

Bill No. 50-15  
 Concerning: Common Ownership  
Communities - Commission on  
Common Ownership Communities -  
Composition - Dispute Resolution  
 Revised: March 10, 2016 Draft No. 4  
 Introduced: December 8, 2015  
 Enacted: April 5, 2016  
 Executive: \_\_\_\_\_  
 Effective: \_\_\_\_\_  
 Sunset Date: None  
 Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the request of the County Executive

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**AN ACT to:**

- (1) make ~~[[mediation]]~~ attempted resolution of certain disputes regarding common ownership communities by informal negotiation mandatory;
- (2) ~~[[alter the composition of the three member hearing panel]]~~ require members of the Commission to complete certain training;
- (3) ~~[[alter the composition of the Commission on Common Ownership Communities to include members of the public~~;
- (4)] transfer duties assigned to the Office of Consumer Protection to the Department of Housing and Community Affairs;
- ~~[[5]]~~(4) provide for certain transition provisions; and
- ~~[[6]]~~(5) generally amend County law concerning common ownership communities.

By amending

Montgomery County Code  
 Chapter 10B, Common Ownership Communities  
 Sections 10B-2, 10B-3, 10B-4, 10B-5, 10B-7A, 10B-9A, 10B-11, 10B-12, 10B-13, 10B-14,  
 and 10B-19.

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
<del>[Single boldface brackets]</del>	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
<del>[[Double boldface brackets]]</del>	<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-4, 10B-5, 10B-7A, 10B-9A, 10B-11, 10B-12, 10B-**  
2 **13, 10B-14, and 10B-19 are amended as follows:**

3 **Article 1. Commission on Common Ownership Communities.**

4 \* \* \*

5 **10B-2. Definitions.**

6 In this Chapter, the following words have the following meanings:

7 [(a)] *Commission* means the Commission on Common Ownership  
8 Communities.

9 [(b)] *Common ownership community* includes:

- 10 (1) a development subject to a declaration enforced by a homeowners’  
11 association, as those terms are used in state law;
- 12 (2) a residential condominium, as that term is used in state law; and
- 13 (3) a cooperative housing project, as that term is used in state law.

14 \* \* \*

15 [(c)] [Office means the Office of Consumer Protection.] Department means  
16 the Department of Housing and Community Affairs.

17 Director means the Director of the Department of Housing and  
18 Community Affairs or the Director’s designee.

19 **10B-3. Commission on Common Ownership Communities.**

20 (a) The County Executive must appoint, subject to confirmation by the  
21 Council, a Commission on Common Ownership Communities. The  
22 Commission consists of 15 voting members.

- 23 (1) [Eight] [~~Five~~] Eight members should be selected from unit or lot  
24 owners or residents of self-managed and professionally managed  
25 condominiums, self-managed and professionally managed  
26 cooperative housing corporations, and self-managed and

27 professionally managed homeowners' associations, and may  
28 include members or former members of governing boards.

29 (2) ~~[Seven]~~ ~~[[Five]]~~ Seven members should be selected from persons  
30 who are members of professions associated with common  
31 ownership communities (such as persons involved in housing  
32 development and real estate sales and attorneys who represent  
33 community associations, developers, housing management or  
34 tenants), including at least one person who is a professional  
35 community association manager.

36 ~~[[3) Five members should be selected from the public at large who~~  
37 ~~would not meet the criteria for selection under subsection (a)(1) or~~  
38 ~~(a)(2).]]~~

39 (b) Designees of the County Council (if the Council selects a designee),  
40 Planning Board, Department of Environmental Protection, Department of  
41 Permitting Services, Department of Transportation, [Office of Consumer  
42 Protection,] and Department of Housing and Community Affairs are ex-  
43 officio nonvoting members of the Commission.

44 (c) Each voting member serves a 3-year term. Of the members first  
45 appointed, one-third must be appointed for 1-year terms, one-third must  
46 be appointed for 2-year terms, and one-third must be appointed for 3-year  
47 terms. A member must not serve more than 2 consecutive full terms. A  
48 member appointed to fill a vacancy serves the rest of the unexpired term.  
49 Members continue in office until their successors are appointed and  
50 qualified.

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

53           (1) training required of common ownership community board  
 54           members under Section 10B-17(h); and

55           (2) training in the State and local laws on matters within the  
 56           jurisdiction of the Commission provided or otherwise approved by  
 57           the County Attorney.

58           (e) The County Executive, with the consent of the Council, may remove a  
 59           voting member of the Commission for neglect of or inability to perform  
 60           the duties of the office, misconduct in office, or serious violation of law.  
 61           Before the Executive removes a member, the Executive must give the  
 62           member notice of the reason for removal and a fair opportunity to reply.

63           [(e)](f) Section 2-148(c) applies only to voting members of the  
 64           Commission.

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

68           [(g)](h) Voting members of the Commission receive no compensation for  
 69           their services.

70           [(h)](i) The Commission meets at the call of the chair as often as required  
 71           to perform its duties, but at least once each month. A majority of the  
 72           voting members are a quorum for the transaction of business, and a  
 73           majority of the voting members present at any meeting may take any  
 74           official action.

75           [(i)](j) The Office must provide the Commission with staff, offices and  
 76           supplies as are appropriated for it.

77           [(j)](k) The Commission must submit an annual report by September 1 to  
 78           the County Executive and the County Council summarizing its activities,

79 needs, and recommendations, and the extent to which the goals of this  
80 Chapter are being met.

81 **10B-4. Administrative support.**

82 In selecting staff to carry out the [Office's] Department's responsibilities under  
83 this Chapter, the Director must consider the recommendations of the  
84 Commission.

85 **10B-5. Duties of the [Office] Department of [Consumer Protection] Housing and**  
86 **Community Affairs.**

87 The [Office] Department, in consultation with the Commission, must:

88 \* \* \*

89 **10B-7A. Notification requirements.**

90 The governing body of a community association must, at least annually,  
91 distribute information in a form reasonably calculated to notify all owners about  
92 the availability of dispute resolution, education, and other services to owners  
93 and residents of common ownership communities through the [Office]  
94 Department and the Commission. The governing body may satisfy this  
95 requirement by including with any annual notice or other mailing to all members  
96 of the community association any written materials developed by the [Office]  
97 Department to describe the Commission's services.

98 **Article 2. Dispute Resolution.**

99 \* \* \*

100 **10B-9A. Request for relief from stay.**

101 \* \* \*

102 (b) The special panel must consist of ~~[[3]]~~ three voting members of the  
103 Commission designated by the chair, and must include [at least] at least  
104 one representative of each membership category.

105 \* \* \*

106 **10B-11. Mediation; dismissal before hearing.**

107 (a) The [Office] Director may investigate facts and assemble documents  
108 relevant to a dispute filed with the Commission, and may summarize the  
109 issues in the dispute. The [Office] Director may notify a party if, in [its]  
110 the Director's opinion, a dispute was not properly filed with the  
111 Commission, and may inform each party of the possible sanctions under  
112 Section 10B-13(d).

113 (b) If the [Office] Director, after reviewing a dispute, finds that, assuming all  
114 facts alleged by the party [which] that filed the dispute are true, there are  
115 no reasonable grounds to conclude that a violation of applicable law or  
116 any association document has occurred, [it] the Director may so inform  
117 the Commission. The Commission[, in its discretion, may] must dismiss  
118 a dispute if it finds that there are no reasonable grounds to conclude that  
119 a violation of applicable law or any association document has occurred,  
120 or it may order the [Office] Director to investigate further. The  
121 Commission may reconsider the dismissal of a dispute under this  
122 subsection if any party, in a motion to reconsider filed within 30 days  
123 after the dispute is dismissed, shows that:

124 (1) the Commission erroneously interpreted or applied applicable law  
125 or an association document; or

126 (2) material issues of fact [which] that are necessary to a fair resolution  
127 of the dispute remain unresolved.

128 (c) [Any party may request mediation.] If the Director, after reviewing a  
129 dispute and any investigation, finds reasonable grounds to conclude that  
130 a violation of applicable law or an association document has occurred,  
131 the Director must attempt to resolve the matter through informal  
132 negotiation including, in the Director's discretion, mediation. Each party

133 named in the dispute or its representative must attend any mediation  
 134 conference scheduled by the Director under this Section unless excused  
 135 by the Director. If the party that files the dispute refuses or fails to  
 136 participate in the mediation, the Director must dismiss the dispute. If the  
 137 party that is the subject of the dispute refuses or fails to participate in the  
 138 mediation, the Director must refer the dispute to the Commission for  
 139 resolution. The party that is the subject of the dispute may not appear at  
 140 the hearing, and the hearing panel may award relief to any party that the  
 141 facts on the record warrant.

142 (d) [If a party requests mediation, the Commission must notify all parties of  
 143 the filing and of the mediation session.] Unless otherwise agreed to by  
 144 the parties in writing, a mediation conference is informal and nothing said  
 145 or done during a mediation conference is admissible in any subsequent  
 146 hearing under this article.

147 (e) [The Commission must provide a qualified mediator to meet with the  
 148 parties within 30 days after a party requests mediation to attempt to settle  
 149 the dispute.] The Commission must promptly schedule a hearing under  
 150 Section 10B-13 if either: (1) mediation has not occurred within 90 days  
 151 after the Director found reasonable grounds to believe a violation  
 152 occurred; or (2) the Director decides at any time that mediation would be  
 153 fruitless. The Director may extend the mediation deadline by mutual  
 154 consent of the parties.

155 [(f) If any party refuses to attend a mediation session, or if mediation does not  
 156 successfully resolve the dispute within 10 days after the first mediation  
 157 session is held, the Commission must promptly schedule a hearing under  
 158 Section 10B-13 unless a hearing has already been held under Section  
 159 10B-13.]

160 **10B-12. Hearing Panel.**

- 161 (a) If a hearing is scheduled, the chair of the Commission must convene a 3-  
162 member panel to hear the dispute.
- 163 (b) The chair must choose [2] ~~[[3]]~~ two members of the panel from the voting  
164 members of the Commission. The persons selected must represent the [2]  
165 ~~[[3]]~~ two different membership groups of the Commission. [The 2  
166 Commission members must designate the third member from a list of  
167 volunteer arbitrators trained or experienced in common ownership  
168 community issues maintained by the Commission. The third member  
169 must chair the panel. If a suitable arbitrator is not available, the chair of  
170 the Commission must designate the third panelist from among the voting  
171 members of the Commission, and must designate the chair of the panel.]  
172 ~~[[The chair must designate one panel member to serve as panel chair.]]~~  
173 The two Commission members must designate the third member from a  
174 list of volunteer arbitrators trained or experienced in common ownership  
175 community issues maintained by the Commission. The third member  
176 must chair the panel. If a suitable arbitrator is not available, the chair of  
177 the Commission must designate the third panelist from among the voting  
178 members of the Commission, and must designate the chair of the panel.
- 179 (c) Each panelist must not have any interest in the dispute to be heard.
- 180 (d) Each volunteer arbitrator must not represent any parties in disputes  
181 before other hearing panels convened under this Chapter.
- 182 (e) If the Commission chair decides that a hearing should be held by a  
183 hearing examiner instead of a hearing panel, the chair, with the approval  
184 of the Commission, may designate the Office of Zoning and  
185 Administrative Hearings to conduct the hearing.



186 ~~[(e)]~~(f) If the parties to a dispute agree that the hearing should be held  
187 and the dispute decided by a hearing examiner instead of a hearing  
188 panel, the chair must designate the Office of Zoning and Administrative  
189 Hearings or another hearing examiner to conduct the hearing and issue  
190 a decision.

191 **10B-13. Administrative hearing.**

192 \* \* \*

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

195 (1) filed or maintained a frivolous dispute, or filed or maintained a  
196 dispute in bad faith;

197 (2) [unreasonably] refused to participate in mediation of a dispute[, or  
198 unreasonably withdrew from ongoing mediation]; or

199 (3) substantially delayed or hindered the dispute resolution process  
200 without good cause.

201 The hearing panel may also require the losing party in a dispute to pay all  
202 or part of the filing fee.

203 (e) [the] The hearing panel must apply ~~[[state]]~~ State and County laws and  
204 all relevant caselaw to the facts of the dispute, and may order the payment  
205 of damages and any other relief that the law and the facts warrant. The  
206 decision of the hearing panel is binding on the parties, subject to judicial  
207 review under Section 2A-11.

208 \* \* \*

209 (i) The Commission, acting through the [Office] Department and the County  
210 Attorney, may enforce a decision of the hearing panel by taking any  
211 appropriate legal action.

212 \* \* \*

213 **10B-14. Settlement of disputes; assistance to parties.**

214 \* \* \*

215 (b) The [Office] Director may inform any party who has settled a dispute by  
 216 mediation, or any party who prevails in a hearing held under Section 10B-  
 217 13, about how the agreement or decision can be enforced.

218 \* \* \*

219 **10B-19. Enforcement.**

220 (a) The [Commission] Department may enforce this Article by legal action.

221 (b) In addition to any action by the [Commission] Department and any other  
 222 action authorized by law, including the filing of a dispute under Article  
 223 2, any person may file an action:

- 224 (1) for injunctive relief to enforce this Article or correct any violation
- 225 of it[[,]]; and
- 226 (2) to recover damages for a loss sustained as a result of a violation of
- 227 this Article.

228 **Sec. 2. Effective Date.**

229 Sections 10B-11(c), (d), and (e), as amended by this Act, which [[mandate  
 230 mediation]] require attempted informal resolution of disputes, including mediation,  
 231 [[applies]] apply to all disputes filed with the Commission after this Act takes effect as  
 232 provided in Charter Section 112.

233 **Sec. 3. Transition.**

234 [[The first three vacancies of members selected under Section 10B-3(a)(1) and  
 235 the first two vacancies of members selected under Section 10B-3(a)(2) must be filled  
 236 by members selected under Section 10B-3(a)(3).]] Current members of the  
 237 Commission must complete the training required under Section 10B-3(d) within 90  
 238 days after this Act takes effect.

239 *Approved:*

240

*Nancy Floreen*

*April 7, 2016*

Nancy Floreen, President, County Council

Date

241 *Approved:*

242

Isiah Leggett, County Executive

Date

243 *This is a correct copy of Council action.*

244

Linda M. Lauer, Clerk of the Council

Date

245