



CCOC Communicator

Money Matters

*By Staci Gelfound, Legislation Committee Chair
Commission on Common Ownership Communities*

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One of the responsibilities of the Commission on Common Ownership Communities (CCOC) is to identify public policies that will impact the health and well-being of common ownership communities, to analyze the impact they would have, and to advise County policymakers accordingly.

Recently, our communities faced a proposed increase in expenses from the Washington Suburban Sanitary Commission (WSSC) that would have imposed a 9.5% increase in the cost of consumption of water/sewer services and the addition of a "ready-to-serve" fee of \$20 per month per home. The CCOC opposed WSSC's approach to the ready-to-serve charge for the reason that it was unfair to common ownership communities, especially those that are the most densely-populated, and because it imposed disproportionately high increases on those who used the smallest amounts of water.

CCOC vice-chairperson **Vicki Vergagni** did extensive research on this issue to compile statistics to show exactly how these proposals would affect the County's common ownership communities, and presented her findings at several public hearings held by WSSC and by the Montgomery County Council.

In early March, the WSSC board voted to withdraw its proposal to add the monthly fee of \$20. However, it went ahead with its proposal to raise water rates by 9.5%.

Association boards and managers should be aware of this impending increase and begin planning their budget accordingly.

The Commission is indebted to Ms. Vergagni for her tireless work on this issue, which will save many thousands of dollars this year alone for communities whose assessments include water and sewer services.

Other proposed bills affecting common ownership communities are now being reviewed in Annapolis, where the General Assembly is in session. The CCOC has been asked for its position on several of these proposals.

The CCOC voted to support **House Bill (HB) 1402**. This bill would require condominium associations to provide more information to their members about the proposed annual budget, including its actual or projected income for the fiscal year, the amount of uncollected income, the amounts of its debts and investments, and other data.

The CCOC also voted to support **HB 1129**, which will allow homeowner associations to amend their governing documents by a positive vote of two-thirds of the members, or less if the association documents allow less.

The CCOC also supports **HB 1053**. This bill will require all common ownership communities to purchase fidelity bond insurance on their

governing bodies and on their managers. (Fidelity bond insurance will help to protect the association against the theft of its funds by its managers or directors.)

However, the CCOC opposes **HB 988**. This bill would require that any single expense of any common ownership community which exceeds 5% of the total operating budget must be approved by a majority vote of the association membership. The CCOC believes that this requirement is unreasonably restrictive and will make it much more difficult for the boards of directors to carry out their legal obligations to maintain the common areas of the association.

At the Annual Forum last October, the CCOC expressed its strong support for a bill that would give association liens for up to 6 months of unpaid assessments higher priority than liens filed by mortgage companies. Such relief is urgently needed in these troubled economic times because the rate of foreclosures has soared due to the huge numbers of risky loans made by subprime lenders. The CCOC is disappointed to report that no priority lien bill has been introduced during the current legislative session. A compromise proposal, **HB 682**, has been introduced. This bill would make the purchase of the unit or lot liable for the first 6 months of any unpaid assessments. The CCOC takes no position on this proposal.

If you are interested in any of these bills, you should

Money Matters (Continued from front page)

contact your area's representatives as soon as possible.

More information about these and other proposed legislation is available online at the General Assembly's website:
<http://mlis.state.md.us>.

General Assembly Adopts Change to Master Insurance Deductible

As this issue of the *Communicator* was sent to the printer, we learned that the General Assembly has approved House Bill 646. This amendment to the Maryland Condominium Act raises the maximum deductible for master insurance policies from \$1000 to \$5000. The amendments affect Sections 11-114(g)(2)(iii) 2 and 3 of the Real Property Article.

The bill does not become law until it is signed by the Governor and given an effective date.

The Commission suggests that every association should review its current bylaws to determine whether they allow the association to pass the increased deductible to the unit owners. Some associations may need to amend their bylaws or rules in order to take advantage of the changes.

Important Court Ruling on Master Insurance

In one of the most important court rulings of this decade, the Maryland Court of Appeals has held that a condominium's master insurance policy only covers repairs to the common elements, and does not cover repairs to private units when the damage to the unit is caused by a defect in the unit itself. We will discuss this case in more detail in the next newsletter.

The case is *Anderson v. Council of Unit Owners of The Gables on Tuckerman*, No. 99 (April 15, 2008). It is online at:
<http://mdcourts.gov/opinions/coa/2008/99a07.pdf>

CAI Annual Conference

On February 23, 2008, the Washington Metropolitan Chapter of the Community Associations Institute (CAI) held its Annual Conference and Exposition at the Washington Convention Center. Commissioners **Kevin Gannon, Harold Huggins, Staci Gelfound, Toni Negro, Andrew Oxendine** and **Vicki Vergagni** attended the conference to staff the CCOC booth at the expo, and to use this opportunity to inform homeowners and management professionals of the services that the CCOC provides, including education, mediation, legislative initiatives, and the proposed WSSC rate increases for Montgomery and Prince George's Counties.

Those of our readers who are new to the field of common ownership community management may want to visit the website for the CAI, www.caionline.org, where they can find manuals and brochures on many relevant topics.

A Sad Farewell

This month, the CCOC reluctantly bids farewell to 4 retiring commissioners, including **Rick Leeds** and **Harold H. Huggins**, both of whom have served as chairmen of the CCOC. Also retiring are Commissioners **Robert Gramzinski** and **Stephen Maloney**. They all performed important services to the CCOC during their tenures and will be greatly missed.

The CCOC will also miss **Robert Thorpe**, a volunteer panel chair and author of several Decisions, who died last September.

Terms of office in the CCOC expire at the end of the calendar year. The County Executive's Office usually announces it is accepting applications for the upcoming vacant positions, if any, in November every year. Commission members may serve a total of two 3-year terms. If you are interested in serving on the CCOC, you may send us a resume at any time and we will contact you when a vacancy arises for which you can apply.

And a Warm Welcome

The CCOC is pleased to welcome 5 new members who will bring it up to full strength. Our new members are **Karen Kali** (resident representative), **Helen Whelan** and **Mitchell Alkon** (professional representatives), and **Carolyn Thompson** and **Arthur Dubin** (real estate representatives). Commissioner **Allen Farrar** was reappointed to his first full term as a residential member.



Attorney Fees and the CCOC

The CCOC's dispute resolution process is intended to be an informal one in which attorneys are optional, not required. Nonetheless, many parties, especially associations, choose to be represented by attorneys in CCOC hearings.

The general rule in the CCOC process, as in our court system, is that each party must pay its own attorney fees. But just as there are special statutory provisions under which courts sometimes order one party to pay the other's legal fees, Chapter 10B of the County Code (under which the CCOC operates) allows the CCOC to order one party to pay the other's attorney fees in certain circumstances.

These circumstances don't come up very often. A review of 196 CCOC decisions reveals that attorney's fees were requested in only 34 cases, and were awarded in only 11 cases, less than 6 percent of all CCOC decisions. Still, since some recent CCOC decisions have dealt with attorney's fees issues, it's worthwhile reviewing when the CCOC might award attorney fees.

Section 10B-13(d) of the County Code allows a hearing panel to require one party to pay the other party's legal fees if the first party filed a frivolous dispute or continued a dispute in bad faith; or "unreasonably refused to accept mediation" of a dispute before a hearing; or "substantially delayed or hindered the dispute resolution process without good cause." At the CCOC, we call these types of behavior "misconduct." The other situation in which Subsection 10B-13(d) allows a hearing panel to award fees is "if an association document so requires and the award is reasonable under the circumstances." We call this the "rule requirement" situation. In this situation, no "misconduct" is necessary. Instead, the issues are whether the association has a properly-adopted written rule requiring the losing party to pay the winner's legal fees, and whether the award is reasonable under the circumstances.

Let's now look at CCOC decisions interpreting these two provisions.

"Misconduct" Under County Law

The Maryland Court of Appeals, in Black v. Fox Hills North Community Association (1992), stated that as a general matter, the award of attorney fees is "an extraordinary remedy, intended to reach only intentional misconduct." The CCOC has followed this principle, and cases of genuine misconduct are rare. A case in which the panel found it, however, is Harary v. The Willoughby of Chevy Chase #373 (1998). In that case, the condo owner appealed the fines levied against her for causing excessive noise with her radio. She argued that she had no control over the radio because the residents upstairs somehow set the volume of her radio by remote control. She did not produce any evidence to support this claim. Further, there was other evidence that she could, in fact, turn down the volume when asked to. The hearing panel found her complaint to be "frivolous" because she had absolutely no evidence to support her claims, and it ordered her to pay \$500 of the association's attorney's fees bill of \$1170.

More recently, in Greencastle Lakes Community Ass'n. v. Muller #829 (2007), the owner delayed the CCOC hearings for well over a year by repeatedly promising to submit architectural applications or to make architectural changes that he never actually performed, and then, after requesting a continuance of the hearing due to his job demands and agreeing to a new hearing date, he failed to show up at the hearing and never did present any defense to the association's claims. The hearing panel found that he had unreasonably delayed the resolution of the case, and ordered him to pay \$2523 for the association's legal fees in the matter.

But in Longmead Crossing Community Services Association v. Venson #04-06 (2006), the hearing panel declined to award legal fees to the association even though the homeowner never responded to the complaint and didn't come to the hearing. The panel held the owner to be in violation of the architectural rules and ordered her to make the necessary changes; but it went on to hold that under Subsection 10B-13(d) some showing of actual misconduct was required, and mere inaction was not misconduct. The owner's failure to respond to the CCOC complaint did not cause any delay in the dispute resolution process (unlike in the Muller case), and the panel ruled it was not unfair to require the

party filing a complaint to prove its case.

Similarly, in Fried v. Norbeck Grove Condominium Association #28-06 (2006), the hearing panel denied a motion for attorney fees after the homeowner dismissed his own complaint shortly before a hearing. The panel ruled that although the complainant may have been mistaken about whether he had properly called a special meeting to depose the association's current president, he was not represented by an attorney at the time he filed the complaint, and having later obtained an attorney, he promptly withdrew his case after all the facts and law were made more clear. The panel therefore found no evidence of bad faith or intentional misconduct.

Of course, the misconduct provision also applies to associations, and in Kushawaha v. Stonehedge Condominium Association #811 (2006), the CCOC ruled that the association's delay in turning over documents to the owner was unreasonable and ordered the association to pay the legal fees related to the owner's motion to compel compliance with the CCOC's discovery rules.

Evidence of misconduct can be used to *reject* a claim for attorney fees, as well as to *support* such a claim. A case in point is Vartan v. Oak Springs Townhouse Association #733 (2005). In Vartan, the panel ruled that the owner's complaint was frivolous because she did not produce any relevant facts to support it. But the panel also pointed out that the association had refused to participate in the mediation of the complaint. The panel felt that if the association had met with the owner in mediation, it might have been able to show her that she did not have a very strong case and persuade her to withdraw it voluntarily, thus avoiding the need for a formal hearing. The panel ruled that the association's refusal to mediate was "unreasonable" and therefore a violation of that part of Subsection 10B-13(d)(2) which allows the CCOC to penalize a party who "unreasonably refused to accept mediation of a dispute." As a result, it reduced the fee award from the \$4900 requested to \$1500. This decision is also a reminder that CCOC policy strongly encourages both parties to attempt mediation before they request a formal hearing.

Association Rules on Attorney Fees

The second situation in which the CCOC may award attorney fees is when a

rule of the association requires that the loser pay the winner's legal fees in the type of case before the CCOC, and if the award is reasonable under the circumstances. In this situation it is not necessary to prove intentional misconduct. Thus, in Greencastle Lakes Community Association v. Abeje #776 (2006), a homeowner who, like the homeowner in the Venson case (above), did not bother to answer the complaint and did not bother to come to the hearing to present any defense to the charge of architectural violations was, unlike Venson, ordered to pay the association's legal fees. The key to this ruling is that Greencastle Lakes' architectural rules—unlike Longmead Crossing's—specified that if Greencastle had to take legal action to correct or abate an architectural violation, the offending homeowner would have to reimburse it for its legal fees in prosecuting the action. Since the hearing panel ruled that the homeowner was in violation of the architectural rules, it also agreed to order the homeowner to pay \$767 of Greencastle's attorney fees.

Although a well-written rule or bylaw on attorney fees goes a long way to support a claim for such fees, the rule in question must also apply to the type of case pending before the CCOC. For example, in Brandermill Association v. Wells #42-06 (2007), the CCOC rejected a fee request because the rule cited by the association only applied if the association was suing to collect unpaid assessments, and the case before the CCOC was an architectural dispute. Similarly, in McPherson v. Morningside HOA #614 (2004), the CCOC denied fees because the association rules only required them when the association had to sue to abate an architectural violation, and in that case the homeowner had filed the complaint to appeal the denial of his architectural application but had never installed the change in dispute, so there was no violation to be abated.

The "rule requirement" situation also specifies that even if there is an association rule on attorney fees, the award of the fees by the hearing panel "must be reasonable under the circumstances." In Blackburn Village HOA v. Saunders #06-06 (2006), the hearing panel found that the homeowner had violated the architectural rules by installing a security door without prior approval, but it denied the association's request for legal fees because the association had also violated the architectural rules (the architectural committee that ruled the security door to be a violation consisted of only 1 person, when the rules required 3 members). In other cases that

applied the requirement of "reasonableness", CCOC hearing panels have tried to ensure that the fees requested are fair both as to the number of hours claimed and the amount of the hourly fee. In the recently-issued decision in Greencastle Lakes Community Association v. Baker #88-06 (2007), the panel, after agreeing that the association had a rule that allowed it to charge its legal fees to a homeowner in violation of the architectural rules, required the association's attorney to submit an itemized accounting of her hours and her hourly rate before it awarded \$580 for 2 hours of work at the rate of \$290 per hour in a case in which the homeowner did not answer the complaint or appear at the hearing.

Some Lessons for the Parties

1. The most important lesson to be drawn from these CCOC decisions is that *the CCOC will not impose attorney fees against a party simply because that party loses its case*. The CCOC will only require a party to pay legal fees if that party is guilty of misconduct in the course of the CCOC proceedings or when there is an association rule that clearly requires the payment of such fees in the type of case that is brought before the CCOC.

2. Homeowners or unit owners who are faced with claims that they have violated an architectural rule have to be careful because many associations have rules that require the owner to pay the association's legal fees if the association has to bring a legal action to correct the violation. Owners who receive such a complaint from their associations and who have no good defense to it may find themselves not only having to pay to correct a violation or to remove an expensive change, but also may have to pay much more for the association's attorney. At the very least, owners should read their community's rules carefully in order to make an informed decision about whether to defend themselves or to perform the changes that the association wants.

3. The CCOC frowns upon attempts to use a request for payment of attorney's fees as a threat to intimidate the other party into settling or dismissing a complaint if the party making the threat cannot make a strong case that it will qualify for such fees under Subsection 10B-13(d) of the Montgomery County Code as applied by the CCOC hearing panels.

For More Information

Most of the cases referred to in this article are now posted at the CCOC's website, www.montgomerycountymd.gov/ccoc under "Decisions and Orders." If the full text of the Decision is not online, a staff summary of it may be available there. The CCOC is working to post copies of all of its formal Decisions, plus easy-to-read summaries, on its website so that associations and their members will have a better understanding of the law and how it is applied.

Visit the CCOC Website

If you have not visited CCOC's Website recently, please do so. In Recent months, we have added several new features, including an online complaint form, a section answering frequently-asked questions, minutes of recent CCOC meetings, and our Bill Of Rights And Responsibilities. The CCOC's *Manual & Resource Guide* is also posted there.

Come to the CCOC Meetings!

The CCOC welcomes members of common ownership communities at its monthly meetings and dispute resolution hearings. Monthly meetings are usually held on the first Wednesday of each month at 7 pm in the 6th-Floor Conference Room of the Council Office Building at 100 Maryland Avenue in Rockville. For the hearing schedule, call 240-777-3636.



Safety and Human Services Resources

These numbers are being provided to you to assist you in knowing what phone numbers to call in the event you or your family have a safety or human service need.

Montgomery County Government Main Number 240-777-1000 Voice 240-777-2545 TTY

Call here to find out about programs and services provided by Montgomery County Government.

Montgomery County Department of Health & Human Service 240-777-1245
Voice Information and Referral Line 240-777-1295 TTY

Call here to find out about the programs and services provided the Department of Health and Human Services.

Montgomery County Police Department
Emergency: 911

Non-Emergency Dispatch: 301-279-8000

If you see someone acting in a way that you believe is endangering their life or the life of someone else or is in the act of breaking the law, please contact the police immediately.

Montgomery County Crisis Center 240-777-4000 (24 hour service)

People who call the crisis center usually are calling about a family member who is not in imminent danger to oneself or another and is not breaking the law, but is experiencing crisis needs. The Montgomery County Crisis Center provides immediate responses to crisis situations for all residents of Montgomery County, Maryland. The center provides goal-oriented crisis intervention, brief crisis stabilization, and help in obtaining services for individuals and families with a mental health crisis or experiencing other crisis situations. The Crisis Center has:

- ▷ [Telephone and walk-in crisis intervention](#)
- ▷ [Psychiatric consultation, evaluation and stabilization](#)
- ▷ [Assessment of children and adolescents](#)
- ▷ [Suicide Prevention](#)
- ▷ [Services for the homeless](#)
- ▷ [Response to victims of violence, including sexual assault and mate-related abuse](#)
- ▷ [Alternatives to psychiatric hospitalization](#)
 - [Triage and Evaluation \(T&E\) Beds](#)
 - [Mobile Crisis Team \(MCT\)](#)
- ▷ [Assertive Community Treatment \(ACT\) Team](#)
- ▷ [Critical Incident Stress Management \(CISM\)](#)
- ▷ [Training and Consultation](#)

Adult Protective Services 240-777-3000 (24 Hour Service)

If you believe that a vulnerable adult is experiencing abuse, neglect, self-neglect or financial exploitation, call the Montgomery County Department of Health and Human Services, Adult Protective Services program. A vulnerable adult is an individual who is 18 years or older who lacks the physical or mental capacity to provide for his or her daily needs, and is at-risk in the community.

Abuse is the sustaining of any physical injury by a vulnerable adult as a result of cruel or inhumane treatment or a result of a malicious act.

Neglect is the willful deprivation of adequate food, clothing, essential medical treatment, shelter or supervision of a vulnerable adult.

Self-Neglect is the inability of a vulnerable adult to provide services that are necessary for their physical and mental health; the absence of which impairs or threatens their well being.

Exploitation is any action which involves the misuse of a vulnerable adult's funds, property or person. You will speak with an intake worker about your concern that a vulnerable adult is being mistreated. Your report is confidential and can be made anonymously. Any person who in good faith makes a report is immune from any civil liability. Health practitioners, police officers, and human services workers are required to notify Adult Protective Services if they have reason to believe that a vulnerable adult has been subjected to abuse, neglect, self-neglect or financial exploitation.

Receive Emergency Alerts and Road Closure Information Sign Up for Alert Montgomery!!!

Montgomery County officials are urging local residents to take advantage of the County's automated warning system—Alert Montgomery. In an emergency, staff from the County's Homeland Security Department can send text messages to email accounts, cell phones, pagers, Blackberrys and wireless PDAs. In addition to obtaining emergency alerts, residents can also obtain information about severe traffic delays and severe weather. Residents of the cities of Rockville, Gaithersburg, and Takoma Park are also eligible for the service, and residents who have already signed up for emergency alerts from those cities will also receive the County alerts.

To sign up, go to www.montgomerycountymd.gov and click on *Alert Montgomery*. The service is free, although some residents may be charged by their wireless carriers to receive the text messages.

County residents are also encouraged to educate themselves about emergency planning and personal preparation. The County's "Plan to Be Safe" includes a 3-part brochure with pictures and simple text listing essential supplies (water, food, clothes, medications, flashlight, manual can opener, battery-powered radio, hygiene items and first aid kit). Another part of the plan is the brochure, "Everybody Ready" describing how to prepare a personal plan for emergencies. This brochure is available in several languages. For more information, go to the County website (above) and click on the link for Emergency Preparedness, or call **240-777-3038**.

Associations may wish to print copies of these brochures and distribute them as a service to their members so that the whole community is better prepared for an emergency.

Resources to Avoid Foreclosure

The continuing home foreclosure crisis continues to reverberate throughout the housing market and other sectors of the economy. But the real tragedy is what foreclosure—or even the threat of default—does to families and individuals who face this kind of financial upheaval. And, it's happening everywhere. While foreclosure rates are highest in "rustbelt" states like Michigan and Ohio, no state or region is immune.

High foreclosure rates are largely the result of lenders offering mortgage loans below the prime lending rate. These "sub-prime" loans are most often provided to those with poor credit or buyers who need adjustable-rate loans to purchase homes. Mortgage defaults also can be the unfortunate result of a lost job or even a serious injury or long-term sickness that prevents breadwinners from working.

Foreclosures can also be initiated by the associations, but this is rare and most often the result of an owner refusing to pay association assessments over a period of time.

We hope none of our neighbors ever face a financial crisis leading to foreclosure, but that is wishful thinking. It can and does happen. If you or someone you know faces this kind of personal crisis, advice and information are available.

(Source: <http://usasearch.gov/search?v%3aproject=firstgov-web&v:project=firstgov-web&query=foreclosure&>)

Emergency Foreclosure Counseling: National Housing Assistance Hotline (1-888-995-4673); Maryland HOPE Hotline (1-877-462-7555)

For general information on foreclosure and mortgage lending, check out these websites:

- Americans for Fairness in Lending: www.affil.org
- Consumer Federation of America: www.consumerfed.org
- ACORN Housing: www.acornhousing.org
- Center for Responsible Lending: www.responsiblelending.org
- FTC Fact Sheet, "Mortgage Payments Sending You Reeling? Here's What to Do": www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm
- Neighbor Works America's Center for foreclosure Solutions: www.nw.org/network/neighborworksProgs/foreclosuresolutions/default.asp
- Montgomery County Office of Consumer Protection: www.montgomerycountymd.gov/consumer



What's So Great about Community Associations?

Community associations offer one of the best opportunities for Americans to own their own homes. They are for the 21st century what land grants were in the 19th century, and what the New Deal and GI Bill were in the 20th. Why?

Collective Management Protects Value

Americans have accepted, for the most part, the collective management structure of community association living. Covenants and rules are no longer a new concept to most of us; renters are used to lease agreements with restrictions; single-family, detached-home owners are used to zoning ordinances and building codes. The difference is that in traditional, single-family housing, restrictions are administered by public bodies rather than by private boards.

Most Americans have accepted private governance because they understand that collective management and architectural controls protect and enhance the value of their homes.

Privatizing Public Service Allows Growth

Wherever a new community is built, local infrastructures are stretched. School populations, snow removal, storm water management, road maintenance, utilities, traffic, everything increases, leaving the local jurisdiction unable to support new community development. Yet housing is sorely needed. Therefore, local jurisdictions often require community associations to assume many responsibilities that tradi-

tionally belonged to local and state government.

This privatization of public services has allowed local jurisdictions to continue developing needed housing without increasing local taxes. Instead, the developer must build the infrastructure and create an association to maintain it after it's developed.

Community Associations Can Help Make Owning a Home More Affordable

Almost from their inception in the 19th Century, community associations have provided housing for low-to-moderate income Americans. In fact, in some areas, including Montgomery County, builders are required to include a certain percentage of affordable homes in new developments.

Also, converting rental apartments and commercial buildings into condominiums not only revitalizes many decaying neighborhoods, it's also made ownership more affordable for those waiting to live in urban centers.

Community associations have made home ownership possible for millions of Americans partly because 21st century families tend to be smaller, the number of single parent homes has increased, and more retirees are staying in their homes after retirement.

Community Associations Minimize Social Costs

Community associations also minimize social costs. Because they have mandatory covenants that require certain obligations from homeowners and the association, associations ensure that all who benefit pay

their share and everyone is equally responsible. Community associations have enforcement authority that is comparable to that of local governments, and seldom need to resort to government intervention to resolve their disputes. Many associations also use some sort of alternative dispute resolution mechanism because it's a faster and cheaper way to solve problems than legal action.

Community Associations Make the Market Efficient

Many community associations—especially condominiums—have greatly reduced urban sprawl. Because of their collective management and protective covenants, they are precisely what the Housing Act of 1949 intended when it called for "decent home(s) and suitable living environments." Community associations, as alternatives to traditional single-family homes, are shining examples of free-market efficiency.

The factors that make community associations great places to live are easily ignored or misunderstood. Critics prefer to look at a few sensational issues instead of the whole picture. But for many community associations are affordable, enjoyable, efficient places to live.

SELECTED SUMMARIES OF CCOC FINAL PANEL DECISIONS



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

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Esprit, A Condominium v. Abrigo, #06-07 (Panel: Thorpe, Gelfound, Negro) (August 22, 2007). The Condo complained that the unit owner had installed a satellite dish without permission next to his air conditioning unit but in the common elements owned by the Condo. The panel noted that under Federal Communications Commission rules, the FCC held jurisdiction over complaints involving owner rights to install satellite dishes on their own property, and therefore the first issue for the Panel was to determine where the dish was located. The panel found that the dish was in fact located on the common elements and that therefore the Panel had jurisdiction to decide the case. The panel found that the Condo rules only gave permission to unit owners to install air conditioning units in the common areas set aside for that purpose and that it never approved the owner's dish. The Panel held that the unit owner was in violation and ordered him to remove the dish from the common elements.

Kauffman v. The Kenwood Condominium, #04-07 (Panel: Stevens, Gramzinski) (October 4, 2007). The unit owner challenged a special assessment totaling \$610,000 imposed by the board on the membership. The owner argued that under the association's rules the board could only charge special assessments if there was a "net deficit", and the Condo had a sizeable positive balance in its reserve funds. The panel upheld the Condo. The evidence showed that for several years the Condo's assessments were too low to pay its operating expenses and the Condo was paying the difference out of the reserve fund. As a result, the reserves fell below the level recommended in the last reserve study which the board had accepted as proper, and the pur-

pose of the special assessment was to bring the reserve fund back up to its proper level as determined by the board with the assistance of the reserve study. The panel ruled that this decision was within the legal discretion of the board.

Boone v. Seneca Knolls Condominium Association, #81-06 (Panel: Fleischer, Gramzinski, Leeds).

The unit owner claimed that the Condo had failed to fix chronic leaks into her unit within a reasonable time and that the contractors it used were incompetent; she asked for an order allowing her to make the repairs with the contractors of her choice. The Condo responded that it had fixed all leaks of which it was aware, that it was not aware of any new leaks or damage, and asked for permission to enter the unit to determine what repairs were now needed. The panel issued two orders, both of which required the unit owner to allow the Condo to inspect her unit and to make emergency repairs if any were needed. However, by the time the unit owner allowed access she had already made the repairs she wanted, so there was nothing for the Condo to inspect. The panel dismissed this part of the case with prejudice as a penalty against the unit owner for violating its orders and not allowing the Condo the chance to gather relevant evidence for the hearing. (Other issues raised were dismissed without prejudice because the CCOC had no jurisdiction over them.)

Decoverly I Homeowners Association v. Kidd, #69-06 (Panel: Shontz, Gannon, Vergagni)

(May 31, 2007). The HOA complained that the lot owners had removed an ornamental balustrade from the front of their home without permission and asked that they be ordered to replace it. The

owners argued that the balustrade caused leaks into their unit and that the HOA allowed other owners to remove balustrades. The evidence showed that the owners suffered repeated leaks into their unit under the balustrade and that their roofing contractor told them he could not guarantee his repairs so long as the balustrade remained in place, so they removed it without seeking permission to do so. After the HOA began to send violation notices the owners attempted to appeal to the board in person but for various reasons they were not given that opportunity before the HOA filed its complaint with the CCOC. The hearing panel found that the homeowners had violated the rules by making changes without permission, but that the HOA bore some responsibility because it failed to take any action to enforce its rules for almost 2 years, and then the board violated its own rules by failing to give the owners a hearing as they requested. The panel deferred a final ruling. Instead, it ordered the HOA to give the unit owners a personal hearing and to report back to the panel. The HOA held the required hearing and settled the dispute with the owners.

Greencastle Lakes Community Association v. Muller, #829 (Panel: Sample, Maloney, Negro) (December 27, 2007) and Greencastle Lakes Community Association v. Baker, #88-06 (Panel: Friedman, Farrar, Gelfound) (December 13, 2007): These decisions are discussed elsewhere in this newsletter in the article "Attorney's Fees and the CCOC".



Useful County Phone Numbers for Common Ownership Communities

Office of Consumer Protection	(240) 777-3636	Stormwater Facility Mgmt.:	(240) 777-7623
Commission on Common Ownership Communities	(240) 777-3766	Department of Permitting Services	
Department of Housing and Community Affairs	(240) 777-3600	Zoning Information	(240) 777-6240
Landlord-Tenant	(240) 777-3609	General Information	(240) 777-1000
Licensing & Registration	(240) 777-3799	Housing Opportunities Commission	(301) 929-6700
Housing Code Enforcement	(240) 777-3785	Human Rights Commission	(240) 777-8450
Cable TV Office	(240) 777-2288	Libraries	(240) 777-0002
Circuit Court	(240) 777-9400	Park and Planning Commission	(301) 495-4600
Community Use of Public Facilities	(240) 777-2706	Police Department (non-emergency)	(301) 279-8000
County Council	(240) 777-7900	Abandoned Autos	(301) 840-2455
County Executive	(240) 777-2500	Community Outreach	(301) 840-2715
Department of Environmental Protection		Department of Public Works & Transportation	(240) 777-7170
		Traffic Operations	(240) 777-2190

FY 2008 Commission Participants (as of December 31, 2007)

Residents from Condominiums/Homeowner Associations:

Charles H. Fleischer
 Antoinette Negro
 Vicki Satern Vergagni, Vice-Chair & Annual Forum Chair
 Clara Perlingiero
 Allen Farrar
 Robert Gramzinski (term expiring)

Professionals Associated with Common Ownership Communities:

Jeff A. Kivitz
 Staci Gelfound, Legislative Committee Chair
 Andrew Oxendine, Education Committee Chair
 Jeffrey R. Williams, Chairman
 Stephen Maloney (term expiring)
 Rick Leeds (term expiring)

Real Estate Sales and Development:

Kevin Gannon
 Harold Huggins (term expiring)
 (1 position vacant)

County Attorney's Office:

Walter Wilson, Esq. Associate County Attorney

Volunteer Panel Chairs:

Christopher Hitchens, Esq.
 John F. McCabe, Jr., Esq.
 Dinah Stevens, Esq.
 John Sample, Esq.
 Douglas Shontz, Esq.
 Julianne Dymowski, Esq.
 Corinne Rosen, Esq.
 Ursula Koenig, Esq.
 Greg Friedman, Esq.

Office of Consumer Protection:

Evan Johnson, Administrator
 Peter Drymalski, Investigator
 Nellie Miller, Investigator
 Kathy Schaeffgen, Aide
 Peggie Broberg, Aide

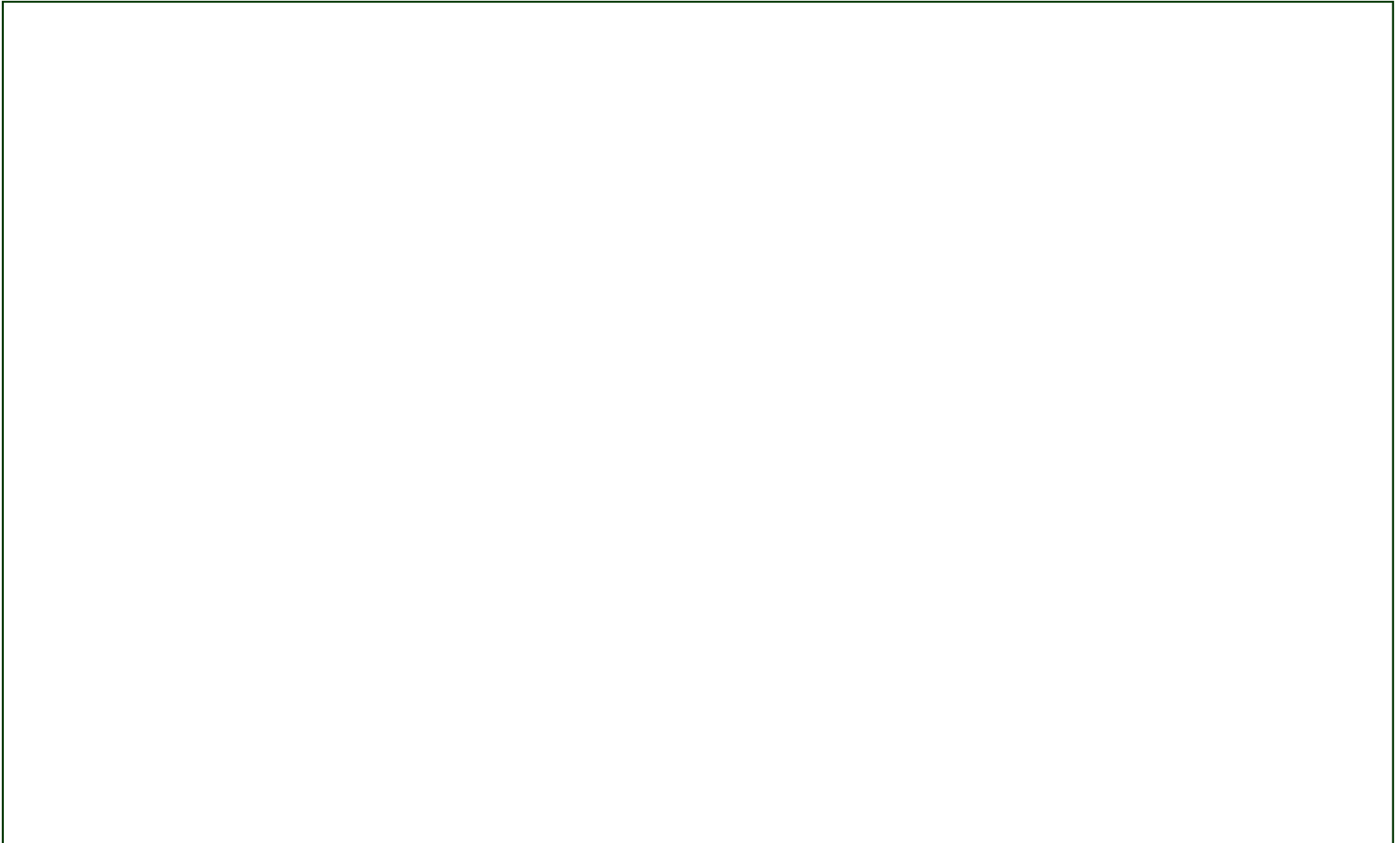


Commission on Common Ownership Communities

100 Maryland Avenue, Room 330

Rockville, Maryland 20850

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 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