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Do HOAs Have the Right to Impose Fines?

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before this Court [to show that] our Courts or our legislature has said that homeowner associations have carte blanche to tax or to fine or to do anything they wish to do as long as it doesn't violate one of the Bill of Rights.

"Although you were using it by way of an analogy, they couldn't say, 'okay, well if you do something like put up a wall without approval, we're going to cut off your water supply for 30 days.' You might argue that that's not cruel and unusual [punishment] because they could go get water somewhere else. It would just be punishment.

"But the fact that the penalty that they might impose is not cruel and unusual is not the test. The test is that there's got to be authority to fine. The Court does not accept the fact that the homeowners association is without power. The power is to order, to get a Court order to 'tear down that wall,' as President Reagan said to Mr. Gorbachev. That's the power. And if it's not followed, the Court can fine. The Court can imprison people [through the] contempt of court [power]. You've got every power known to mankind to enforce that. That's your power, not to tax, not to fine."

The HOA chose not to appeal that decision. It must be emphasized that the

ruling affects *only* the HOA involved in that case, and it is not binding on any other HOA in Montgomery County or elsewhere. Nonetheless, it can be expected that other homeowners will refer to that case in support of their own disputes with their own HOAs.

There are no reported decisions by the Maryland appellate courts on the issue of an HOA's authority to charge fines. The Circuit Court judge obviously accepted the reasoning of the Supreme Court of Virginia in a similar dispute in which that Court ruled that the power to issue fines is limited to the government. As a result of that decision, the Virginia legislature passed laws granting condominiums and HOAs the authority to charge fines. Other states have followed the same solution. And as the judge noted in the Montgomery County case, Maryland law already grants condominium associations the right to charge fines.

If State law does not clearly grant this right to HOAs, do they still have the legal authority to impose fines on their members for violations of their governing documents? There are hundreds of HOAs in Montgomery County alone and thousands throughout the rest of the State. They all operate under covenants recorded in their local land records, and many of these documents

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Are You Tired of Exposed and Incomplete Cable TV Installations in Your Community?

Low-hanging and exposed TV cables are a few examples of the problems created by cable TV installers in our communities.

To help you with such issues, the County has the Office of Cable and Broadband Services (the Cable Office) which oversees the cable TV franchises of Comcast, RCN,

and Verizon FiOS TV. The Cable Office has been very successful serving as an intermediary to help resolve complaints about cable TV installations and

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Sloppy Cable TV Installations

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service.

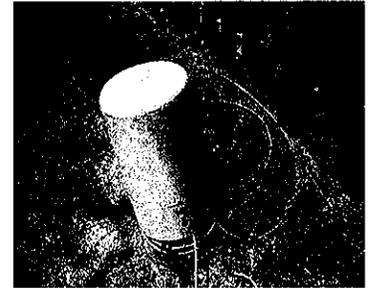
The County's Cable Office has two right-of-way inspectors who assist residents and property managers with correcting ongoing cable TV infrastructure maintenance problems as well as with incomplete installations performed by the cable operators. The inspectors identify violations through their daily activity in the field. In addition, many cable-related safety hazards are reported directly to the Cable Office from residents and managers. Exposed cables, low-hanging wires and damaged equipment are just a few of the violations

that the Cable Office can help to resolve. When a person reports a problem, an inspector will visit the site, determine which cable TV operator is responsible, and notify the operator to correct the problem.

The Cable Office also handles complaints about billing errors and poor service.

The Cable Office has jurisdiction over Verizon's FiOS services, both TV and telephone, but its traditional "copper wire" phone service is under the authority of the Maryland Public Service Commission, and complaints about it should be reported to that agency.

To contact the Cable Office, call 240-777-8111 or email it at [CATV.complaints @ montgomerycountymd.gov](mailto:CATV.complaints@montgomerycountymd.gov).



Recent CCOC Decisions on Architectural Control

HOA order to remove a roof is unreasonable when there is no visible difference between the roof material installed and the roof material required by the rules. In its second and final ruling in the case of *Inverness Forest Ass'n. v. Salamanca*, CCOC #17-08 (July 6, 2011), the hearing panel overturned a decision by the HOA board that the owner must remove the "Class C fire-rated" synthetic cedar shingle roof that he installed without permission. The HOA rules permitted only a specific manufacturer's "Class A fire-rated" synthetic cedar shingle roof. Although the panel upheld the HOA's rule, it concluded that the HOA's decision to force the owner to remove his roof was unreasonable for several reasons. First, there were other non-conforming roofs. Secondly, the Class C roof installed was more fire-resistant than the unrated natural cedar shingle roofs predominant in the community, and leaving the roof in place would not cause any harm or risk of harm to the community. Finally, the panel

examined samples of both roof materials and could not see any visible difference between them. In view of all the facts, forcing the owner to spend money to remove and replace a brand new roof could not be justified.

Condo refusal to allow installation of air conditioning unit in common areas upheld. In *Verchinski v. Plymouth Woods Condo. Ass'n.*, CCOC #57-10 (June 22, 2011) the panel ruled that an association could reasonably refuse to allow a member to install an air conditioning compressor in the common areas instead of in her utility closet which was designed for it. A compressor in the common areas would create extra noise for the ground-floor residents and the wiring and piping would alter the appearance and integrity of the exterior walls; moreover, units were available that would fit into the member's utility closet, so that it was not essential that she have the use of the common areas for her new compressor.

CCOC Elects New Officers for 2012

The CCOC is pleased to announce that it has elected Elizabeth Molloy as its Chairperson for 2012, and B. Gwen Henderson as its Vice-chairperson. Ms. Molloy will replace Staci Gelfound, whose term expires this year. The CCOC appreciates Ms. Gelfound's many services on behalf of the Commission and her leadership as its Chairperson for the last two years.