MONTGOMERY COUNTY GOVERNMENT
COMMISSION ON COMMON OWNERSHIP COMMUNITIES

Spring 2013

# CCOC Communicator

## CASH AND CASUALTY:

### Who Pays When a Condominium Unit is Damaged?

**By Arthur Dubin and Rachel Dubin Browder, Esq.**

**When an individual condominium unit or the condominium itself suffers damage, who is financially responsible for repairs?**

Unfortunately, there isn't a catchall answer to this question. Instead, identifying the reasonable/responsible party requires consideration of a number of things, including the following: the condominium association's governing documents; the condominium's insurance policy; and the cause of the damage. Navigating these documents, as well as determining the cause of the damage, is not always easy. In that spirit, what follows is a framework communities can use to determine who is financially responsible.

***1) What caused the damage?***

The damage could come from outside or inside the condominium. For example, high winds, lightning strikes, falling trees, earthquakes, and floods can all cause damage to the common areas and to the private units. Such things are called "acts of God." Standard insurance does not cover all of them equally. The damage can also come from the common areas or from private units,

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## CCOC Welcomes Four New Commissioners

County Executive Ike Leggett appointed four new members to the CCOC to replace those whose terms of office have expired.

The new resident members are Marietta Ethier, an attorney and former president of the Parc Somerset Condominium, and Rand H. Fishbein, Ph.D., vice-president of the Maryland Homeowners' Association (MHA).

The new professional members are Aimee Winegar and Terry Cromwell, both of whom are professional managers employed by Community Association Services.

Commissioners Richard Brandes and Elayne Kabakoff were reappointed to second terms.

Retiring from the CCOC are Allen Farrar, Ralph Caudle, Gwen Henderson and Janet Wilson.

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such as roof leaks or faulty water pipes.

***(2) Where did the loss originate?***

**"In many cases, the governing documents will help you determine the scope of the association's duty to make repairs."**

When the cause of the damage is located inside the condominium, consider where specifically the loss came from. The cause will be located in one of these three places: (1) another unit; (2) a limited common element; or (3) a common element.

Under Maryland law, a "common element" refers to "all of the condominium except the units." 1/ One example of a common element is a community swimming pool. Similarly, a "limited common element" refers to "those common elements identified in the declaration or on the condominium plat as reserved for the exclusive use of one or more but less than all of the unit owners." 2/ For limited common elements, communities should refer to their declaration or condominium plat to determine whether the element qualifies. For example, a parking space could be a common element or a limited common element.

Sometimes, determining the source of the casualty loss is difficult. Other times, it's not. For example, you may need to bring in a specialist to determine the source of a water leak or mold infestation.

***(3) What do the governing documents say?***

Second, review the association's governing documents. These documents can help you answer several key questions: (1) who owns what? (2) who is responsible for maintaining what? (3) what types of maintenance, if any, are the association's responsibility? (4) does the condominium have casualty insurance and, if so, what is the deductible?

In many cases, the governing documents will help you determine the scope of the association's duty to make repairs. For example, there may be language in the documents such as this: "*In the event of damage or destruction by fire or other casualty the same shall be promptly repaired or reconstructed . . . with the proceeds of insurance available for that purpose, if any."* There may also be a section limiting the association's responsibility for damage caused to a unit as a result of leaks from the common elements. (But such a limitation might not be legally enforceable when the association was negligent in failing to prevent the leak. For example, in *Prentice v. Sierra Landing Condominium,* CCOC No. 15-08, the CCOC held that a bylaw waiving liability for leaks did not protect the condominium from liability for damage to improvements installed by the unit owner when the facts showed the condominium was negligent in preventing the leaks. Moreover, such a clause may now be inconsistent with Section 11-114(g) of the Condominium Act, which imposes a duty to repair and does not exempt water leaks.) The documents may also indicate who is responsible for paying the deductible. They also may identify the responsible party in the event of negligence. Unfortunately, sometimes the language in the governing documents may be conflicting or vague and, sometimes, the documents don't address an issue at all.

***(4) Is the loss an insured event?***

After taking a look at the association's governing documents, turn to your association's master insurance policy. The policy should tell you whether it covers the cause of the damage and the damage itself. For example, a leak might be covered, but the mold caused by the leak might not be covered. You will also want to know what portion of the loss the insurance company will cover.

The insurance your association provides will most likely mirror what your governing documents require, possibly with exceptions for depreciation, code changes, negligence, improvements, and residents' personal property.

As explained in greater detail below, if the loss is not a covered event under the master policy, it is possible that the council of unit owners could still be responsible for repair or replacement costs.

***(5) Who must make the repairs?***

*a) the Anderson case and the Legislature's reaction*

If the loss is an insured event, the association may or may not be responsible for paying the deductible. This issue has come up in recent court cases, due at least in part to the fact that the law in Maryland has recently been amended, and it is being interpreted in at least two different ways by experts.

In *Anderson v. Council of Unit Owners of Gables on Tuckerman Condo.*, 404 Md. 560, 591 (2008), Maryland's highest court ruled that the Maryland Condominium Act ("the Act") did not require the council of owners to repair or replace property of an owner in an individual unit after a casualty loss. In that case, Ms. Anderson's own hot water heater burst and flooded her unit.

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# CCOC Rules that Board President Must Place the Association's Interests Above His Own and Cannot Benefit from Errors that He Allows His Association to Make

In a recent decision, a split (2-1) CCOC hearing panel rendered an important decision on the duties that board members to their associations.

After the president of an HOA's board of directors applied for, and received, permission to install a deck on his new home, he altered the design of the deck to include the installation of several "privacy panels" on a portion of the deck. These panels were 8 feet tall and of solid wood markedly different from the rest of the deck. He did not request permission for the change, which was a violation of the HOA rules. After some neighbors complained about the panels, the board discussed the matter at an open meeting. At that meeting, the president made an oral request for permission to keep the panels, although the HOA's rules required written change applications signed by neighbors. After a lengthy discussion of the application, during which most of the comments about the panels were critical of them as unsightly, the board voted on the application. Although the president voted to allow his own oral application, the request was rejected by a vote of 5 to 2.

Shortly thereafter, the HOA sent a letter to the president confirming that the application for the panels was denied and telling him to remove them. The notice did not state why the application was denied.

**"A director must endeavor to act in the best interest of the community, and this means he must place the association's interests above his own private interests."**

The HOA's Declaration of Covenants, as well as its Architectural Guidelines, stated that the HOA must act on an architectural application within 60 days or it is deemed approved. In addition, a separate rule in the Guidelines (but not found in the Declaration) stated that the HOA must state a reason for its denial of an application, and also stated that if the reason was not clear, the homeowner involved could ask for clarification.

On the 61st day after submitting his oral application for the panels, the president wrote to his board stating that because the board did not give a reason for its rejection of his application, the application was deemed approved under the Guidelines. When the board rejected this letter, the president filed a complaint to the CCOC.

The panel majority ruled that the HOA's failure to state a reason for its rejection within the 60 day deadline did not result in automatic approval of the application. The terms of the Declaration and the relevant guideline only applied the deadline to the board's failure to act on an application. The requirement to state a reason was in a separate guideline which did not state any automatic penalty. In addition, that guideline allowed the applicant to request clarification of the reason for the rejection, and the president did not exercise that right.

The panel then ruled that the president was not harmed by the HOA's failure to state a reason, since he already knew why the board rejected the panels, and in addition he was not entitled to complain about the HOA's mistake. The panel noted that the president had repeatedly violated the rules of the HOA, and his conduct showed a lack of good faith.

In particular the panel majority concluded that the president knew of the guideline that required the HOA to state a reason, and that he intentionally allows the 60 day deadline to pass without notifying the rest of the board that he believed the board had to state its reason in writing. Thus, he allowed his own HOA to make a mistake and then tried to take advantage of that mistake for his own personal benefit.

The panel wrote that it did not expect board members would never act in their own personal interests, and it recognized that board members will often have both group interests and private interests at the same time.. But, it went on, "if the fiduciary duty of a director is to mean anything at all, it must mean that the director endeavor to act in the best interest of the community, and this means he must place the association's best interests above is own private interests. If he cannot do so, he must resign."

"As a member of the Association's Board, [he] had a fiduciary interest to help ensure that the Association properly followed its own rules. He also had a duty to prevent the Association from either taking action or failing to take action when he knew that the Association would violate its own rules as result. He attempted to benefit directly from a mistake that he allowed his own board to make. This was self-dealing on his part. This panel declines to tolerate or excuse such behavior by a director of a common ownership community."

The panel ordered the president to remove the panels, and went on to order the president to reimburse the HOA for $8542 as its reasonable attorney fees in the dispute. County law allows the CCOC to award attorney fees to the winning party if those fees are required by the Association's governing documents. In this case the documents stated that if the HOA had to take legal action to enforce a rule, then the member in violation of a rule had to pay the HOA's costs for the action, including its legal fees. (The decision has since been appealed to the Circuit Court.)

*Kessler v. Leaman Farm HOA,* #02-12 (February 25, 2013)

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Her homeowners insurance paid the claim and then tried to get reimbursed from the condominium's master insurance, citing Section 11-114. According to the Court, however, although the law imposed a duty on the council of unit owners to maintain insurance on the entire property, it only required the council to repair or replace damage to the common elements, not to private units. 3/

**"The law now provides that "*any portion of the units damaged or destroyed shall be repaired or replaced promptly by the council of unit owners.*"**

The Maryland General Assembly was not a fan of the Court's opinion in *Anderson*. Indeed, just a few months after the Court issued its decision, the Legislature amended Section 11-114, explaining that "it is the intent of the General Assembly that this Act . . . [o]verturn the Court of Appeals ruling in . . . *Anderson*," and "[p]lace an affirmative duty on the council of unit owners of a condominium association to . . . [r]epair damage or destruction to the condominium that originated in a unit."4/ Among other things, the amendments made clear that the word "condominium" included both the common elements and the private units. Therefore, the association has a duty to repair damage or destruction to the common elements and to the private units. The language quoted above to preface the 2009 amendments is included in the official notes that are part of the Maryland Code and must be seriously considered when interpreting the law. At the very least, that language seems to show that the General Assembly disagreed with the entirety of the *Anderson* decision and that it cannot be used as a precedent.

So what does the amended law actually look like now? The law provides that *"[a]ny portion of . . . the units . . . damaged or destroyed shall be repaired or replaced promptly by the council of unit owners,"* subject to four exceptions: (1) improvements installed by unit owners; (2) termination of the condominium; (3) unlawful repairs; and (4) a vote not to rebuild.5/ Additionally, the law contains an implied fifth exception based on its reference to "[a]ny portion of the units": damage to an owner's personal property. By definition, personal property is not part of a unit. 6/

The law also addresses who is responsible for paying any costs not covered by the deductible. If the association was created after 1982,7/ the council of unit owners' deductible is a common expense if the cause of the damage comes from the common elements.8/ If the damage originates from a unit, the owner of the unit where the damage originated is responsible for the deductible up to $5,000.9/ The remaining portion of the deductible (i.e., more than $5,000) is a common expense that must be paid by the association.10/

*b) Is the duty to repair limited to damages covered by insurance?*

Although it is clear that the current version of Section 11-114 places an affirmative duty on the council of unit owners to repair or replace damage to the common elements and private units in certain situations, a debate has arisen regarding the scope of this duty: does the law require associations to repair damage *only if* the damage is covered by the master insurance policy or, alternatively, does it require associations to repair damage in private units caused by a casualty, *whether or not* the loss is covered by the master policy?

As a general matter, those who argue that associations are only required to foot the bill for covered losses assert that, because the law regulates insurance, it doesn't cover damage excluded from insurance policies. Proponents of this view rely in part on section 11-108.1 of the Act, which provides that "subject to Section 11-114," the association is responsible for maintenance, repair, and replacement of the common elements, while each unit owner is responsible for maintenance, repair, and replacement of his unit.11/ Most of Section 11-114 deals with requirements of master insurance – subsections (a) through (f) and subsection (h) – and the allocation of repair costs not covered by the insurance deductible or the distribution of insurance proceeds not used for repairs – subsection(g)(2) to (g)(4). They assert that, when reading sections 11-108.1 and 11-114 together, it is clear that an association's responsibility to pay for repairs to a unit under 11-114 does not kick in unless the damages are covered by the master insurance policy. If the damages aren't covered and, by extension, section 11-114 does not apply, section 11-108.1 carries the day: the association will pay for repairs to the common elements, and the individual unit owner will pay for repairs to the unit.


The opponents of a general duty to repair go on to point out that the only part of Section 11-114 that imposes a duty to repair private units is subsection 11-114(g). Although (g)(1) states broadly that "any portion of the common elements and the units . . . damaged or destroyed shall be repaired or replaced promptly by the council of unit owners," subsection (g)(2) states that the cost of such

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repairs "in excess of insurance proceeds and reserves" is a common expense, meaning that the association must foot the bill. It also states that "a property insurance deductible" is *not* always a common expense because the first $5,000 of any repair costs not covered by the insurance deductible is the obligation of the unit owner whose unit was the source of the damage to pay. These references to costs "in excess of insurance proceeds" or which are not covered by the "insurance deductible" imply that the intent of the law is to apply the duty to repair private units only to situations in which the damage falls under the coverage of the master insurance policy, but that coverage is either insufficient (the cost of repair is "in excess of insurance proceeds") or the cost of repairs is low enough to be excluded by the policy (not covered by the "insurance deductible").

Moreover, the law explicitly gives the association the right to pass on the first $5,000 of repair costs to the unit owner responsible when those costs are not covered by the deductible. The implication the "insurance only" advocates draw is that the association cannot pass on those costs *unless* there is a deductible. And, they go on, there cannot be a deductible if there is no insurance. Therefore, the condominium's duty to repair only exists if the damage is covered by insurance.

Finally, the "insurance only" proponents claim that to require the association to make repairs to private units at its own expense conflicts with Section 11-108.1, which, as we have seen, states that unit owners must maintain and repair their units at their own expense. In effect, their position is that 11-114(g)(2) limits the scope of 11-114(g)(1).

*c) Does the association have an unconditional duty to repair private units?*

On the other side are those who point to the actual words of the law:

> **11-114(g)(1): Any portion of the common elements and the units, exclusive of improvements and betterments installed in the units by unit owners other than the developer, damaged or destroyed shall be repaired or replaced promptly by the council of unit owners . . .**

And they argue that the issue is simple because the law means exactly what it says, no more and no less: *"[a]ny portion of . . . the units . . . damaged or destroyed shall be repaired or replaced promptly by the council of unit owners."*12/ The law contains 4 explicit exceptions , none of which excludes damage not covered by the master insurance policy. No grammatical or logical gymnastics are necessary to interpret this plain language.

***THIS IS THE END OF PART ONE OF THIS ARTICLE. IT WILL BE CONTINUED IN THE SUMMER NEWSLETTER.***

**(Arthur Dubin, CPM, PCAM, CMCA, is the President of ZALCO and the Vice Chairperson of the CCOC. His daughter, Rachel Dubin Browder, Esq., is an associate with The Kaiser Law Firm and a volunteer panel chair for the CCOC. The opinions they express are their own and do not necessarily reflect the opinions of the CCOC.)**

**FOOTNOTES:**

1. Md. Code Ann., Real Prop. Section 11-101)(c)(1).
2. Md. Code Ann., Real Prop., Section 11-101(c)(2).
3. *Anderson,* 404 Md. at 577-78.
4. REAL PROPERTY—CONDOMINIUMS—INSURANCE COVERAGE, 2009 Maryland Laws Ch. 523 (H.B. 287).
5. Md. Code Ann., Real Prop. Section 11-114(g)(1).
6. Md. Code Ann., Real Property Section 11-101(q) (defining a "unit" as "a three-dimensional space identified as such in the declaration and on the condominium plat," including "all improvements contained within the space except those excluded in the declaration").
7. If the association was created before 1982 and its bylaws contain a different insurance plan, its bylaws, and not these amendments, will control.
8. Md. Code Ann., Real Prop. Section 11-114(g)(2)(ii).
9. Md. Code Ann., Real Prop., Section 11-114(g)(2)(iii)1.
10. Md. Code Ann., Real Prop., Section 11-114(g)(2)(iii)3.
11. Md. Code Ann., Real Prop., Section 11-108.1.
12. Md. Code Ann., Real Prop., Section 11-114(g)(1).

## Board President Cannot Adjourn Election Without Vote of Members Present

Although a quorum of members appeared at the HOA's annual election, the board's president, acting on his own initiative, adjourned the election indefinitely before any vote could be taken. The president explained to the members present that he had received complaints that some voters had been intimidated by other members who were out canvassing for one of the candidates, and that he thought the same candidate's election materials were unfair. He also said that he had doubts that the proxy ballots submitted by the candidate were proper. He said he wanted to investigate these issues further before an election could take place.

The CCOC hearing panel ruled that these actions were improper. The HOA's Bylaws stated that the HOA must call and conduct an annual election, and that if there is no quorum, the members present in person or by proxy may vote to adjourn the meeting and reconvene it at another time. In addition, standard parliamentary procedure, as laid out in *Roberts Rules of Order,* requires the members present at a meeting to vote on a motion to adjourn, and also states that unless a time for a reconvened meeting has already been set, a motion to adjourn is out of order while other business is pending. The panel concluded that the president acted beyond his authority when he took it upon himself to adjourn the election.

**"Standard parliamentary procedure requires the members present at a meeting to vote upon a motion to adjourn, and also states that unless a time for a reconvened meeting has already been set, a motion to adjourn is out of order while other business is pending."**

The panel also reviewed the president's excuses for adjourning the meeting. It found that he failed to back up any of his claims about voter intimidation. The proxy ballots used by the candidate were no different from those officially approved by the board of directors except that the names of the candidates were checked off, and Montgomery County law provides that the board must have a good reason for rejecting a proxy created by one of the candidates. Finally, the fact that election materials might be unfair is not a good reason for failing to comply with the HOA's duty to conduct an annual election.

The panel rejected the homeowner's request to remove the president from office, on the grounds that the CCOC's jurisdiction is only over an association as a legal entity and it does not have authority over the individual members of the board of directors. Members of an HOA have the right under the governing documents to remove a director from the board, however. The CCOC ordered the HOA to hold a new election within 30 days, to refund to the prevailing homeowner his $50 filing fee, and to give a copy of its decision to every member of the association.

The case is *Tanouye v. Decoverly I HOA*, #19-12 (March 21, 2013) (Panel: Rosen, Whelan, Wilson).

## Member Who Challenges Board's Decision Not to Take Action Against a Neighbor on Noise Complaint Must Prove Bad Faith

The CCOC has no authority to accept complaints by one member of an association against another members. Members or residents who have disputes with their neighbors that involve violations of the association's rules must first take them to the board of directors for a decision, and if the decision is unfavorable, the complaining party can then file a complaint with the CCOC against the association. In such a case, the CCOC's authority is limited to reviewing whether or not the board acted within its authority and whether the board acted in good faith. The board must act: it cannot ignore a complaint from a member.

In a case where a resident filed complaints with the board about noises from the unit upstairs, the board held a hearing, took testimony from the complainant and her sisters, from the landlord of the upstairs unit and from the tenant living there. The board ruled that the noise was not excessive. The CCOC upheld the board, stating that it was the legal duty of the complainant to prove not only was there noise that bothered her but that the noise amounted to a public nuisance, that is, was so loud that ordinary reasonable people would find it excessive. She did not show that the board acted in bad faith or that it had no evidence to support its decision, and since she did not do so, the board's conclusion that the noise was not excessive was a reasonable one, within its legal authority to make. The panel dismissed the complaint. *Taylor v. Heritage Green Condominium Association,* #16-12 (January 18, 2013) (adopting recommended decision from the Office of Zoning and Administrative Hearings).

## Condominium's Duty to Repair Damage Overrides Governing Documents

When the owner of a condominium unit noticed a water leak in the ceiling, she called the manager, who sent a plumber. The plumber opened the ceiling and found a leak in a water pipe that served only that one unit. He fixed the leak and the association then sent in a contractor to fix the damage to the ceiling. The bill for these repairs amounted to $891.

**"The statutory duty (under Section 11-114(g)) to make repairs overrides the provisions of the bylaws, consequently no vote of the board or prior notice to the unit owner are required."**

The unit owner refused to pay on the grounds that the bill was excessive and that she was not given the opportunity to bring in her own contractor who could do the work at a lower price.

The hearing panel agreed that the bill was excessive, because it included a charge of $200 for a missed appointment by the unit owner, but there was no evidence that any appointment had been agreed to which she missed. The panel deducted that charge.

The panel also noted that the association's bylaws only allowed the association to enter a unit to make repairs upon a vote of the board to do so and only after prior notice to the unit owner. In this case the board did not conduct such a vote and did not give prior notice to the unit owner. However, the panel upheld the board.

In this case the owner herself requested that the association make the repairs. In addition, Section 11-114(g) of the Maryland Condominium Act states that whenever a unit is damaged, it is the duty of the association to repair the damage, and that if the cost of the damage is less than any insurance deductible, the condominium can bill the owner of the unit that caused the damage for the first $5000 of any repair costs excluded by the deductible. This statutory duty overrides the provisions of the bylaws, consequently, no vote of the board or prior notice to the unit owner are required.

The panel ordered the unit owner to pay $691 as the reasonable costs of repair to her unit.

*Ortega v. Key West Condominium Ass'n.*, #07-12 (January 9, 2013) (Panel: Fleischer, Coyle, Henderson).

## CCOC in the Courts

Judges of the Montgomery County Circuit Court ruled in favor of the CCOC in three recent cases.

The homeowner's appeal of the CCOC ruling in *Kim v. Decoverly I HOA* (#56-11), in which a CCOC hearing panel ruled that a sensitivity to mosquito bites did not constitute a "disability" under the Fair Housing Act, was dismissed because the homeowner failed to obtain and file a transcript of the hearing at her own cost, which is required by the court rules for appeals from administrative agency decisions.

In the appeal of *Glenn v. Park Bradford Condominium Association,* No. 29-11, the Court held a hearing at which both parties presented their cases, and then ruled in favor of the CCOC, finding it had correctly applied the law and that its findings of fact were well supported by the record in that case.

Finally, in an unusual setting, the Circuit Court refused to issue an order that would have required the CCOC to halt its proceedings in a case then pending before the CCOC. The HOA had filed a complaint against one of its members with the CCOC to force the member to stop construction of changes to his house that it had not approved. A few days after the HOA filed its CCOC case, the homeowner sued the HOA in the Circuit Court, and asked the Court to order the CCOC to suspend proceedings in the CCOC case so that the disputes could be decided by the Court, not the CCOC. The judge refused to grant the motion and dismissed the Circuit Court action. The case is *Peter and Michael Ball v. Potowmack Preserve, Inc.,* Circuit Court No. 372523V (order of dismissal entered April 12, 2013).

## Annual Notice Reminder


We remind all associations and their managers that County law requires all associations to give notice to their members at least once a year about the CCOC and the services it provides. We offer two sample notices for your convenience—a long form (full page) and a short form (half page). To obtain a copy, please email us at *ccoc@montgomerycountymd.gov*.

# County Encourages Associations to Hire Certified "Green" Landscaping Contractors

The County's Department of Environmental Protection (DEP) has expanded its "Green Business Certification" program to include landscaping contractors. This is good news for common ownership communities and their managers because it makes it much easier to identify an environmentally responsible landscaper who is also up-to-date on good landscaping practices.

**Certified Green Landscapers** not only "green" their own operations but know how to help their clients learn new ways to save money and practice beneficial property management. For example, Green Landscapers can show you how to:

*reduce or eliminate the use of pesticides, herbicides and fertilizers

* plant canopy trees to provide shade and reduce the need for mowing and watering

* install rain gardens to capture and filter storm water and runoff from roof gutters

* reduce the size of areas to be mowed

* save water otherwise used for landscaping purposes

* create landscaping that will conserve energy and water.

The first contractors to be "Green Certified" are The Abundant Backyard, AIR Lawn Care, Backyard Bounty, the Brickman Group, Gracefully Green, and the Green Scene Landscaping Co.

DEP will host a seminar on green property management practices and the Green Landscape Business Certification Program on **Tuesday, June 25, 2013 from 6:30pm to 8:30 pm** at the Executive Office Building in Rockville (Lobby Auditorium, 101 Monroe St.). Association members and managers are welcome to attend.

# East County Regional Center Available to Assist Communities

Miti Figueredo, Director of the East County Regional Services Center at 3300 Briggs Chaney Road, Silver Spring, would like homeowner and condominium associations in the East County area to know she welcomes the opportunity to speak to them about the services the Center can provide and to learn about any issues that concern them.

The Regional Center is a link to the County Executive's Office, the County Council, and the various County departments and agencies. It assists individuals, businesses, and community associations.

The Center's service area includes Cloverly, Fairland, White Oak, Colesville and Burtonsville.

For more information, call Ms. Figueredo at 240-777-8414.

# Office of Zoning and Administrative Hearings to Hear Some CCOC Cases

The CCOC has begun to refer cases to the County's Office of Zoning and Administrative Hearings (OZAH) for hearings. Under this procedure, once the CCOC votes to accept jurisdiction of a dispute, it can then vote whether to hold the hearing on that dispute itself or refer it to OZAH for the hearing.

If the CCOC refers a dispute to OZAH, that office will appoint a hearing officer, who is also an attorney. The hearing officer will apply all the rules and regulations that a CCOC hearing panel would apply. The officer will also conduct the formal hearing the same way the CCOC would, and after the hearing the officer will prepare a detailed recommended decision.

The CCOC will appoint a 3-member panel to review the recommended decision. The CCOC panel can accept, reject, or modify the OZAH recommended decision, which is not binding until the CCOC panel approves it. The parties to the dispute will have to right to offer comments on the recommended decision for the panel to consider.

CCOC plans to use this procedure only when it cannot hear the case itself in a timely manner because of a shortage of panel members, or when a CCOC member is a party to a dispute.

# Useful County Phone Numbers for Common Ownership

Most County Government agencies may now be reached by phone by dialing "311" during ordinary business hours. The operator will then refer the caller to the proper agency. This service includes non-emergency Police services such as reporting abandoned cars and community outreach, Libraries, the Circuit Court, Landlord-Tenant Affairs, Housing Code Enforcement, the Office of the County Executive, Cable TV regulation, the Department of Permitting Services and the Department of Transportation.

Some County agencies may be called directly or through 311, including:

| | | |
|---|---|---|
| Office of Consumer Protection | 240-777-3636 | (email: **ocp@montgomerycountymd.gov**) |
| CCOC | 240-777-3766 | (email: **ccoc@montgomerycountymd.gov**) |
| County Council | 240-777-7900 | |
| Parks & Planning Commission | | |
| Planning Board | 301-495-4605 | |
| Parks Headquarters | 301-495-2595 | |

City of Rockville: residents should still call their City agencies directly.

Emergency services: 911

For more information on the 311 system or to search for agencies by computer, go to:

**Http://www3.montgomerycountymd.gov/331/Home.asp**

# FY 2013 Commission Participants (as of June, 2013)

*__Residents__ from Condominiums/Homeowner Associations:*

Elizabeth Molloy, Chairperson
Jim Coyle
Marietta Ethier
Rand Fishbein
Bruce Fonoroff
Elayne Kabakoff
David Weinstein
Ken Zajic

*__Professionals__ Associated with Common Ownership Communities:*

Arthur Dubin, Vice-chairperson
Mitchell Alkon
Richard Brandes
Terry Cromwell
Thomas Stone
Helen Whelan
Aimee Winegar

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 Burgess, Esq.
Greg Friedman, Esq.
Charles Fleischer, Esq.
Nicole Williams, Esq.
Rachel Browder, Esq.
Jennifer Jackman, Esq.
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# Legislative Report from Annapolis

The 2013 General Assembly failed to reach an agreement on two of the most important issues pending before it that affect common ownership communities—manager licensing and liability for pit bulls. While the concept of regulating professional property managers was not controversial, there was disagreement over the details of that regulation and even more disagreement over how it was to be paid for.

Although both the House and the Senate passed legislation concerning liability for injuries caused by pit bulls, they did not agree on the all the issues, and so none of the proposals passed both houses. The result is that the 2012 decision of the Court of Appeals in *Tracey v. Solesky* (CCOC Communicator, Fall 2012) remains in effect, and common ownership communities are liable for injuries caused by pit bulls that the communities know are living in the community even if the dog has not previously been known to be dangerous.

The Assembly did pass HB 388. This law allows the boards of directors to hold

closed meetings to discuss contacts that are still in the negotiation stage if the disclosure of the terms of the contract could have a negative effect on the economic interests of the association. The HOA Act already has this provision.

The Assembly also passed HB 286, a law to limit the amount of attorney fees and costs that a common ownership community can collect when it forecloses on a lien it has obtained under the Contract Lien Act. Foreclosure on such a lien is not allowed if the lien is only for costs, fines or attorney fees.

In addition, the allowable amount of such fines, costs and attorney fees cannot be greater than the amount of the unpaid assessments due under the lien.

It should be noted that this bill applies only to the *foreclosure* of Contract Liens. It does not apply to the liens themselves, so a lien can be filed in the land records even though the amount of the attorney fees and costs is greater than the amount of the unpaid assessments. It also does not affect debt collection lawsuits.

Also becoming law is HB 88, which is intended to encourage the refinancing of mortgages on terms that are more favorable to homeowners. The law allows the new mortgage to have the same priority as the mortgage it replaces. However, the law does not affect liens filed by associations under the Contract Lien Act. As a result, such liens will either have priority over the new mortgage in the event of a foreclosure or sale, or will have to be paid off as part of the refinancing.