

CCOC Communicator



The Newsletter of the Montgomery County
Commission on Common Ownership Communities

Summer 2000

We Can Work It Out

From the Chair



Hello everyone. I am honored to have been named the Commission Chair at the Commission's January meeting. I know I have big shoes – or chair-- to fill. Peter Kristian was our two-term chair and a fixture in Maryland's HOA community. He was not only a long-time Commissioner, but also the Executive Vice President for the Montgomery Village Foundation. In his two years as Commission Chair, and in his three prior years as a Commission member, Peter nurtured the good feeling and positive environment among the Commissioners, and greatly further our commitment to public service. This is no small feat, particularly in light of the fact that all Commissioners volunteer their time and energy, in addition to their day jobs and their families. Peter's absence will be keenly felt, but we are happy for his newest endeavor – as general manager of the Hilton Head Plantation HOA. Somehow we think that we may miss Peter more than he misses us, as he enjoys himself in sunny Hilton Head.

I would also like to say a word about our professional staff. As a long time Commissioner myself, I have greatly



appreciated the work of the members of the Montgomery County Department of Housing and Community Affairs who work with us, never more so than now when there is even more work to do.

The Commission's main focus has always been the relationship between common ownership communities and the residents that comprise those communities. Homeowners Associations, Condominiums and Cooperatives face the same, paramount issue regardless of size and location. The issues that Peter now deals with in sunny Hilton Head are of the exact same nature as the issues the Commission was created for and has worked hard to address. This relationship has been the source of community that makes common ownership communities successful. Indeed, there is one thing that all common ownership communities need to function smoothly -- reasonable and interested owners residents. I focus on owners and residents rather than management professionals or board members because these communities really are the owners and residents, and it is these communities members that determine what kind of place a common ownership community is to live in.

One case that brought this to light, and to national prominence, is the case of Brage Saseen. He is a six year old boy diagnosed with leukemia. He and his family live in a single family home HOA near Tampa Bay, Florida. His story has tested the very nature of common ownership communities. In a way, however, his story was very typical. At the Commission we hear disputes that frequently result from a homeowner complaining that rules are being over enforced or under enforced. This frequently happens in the same case at the same time.

According to television interviews and the January 11, 2000, edition of the St. Petersburg Times, Brage's family built a treehouse for him. This gave him a place to play and be a normal child away from the traumas he was experiencing.

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Lesia N. Weiss, Editor

Perhaps the most universal truth is that common ownership communities create significant opportunities and needs for neighbors to work together.

However, the Saseen's built the treehouse in what was apparently a very visible location, in what at least two neighbors thought was an eyesore. The Saseens, it seems, lived in an HOA that had relatively typical rules about the construction of such structures. But the Saseens never bothered to concern themselves with their obligations to their neighbors and never submitted the required application for an architectural charge along with the required \$10 fee under the HOA covenants and declarations.

There apparently was no dispute that the HOA documents required the Saseens to seek permission before construction. Two neighbors complained, and the board reacted by asking the Saseens to remove the treehouse. Before you could say "why don't you neighbors pick up the phone and talk to each other so the kid can have a place to play without it being an eyesore or a problem" this matter was being reported in the national press and I understand that lawyers were consulted. As a lawyer myself, I do not mind having my brethren at the bar employed, but enough is enough.

Indeed, I was interviewed by a couple of news sources for my opinion on this matter, as a practicing real estate attorney. What I found most amazing is that this incident was being reported as the big bad HOA board versus the poor homeowner. One reporter referred to HOA boards generally as the "housing police." It quickly became apparent that all sides in that debate quickly lost sight of certain fundamental truths.

First truth: the HOA Board members *are the homeowners*. The debate should never be us versus them, homeowners versus the Board, because the Board is elected by the homeowners and is made up of homeowners. We would all do well to pause and remind ourselves that we have met the enemy, and they are us. As a Commissioner and an HOA resident, I resemble this last remark.

The Saseen's treehouse should never have become a fight between them versus us. It was always a matter of neighbor versus neighbor, which is significant, and sad in itself. Indeed, the Board members should have realized this, and discussed this matter with the Saseen's and their neighbor to arrive a mutually agreeable solution. Common ownership communities and their Boards are constrained by certain legal standards, but I have always felt that the common law makes room for common sense.

Second truth: when a person buys a home in a common ownership community that person agrees to certain contractual obligations. Anyone who purchases a home in an HOA, condominium, or cooperative must realize that there are extra benefits and extra burdens in such a community. No one

benefits when an owner is ignorant of his or her own legal rights and obligations. The Saseens should have taken the simple step of seeking permission to build the treehouse, like anyone else in his community. Presumably, even if some sort of special approval was needed to build the treehouse, the Saseens could have provided his community with a doctor's note or other information proving that there was a unique need for the treehouse.

Third truth: common ownership community Boards have elements of a local government. Boards have certain responsibilities such as common area maintenance, possible road maintenance, trash pickup, and stormwater pond maintenance. These may seem like small matters, but they can have a very significant impact on property values and individual homes and their residents and owners. Therefore, it does well to remember that each homeowner has a vote, and should use it. Any homeowner who doesn't exercise his or her voting rights surrenders a small measure of control over their own neighborhoods and lives.

In the end, these universal truths tend to win out. I understand that the Saseen's issue was resolved when the child's doctor signed a note effectively stating the treehouse had a therapeutic purpose. The Board noted that the treehouse was not an eyesore and it made a rational, limited exception to keep it, and this dispute was resolved.

Perhaps the most universal truth is that common ownership communities create significant opportunities and needs for neighbors to work together. It pays to remain reasonable and civil with one another. By and large, we are all interested in the same thing—a safe, enjoyable neighborhood where we and our families can live among rapidly appreciating property values. Fighting doesn't help.




Richard M. Price



Consumers Can Now Choose Their Electric Supplier

Customers may soon be able to choose the company that supplies their electricity. In the past, electricity was provided by the one electric utility that serviced the customer's area. Electricity was a "bundled" product, with generation, transmission and distribution sold together. Buying electricity was simple, with very few choices to make about rates or products. And now, it can still be simple, but it helps to know a few things:

Only generation is deregulated. There are three parts to an electricity product:

-  generation of the power at the power plant;
-  transmission of the power over long distances; and
-  distribution of the power to local homes and businesses.

Transmission and distribution are not greatly affected by deregulation. That means that the company that delivers power to your home will still be the same, no matter who you buy generation from. Reliability of service should not be affected, and if you do have problems, you can call the same company you always called.

Customers don't have to do anything. Choosing a new supplier is optional. If you don't make a choice, you will continue to receive power from your electric company under what is called "Standard Offer Service." You don't need to worry about the lights going off because you haven't actively made a choice.

It's easy to get more information. Montgomery County provides information through their Division of Consumer Affairs: (240) 777-3636, and the Department of Environmental Protection: (240) 777-7700. You can also get information from the "Power Shopping" web page at www.askDEP.com. Make sure to click on the "Power Shopping" icon. In addition, the Maryland Public Service Commission has published a "Consumer Guide to Electric Choice" which explains the new electric marketplace and provides guidelines for selecting an electric supplier. You can get this guide by calling 1-800-800-4491, or from the web site at www.md-electric-info.com. Homeowner associations, particularly larger ones, may be interested that deregulation permits "aggregators" to buy power in bulk for their members, potentially at reduced rates. All aggregators must be licensed by the PSC.

The purpose of deregulation is to create competition in the electricity marketplace. Over time, competition may result in lower prices and increased innovation. Competitive companies will be able to develop new products and services to attract and retain customers. Customers who are concerned about air pollution or climate change may be able to buy electricity that is generated in a way that is less damaging to the environment. All this will begin on July 1, when customers can begin purchasing power from any new suppliers in their market.

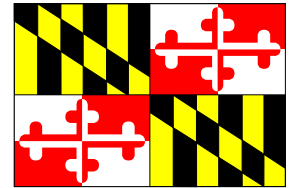
Ann Elsen is Energy Planner, Division of Environmental Policy and Compliance for the County's Department of Environmental Protection

Sue Rogan is an Investigator in the Consumer Education Office of the Division of Consumer Affairs, Department of Housing and Community Affairs



Annapolis Update

Although community associations are governed, on a day-to-day basis by declarations, by-laws, covenants, and other documents drafted for the individual community, above them all are statutes enacted by our elected officials in Annapolis. Most are found in the Maryland Condominium Act, and Maryland Homeowners Act, while statutes found in other sections of the Maryland Annotated Code also impact community associations. In the 2000 session of the Maryland Legislature, from January to April, a number of bills were introduced, but few passed.



With this issue of the *CCOC Communicator*, we enclose a special stand-alone insert, summarizing all of the bills introduced during the 2000 session of the Maryland Legislature, and the disposition of each.

Are Homes Being Rented in Your Community?

Many owners of homes in common ownership communities -- single family, townhouses, and apartments -- rent their homes to others. Chapter 29 of the Montgomery County Code requires these owners to be licensed before renting their homes. This obligation rests with the owner of the individual home, not the association's governing body. (If your association is in an incorporated municipality, this may not apply to you.)

The licensing process entails completion and submission of a Rental Facility License Application to the Licensing & Registration office of the Division of Consumer Affairs, and payment of an annual license fee to the County. The license fee year runs from July 1 through the following June 30, coinciding with the County's fiscal year. Failure to obtain a rental license is a Class A violation (misdemeanor), and may subject the unit/homeowner renting their home to pay a civil fine as a penalty.

What should the County's common ownership communities do? Annually, it is recommended that a gentle reminder be included in an association's communications to its owners; newsletters, notices of annual meetings, and the like are good vehicles. Additional information is available on the County's web site at: www.co.mo.md.us/services/hca/Consumer/LR-LandlordTenant.HTML, which includes a link for downloading the required application form. In addition, the County has published a *Landlord-Tenant Handbook*, which can be found at: www.co.mo.md.us/services/hca/lthdbk.htm. For more information, please call the Licensing and Registration Unit at (240) 777-3636.

Decisions, Decisions...

One of the CCOC's most important missions is providing alternative means of dispute resolution for community associations. Disputes involving issues under the Commission's jurisdiction not resolved by mediation are referred to a 3-person panel, one of whom *must* be from the "resident" category. Cases with the suffix "-O" signify complaints by homeowners; those with "-G" signify complaints filed by "governing" bodies. Abstracts of recent Commission decisions include:*

Case No. 402-G: A homeowners association (HOA) filed a complaint alleging a lot owner constructed a fence without the required approval of the Architectural Committee (ARC), failed to complete a landscape plan, and failed to complete construction of the owner's home in accordance with the HOA's covenants. The owner asserted he was in compliance, the HOA waived requirements or consented to certain actions, and that the HOA acted in an arbitrary and capricious manner. The owner also asserted that the Commission on Common Ownership Communities (CCOC) lacked jurisdiction, that portions of the County Code violated the Constitution, and further procedural legal challenges.

The HOA is a Maryland corporation, but no evidence was presented that its documents were recorded in the County's land records. No question was raised regarding their authenticity or applicability. The documents require written approval by the ARC for any construction, including any fence or wall. A failure to deny or act within 45 days of receiving a proper application, is deemed to be an approval. The HOA developer is president of the Board and a member of the ARC. Another individual is a trustee for the HOA, a member of the Board, and of the ARC.

Following the purchase of his lot, the homeowner submitted an application to the ARC for construction of his home, and proceeded to do so after receiving approval. Testimony was presented that the approval was verbal. The application did not include a landscaping plan or fence. Difficulties were encountered during construction because of the builder's financial problems. The developer did not remember whether written approval was given.

Evidence was presented that the ARC addressed the owner's architectural plans in writing. The owner was represented before the ARC by his architect, who added features to the home during the ARC's discussions; the architect did not testify before the panel. These features included a means to mask the underside of a planned deck, considered an important requirement for approval of such plans.

The owner alleged inconsistencies with respect to the HOA's treatment of an adjacent property relative to the

location of the home built, and an allegedly unapproved fence. The owner assumed different standards were being applied. However, written correspondence introduced suggested that the HOA was exerting similar efforts.

The owner was notified that construction of his home was not complete pursuant to the approved plan and the required landscape plan had not been submitted. Shortly thereafter, a landscaping plan was submitted which included a fence. The ARC sought more details, and noted that fences along joint property lines must be agreed to by both property owners. A later landscape plan did not provide the detailed fence construction plans sought. Additional correspondence took place between the owner and the ARC chair where it was acknowledged that some portions of the landscape plan were approved, but the fence and its landscaped screening, already had been constructed.

The panel held that the owners failed to comply with the Declaration when they did not obtain approval of a fence before building it. They also failed to comply with conditions for approving construction of their house, and in maintaining their property pursuant to the Declaration. The panel relied on *Kirkley v. Seipelt*, 212 Md. 127 (1957), for the proposition that when the parties' intentions are clear and the covenant restrictions are reasonable, they will be upheld as a contract between parties voluntarily entered into and not in violation of public policy.



It also was held that the owner did not have written approval of the ARC, and it could not be found that he had ARC approval in the absence of a 45 day response. Complete plans necessary for ARC review had not been submitted before the fence was constructed. The piecemeal submission of information following fence construction could not substitute for obtaining prior approval. Although the owner asserted that the ARC was not consistent in their practices, records produced at the panel's request did not show this. The owner did not demonstrate that the HOA acted fraudulently or in bad faith in enforcing the Declaration, following the business judgment rule outlined in *Black v. Fox Hills North Community Association*, 90 Md. App. 75 (Court of Special Appeals 1992). This was true with respect to the ARC's denial of a request to place the fence on the property line on three sides of the property, where requests by other owners had been approved. The panel held the owner had prior notice of other architectural requirements and guidelines within the community, and was under a continuing responsibility to meet the standards set.

Decision: The owner was ordered to submit a landscaping plan with a complete description of the fence as built, or as it might be modified. Thereafter, the owner must complete reconstruction of the fence as required to comply with any approval by the ARC. Construction of the house and fence must be completed pursuant to approved HOA guidelines.

April 5, 2000

*These are abstracts of cases only. Readers are encouraged to read the entire case for the full context.

Note: One panel member issued a written dissent, distinguishing additional facts he found but were not included in the panel's opinion. An appeal of the panel's decision by the homeowner is pending in the Circuit Court.



Case No. 446-O: Owners in a homeowners association ("HOA") filed a complaint alleging the Board acted unreasonably in selectively enforcing non-specific guidelines imposing an 8-foot height limit on trees they planted, and in changing requirements for outdoor lighting installed after the Board had approved the installation.

The owners planted 20 trees parallel to their property line, and applied for approval of a rear deck. The blueprints included a representation of lights; the application was approved. Neighbors then complained about the trees and deck lights. The Board ordered the owners to move certain bushes and trees, keep the trees pruned, and install a dimmer for the deck lights. The owners largely complied, but requested reconsideration as to moving two trees. The neighbors requested the owners be ordered to move other trees, place a 4-foot height limit on others, and shade, change or remove the deck lights. The Board placed an 8-foot height limit and ordered the deck lights be redirected. The complaining neighbors no longer live in the HOA.

The panel held the HOA's Declaration defined its authority to approve buildings, fences, and other structures, but are silent as to landscaping on private lots. Therefore, rules and regulations relating to landscaping are not enforceable. The deck lights were installed pursuant to what was represented in the approved deck plans. Therefore it was unreasonable to revisit the issue months later, after the owners already had complied with earlier approvals and orders.

Decision: The panel relied on the rule of property law that disfavors use restrictions on property, with questions and ambiguities being construed against the party seeking enforcement. The HOA's governing documents do not give the HOA any authority to regulate landscaping on privately owned lots and, therefore, had no authority to impose a height limit on trees. The HOA essentially approved the lights for the deck twice: the original deck approval, and when a dimmer switch was required. Therefore, the order to minimize light "leakage" was arbitrary and capricious, unreasonable and unenforceable.

January 7, 2000



Case No. 448-O: The (complainant) owner purchased a condominium with an existing rear deck. The prior owner confirmed the original plans called for stairs to the ground level, but were not built because of their needs. The owner applied for approval of stairs to the ground level; the stairs would be built on property that is part of the general common elements. The bylaws require approval or disapproval within

60 days of the submission of complete plans, after which approval will not be required. However, construction must be commenced within 6 months following approval.

The owner's application was approved by default. The Board requested new data, which was supplied, restarting the 60-day approval process, again granted by default. However, construction began more than 6 months later (due to delays in contractor availability). After they were constructed, the Board requested removal of the stairs.

Although no hearing was conducted, the Board began assessing a \$5/day fine but suspended it when the parties began negotiating. The Board requested the owner obtain a permit for the stairs; she did. The Board proposed that the owner record a covenant to maintain holly trees at the base of the stairs, and pay legal costs; it was rejected when she countered. When no settlement was reached, the Board directed the stairs be removed, following which the owner requested a formal hearing. After the hearing, the Board voted to direct removal of the stairs by a certain date, or face a \$25/day fine. The owner filed this Complaint, suspending the assessment, but not running, of the fine.

Testimony at the Commission hearing disclosed that there are at least 3 decks in the same line as the owner's unit with stairs leading to the general common elements which are virtually identical to the stairs built by the owner. There are 4-6 other units in the condominium with similar decks and stairs. A Board member testified that general cleaning and maintenance of the decks and stairs is the individual owner's responsibility, but major repair/replacement is the condominium's responsibility. No testimony was available as to whether the other relevant decks/stairs were approved by a developer- or resident-controlled Board.

The panel concluded that the original application to build the stairs was approved by default, but the approval expired when the owner failed to construct them within 6 months after the approval. However, the Board's decision to direct removal of the stairs or face a daily fine was unreasonable in light of other units with similarly situated decks and stairs, since such decision would not likely have served as a precedent to other locations.

Decision: The panel found the owner had violated the bylaws when she failed to construct the stairs within the required time. In the context of the facts of this case, this violation is considered *de minimus*. As a result, the Board's decision directing the owner to remove the stairs or face a daily fine, was reversed, and the owner ordered to refile her application for the stairs. The condominium may impose reasonable conditions regarding the stairs, except imposing attorney's or other expert's fees. The owner previously expressed willingness to be responsible for repairing, maintaining and replacing the stairs for 2 years, and for damage to adjacent holly trees manifesting itself during the same period. The panel declined to award attorney's fees to either party.

January 3, 2000

Get Wired! Resources Online



growth in using the Internet as a resource has been phenomenal! In addition to our back-page listings of local County offices and telephone numbers, we're adding a standing column of web sites of interest to homeowners in common ownership communities. Unless noted, all web sites use the "www." prefix.

Local Government:

- Housing Opportunities Commission hocweb.org
- Montgomery County Council mo.md.us/council
- Montgomery County Executive
 • Douglas Duncan co.mo.md.us/executive
- Montgomery County Government co.mo.md.us
 • Community Use of Public Facilities cupf@co.mo.md.us
 • Department of Environmental Protection
co.mo.md.us/services/dep
 • Stormwater Facilities
[www.\[.....\]/dep/DEP/StrmWater/strmfac.html](http://www.[.....]/dep/DEP/StrmWater/strmfac.html)
- Department of Housing & Community Affairs
co.mo.md.us/services/hca
 • Division of Consumer Affairs
co.mo.md.us/services/hca/Consumer/consumers.html
 • Commiss'n on Common Ownership Communities
co.mo.md.us/CCOC
- Department of Permitting Services
co.mo.md.us/services/permitting
- Montgomery County Judicial System co.mo.md.us/judicial
 • Circuit Court co.mo.md.us/judicial/circuit/mcccourt.html
 • District Court co.mo.md.us/district/mcdcourt.html
 • Clerk of the Court Land Records Department
co.mo.md.us/judicial/circuit/services/crtclerk/landrec/land.html
- Montgomery County Library mont.lib.md.us
- Montgomery County Planning Board mncppc.org
- Montgomery County Police co.mo.md.us//services/police

State Government:

- Maryland Attorney General's Office
 Consumer Protection Div. oag.state.md.us/consumer
- Maryland General Assembly mlis.state.md.us
- Maryland State Government mec.state.md.us/mec
- Maryland Secretary of State sos.state.md.us
 Maryland Condominium Act
sos.state.md.us/sos/condos/html/condoindex.html
- Maryland Statutes
mlis.state.md.us/cgi-win/web_statutes.exe

Municipalities:

- Chevy Chase Village ccvillage.com
- Friendship Heights erols.com/friendshiphtsvillage
- Gaithersburg ci.gaithersburg.md.us
- Garrett Park cais.com/garrettpark
- Olney olneymd.com
- Poolesville ci.poolesville.md.us
- Rockville ci.rockville.md.us
- Takoma Park cityoftakomapark.org

Federal Government:

- Federal Communications Commission
 Telecommunications Act of 1996
fcc.gov/telecom.html

Public Utilities:

- Allegheny Power (Potomac Edison) alleghenypower.com
- Baltimore Gas & Electric (BG&E) bge.com
- Potomac Electric Power Company (PEPCO) pepco.com
- Washington Gas washgas.com
- Washington Suburban Sanitary Commission (WSSC)
wssc.dst.md.us

Consumer Interest:

- Omega Fire Sprinkler Settlement &
 Recall Information omegarecall.com

Associations/Organizations:

- Community Associations Institute
 Publications and Periodicals caionline.org
caionline.org/pubs
- Community Associations Institute
 Washington Metropolitan Chapter caidc.org
- Institute of Real Estate Management irem.org
- IREM West-Central Maryland Chap. irem92.org
- Maryland Homeowners Association
erols.com/marylandhomeownersassociation
- Metropolitan Washington Council
 of Governments mwcog.org
- National Board of Certifications for
 Community Association Managers nbccam.org
- Regenesis regenesis.net
- Rockville Community Network rocknet.org



Useful County Phone Numbers for Common Ownership Communities



Department of Housing and Community Affairs	
Division of Consumer Affairs	
Office of Common Ownership Communities	(240) 777-3766
	TDD (240) 777-3679
Cable Television	(240) 777-3636
Landlord-Tenant	(240) 777-3636
Licensing Registration	(240) 777-3636
Code Enforcement	(240) 777-3600
Circuit Court	(240) 777-9400
Homeowner Association Depository	(240) 777-9403
Land Records	(240) 777-9477
Community Use of Public Facilities	(240) 777-2706
County Council	(240) 777-7900
County Executive	(240) 777-2500
Department of Permitting Services	
Zoning Information	(240) 777-6240
Stormwater Inspections	(240) 777-6266
General Information	(240) 777-1000
Housing Opportunities Commission	(301) 929-6700
Human Relations Commission	(301) 468-4260
Libraries	(240) 777-0002
Park and Planning Commission	(301) 495-4600
Police Department (non-emergency)	(301) 279-8000
Abandoned Autos	(301) 840-2454
Animal Control	(301) 279-1066
Community Outreach	(301) 840-2585
Department of Public Works & Transportation	
	(240) 777-7170
Roadway Reimbursement Program (Division of Highway Services)	not available yet
Traffic Operations	(240) 777-2190
Trash & Recycling Collection	(240) 777-6410

FY'2000 COMMISSION PARTICIPANTS*



COMMISSIONERS:

Residents:

- Laurie Murphy (*Homeowner Association*)
- Arlene Perkins (*Homeowner Association*)
- Clara Perlingiero (*Condominium*)
- Richard Price (*Homeowner Association*)
- Russell P. Subin (*Homeowner Association*)
- Leesa N. Weiss (*Condominium*)

Professionals Associated with

Common Ownership Communities:

- Jay I. Krampf (*Lender*)
- Michael Maloney, AMS® (*Professional Manager*)
- Nadene L. Neel (*Professional Manager*)
- Richard Skobel, CPM® (*Professional Manager*)
- Dean Stoline
- Craig F. Wilson, Jr., CMCA®, AMS® (*Professional Manager*)

Real Estate Sales and Development:

- Lawrence Gaffigan, CPM® (*Real Estate Sales/Development*)
- Harold H. Huggins
- Barry Wertlieb

COUNTY ATTORNEY'S OFFICE:

- Walter Wilson *Assistant County Attorney*

VOLUNTEER PANEL CHAIRS:

- Richard Alper
- William Hickey
- John McCabe
- Peter Philbin
- Stephen Reilly
- Dinah Stevens
- Jeffrey Van Grack



DIVISION OF CONSUMER AFFAIRS:

- George Rose, *Chief*
- Evan Johnson, *Administrator*
- Lisa Brennan, *Investigator*

*As of May 16, 2000.

Do you need additional copies of the *CCOC Communicator*? Call us at (240) 777-3766.

Subscriptions to Commission decisions are available, upon request. Call the CCOC for fees.

Thank you Cinnamon Woods Home Association!!!

Have Commissioners will travel! Commissioners Leesa Weiss and Mike Maloney met with the Cinnamon Woods Home Association in Germantown, to provide insight on the process for conducting Board elections. If you would like us to visit your association, please call (240) 777-3766.