

Bill No. 42-09
Concerning: Common Ownership
Communities – Dispute Resolution
Revised: 3-30-10 Draft No. 2
Introduced: November 17, 2009
Enacted: April 6, 2010
Executive: April 12, 2010
Effective: July 12, 2010
Sunset Date: None
Ch. 10, Laws of Mont. Co. 2010

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Council President at the Request of the County Executive

AN ACT to:

- (1) modify the composition of the Commission on Common Ownership Communities;
- (2) subject community associations to certain annual notification requirements;
- (3) make certain types of complaints subject to dispute resolution through administrative hearings by the Commission;
- (4) establish a special panel with authority to lift the automatic stay imposed when a dispute is filed with the Commission; and
- (5) generally revise County law regarding common ownership communities.

By amending

Montgomery County Code
Chapter 10B, Common Ownership Communities
Sections 10B-3, 10B-8, 10B-9, ~~[[and]]~~ 10B-12, and 10B-17

By adding

Chapter 10B, Common Ownership Communities
Sections 10B-7A and 10B-9A.

Boldface	<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:

Clerk's Note: The word "created" on page 7, line 146 was not double underlined and should have been.

1 **Sec. 1. Sections 10B-3, 10B-8, 10B-9, [[and]] 10B-12, and 10B-17 are**
2 **amended, and Sections 10B-7A and 10B-9A are added as follows:**

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

4 (a) The County Executive must appoint, subject to confirmation by the
5 Council, a Commission on **Common Ownership Communities**. The
6 Commission consists of 15 voting members.

7 (1) ~~[Six]~~ Eight members should be selected from unit or lot owners
8 or residents of self-managed and professionally managed
9 condominiums, self-managed and professionally managed
10 cooperative housing corporations, and self-managed and
11 professionally managed homeowners' associations, and may
12 include members or former members of governing boards.

13 [(2) Three members should be selected from persons involved in
14 housing development and real estate sales.]

15 [[3)] (2) ~~[Six]~~ Seven members should be selected from persons who are
16 members of professions associated with **common ownership**
17 **communities** (such as persons involved in housing development
18 and real estate sales and attorneys who represent **community**
19 **associations**, developers, housing management or tenants) [or
20 investor-owners of units in common ownership communities],
21 including at least one person who is a professional **community**
22 **association** manager.

23 * * *

24 **10B-7A. Notification requirements.**

25 The governing body of a community association must, at least annually,
26 distribute information in a form reasonably calculated to notify all owners about the
27 availability of dispute resolution, education, and other services to owners and

28 residents of common ownership communities through the Office and the
29 Commission. The governing body may satisfy this requirement by including with
30 any annual notice or other mailing to all members of the community association any
31 written materials developed by the Office to describe the Commission's services.

32 **10B-8. Defined terms.**

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

34 * * *

35 (2) Common element includes:

36 (A) in a condominium or cooperative, all portions of the
37 common ownership community other than the units; or

38 (B) in a homeowners' association, any real estate in a
39 homeowners' association community that is owned or
40 leased by the association, other than a unit; and

41 (C) in all common ownership communities, any other
42 interest in real estate for the benefit of owners which is
43 subject to the declaration.

44 ~~[(2)] (3)~~ * * *

45 ~~[(3)] (4)~~ **Dispute** means any disagreement between 2 or more **parties**
46 that involves:

47 (A) the authority of a **governing body**, under any law or
48 **association document**, to:

- 49 (i) require any person to take any action, or not to take
- 50 any action, involving a **unit or common element**;
- 51 (ii) require any person to pay a fee, fine, or assessment;
- 52 (iii) spend association funds; or
- 53 (iv) alter or add to a **common [area or] element**; or

- 54 (B) the failure of a **governing body**, when required by law or
- 55 an **association document**, to:
- 56 (i) properly conduct an election;
- 57 (ii) give adequate notice of a meeting or other action;
- 58 (iii) properly conduct a meeting;
- 59 (iv) properly adopt a budget or rules;
- 60 (v) maintain or audit books and records; [or]
- 61 (vi) allow inspection of books and records[.];
- 62 (vii) maintain or repair a **common element** if the failure
- 63 results in significant personal injury or property
- 64 damage; or
- 65 (viii) exercise its judgment in good faith concerning the
- 66 enforcement of the **association documents** against
- 67 [[require]] any person [[who]] that is subject to
- 68 [[**association documents** to comply with]] those
- 69 documents.

70 [(4)] (5) **Dispute** does not include any disagreement that only involves:

- 71 (A) title to any **unit** or any **common** [area or] **element**;
- 72 (B) the percentage interest or vote allocable to a unit;
- 73 (C) the interpretation or enforcement of any warranty;
- 74 (D) the collection of an assessment validly levied against a
- 75 party; or
- 76 (E) the exercise of a **governing body's** judgment or discretion
- 77 [of a **governing body**] in taking or deciding not to take
- 78 any legally authorized action.

79 [(5)] (6) * * *

80 [(6)] (7) * * *

81 [(7)] (8) * * *

82 (9) **Unit or lot includes:**

83 (A) any physical portion of a **common ownership community**
84 with distinct property boundaries that:

85 (i) provides complete, independent living facilities for
86 one or more individuals,

87 (ii) contains permanent provisions for living, sleeping,
88 eating, cooking, and sanitation, and

89 (iii) is designated for exclusive ownership, control, or
90 occupancy by those individuals; and

91 (B) all legally enforceable rights and interests incidental to
92 individual ownership of real property in a **common**
93 **ownership community.**

94 **10B-9. Filing [[of]] disputes; exhaustion of association remedies.**

95 * * *

96 (e) [When] Except as provided in Section 10B-9A, when a **dispute** is filed
97 with the **Commission**, a **community association** must not take any
98 action to enforce or implement the association's decision, [except] other
99 than filing a civil action under subsection (f), until the process under this
100 Article is completed.

101 * * *

102 **10B-9A. Request for relief from stay.**

103 (a) At any time after a **dispute** is filed under Section 10B-9, a **community**
104 **association** may submit a request to lift the automatic stay required
105 under Section 10B-9(e) to a hearing panel appointed under Section 10B-
106 12, or if no hearing panel has been appointed, a special standing panel
107 authorized to consider requests for relief from stays.

- 108 (b) The special panel must consist of 3 voting members of the **Commission**
 109 designated by the chair, and must include at least one representative of
 110 each membership category.
- 111 (c) An association that requests relief from a stay must serve a copy of its
 112 request on any other **party** named in the **dispute** by certified mail or
 113 personal service. A certificate of service must accompany any request
 114 submitted under this Section. A **party** served with a copy of the request
 115 must file its opposition, if any, within ~~[[5]]~~ 10 days after receiving
 116 service.
- 117 (d) If a request ~~[[assigned to a special panel]]~~ for relief from a stay which
 118 states facts sufficient to show a need for immediate action is not granted
 119 or denied within ~~[[15]]~~ 20 days after the request was filed, the request
 120 must be treated as granted.
- 121 (e) Except as provided in subsection (d), a request for relief from stay may
 122 only be granted if the assigned panel finds that:
- 123 (1) enforcing the stay would ~~[[impose]]~~ result in undue ~~[[hardship~~
 124 on]] harm to the **community association**; and
- 125 (2) lifting the stay will not result in ~~[[irreparable]]~~ undue harm to the
 126 rights or interests of any opposing **party**.

127 **10B-12. Hearing Panel.**

128 * * *

- 129 (b) The chair must choose 2 members of the panel from the voting
 130 members of the **Commission**. [They] The persons selected must
 131 represent the 2 different membership groups of the **Commission**. [At
 132 least one member must be a resident of a common ownership
 133 community.] The 2 **Commission** members must designate the third
 134 member from a list of volunteer arbitrators trained or experienced in

135 common ownership community issues maintained by the Commission.
136 The third member must chair the panel. If a suitable arbitrator is not
137 available, the chair of the Commission must [choose] designate the third
138 panelist from among the voting members of the Commission, and must
139 designate the chair of the panel.

140 * * *

141 **10B-17. Voting procedures.**

142 * * *

143 (d) *Proxy or power of attorney.* Any proxy or power of attorney valid
144 under state law ~~[[is valid]]~~ may be used at any association meeting.
145 However, a proxy and any power of attorney ~~[[that is not appointed to~~
146 vote as directed]] created for the purpose of a governing body's election
147 must be appointed only to meet a quorum or to vote on matters other
148 than an election for a governing body unless the proxy or power of
149 attorney contains a directed vote on the election. If a proxy or power of
150 attorney form must be approved before it is ~~[[used]]~~ cast, the approving
151 authority must not unreasonably withhold its ~~[[approval]]~~ consent. A
152 general power of attorney valid under state law may be used for any
153 purpose at an association meeting that is consistent with the provisions
154 of the general power of attorney, including for an election of the
155 governing body.

156 * * *

157 **Sec. 2. Transition.** Until otherwise amended or superseded, a regulation
158 issued under Chapter 10B before this Act takes effect remains in effect to the extent
159 that the regulation is consistent with Chapter 10B, as amended by this Act. This Act
160 does not affect the term of any member of the Commission on Common Ownership
161 Communities serving when this Act takes effect.

162 *Approved:*

163

164

Nancy Floreen 4/7/10
Nancy Floreen, President, County Council Date

165 *Approved:*

166

167

Isiah Leggett 4/12/10
Isiah Leggett, County Executive Date

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

169

170

Linda M. Lauer 4/19/10
Linda M. Lauer, Clerk of the Council Date