

CCOC Communicator



Maryland Task Force On Common Ownership Communities Recommendations

*By Harold H. Huggins, Chairman,
Commission on Common Ownership Communities*

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During the 2005 session of the Maryland General Assembly a Task Force on Common Ownership Communities was created. The Task Force was charged with studying the following issues:

1. The education and training needs of common ownership community boards and new and prospective owners of dwelling units in common ownership communities;
2. Alternative dispute resolution services for common ownership communities;
3. The desirability of adopting provisions of the Uniform Common Interest Ownership Act (1994) promulgated by the National Conference of Commissioners on Uniform State Laws;
4. Issues facing aging common ownership communities;
5. Issues relating to the collection of assessments; and
6. Issues relating to the resale by owners of homes located in common ownership communities.

Over the past year the Task Force had numerous meetings

and hearings around the State and recently issued their report with the following recommendations:

- A website should be created regarding the rights and responsibilities of living in a common ownership community.
- The Maryland Higher Education Commission should provide affordable educational materials and services on what it means to be a homeowner living in a COC and what it means to be a board member of a governing body within a COC
- Local governments should be required to consider offering COC alternative dispute resolution services.
- Before transfer of the common elements of a homeowners association from the developer to the resident governing board, an independent reserve study should be required and the governing body of a COC should be required to update the reserve study every 5 years.

- COC management companies should be licensed by the State of Maryland and should be required to post a bond in order to obtain a license
- The current \$1,000 cap on a condominium unit owner's responsibility in certain circumstances for the council of unit owners' property insurance policy deductible should be increased to \$10,000.

There were other topics that were addressed and recommendations that were made but these were a few that we wanted the citizens of Montgomery County to be made aware of. The Commission on Common Ownership Communities of Montgomery County has set the tone and pace for this Task Force by its actions and reputation over the years and was referenced many times in their report.

Legislation is being considered in the 2007 session of the Maryland Legislature to implement various Task Force recommendations and the CCOC will be monitoring each bill as one of their responsibilities and offering their advice and counsel as necessary. This document may be viewed in its entirety at: www.dhcd.state.md.us



Is It Really Possible To Amend By-Laws?

A common ownership community is governed by by-laws that determine the administration, management and conduct of business. By-laws have primary legal standing, and their authority is determined by the laws of the State of Maryland. Amending the by-laws is a very serious

process and should be done only when there are important extenuating circumstances that affect the community, such as changes in local and state laws or improvements that require voting approvals. Therefore, the bar for change has been set extremely high. The laws of

the State of Maryland require that 66 2/3% of all owners in a common ownership community approve amendments to by-laws. However, a higher percentage of owners is required to approve amendments to the by-laws in some common ownership communities. In some cases that percentage is 80 %.

Amend By-Laws (continued from Page 1)

common ownership communities; in some cases that percentage is 80 %. In those cases, the law defers to the communities' by-laws, and the higher percentages prevail. (These high percentages certainly should be among the very first amendments made to those communities' by-laws!)

Getting the community to approve amendments to the by-laws is a daunting task simply from a mathematical point of view alone. Regardless of size, a common ownership community will have owners with varied points of view about making change, and others who are unable to understand the need for change or are apathetic to community affairs. Generally, this indicates a lack of understanding with regard to the rights and responsibilities of common ownership living and the benefits that can be derived from participation. A well-governed community works for the benefit of all.

Amendments to the by-laws should be undertaken in phases.

1. Identify by-laws that need to be changed. The board of directors should discuss proposed changes in open meetings and record their considerations in minutes so that owners are informed of the rationale for change. Be certain that the proposed changes are necessary and that there is significant benefit to the owners/residents and the community as a whole. It may take several meetings to reach consensus.

2. Consult with an attorney who is familiar with your community's documents and is knowledgeable of common ownership community laws and practices. The attorney should draft each amendment in "legal" language with an explanation in "plain English" that re-states the amendment and then explains the reasons for the change, the differences between the current and proposed language, and the benefits to owners/residents and the community as a whole for making the change. The attorney also should draft notices and legal documents to facilitate the process of amending the by-laws, such as proxies/ballots, letters to mortgage holders and recordation of amendments.

3. The roster of names, addresses and telephone numbers of owners needs to be updated. Names and addresses of current mortgage holders also need to be identified either by owners or

from land records. (The by-laws of many common ownership communities require owners to provide this information to the community.) Prepare owners to vote on, and mortgage holders to review, proposed amendments to by-laws. A letter of intent to amend the by-laws with a timeline for the change process should be sent to each of the above prior to the distribution of the proposed amendments to the by-laws and the voting materials.

4. Establish a mechanism for collecting proxies and counting votes.

5. Distribute the proposed amendments to the by-laws and voting materials prepared by the attorney to the owners and mortgage holders. Be certain that all deadlines and procedures for voting, collecting proxies/ballots and counting votes are clear. Hold the initial meeting required in the community's documents to discuss the proposed amendments to the by-laws, using a format for announcing the meeting that is written by an attorney so that the community is in compliance with all governing state laws and community documents. At the close of the official meeting related to the proposed amendments to the by-laws, be certain that the meeting is continued so that there is a period of time in which to gather the votes and so that a "continued" meeting on the proposed amendments to the by-laws can be called at a later date to confirm the vote.

Note: You have 11 months to accomplish your goal before the proxies/ballots with the earliest date start to expire. **(By Maryland law, proxies are good for 11 months unless the proxy provides otherwise.)** The most enthusiastic and participative owners will vote immediately when they receive the proposed amendments to the by-laws. It is the other 80% or more of the community who will stall or kill the process. So, choose a six-month period when most owners will be around, such as January – June, or October – March. (Holidays are great times to get proxies if you have a social community with many get-togethers.)

6. After getting an owner's attention, the key to getting the amendments passed is **EDUCATION**. Mount a campaign to contact owners, educate them on the proposed amendments to the by-laws, and encourage them to vote. Owners need to be convinced that the proposed amendments to the by-laws will result in either lower fees, higher property values, or a better

quality of life.

7. Select volunteer vote-getters who are respected by their peers, skilled in working with others, supportive of the proposed amendments to the by-laws, and willing to work towards what may appear to be an unachievable goal. These people also must be willing to contact each owner assigned to them several times to assure that they get the proxy. Gather the vote-getting volunteers for a training session that focuses on the proposed amendments to the by-laws and on coordinating the proxy-gathering process. Explain each proposed amendment to the by-laws, discuss anticipated reactions to each, and develop points to overcome any objections. The owners should be divided into groups (*i.e.*, immediate neighbors, friends, native languages if English is not spoken community-wide). Each of those groups should be headed by an individual who will take responsibility for bringing in that vote. At the training session ask the volunteer vote-getters to select groups for which they will be responsible for securing votes. When the training session is completed, everyone should understand and be able to explain to others the amendments to the by-laws and have a list of owners whom he/she must contact.

8. Walk the complex. Set up both letter and telephone campaigns. Set up additional education meetings to discuss the proposed amendments to the by-laws in various languages. Place signs at the entrances and exits to the complex that show a "thermometer" with the community's progress toward voting on the proposed amendments to the by-laws. Distribute bulletins on a regular basis to on-site and off-site owners to advise on the community's progress toward voting on the proposed amendments to the by-laws. Persistence will get the proxies dragged across the finish line.

Yes, a community can overcome the odds and amend its by-laws.

Good luck!

UPCOMING EVENT:

Washington Metropolitan Chapter Community Associations Institute 2007 Conference & Expo. Saturday, March 31, 2007. 8:00 am to 4:00 pm at the Washington Convention Center. 801 Mount Vernon Place, NW Washington, DC Call CAI at #703.750.3644 or go to info@caidc.org, www.caidc.org for additional information. CCOC will have a booth, please stop by to visit.

CCOC Complaint Information

The following statistics compare the CCOC's workload for the period of January 1 through December 31, 2006 with the same period last year:

Task	2006	2005
Disputes filed:	88	100
Disputes closed:	94	93
Public Hearings:	21	17
Mediations:	34	33
Advice Given:	1133	1166

Inside This Issue

Through the generosity of the Community Associations Institute Copy Service a featured article will appear in this and all future editions of The Communicator. These articles are not copyrighted and the content is designed to help those responsible for producing community newsletters, association web sites, bulletin boards and other forms of communication for homeowners.

Do You Know Where Your Association Documents Are?

When you bought a home in your community, you should have received copies of all governing documents—including the rules and regulations—prior to or at closing. Sometimes these documents get lost among all the other papers you received at closing. And many homebuyers are so involved moving into their new homes, they don't take the time to read all the fine print.

As a homeowner, you have a right to these documents; so, if you don't have copies for any reason, you should let your realtor know and they should provide them to you.

Of course, it's your responsibility to provide the association with your current address and phone number (particularly nonresident owners). This enables the HOA to meet their obligation to provide all owners with information from the association.

It's very important to have copies of the governing documents because you'll be expected to know and comply with all rules and regulations of the community. You'll also want to stay informed by reading all materials provided by the association.

It's the HOA's responsibility to make these documents—the

bylaws and the covenants, conditions, and restrictions—as understandable as possible, so if there's anything you don't understand, please let them know. They should be glad to clarify any confusing language or give you other materials that answer your questions.

That old expression—ignorance of the law is no excuse—isn't exactly our motto, but it's close.

Source:
Community Associations Institute

SELECTED SUMMARIES OF CCOC FINAL PANEL DECISIONS



1. Storm Door Question Reveals Architectural Committee Violating Rules

In *Blackburn Village Homeowners Association v. Saunders*, decided October 31, 2006, plaintiff homeowners association (HOA) complained that an owner installed a security door on her unit in violation of HOA rules regulating storm doors. The HO replied that a security door was necessary given her age, disability and the existence of crime in the neighborhood.

The hearing panel found that the rules regulating storm doors applied to security doors as well, and that the rules were reasonable. The owner had violated the rule by installing the security door without seeking advance approval from the architectural committee. However, at the hearing the head of the HOA's architectural committee said that in his opinion it was not a violation of the rule and he would allow the security storm door if the owner applied for permission to have it. Furthermore, the evidence showed that although the HOA's own rules required an architectural committee of 3 members, the committee had only 1 member, who was making all decisions for the HOA.

The panel concluded that although the storm door rule was valid, its enforcement was inconsistent and arbitrary because the architectural committee was not operating according to the rules and because the committee head would approve the application. It ordered the owner to submit an application to a properly constituted architectural committee.

2. Association Must Not Withhold Names of Directors and Officers

In *Supik v. Milestone II Townhouse Condominium Association*, decided November 9, 2006, a homeowner alleged that the condominium association (CA), among other claims, failed to provide him with the names of the board of directors and committee members. The evidence showed that the owner requested the names of the CA's directors and members of its architectural committee, and that the CA's only response was to refer him to its web site. The panel ruled that this was a violation of the Maryland Condominium Act, which requires the CA to make the records available for inspection at its offices. The CA agreed to provide this information within 10 days after the hearing. It did so, and the panel deemed the Complainant's claim satisfied.

3. Pick-up Trucks: To Cap or Not to Cap

In *Whetstone Homes Corp. v. Hight-Walker & Groff*, decided November 28, 2006,

the association filed a complaint to enforce a rule prohibiting the parking of pickup trucks in the community against the owner of the unit and his tenant, who owned and parked the truck involved. The evidence at the hearing showed that the tenants were in the military and assigned to duty in the Washington, D.C. area from Texas. When they moved to this area they brought with them their

pickup truck, and were not specifically informed by the owner or his broker of the rule prohibiting the parking of pickup trucks on the community streets. The HOA permits pickup trucks that are parked in the garages of the units, but the pickup here is too big to fit into the garage of its unit, and was parked on common property. However, the HOA permits the parking of SUV's in the community.

The panel upheld the rule. The panel noted that the rule was properly enacted and reasonable. The panel distinguished a prior decision which allowed capped pickup trucks due to their similar appearance to SUV's which were permitted by that association. But in this case the truck involved was not capped and therefore visually different from SUV's.

The panel suspended enforcement of the rule for 30 days, and suggested that the tenant apply to the HOA within that 30 day period for permission to obtain a cap for his pickup truck and to park the capped truck in the community; it further ordered the HOA to consider seriously any such application from the tenant. Finally, it ordered the tenant to comply with any adverse ruling of the HOA within 30 days of the date of the HOA's decision on his application.

Thanks to the following CCOC Commissioners and Staff for making this publication possible:

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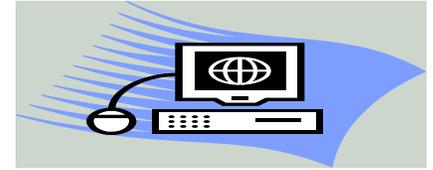
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Get Wired! Resources Online



Websites of interest to owners in common ownership communities.

Local Government:

Housing Opportunities Commission www.hocmc.org

Montgomery Co. Council www.montgomerycountymd.gov/council

Montgomery County Executive Douglas Duncan
www.montgomerycountymd.gov

Montgomery County Government www.montgomerycountymd.gov

Comm. Use of Public Facilities www.montgomerycountymd.gov/cupf

Department of Environmental Protection www.askdep.gov

Dept. of Housing & Community Affairs
www.montgomerycountymd.gov/dhca

Office of Consumer Protection: www.montgomerycountymd.gov/consumer

Commission on Common Ownership Communities:
www.montgomerycountymd.gov/CCOC

Dept. of Permitting Services: www.montgomerycountymd.gov/dps

Montgomery County Judicial System:
www.montgomerycountymd.gov/mc/judicial

Montgomery County Library www.montgomerylibrary.org

Montgomery County Planning Board www.mncppc.org

Montgomery Co. Police www.montgomerycountymd.gov/police

State Government:

Maryland State Government www.maryland.gov

Maryland Attorney General's Office www.oag.state.md.us

Maryland General Assembly www.mlis.state.md.us

Maryland Secretary of State www.sos.state.md.us

Maryland Condominium Act Statutes www.mlis.state.md.us/#stat

Federal Government: www.firstgov.gov

FCC Telecommunications Act of 1996 www.fcc.gov

Municipalities:

Chevy Chase Village www.ccvillage.org

Village of Friendship Heights www.friendshipheightsmd.gov

Gaithersburg www.gaithersburgmd.gov

Garrett Park www.garrettpark.org

Olney www.olneymd.com

Poolesville www.ci.poolesville.md.us/index

Rockville www.rockvillemd.gov

Takoma Park www.takomagov.org/index

Public Utilities:

Allegheny Power (Potomac Edison) www.alleghenypower.com

Baltimore Gas & Electric (BG&E) www.bge.com

Potomac Electric Power Company (PEPCO) www.pepco.co

Washington Gas www.washgas.com

Washington Suburban Sanitary Commission
www.wssc.dst.md.us

Associations/Organizations:

Community Associations Institute Publications and Periodicals
www.caionline.org

Community Associations Institute Washington Metropolitan Chapter
www.caicd.org

Institute of Real Estate Management www.irem.org

IREM West-Central Maryland Chapter www.irem92.org

Maryland Homeowners Association

www.marylandhomeownersassociation.info

Metropolitan Washington Council of Governments
www.mwcoq.org

National Board of Certifications for Community Association Managers
www.nbccam.org

Regenesis www.regenesis.net

Rockville Community Network www.rocknet.org



Useful County Phone Numbers for Common Ownership Communities

Department of Housing and Community Affairs (240) 777-3600	Stormwater Inspections (240) 777-6266
Office of Consumer Protection (240) 777-3636	General Information (240) 777-1000
Office of Common Ownership Communities (240) 777-3766	Housing Opportunities Commission (301) 929-6700
Cable Office (240) 773-2288	Human Rights Commission (240) 777-8450
Landlord-Tenant (240) 777-3609	Libraries (240) 777-0002
Licensing Registration (240) 777-3799	Park and Planning Commission (301) 495-4600
Housing Code Enforcement (240) 777-3785	Police Department (non-emergency) (301) 279-8000
Circuit Court (240) 777-9400	Abandoned Autos (301) 840-2455
Community Use of Public Facilities (240) 777-2706	Community Outreach (301) 840-2715
County Council (240) 777-7900	Department of Public Works & Transportation (240) 777-7170
County Executive (240) 777-2500	Traffic Operations (240) 777-2190
Department of Permitting Services	Trash & Recycling Collection (240) 777-6410
Zoning Information (240) 777-6240	

FY 2007 Commission Participants (as of February 28, 2007)

Residents from Condominiums/Homeowner Associations:

Charles H. Fleischer
 Robert A. Gramzinski
 Antoinette Negro
 Vicki Satern Vergagni, Vice Chair
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Professionals Associated with Common Ownership Communities:

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 Richard J. Leeds, Manual Committee Chair
 Stephen M. Maloney
 Staci Gelfound, Legislative Committee Chair
 Andrew Oxendine, Education Committee Chair
 Jeffrey R. Williams, Chair (as of Feb. 7, 2007)

Real Estate Sales and Development:

Harold H. Huggins, Chair (until Feb. 7, 2007)
 Bryan Cook
 Kevin Gannon

County Attorney's Office:

Walter Wilson, Esq. Associate County Attorney

Volunteer Panel Chairs:

Christopher Hitchens
 John F. McCabe, Jr.
 Dinah Stevens
 John Sample
 Douglas Shontz

Julianne Dymowski

Corinne Rosen

Robert Thorpe

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Office of Consumer Protection:

Evan Johnson, Administrator
 Peter Drymalski, Investigator
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COMMISSION ON COMMON OWNERSHIP COMMUNITIES
OFFICE OF CONSUMER PROTECTION
MONTGOMERY COUNTY MARYLAND

Phone: 240-777-3766

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SPECIAL BULLETIN

Please share this with all of your members in your communities.

Commission on Common Ownership Communities (CCOC)

The Commission can help your community by providing information and assistance in many areas:

- Providing a means of resolving disputes between common ownership communities Boards and homeowners
- Promoting education, public awareness and association membership understanding of the rights and obligations of living in a common ownership community
- Promoting legislation to improve the quality of life in community associations

Education

A Commissioner can come to your community meeting and discuss the importance of community involvement, living in an association environment, governing documents, holding a meeting, voting in Board members, how to file a complaint or set up mediation, and an assortment of other topics pertaining to your Association.

Contact

If you would like to have a Commissioner come to your community meeting, you can contact Evan Johnson or Peter Drymalski at 240-777-3636 and explain what you would like. They will bring this request to the Commission at the next meeting, which is usually held the first Wednesday of each month at 7:00 P.M. in the County Council building located at 100 Maryland Avenue in Rockville, Maryland. A Commissioner will be selected and will then contact you to set up the particulars. You can also e-mail them at:

Peter.Drymalski@montgomerycountymd.gov.

The CCOC was established to assist your community in any way it can.

We certainly need you to let us know what we can do for you.

TIPS ON FILING COMPLAINTS—PART I

Information for Homeowners

Homeowners file approximately half of all complaints received by the CCOC, and usually these complaints are more complex than the ones filed by homeowner associations. The explanation for this lies in the fact that homeowner associations usually complain about architectural violations, which are relatively easy to prove or disprove, whereas homeowner complaints frequently involve allegations of mismanagement and misconduct. Such allegations can involve many different rules and state laws and conduct that stretches out over months if not years.

Since most homeowners file complaints without the assistance of lawyers, the CCOC staff offers some guidelines to help them prepare effective complaints.

1. Be sure to include the correct (legal) name of the association, its address, phone number, and the name of the contact (a board president or management agent).
 2. Include your own daytime phone number and an email address as well.
 3. Remember that the CCOC has no authority over decisions that have not yet been formally adopted by the Board of Directors.
 4. Read “The CCOC Complaint Process” in our Fall, 2006 Newsletter, which is available online.
 5. The person filing the complaint always has the obligation to show that the other party has violated either a State law or a rule of the association. Your complaint should state specifically which law or rule has been violated. Although we understand that association documents are complicated and difficult to read, you have to make that effort. You should copy all the relevant rules and attach them to the complaint.
 6. When you describe your complaint, list the facts and relevant documents in chronological order. Avoid personal attacks—they may make you look as bad as the persons you are trying to criticize. Attach photographs if they help to show the problem.
 7. If you are complaining that the association is not enforcing its architectural rules fairly or reasonably, it is up to you to provide evidence of this. You may wish to consider touring your neighborhood to take photographs and gather other information about other homes that may be permitted to have features that are similar to the one you wish to have.
 8. Likewise, if you are complaining about improper actions or procedures by your board, be sure to attach copies of the documents involved (for example, petitions, proxy forms, agenda, minutes, etc.)
 9. Be sure to check off whether you want the \$50 filing fee refunded if the matter is decided in your favor after a hearing.
 10. Read the information on our mediation program, and state if you are willing to attempt mediation.
 11. Please avoid the use of staples, dividers and tabs, as we have to remove all of them in order to copy the complaint and send it to the other party.
 12. Remember, that if the dispute is not settled, or not resolved at mediation, it will be sent to the CCOC for action, and your complaint form will be the first thing the CCOC reads. **(Next issue: Part II—Tips for Associations.)**
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COMMISSION ON COMMON OWNERSHIP COMMUNITIES

Office of Consumer Protection
100 Maryland Ave., Room 330
Rockville, Maryland 20850