



# CCOC Communicator

a publication of the  
Montgomery County Commission on Common Ownership Communities  
September 2003

## Communities Must Be Represented By Attorneys

The Office of the County Attorney has informed the Commission that common ownership communities must be represented by a member of the Maryland Bar when appearing as either the complainant or respondent at a CCOC hearing. This determination resulted from a routine review of a case by the County Attorney's office. It marks a significant departure from what has been common practice since the Commission's inception. In the past, a community or its governing body could and often did elect to be represented by one of their officers or their manager. This new requirement does not apply to the process leading up to the hearing, only in the hearing itself.

The determination was based on a review of relevant Maryland law regarding representation before judicial and quasi-judicial bodies. The law requires that groups, such as communities or their governing bodies, appearing in a court or similar venue, be represented by an attorney admitted to the Maryland Bar. The sole exception permitted by the law are cases tried in Small Claims Courts.

Following this determination the Commission staff notified all parties in currently filed cases of this requirement and has modified their printed materials to emphasize this change. This determination has no bearing or effect on any cases heard prior to the determination by the County Attorney's Office.



## Hamlet Place Hosts CCOC Speaker

The Hamlet Place Owners Cooperative, located in Chevy Chase, hosted a CCOC speaker at its Annual Meeting April 9<sup>th</sup>. Howard Cihak, chair of the CCOC Education Committee, spoke briefly about the Commission and about strategies in rules enforcement. Hamlet Place is a very unusual cooperative; it consists of 75 town-homes.

The Badger Drive Homeowners Association hosted Richard Leeds as a speaker and counsel to discuss the reviving of their community association.

If your community is interested in having a speaker from the CCOC, please contact us at (240) 777-3766.

## Commission Welcomes New Appointees

In January, five new members were appointed to the Commission by County Executive Douglas Duncan and confirmed by the Montgomery County Council. They are Sarah M. Havlicek, Jeff A. Kivitz, Abbott C. Roseman, Eric D. Smith, and Lawrence E. Stein. Havlicek, Kivitz, Roseman, and Stein were appointed to three year terms and Smith was appointed to fill the remaining two years of an unexpired term. Nadene L. Neel, Commission Vice-Chair, was also appointed and confirmed for a second three year term.

Sarah Havlicek is a senior business systems analyst at Perot Systems. She has served as president of the Bethesda community where she resides and previously as Secretary for a New York City Executive School Board, and has experience developing various types of training programs.

Abbott Roseman is a retired federal attorney residing in a Silver Spring community. He has served as a president and board member of a condominium and presently chairs his community's legislation and taxation committee which reviews relevant federal, state and county legislation.

Lawrence Stein, a lifelong resident of the County, has been a real estate professional for the past few years after more than two decades in the professional services industry. He is a graduate of John F. Kennedy High School and the University of Maryland.

The Commission has fifteen members; six are homeowners in Montgomery County common ownership communities, six are managers and professionals, and three are real estate sales and developers. Commission terms are for three years with a limit of two terms. The Commission meets at 7:00 P.M. on the first Wednesday of each month in the Council Office Building at 100 Maryland Avenue. Meetings are open to the public and opportunity is provided for comments by visitors at the beginning of each meeting.

### ALSO IN THIS ISSUE ...

#### Features

CCOC Statistics .....	2
CCOC Hearing Decisions .....	2

Howard J. Cihak, CMCA®, PCAM®, Editor

**Decision - 9/20/02:** The Panel unanimously agreed the Respondent had acted within its authority and ordered Complainant to remove the brick edging from the perimeter of his property.



**Case No. 556-0 Prohibiting a truck in common area; refusal of documents; arbitrary vehicular parking rules**

The Complainant sought to negate the Respondent's order to cease parking a pickup truck in the common area parking area in violation of the community's Declaration. Complainant also claimed refusal of requested documents, and that the vehicular parking rules were arbitrary and capricious.

Respondent argued the prohibition against trucks was consistent with the community's documents and signs to that effect were posted at the community entrance. Respondent also argued that the document request was not specific enough.

Respondent employed a patrol service provided by the umbrella association, and it cited Complainant's truck and others in the community. Complainant's document request was refused on grounds that may have been legally justified.

**Decision - 11/12/02:** The Panel unanimously agreed Respondent acted within its authority, and that the vehicular parking restrictions were neither arbitrary nor capricious. Although the documents had not been properly requested, Respondent was ordered to honor the spirit of full disclosure in the future. Since Complainant had already disposed of the truck, no order to that effect was deemed necessary.



**Case No. 557-0 Failure to notify owners of meetings; Failure to hold open meetings**

The Complainant claimed the Respondent had failed to notify the owners of the time and location of meetings, and had held closed meetings in violation of the Maryland Condominium Act.

The Respondent argued that it was in compliance with the Act, that its meetings were scheduled on short notice and they were open to owners who requested the opportunity to attend.

Complainant provided no evidence that there were closed meetings, or if they were closed, that the matters discussed were other than those specifically permitted in closed meetings under Section 11-109.1 of the Maryland Condominium Act.

**Decision - 9/20/02:** The Panel unanimously agreed the Respondent must establish a regular date, time and place for regular board meeting, and to inform owners when and where a special meeting is held when the subject matter is not exempted by Section 11-109.1 of the Act. Respondent was also ordered to notify all owners by mail of this hearing and its Conclusions and Orders, and to include a copy of Sections 11-109 and 11-109.1 of the Maryland Condominium Act. Finally, the Respondent was ordered to set aside funds or increase assessments to enable a properly mailed notice of the community's future annual meetings, as required in its bylaws.

**NOTE:** On 2/25/03, Respondent filed a Petition for Judicial Review with the Circuit Court of Montgomery County.



**Case No. 561-0 Access through common area; Unauthorized common area improvements**

The Complainant sought an order that would allow him access to his townhouse via the rear of his property over common area the Complainant was prepared to maintain at his own expense.

The Respondent argued the common area in question had not been maintained in for about 30 years, that it did not desire to maintain it, or have anyone else maintain it, either. Respondent had ordered the Complainant to remove the improvements he had made to the common area without prior approval.

The common area in question was an unimproved path between the rear of the Complainant's property and an asphalt path about 40 feet away maintained by the Respondent. Complainant improved the unimproved path to make it passable to a rolling cart. Complainant's intended use of the rolling cart was to transport materials to and from his rear yard, to comply with doctor's orders not to lift anything exceeding 10 pounds.

Complainant did not obtain, or even seek, approval by the Respondent prior to commencing improvements to the common area. Nonetheless, Respondent had offered two alternative arrangements to allow the Complainant to accommodate trash disposal without undue physical exertion. Complainant declined both of those offers.

**Decision - 2/4/03** The two Panel members present agreed the Respondent had acted reasonably and within its authority, and ordered Complainant to remove, at his expense, all materials, construction, modifications and changes he made to the common area within 90 days.



**Case No. 569-0 Refusal to approve masonry deck**

The Complainant alleged the Respondent had violated the association's governing documents by refusing to approve his application to construct a masonry deck/porch thereby contradicting its own committee charged with reviewing such requests.

The Respondent offered evidence on only a single issue as to whether its action was in violation of the association's governing documents.

The association's Declaration of Covenants, Conditions and Restrictions created an Architectural and Environmental Review Committee whose decision shall be final unless it is appealed to the Board of Directors by an owner. Minutes of the Board meetings of 9/5/01 and 10/3/01 referred to the property manager erroneously acting on behalf of the Complainant in presenting Complainant's application to the Board for approval. Complainant never received notice the Board would be making the decision.

**Decision - 2/4/03:** The Panel unanimously agreed the Respondent erroneously reviewed Complainant's application rather than respecting the Declaration's granting of authority to the Architectural and Environmental Review Committee in such cases. Complainant properly applied to the Committee and was entitled to rely on its approval. Complainant may complete the project as approved by the Committee.

# Commission Statistics

The Montgomery County Commission on Common Ownership Communities (CCOC) was established in 1990, began functioning in January 1991.

Registered common ownership communities in the County . . . . .	775
Total units in registered communities . . . . .	111,115
Disputes currently filed and in process . . . . .	48
Hearing decisions handed down since January 1 <sup>st</sup> . . . . .	14
Disputes filed and closed since 1996 . . . . .	285
Hearing decisions handed down since 1996 . . . . .	93
Hearing decisions appealed since 1998 . . . . .	13
Hearing decisions overturned on appeal since 1998 . . . . .	0



# CCOC Hearing Decisions



The primary mission of the CCOC is to provide a means of resolving disputes between common ownership communities and their owners. If a dispute cannot be successfully mediated by the CCOC staff, and the Commission decides it is within its jurisdiction, then the dispute will be referred to a three member panel for a hearing. One panel member must be an owner in a common ownership community, and the panel is chaired by an attorney volunteer.

Case numbers ending in "-0" indicate complaints filed by owners; those ending in "-G" indicate complaints filed by governing bodies. These abstracts of recent cases should not, by themselves, be viewed as precedents. Each case is decided on the basis of specific facts, including the community's governing documents. Cases should be read in their entirety to learn the full context of the complaints and the resulting decisions.



### Case No. 546-G Home day care facility

The Complainant sought to enforce its prohibition against day care facilities in a home within the community. The Respondent argued the Complainant lacked authority under the Covenants to prohibit them from doing so.

The Declaration of the community prohibited operation of a day care. Section 11B-111.1(d) of the Maryland Homeowners Association Act provides a simple majority of owners may overturn such a prohibition using the voting procedures in the community's declaration.

Respondent had gathered petition signatures approving the day care facility. Complainant conducted a vote by letter that upheld the prohibition. As a result of mediation, another vote was taken that resulted in a tie vote.

**Decision - 1/28/03:** A majority of the Panel upheld the tie vote, and that no approval of a day care facility had been granted.



### Case No. 547-0 Fiduciary duty to maintain recreational facilities

The Complainant argued the Respondent had a fiduciary duty to the community to re-install basketball hoops that had been part of the amenities, but had been removed for several years.

The Respondent had acted to remove the basketball hoops after years of complaints stemming from noise and trouble at the facility and based upon the results of a survey wherein a strong majority of those responding expressed a desire for the hoops not to be re-installed.

Complainant essentially argued that the Respondent did not have the authority to remove the basketball hoops. Complainant believed a controlling provision of the community's governing documents required the Respondent to maintain the community's recreational amenities "in good repair and condition and shall be operated in accordance with high standards." Respondent argued it read that same provision in the context of the entire set of the governing documents that held that the purpose of the community was "to promote the health, safety and welfare of the residents."

**Decision - 12/11/02:** The Panel unanimously agreed the Complainant failed to demonstrate that there was a fiduciary responsibility on the part of the Respondent to re-install the basketball hoops, and that Complainant was asking the Panel to fault the business judgment of the Respondent. The Panel noted this would violate the business judgment rule established in Black v. Fox Hills North Community Association 90 Md. App. 75, 82 (1992). The Panel dismissed the complaint.

**NOTE:** On 1/7/03, Complainant filed a Petition for Judicial Review with the Circuit Court of Montgomery County.



### Case No. 548-0 Removal of brick edging installed without approval

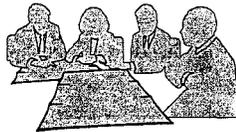
The Complainant sought to negate an order by the Respondent that would have required the Complainant to remove a brick edging around the perimeter of his property.

The Respondent argued the Complainant had built the brick structure without seeking and obtaining approval in accordance with the community's Declaration of Covenants, Conditions and Restrictions. The Declaration prohibited any construction that did not comply with the Declaration and provided for the establishment of an Architectural Control Committee to act upon such proposals and plans as were submitted to it.

Complainant claimed to have submitted an application for approval, but no one from the Respondent was able to testify to ever having seen it. In any case, actual construction did not begin for more than a year after the claimed submission, and well after the 180 day limit stated in the application that the Complainant claimed to have signed and submitted.

Other applications for fences had been rejected on the advice of legal counsel. Respondent had made an effort to amend the Declaration to permit approval of fences, but the effort failed due to the need for 90 percent approval of the home-owners in the community.

# CCOC Commissioners



## **HOMEOWNERS** (in common ownership communities)

Arlene Perkins  
*Chair, COCC*  
Margaret Bruce  
Sarah M. Havlicek  
Abbott C. Roseman  
Eric D. Smith  
Russell P. Subin

## **PROFESSIONALS** (associated with communities)

Nadene L. Neel  
*Vice Chair, COCC*  
Howard Cihak, CMCA®, PCAM®  
*Chair, Education Committee*  
Jeff A. Kivitz  
Richard J. Leeds, CMCA®  
Michael Maloney, AMS®

## **REAL ESTATE SALES AND DEVELOPMENT**

Harold H. Huggins, CPM®  
*Chair, Legislative Committee*  
Lawrence E. Stein  
R. Barry Wertlieb

# 2<sup>nd</sup> Annual CCOC Open House

7:00 P.M., Wednesday,  
Sept. 24<sup>th</sup>, at the  
Council Office Building  
100 Maryland Avenue  
Rockville, Maryland

Refreshments will be served.

**Guest Speaker**  
The Honorable George Leventhal  
Montgomery County Council



DEPARTMENT OF HOUSING  
AND COMMUNITY AFFAIRS  
Commission on Common Ownership Communities  
100 Maryland Avenue  
Rockville, Maryland 20850

### In This Issue ...

**Communities Must Be  
Represented By Attorneys**

**DATED MATERIAL**