.

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

52 * * *

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

77 **10B-7A. Notification requirements.**

78 The governing body of a community association must, at least annually,

79 distribute information [in a form reasonably calculated to notify] to all owners

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

86 **10B-8. Defined terms.**

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

88 * * *

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

91 * * *

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

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

106 * * *

107 **10B-9A. Request for relief from stay.**

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

114 * * *

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

121 * * *

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

128 **10B-9B. Acceptance of jurisdiction of complaints.**

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

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

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

137 **10B-11. Mediation; dismissal before hearing.**

138 * * *

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

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

154 * * *

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

160 accepted jurisdiction]]. The Director may extend the mediation
 161 deadline by mutual consent of the parties.

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

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

173 **10B-12. Hearing panel.**

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

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

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* * *

- (e) If the Commission [chair] Chair decides that a hearing should be held by a hearing examiner instead of a hearing panel, the [chair] Chair, with the approval of the Commission, may designate the Office of Zoning and Administrative Hearings to conduct the hearing.
- [(f) If the parties to a dispute agree that the hearing should be held and the dispute decided by a hearing examiner instead of a hearing panel, the chair must designate the Office of Zoning and Administrative Hearings or another hearing examiner to conduct the hearing and issue a decision.]

10B-13. Administrative hearing.

* * *

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

* * *

- (d) The hearing panel may award costs, including reasonable attorney's fees, to any party if the other party:
 - (1) filed or maintained a frivolous dispute, or filed or maintained a dispute in bad faith;
 - (2) refused to participate in mediation of a dispute[;], unreasonably withdrew from mediation[[, or failed to

213 comply with the terms of an agreement reached in
214 mediation]]]; or

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

217 * * *

218 **10B-17. Voting procedures[; training].**

219 * * *

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

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

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

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

240 (e) *Cumulative voting prohibited.* In an election for a governing body,
 241 for each unit that a [members] member owns the member must not
 242 cast more than one vote for each candidate.

243 (f) *Counting votes.* Until the time for voting closes, an association
 244 must not open or count election ballots, absentee ballots or directed
 245 proxies, and must keep all such documents in a sealed container
 246 which must not be opened or counted until the election. If an
 247 election is conducted electronically, the votes must not be
 248 disclosed or counted by anyone until the election. The individuals
 249 counting absentee ballots or directed proxies must insure that the
 250 individual who has been directed to cast the proxy vote was in fact
 251 in attendance at the meeting.

252 (g) *Terms of office.* Unless the association documents provide for
 253 other terms of office:

254 (1) a member elected to the governing body of an association is
 255 elected for a term of [two 2] three (3) years; and

256 (2) the individual terms of the entire governing body are
 257 staggered, so that as close to one-third as possible are
 258 elected each year.

259 [(h) A member of the governing body of a common ownership
 260 community must successfully complete the educational
 261 curriculum developed by the Commission or a similar educational
 262 curriculum administered by another organization that is approved
 263 by the Commission within 90 days after being elected or appointed
 264 to the governing body for the first time. The governing body must:

265 (1) certify that each member has successfully completed this
 266 training to the Commission;

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

288 **10B-18. Budget.**

289 Unless the association documents provide otherwise:

290 * * *

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

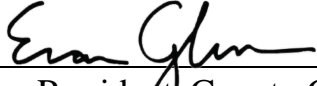
294 result in an increase or decrease of more than 15 percent of the
295 approved budget. This requirement does not apply to expenditures
296 made to respond to an imminent threat to health or safety or of
297 serious property damage, or to properly fund the most recent
298 reserve study conducted for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

299 **10B-19. Enforcement.**

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


302 * * *

Approved:



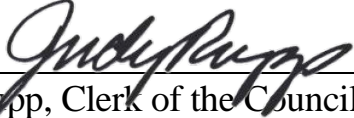
Evan Glass, President, County Council 3/24/2023
Date

Approved:



Marc Elrich, County Executive 4/3/2023
Date

This is a correct copy of Council action.



Judy Rupp, Clerk of the Council 4/3/2023
Date