



CCOC COMMUNICATOR

COUNCIL PASSES BILL 50-15; BUDGET DECISIONS NEXT



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On April 5, 2016, the County Council unanimously adopted an amended version of Bill 50-15. It will become law on July 13, 2016.

In the last *CCOC Communicator* (Fall 2015), this newsletter reported on the introduction of Bill 50-15 in the Montgomery County Council. The Bill was proposed by County Executive Leggett. The bill proposed to:

- ◆ transfer the duties currently assigned to the Office of Consumer Protection (OCP) to the Department of Housing and Community Affairs (DHCA);
- ◆ make mediation of certain disputes regarding common ownership communities mandatory;
- ◆ alter the composition of the three-member hearing panels;
- ◆ alter the composition of the CCOC to include members of the public;
- ◆ provide for certain transition matters; and
- ◆ generally amend County law on common ownership communities.

The original bill was a response to a report by the Council’s Office of

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Legislative Oversight (OLO) early in 2015. Although generally favorable to the CCOC, the report suggested that the dispute resolution process was becoming too complex and taking too long. OLO concluded that the CCOC was underfunded and understaffed and recommended increases in both in order to help it meet its mandates under County law. It also suggested relocating the CCOC to DHCA because DHCA could provide more support and because CCOC and DHCA share a commitment to preserving and enhancing good housing conditions in the County.

After much debate, the CCOC voted to oppose the entire bill on the grounds that the proposed changes were unlikely to improve or to simplify the current dispute resolution process. The CCOC also opposed the transfer to DHCA out of concern that the CCOC might have less visibility and influence.

When the bill was introduced, it attracted wide attention from common ownership communities, and the Council staff's report summarizing the comments and recommending its own changes to the bill ran to more than 170 pages. Most of the comments from the public were critical of proposals to change the composition of the CCOC and to compel mediation in all disputes.

Following a thorough review of all the comments and the advice of its own staff, the Council made several amendments to the bill before adopting it. As adopted, the bill now:

- ◆ Transfers the duties currently assigned to OCP to DHCA;
- ◆ Requires the DHCA staff to attempt to resolve all disputes through informal negotiation or, at the DHCA director's discretion, mediation*;
- ◆ Provides that if the DHCA director requires mediation, the party that refuses to attend can be penalized. If the refusing party is the complainant, the DHCA director must dismiss the complaint without a hearing. If the refusing party is the respondent, the dispute will be referred to the CCOC for a decision, and the responding party will not be allowed to attend any hearing to defend itself;
- ◆ Retains the current composition of the CCOC (8 residents and 7 professionals);
- ◆ Provides that volunteer panel chairs cannot represent any parties in disputes before other CCOC hearing panels; if no volunteer panel chairs are available the CCOC can appoint one of its own members to be the panel chair;
- ◆ CCOC Commissioners must also take the training class required of all association directors under Bill 45-14 (which went into effect January 1, 2016) and additional training on State and local laws on matters within the CCOC's jurisdiction.

The new law is available at the County Council's website under "Legislation" as a pdf version of the enacted bill: http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2015/20160405_50-15.pdf

* As understood and applied by the CCOC in the past, "mediation" means a meeting between the parties with the assistance of a neutral third party in order to attempt to voluntarily resolve the parties' disputes. The mediator is not a judge, and the mediation is not a trial. [Ed.]

County Executive Proposes Budget, Fee Increase for CCOC

In his Fiscal Year 2017 budget for the County's Department of Housing and Community Affairs, County Executive Ike Leggett (right) proposed substantial additions to the current CCOC budget. The proposed budget would add two new positions to the CCOC staff and additional funds to improve the CCOC's technological resources. This budget request is supported by a newly proposed Executive Regulation that will raise the annual registration fee for community associations from its current \$3 per unit to \$5 per unit. It is expected that the new fee will raise up to \$675,000 in revenues, which currently are approximately \$400,000. CCOC expenditures will be \$551,000 according to the proposed budget.



The CCOC's section of the proposed budget is found on page 62-7, and the budget itself is online at

http://www.montgomerycountymd.gov/OMB/Resources/Files/omb/pdfs/fy17/psprec/MCG_FY17_REC_BUDGET.pdf

The proposed Executive Regulation is number 03-16, and is online at the Montgomery County Register at <http://montgomerycountymd.gov/exec/Resources/Files/3-16%281%29.pdf>

About Those Surveys . . .

In January, 2016, the Department of Housing and Community Affairs (DHCA) sent out its annual survey to all registered community associations. This survey gathers information about the Board of Directors and the rental units in each common ownership community. At CCOC's request, additional questions were made part of the survey in order also to obtain information regarding the financial health of each community.

Communities should see DHCA's effort as one that can assist them to better regulate their own operations. Unlicensed landlords are frequently members who have not bothered to obtain association approval for their rentals. DHCA can help associations control unapproved rentals because it can take enforcement action against unlicensed landlords. Associations that have problems with unapproved rentals should contact DHCA for assistance.

The survey on communities was revised at the CCOC's request. CCOC wishes to begin gathering hard data on the health and value of the County's community associations in order to support more effectively proposals to assist them through new legislation and other actions. The annual surveys may change every year so that the CCOC and DHCA can create a comprehensive and up-to-date picture of our communities, their problems, and the great value that they contribute to the County.



ESSENTIAL DOCUMENTS IN THE DEBATE OVER BILL 50-15

Bill 50-15 is the latest development in the County's ongoing review of the CCOC. The Bill is the result of a report issued a year ago by the County Council's Office of Legislative Oversight (OLO). The report found that many of the CCOC's programs were well-received. However, the report also found that although the CCOC's dispute resolution program was a valuable contribution, it was too long and too complicated. The report did not suggest any specific changes to the dispute resolution program. It did, however, conclude that the CCOC was under-funded and under-staffed. OLO presented the report to the County Council in February, 2015. The County Executive provided a reply to the OLO report. Bill 50-15, introduced in December, 2015, reflects the OLO recommendations.

The OLO report is available through its website: www.montgomerycountymd.gov/olo/

The report itself is #2015-8, online at:

http://www.montgomerycountymd.gov/OLO/Resources/Files/2015_Reports/OLOReport2015-8CommissiononCommonOwnershipCommunities.pdf

The joint report of the Public Safety Committee and the Planning, Housing and Economic Development Committees offering amendments to the bill is available at

http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2015/Packets/20160405_13D.pdf

and the law as passed is available at

http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2015/20160405_50-15.pdf

CCOC's Current Panel Chairs

Although the CCOC has lost half of the attorneys who have served as its volunteer panel chairs (see article on page 5), those who remain are also well-qualified and highly dedicated. At this time, they are:

R. Jerome Anderson

Rachel Browder

Greg Friedman

Douglas Shontz

Hon. Bruce Birchman

Charles Fleischer

John Sample

Dinah Stevens

Many of these attorneys have full-time law practices. All of them devote many hours of their time to the CCOC and the citizens of the County. They are expected to be familiar with the case and to decide all prehearing disputes, to conduct the hearings, perform legal research as necessary, and write what are often lengthy decisions on the facts and relevant laws of the dispute.

Walter Wilson, Associate County Attorney, assists them in their work, including the final review of their written Decisions & Orders.

The panel chairs' decisions are organized and summarized in the CCOC's online *Staff's Guide to the Procedures and Decisions of the CCOC*.

The CCOC and the Ethics Commission

Part of the justification for Bill 50-15's proposals to change the membership of the CCOC and to abolish its use of volunteer lawyers as hearing panel chairs referred to a recent opinion of the County's Ethics Commission on the topic. Although the County Council did not adopt those proposals, it did adopt a restriction limiting the type of attorneys whom the CCOC could use as volunteer chairpersons.

By way of background, Chapter 10B, as originally adopted in 1991, required the CCOC to use experienced mediators as chairs of its hearing panels. That law is still effective. The CCOC has generally interpreted the law to allow it to use lawyers as its panel chairs. All of the lawyers have been local attorneys who offer their time and expertise without pay. Most CCOC commissioners have not been lawyers, and many of those who were lawyers did not practice in the specialized field of community association law. In compliance with the law, the CCOC approved applicants to serve as panel chairs. This practice was followed for over 20 years.

Some of the volunteer panel chairs routinely practiced community association law, and also represented clients who appeared before the CCOC. The Code of Ethics of the Court of Appeals of Maryland regulates the practice of law and prohibits conflicts of interest, and the CCOC expected its volunteer lawyers to comply with those standards and to disqualify themselves from serving on any hearing panel in which they might have a conflict of interest. The CCOC also allowed the parties to any dispute to ask to have any panel member disqualified if the party could show a conflict of interest by that panel member.

However, in 2014, the County's Ethics Commission advised the CCOC that its use of attorneys who also practiced before the CCOC could possibly result in a conflict of interest. The Ethics Commission did not find that any panel chair actually had had a conflict of interest, but it was concerned to avoid that possibility in the future. The rulings can be found here:

<http://www.montgomerycountymd.gov/Ethics/Resources/Files/pdfs/CCOC%20Disposition%20FINAL.pdf>

<http://www.montgomerycountymd.gov/Ethics/Resources/Files/pdfs/AO15-08-011.pdf>

The Ethics Commission's advice did not affect all of the CCOC's volunteer panel chairs, but only those who practiced before the CCOC. At the time of the ruling, about half of the volunteer attorneys did practice before the CCOC. The CCOC immediately stopped referring cases to those attorneys even though it did not agree with the ruling, and the CCOC has complied with the ruling ever since. Bill 50-15, as passed by the Council, makes the Ethics Commission's position into law, and the CCOC will comply with that law.

The CCOC owes a deep debt of gratitude to those volunteer attorneys who have served it well in the past and who have crafted many of its best decisions but who can no longer serve the Commission as chairs. They are:

John McCabe

Kevin Kernan

Corinne Rosen

Julie Dymowski

Ursula Burgess

Jennifer Jackman

Christopher Hitchens

Nicole Williams



We will miss them all.



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WWW.MONTGOMERYCOUNTYMD.GOV/CCOC

CCOC MEMBERS AND STAFF AS OF MAY, 2016

Resident Members (8 positions)

Rand Fishbein, Ph.D., Chair (term expired January 2016, can be renewed)

Mark Fine (term expired January, 2016, can be renewed)

Jim Coyle

Marietta Ethier

Bruce Fonoroff

Ken Zajic

Donald Weinstein

One position vacant.

Professional Members (7 positions)

Aimee Winegar, Vice Chairperson (term expired January 2016, can be renewed)

Richard Brandes (term expired January 2016)

5 positions vacant

(NOTE: Commissioners whose terms expire serve until replaced or for 6 additional months, whichever comes first. Commissioners may serve only two full 3-year terms. The CCOC needs a quorum of at least 8 members in order to conduct business.)

CCOC STAFF

Peter Drymalski, Deputy assistant newsletter editor

The *CCOC Communicator* is published quarterly. Previous editions are posted online at the CCOC's website: www.montgomerycountymd.gov/ccoc If you have questions or comments, you can reach the CCOC by email at ccoc@montgomerycountymd.gov