



CCOC Communicator

Message From The Chairman

By Jeffrey R. Williams, Chairman



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I am writing this on the last day of the public school year in Montgomery County. Parents, students and teachers worked hard this last school year and deserve a vacation. This means that starting tomorrow many residents of the county must adjust to new daily routines, schedules and activities until the next school year begins in late August. We are fortunate that Montgomery County possesses so many different attractions and activities for adults and children and hosts so many recreational and leisure time facilities and programs.

Similarly, the Commission on Common Ownership Communities is changing its routine by expanding the services it provides to homeowners and condominium associations with the goal of providing a more comprehensive array of programs which will enhance the quality of life in common ownership communities and enable each association to achieve its true potential. In doing so, the CCOC itself is striving to provide more of the services the County Council and County Executive authorized when the CCOC was created in 1990.

More than 900 communities in Montgomery County are under the jurisdiction of the CCOC. These communities contain more than 120,000 residential units, resulting in more than 300,000 adults and children under the jurisdiction of the CCOC. This is a substantial number of county residents who are directly affected by the actions and decisions of the CCOC. For the last decade, the CCOC has devoted most of its resources to the resolution of disputes between residents and association boards of directors. This included providing mediation services

and, if the dispute is not resolved through mediation, a full evidentiary hearing, including cross-examination of witnesses and review of documentary evidence, before a panel of three fact-finders, who together vote on a decision and draft a memorandum explaining the factual and legal bases of the decision.

But to realize the full potential of the CCOC, the Commission's Vice Chairman, Vickie Vergagni, and I have begun to expand our outreach and education efforts, undertaken a review of the statutes governing the CCOC to determine if they should be amended to make us more efficient in what we do, and identify several important public policy issues for the Commission to focus on that affect common ownership communities. These issues include the unique challenges faced by aging communities, problems and limitations in dealing with residents who suffer from mental illness, seeking a fair and equitable fee structure for certain utility services such as water pipe upgrades by WSSC, and assessments and fees levied by the Fire Department on condominiums for systems inspection. Each of these issues raises serious legal and financial issues for associations, and implicates multiple county government departments and agencies which often don't appreciate the adverse impact their program has on common ownership communities. Our task, as supported by the fifteen commissioners of the CCOC, is to identify these problems and the stakeholders, begin a dialogue with responsible government departments, and find solutions to reduce the adverse im-

pacts of these issues.

Some of these new directions will be described in more detail at the CCOC's annual forum in September. Others will be discussed in future editions of this newsletter. More information can always be found on the CCOC's website. And remember that our monthly meetings are open to the public on the first Wednesday of each month in the County Council Building, 100 Maryland Avenue. Moreover, the CCOC's professional staff is terrific and can answer many of your questions, so please call or email them when you need assistance. Finally, we rely on your association's officer or director that receives this newsletter to disseminate it throughout the association's board of directors and, if possible, to all of the association's members.

So while you are getting used to your new summer routine, the CCOC is also making changes. We will continue to focus our energy on resolving disputes in a timely manner, and we are excited about pro-actively addressing other challenges facing common ownership communities that will continue to demonstrate the CCOC's commitment to improving the quality of life in associations and provide outstanding service to Montgomery County residents.

On behalf of all fifteen members of the Commission, I hope you have a fun, healthy and memorable summer.

What Does The *Anderson Case* Mean For You And Your Association?

Diane Anderson, a unit owner in The Gables on Tuckerman, probably never gave her water heater much thought until it sprang a leak and caused more than \$6000 in damage to her unit. Now it will probably be the most famous water heater in legal history, or at least Maryland's legal history, and there are rumors that a major downtown law firm is planning to cover it in gold plate and install it in their Hall of Fame.

As you probably know by now, Ms. Anderson filed a claim for damages with her homeowners insurance, which then sued the condominium's master insurance carrier for contribution. The master insurance carrier refused to pay for any repairs to Ms. Anderson's private property, and the dispute eventually found its way to the Court of Appeals, Maryland's highest court.

At issue was the meaning of Section 11-114(a) of the Maryland Condominium Act, which requires condominium associations to "maintain, to the extent reasonably available, property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners..." Most condominium associations, and their attorneys and insurance carriers, have long thought that Section 11-114 meant that the master insurance policy had to pay for repairs to the privately-owned units, regardless of the cause of the damage.

They got a big surprise in April this year, when the Court of Appeals said that the word "unit" only meant that part of the building owned by the condominium association, and did not mean the parts of the building that were owned by the members individually. Therefore, the law did not require condominium association master insurance to pay for any repairs to private units—it only had to cover repairs to the common elements.

The implications of this decision are still being debated and analyzed by expert attorneys, insurance companies, and the local chapters of the Community Association Institute. We are far from knowing all the answers, and it is probable that there will be more lawsuits to come, and that the General Assembly, which wrote the original law, may want to become involved as well. However, this much seems to be clear:

1. It will be a good year for members of the Maryland Bar;

2. *Every condominium association should have a lawyer review its governing documents to advise it on whether it must continue to buy master insurance that protects the private units.* Although the Court of Appeals ruled that there is no statutory requirement for such coverage, association documents might be written in such a way as to require it anyway; and such associations may need to amend their governing documents in order to take advantage of the Court's ruling.

3. *Every condominium association should meet with its insurance carrier to find out how the carrier intends to apply the Court decision to its own policies.* Certainly, if the carrier is going to be able to reduce its coverage, it may be possible for it to reduce its fees as well. But associations also need to know its intentions so that they can advise their members what the new policies will be and how to respond.

4. *Every condominium association should advise its new and current members that they should have their own homeowner insurance (called "HO6" coverage), that this insurance should cover their personal property and all of the physical structure of the unit that they own, and that this insurance should also cover their liability for the master insurance carrier's deductible for damages to the common elements when those damages are caused by the unit owner.* (Beginning October, 2008, this deductible is allowed to increase from \$1000 to \$5000.) Associations should send reminders of this advice at least once a year, because if master insurance does not have to cover repairs to private units, it becomes much more important for associations to assure themselves that the individual owners will be financially able to pay for those repairs promptly.

5. *And, finally:* when was the last time you had *your* water heater checked?

New State Law Favors Solar Panels

Early this year, the Maryland General Assembly passed a new law that limits the ability of homeowner and condominium associations to regulate the installation of solar panels by owners on their own property. The law overrides any existing governing documents to the extent they are inconsistent with the law.

The law states that no community may impose "unreasonable limitations" on the installation of solar collector systems if the property owner owns or has the right of exclusive use of the roof or exterior walls on which the system is to be installed.

The law further says that a limitation is "unreasonable" if it "significantly increases" the cost of the system or "significantly decreases" the efficiency of the system.

Therefore, a community may no longer ban the installation of solar collector systems, and it will have to be careful about what limitations it does try to impose. For example, a rule that limits the installation of solar panels to the rear of a home may be invalid when applied to a homeowner whose rear yard does not receive as much sunlight as his front yard.

The new law also creates a "solar easement" agreement, whereby a person who wishes to install a solar collector system can negotiate with his neighbors to establish or preserve access to sunlight for his system. Such a voluntary agreement might, for example, limit the height of any trees or structures on the neighbor's lot.

County Enacts Major Law on Renewable Energy Devices



On August 4, 2008, an important new law on renewable energy devices takes effect in Montgomery County. This law will affect all the County's common ownership communities.

Council Bill **33-07**, which was adopted by the County Council on April 22, 2008 and signed by County Executive Isiah Leggett on May 5, 2008, requires the County to establish a "Sustainability Working Group" that will develop a Renewable Energy Action Plan to increase the use of renewable energy sources and that will investigate the possibility of creating a Sustainability Energy Fund to help subsidize the use of such sources. In addition, the new law creates a property tax credit that allows the purchasers of qualifying solar or geothermal devices a deduction from their County property taxes of up to \$5000 for a heating system or \$1500 for a hot water supply system, and up to \$250 for qualifying energy conservation devices per year.

Of particular interest to common ownership communities, however, are the new sections to Chapter 40 of the County Code. The new Section 40-3A defines "renewable energy" as energy derived from solar, wind, and geothermal sources, and defines a "renewable energy device" as "**a device that (1) creates, converts, or actively uses renewable energy; and (2) meets safety and performance standards set by a nationally recognized testing laboratory for that kind of device.**"

The law goes on to say that "**A person must not create or enforce any deed restriction, covenant, rule, or regulation, or take any other action, which would prohibit the owner of any building from installing a renewable energy device.**" The law makes clear that this restriction applies to common ownership communities: "**Owner of any building" includes the unit owner in a condominium, a lot owner in a homeowner's association, and a shareholder in a cooperative housing corporation.**"

In short, *a common ownership community may not prevent a homeowner, unit owner, or shareholder from installing a qualified "renewable energy device" on the owner's property.* This should include both solar collector panels and windmills, if approved by a national testing agency, and might also include wells and related devices for circulating groundwater through a house. The County law appears to be broader than the new state law, which applies only to solar collection devices.

The law does not specifically prohibit associations from enacting or enforcing reasonable rules and regulations concerning the installation of such devices, but such rules cannot be used to prevent owners from installing the devices of their choice.

A copy of Council Bill **33-07** is available online through the website for the County Council.



Beware of Foreclosure Scams

Rising foreclosure rates have led to an increase in scam artists offering to aid homeowners in financial straits. They typically promise to help save the homes of people facing foreclosure, but will strip away the value of the home with no benefit for the homeowner.

The National Foundation for Credit Counseling advises homeowners to proceed with caution if an individual or company:

- Calls itself a “mortgage consultant” or foreclosure service.”
- Contacts people whose homes are listed for foreclosure, including anyone who uses flyers or solicits for business door-to- door, by phone or e-mail.
- Encourages you to lease your home so you can buy it back over time.
- Collects a fee before providing any services to you.
- Instructs you to cease all contact with your lender, credit or housing counselors, lawyer or other legitimate experts.
- Tells you to make your mortgage payments directly to him or his company (not the lender).
- Requires that you transfer your property deed or title to him or his company.
- Makes a promise that seems too good to be true, for example, instant cash with “no strings attached.”
- Tells you that as part of the deal you need to move out of your house for some period of time for remodeling or other reasons.
- Offers to buy your house for cash at a fixed price that is not set by the housing market at the time of sale.

What should a homeowner *never* do?

- Don’t be pressured to sign a contract. Take your time to review all documents thoroughly, preferably with a lawyer who is representing your interests only.
- Don’t send or give your mortgage payments to someone other than your lender, even if he promises to make the payments for you.
- Don’t sign away ownership of your house to anyone without advice from a credit or housing counselor or lawyer.
- Don’t rely on verbal agreements. They mean nothing. Get all promises in writing and keep copies of all documents, especially those you sign.
- Don’t sign anything containing blank lines or spaces. Scammers can add information later without your knowledge or approval.
- If you do not speak English, use your own translator. Don’t depend on someone who is provided by the “rescuer.”
- Don’t fall for promises often used to lure homeowners such as claims to save your credit rating, promises of instant cash, guarantees that a buyer will be found within a certain number of days, help infilling for bankruptcy to “stop the foreclosure” and offers of free rent or gifts.

For more information, visit www.HousingHelpNow.org.



Host a Candidate Forum

Sometimes annual elections are filled with hard choices between very competent candidates. How could you make it easier on your community members to decide between the candidates? Try hosting a Candidate's Forum.

Communities can greatly benefit from having a thoughtful election opportunity where all members of the association have quality time in a reflective setting to learn more about candidates. A forum can give all members of the community a more in-depth look at a candidate's qualifications and positions on specific issues important to members. To clarify, all associations abide by their bylaws in terms of notice of elections and associated procedures, but associations may wish to include a candidate forum to help the community be better informed before voting.

Some Tips on Organizing a Candidate Forum

1. Determine who will lead the organization of the Candidate's Forum. Board members should not lead the effort to remain neutral in the process. Ideally, the board could ask volunteers (not including candidates or those associated with candidates) to lead the effort as a subcommittee.
 2. Be sure to follow your community's bylaws regarding annual elections or special elections. Unless otherwise stated in your bylaws, a Notice of Annual Meeting/Election must be sent to all owners no less than 10 days, and no more than 90 days, before the event. (Maryland Condominium Act, Section 11-109(c)(4); Montgomery County Code, Section 10B-17(a).) If your bylaws are silent on this point, we recommend sending the notice 20 to 30 days before the scheduled date. Generally, to get a great turnout you'll want to submit a notice to members in sufficient time.
 3. Establish a date, location, time and place for the Candidate's Forum that is convenient for the members. Usually, the location for your association meetings is probably fine for this special event. The forum should be scheduled at a convenient time for most people in your community, but you may consider hosting an additional forum at another time to reach more people. While there may be flexibility in when to host the forum, it's best to hold the event closer to the election, say one to two weeks before voting.
 4. Decide the format of the forum. Will it be open discussion? Will each candidate be allowed a speech? Who will moderate? (Ideally this would be a person outside of the community.) Who will keep time? Will questions be received prior to the event or during the event? There is great flexibility in the format of the forum, so consult with members of your subcommittee, community and discuss with your candidates to fine-tune the program. One suggestion is to create forum guidelines or rules beforehand to ensure that everyone acts respectfully.
 5. Advertise, advertise, advertise! Get the word out about your community's candidate's forum through all available and appropriate avenues (e.g. message boards, online association community, fliers, etc).
 6. Enjoy the event that you and others worked so hard to create. Be sure to begin with guidelines or rules. At the end of the event, gather feedback from attendees for next year's forum.
- And finally, now that you and your fellow association members are well-informed and more knowledgeable about the candidates, don't forget to vote on Election Day!



Selected Summaries Of CCOC Final Panel Decisions



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

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Zich v. Decoverly I HOA (June 5, 2008) (Panel:

Hitchens, Maloney, Negro): The homeowner complained that the Association's board was violating the "open meetings" requirements of Maryland law (Section 11B-111 of the Homeowners Association Act) by closing its discussions of possible architectural violations. The panel ruled: 1. the board of directors can close its meetings to discuss actual or potential litigation, including disputes pending with the CCOC, with its property manager, and it is not necessary that the board's attorney be present in order to close the meetings; 2. the board cannot close meetings simply to discuss or to hold hearings on architectural violations, as these do not normally come under any of the specific exceptions to the open meeting requirements; and 3. although the board had the right to close its meetings in some cases, it violated the open meetings law by failing to record in its minutes both the individual directors' votes to close the meetings and the reasons under the law that allowed the meetings to be closed.

Hess v. The Tiers at Wheaton, #27-07 (April 23, 2008)

(Panel: Friedman, Leeds, Negro): The unit owner complained of erosion in the common areas threatening a beloved cherry tree. The Association failed to reply to the complaint or to make any repairs. The hearing panel requested a staff inspection of the premises, which concluded that a retaining wall was both too low to prevent erosion and was about to fail due to age and deterioration. The Panel concluded that the Association was in violation of its obligations to maintain the common elements and ordered it to replace the wall within 90 days. [Editor's note: the Association is complying with the Order, which will cost approximately \$50,000.]

Jackson v. Woodlawn HOA, #72-07 (May 28, 2008)

(Panel: Koenig, Leeds, Vergagni): The homeowner complained that the Association violated its rules by not holding annual meetings and elections, and by not holding monthly meetings. The Association did not reply to the complaint. The panel held that the Association was in violation of its obligations under the governing documents to hold annual meetings and elections, but there was no requirement to hold monthly meetings of the board of directors, which was a matter left to the discretion of the board. The panel ordered the Association to hold an annual meeting and election within 60 days, and ordered the Association to refund to the homeowner her \$50 filing fee for the dispute.

Potowmack Preserve v. Ball/Ball v. Potowmack Preserve, ##720-G/33-06 (June 13, 2008) (Panel:

McCabe, Huggins, Negro): Two separate disputes were consolidated for a single hearing before the same hearing panel. In the first case, the panel found that the homeowner was in violation of the architectural rules by constructing a closed room to his house when he had only applied for, and received permission for, a roofed deck. The panel ordered him to remove the entire addition or else to modify it to the Association's satisfaction. In the second case the homeowner claimed the board had improperly increased the annual assessments in 2005. The Association's rules limit the maximum increase in annual assessments to the annual increase in the Consumer Price Index. In 2005, the index rose by 3.7% but the board took an actual increase of 27%, on the grounds that it had not taken any increase since 2000, and the total CPI increase since 2000 had been 27%. The panel upheld the board, saying that the rule required the board to take the maximum increase allowed although the board had the discretion to determine how much of that maximum allowable increase it would implement in a given year. In short, the maximum allowable assessment rose every year, although the board could adjust the actual assessments as needed so long as it stayed under the maximum.

Barry v. Montgomery Village Foundation

#35-07 (May 28, 2008) (Panel: Koenig, Huggins, Perlingiero): The Homeowner applied for permission to install vertical siding on her home, and the Foundation approved a specific kind of vertical siding. The contractor installed a type of vertical siding that was not in the contract and had not been approved by the Foundation. The panel found that although there were other homes in the neighborhood that had some variation in the type of siding installed, the Foundation had a reasonable explanation for each exception that did not apply to the siding used here, which was markedly different from any other in the area. The panel ordered the Homeowner to remove the siding and to replace it with the proper kind.

New CCOC Cases on Attorney Fees

In the Spring issue of the CCOC Communicator, we reviewed the decisions of the hearing panels granting and denying requests for attorneys fees in CCOC disputes. One of the basic principles these decisions established is that the CCOC will *not* award fees unless the party who is asked to pay them engaged in some sort of misconduct while the case was pending with the CCOC, or unless the rules of the community require the losing party to pay the winning party's legal fees.

Since that article appeared, two important decisions have been issued by our hearing panels. In Greencastle Lakes Community Association v. Kelley, #87-06 (April 24, 2008), the hearing panel reviewed the language of documents that the Association claimed required the payment of attorney fees: "Any costs of a legal action to remove or correct violations shall be charged to the affected homeowner following the resolution of the action." The hearing panel noted that this language only referred to "costs," and did not specifically refer to and include attorney fees or legal fees. Citing Maryland court cases, the panel said that the document must specifically refer to legal fees. It went on to state that under the usual principles of contract law, a clause that is not clear must be interpreted against the party that wrote it. Therefore, since the Association wrote the clause, and since the meaning of the word "costs" was not clear, the document did not give the Association the right to be awarded attorneys fees.

In the other major decision, Fiscina v. Devonshire East Homeowners Association, #71-06 (May 21, 2008), the hearing panel awarded attorney fees to the *homeowner*. This is the first time a panel has awarded fees to a homeowner for successfully prosecuting a case. The hearing panel ruled that such an award was required by the language of the Association's documents. Section 11.02 of the Association's Declaration of Covenants states that: "The Association, or any Owner shall have the right to enforce all the restrictions and obligations of this Declaration...If the Association or any Owner successfully brings an action to enforce this Declaration or Bylaws, the costs of such action, including legal fees, shall become a binding personal obligation of the Owner committing such violation..." (This Decision is now on appeal to the Circuit Court.)

The lessons of these two decisions are that any rule used to justify a claim for attorneys fees must clearly refer to attorneys or legal fees. Secondly, many other association documents may have language similar to that used the Devonshire East documents, which may increase their liability if they are found to have been acting in violation of their own rules.

Come to the Annual Forum October 1st!

The Commission will host its 2008 Annual Forum on October 1 at 6:30 pm. at the Executive Office Building in Rockville. The purpose of the Forum will be to present the County Government staff members whose agencies directly affect common ownership communities, such as Permitting Services, Housing Code Enforcement, and others.

Speakers from several agencies will talk about the laws they enforce that affect our communities and how the communities can work with them to comply with the law, obtain more information, or take advantage of their services.

Many communities are unaware that the County Government has several offices, in addition to the CCOC, that can help them to resolve problems quickly. For example, the Office of Housing Code Enforcement can take complaints about trash buildup or lack of maintenance of private properties or common elements. The Office of Site Plans can be an essential part of any proposal to modify a community's common areas.

Funding to assist residents in making basic repairs or home improvements is often available from the Department of Housing and Community Affairs.

These are just a few examples of how the County is involved with its common ownership communities and of how you and your community can benefit from learning more.

The Commission invites all residents of its common ownership communities to attend the Forum and to meet the County's regulators and the Commission members. We will mail invitations by September and post more information on our website as the Forum draws near.



Useful County Phone Numbers for Common Ownership Communities

Office of Consumer Protection	(240)-777-3636	Department of Permitting Services	
Office of Common Ownership Communities	(240) 777-3766	Zoning Information	(240) 777-6240
Department of Housing and Community Affairs	(240)-777-3600	General Information	(240) 777-1000
Landlord-Tenant Affairs	(240)-777-3609	Housing Opportunities Commission	(301) 929-6700
Licensing & Registration	(240)-777-3799	Human Rights Commission	(240) 777-8450
Housing Code Enforcement	(240)-777-3785	Libraries	(240) 777-0002
Cable Office	(240) 773-2288	Park and Planning Commission	(301) 495-4600
Circuit Court	(240) 777-9400	Police Department (non-emergency)	(301) 279-8000
Community Use of Public Facilities	(240) 777-2706	Abandoned Autos	(301) 840-2455
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 Environmental Protection		Trash & Recycling Collection	(240) 777-6410
Stormwater Facility Mgmt	(240)-777-7623		

FY 2008 Commission Participants (as of July 1, 2008)

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Commission on Common Ownership Communities

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www.montgomerycountymd.gov/ccoc

Do You Want a Commissioner to Speak to Your Community?

The Commission will be pleased to send a speaker to your community's next board or general meeting .

If you would like to make a request for a speaker, please write to us, or send an email to peter.drymalski@montgomerycountymd.gov. Please tell us what dates you have available, what topics you would like our speaker to cover, and how many people you expect to attend.

The Office of Consumer Protection can also send a speaker to talk to your community. Consumer Protection investigators are available to give information on important issues such as avoiding foreclosure and home improvement frauds and identity theft, how to deal with auto repair or new home warranty complaints, and many other topics. For more information contact sue.rogan@montgomerycountymd.gov