

COMMON OWNERSHIP COMMUNICATOR

CCOC MOVES TO NEW HOME AND FAMILY

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On July 1, 2016, the Commission on Common Ownership Communities (CCOC) and the Common Ownership Communities (COC) program were transferred from the County's Office of Consumer Protection to the Department of Housing and Community Affairs, (DHCA) and a month later DHCA relocated to a new home on the fourth floor of 1401 Rockville Pike (right). The new offices are a block north of Congressional Plaza.



Clarence Snuggs, DHCA Director (below, left) warmly welcomed the COC program, stating that the Commission and the Department share a strong interest in preserving and improving the County's housing stock for families of all income levels, and promised to support the CCOC's efforts on behalf of the County's common ownership communities of all kinds.



Mr. Snuggs stated that the COC program will become more effective in carrying out its missions because it will be able to work more closely with other programs and operations within DHCA, including Housing, Housing Code Enforcement, and Neighborhood Revitalization. "This will not be a one-sided effort," he said. "DHCA will fully support the COC and draw upon its expertise to deliver high-quality service to all the County's common ownership communities."

New Staff Join COC Program

March, 2017, marked a milestone for the COC, as new members joined its staff.



Larita Carney is the new Office Services Coordinator. She will assist the COC's investigators in their jobs and will be a point of contact for citizens seeking information on the status of community registrations. Larita is no stranger to a team environment as she has 12 years of law enforcement experience. She was the Assistant to the Deputy Director of the Prince George's County Housing Authority. Larita has a Masters degree in Psychology and plans to pursue a Law Degree in the near future. Larita is a native Washingtonian who currently resides in Waldorf Maryland with her daughter.

Mark Anders, an attorney, will be one of the COC's two investigators and responsible for responding to citizen requests for information on community association law and practices and will support the COC's complaint resolution program. He is a graduate of the University of Baltimore School of Law, and has been a practicing attorney for nearly twenty (20) years. He began his legal career as a private practice paralegal with an emphasis on land disputes and insurance defense and later became the Assistant Frederick City Attorney, where his focus was on the Historic District Commission (HDC), Land Use and Zoning matters. After several years, he opened his own law firm, the Fredericktowne Title Company.



Changes to COC Operations

Although most COC activities will not change, some important details will. As noted on page 1, the COC's new location is 1401 Rockville Pike, Fourth Floor, Rockville, Maryland 20852. This building is a block north of Congressional Plaza and also contains the well-known Joseph A. Banks Clothing store. Office hours remain 8 am to 5 pm.

Visitors should use the free parking lot and the garage at the rear of the building, which are entered through automatic gates on either side of the building. Do not use the parking lot in front of the building, which is reserved for retail customers on the ground floor. For free parking, have the DHCA front desk validate the parking ticket you will receive at the parking entrances.

Callers should use the County's "311" information line (240-777-0311).

CCOC hearings, and most CCOC monthly meetings, will continue to be held at the Council Office Building, located at 100 Maryland Avenue, Rockville, in Room 225. Most CCOC mediations will also be held at the Council Office Building (COB) in Room 330. However, the mediation location will change in the next few months because the COB's third floor will be extensively renovated.

COMMISSION MEMBERS, PANEL CHAIRS, AND STAFF

Effective May, 2017, the members of the Commission are:

Rand Fishbein, Chair

Aimee Winegar, Vice-chair

Ilana Branda

Michael Burrows

Marietta Ethier

Mark Fine

Bruce Fonoroff

David Gardner

Staci Gelfound

Susan Koonin

Chris Majerle

Andrew Oxendine

John Radcliff

Dallas Valley

Kathy Viney

The Commission's volunteer panel chairs are:

Dinah Stevens, Esq.

Rachel Browder, Esq.

Charles Fleischer, Esq.

Hon. Bruce Birchman, Esq.

Douglas Shontz, Esq.

Associate County Attorney advising the COC program and the Commission

Walter Wilson, Esq.

COC Program Staff:

Jay Greene, Chief, DHCA Housing Division

Mark Anders, Investigator

Larita Carney, Office Services Coordinator

UPDATES ON THE MANDATORY TRAINING PROGRAM

As most readers know, Montgomery County law now requires all common ownership community directors to be trained in their responsibilities. The law, adopted by the County Council in 2015, applies to all directors who are elected for the first time, or who are re-elected, after January 1, 2016. Any person can take the class.

The COC provides free training. The class is freely available online through the COC's website (www.montgomerycountymd.gov/ccoc), and it takes about 2 1/2 hours to complete. The class can be taken in installments and not all at once, if desired. The general format is one of lessons on specific topics followed by short quizzes. The quizzes must be completed successfully in order for the student to move on to the next topic.

Live classes are also available from attorneys and professional managers who have been approved by the Commission.



The law is the first of its kind in the country. As of May, 2016, over 2000 citizens have taken and passed the classes.

Community members who wish to know if their directors have taken the class can visit the CCOC webpage and search by association name under the topic of Online Training Verification. Associations must also report annually on their directors' compliance.

The class needs to be taken only once. Certification is good indefinitely.

It should be noted, that directors who refuse to take the class are subject to a fine of up to \$500.

The New Fair Housing Act Amendments and Community Association “Harassment”

By Hillary A. Collins, Esq. and John F. McCabe, Esq.

Effective October 14, 2016, the U.S. Department of Housing and Urban Development (HUD) adopted a rule that significantly amends its Fair Housing Regulations. The new rule can have a major impact upon how community associations deal with claims of discrimination against protected classes among its owners and residents. The title of the new regulation is “Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act.” The rule clarifies (and some would say adds to) HUD standards for how it will investigate and decide claims of harassment on the basis of race, color, religion, national origin, sex, family status, or disability in connection with housing practices.



Until recently, community associations experienced “fair housing” claims primarily as claims for reasonable accommodations and reasonable modifications. (A “reasonable accommodation” involves a change in, or exception to, rules, policies or services; whereas a “reasonable modification” involves physical changes to the property.) An association must provide, on request, a “reasonable accommodation or modification” to a disabled individual if it is necessary to give that person an equal opportunity to use and enjoy a home or common area.

The new regulations add two new concepts for community associations to be aware of: “quid pro quo harassment,” and “hostile environment harassment.” The harassment must be one that is committed against a person who is a member of one of the “protected classes” listed above.

“**Quid pro quo harassment**” is defined as an unwelcome request or demand to a person which is a condition of the sale, rental, or availability of services in, a residential real estate transaction.

The “**hostile environment harassment**” regulations are probably more relevant to community associations, because they can require an association to act even when it is not the cause of the harassment. If a homeowner or resident complains to the association about the conduct of another member or resident, and alleges that the conduct is committed against the complainant because he is a member of a protected class, the association may be required to investigate the claim and to respond in a way that resolves or remedies the situation. *Thus, the association may be called upon to take a pro-active role in complaints that don’t involve its own conduct, but instead which involve the interactions between its members and residents.*



To emphasize this responsibility, the regulations also speak of “direct” and “vicarious” liability. Direct liability is created when the association or its board members engage in discriminatory housing practices, *or when it fails to take prompt action to correct or end the discrimination performed by its agents or employees or by a third party, once it knows or should have known about the discrimination.* Vicarious liability attaches when an association’s agent or employee engages in a discriminatory practice regardless of whether the association knew or should have known about the conduct.



The New Fair Housing Act Amendments and Community Association “Harassment”

For many associations, accustomed to sidestepping disputes between members as outside of the association’s responsibilities, this may be a change difficult to understand and adapt to.

Associations which fail to act may find themselves the subject of investigation by County or State agencies that enforce fair housing laws of their own, such as the Maryland Commission on Civil Rights and the Montgomery County Human Rights Commission. (See article below.)

(Hillary Collins and John McCabe are community association attorneys with the law firm of Rees Broome, PC., in Bethesda, MD. Mr. McCabe is also a former volunteer panel chair for the CCOC. This article is re-printed in edited form by permission from the Rees, Broome, PC, April 2017 Community Association Newsletter. The views in this article and the one that follows are the authors’ and do not necessarily represent the CCOC’s.)

The Enforcement of the New FHA Regulations on Hostile Environment Harassment

By Hillary Collins, Esq. and John McCabe, Esq.

The new regulations discussed in the preceding article are Federal regulations pursuant to the Federal Fair Housing laws. It is not clear yet how these concepts will apply under State or County law. The protected classes under Federal, State, and County law differ.

The Montgomery County Commission on Human Rights operates under Chapter 27 of the Montgomery County Code. Chapter 27, Section 27-12, prohibits discriminatory housing practices based on race, color, religious creed, ancestry, national origin, sex, marital status, disability, presence of children, family responsibilities, source of income, sexual orientation, gender identity, or age.

Section 27-8 describes the penalties and relief available for violating these provisions of the Montgomery County Code. The Commission on Human Rights review boards may award compensation for reasonable attorneys’ fees, property damage, personal injury, unreimbursed travel or other reasonable expenses and damages not exceeding \$500,000.00 for humiliation and embarrassment. Plainly, the potential consequences for violating the County’s Human Rights law are severe.

The provisions governing the State of Maryland on Civil Rights appear in the State Government Article, Title 20. State law prohibits discrimination in the provision of facilities or facilities in connection with housing based on race, color, religion, sex, disability, marital status, familial status, sexual orientation, general identify, or national origin. Maryland State Government Code Ann. § 20-705.

(Continued on page 6.)

The Enforcement of the New FHA Regulations on Hostile Environment Harassment

(Continued from page 5)

The remedies an Administrative Law Judge may award under State law include injunctive relief and compensatory damages. Compensatory damages may be awarded for pecuniary losses as well as for emotional pain, suffering, inconvenience, mental anguish, or loss of enjoyment of life. If the complaint is heard before a court, the court may also award the prevailing party reasonable attorneys' fees, expert witness fees and costs. Maryland State Government Code Ann. § 20-1015. There can also be civil penalties.



Under Federal law, proof of a violation of the Federal Fair Housing Act entitles a complainant to actual damages as well as damages for emotional distress, embarrassment and humiliation. The legal articles that discuss remedies in Fair Housing Act cases indicate that most of the damages awarded in Fair Housing Act cases are for emotional distress. A plaintiff may also recover economic damages such as the expenses incurred in finding another place to live.

A question community associations will naturally ask is, are the customary protections for Board decision-making available in the case of alleged violations under the Fair Housing Act? In particular, associations will want to know whether they are protected by the Business Judgment Rule or by some form of reasonableness test. If an association in good faith reviews a controversy between two individuals in the community and determines that the association has no authority to afford a remedy, what will happen if a court or administrative body decides that the association was wrong?



Injunctive relief directed at the association is one possibility. However, will the association be assessed civil penalties or even damages, fees and costs for its failure to act when a review body determines that it should have acted? If the association's decision about whether it has the authority to act and to fashion a remedy is characterized as a jurisdictional or a purely legal decision, then there is no discretion or business judgment involved. The association is either correct or incorrect as a matter of law. If it is incorrect, then there may be penalties. It would seem, however, there should be some protection for acting in good faith and with reasonable advice such as the advice of counsel or other experts.

Significantly, in the hostile environment cases where the association is not the actor, it is not causing the harm. At worst, it is only failing to mitigate the harm on the good faith belief that it cannot. Where these considerations will lead is probably speculative at this point. However, an association can do the following to protect itself.

When it receives a complaint, it should immediately acknowledge receipt of the complaint in writing, investigate the complaint, make a good faith determination about whether it has authority to act and the ability to effectuate a realistic remedy, and communicate with the parties involved. If the association believes, for whatever reasons, that it has no authority to act or that it cannot effectuate a realistic remedy after it has gone through this process, then it has the protection of having, in good faith, analyzed and attempted to perform any responsibility it may have. Fairness would seem to dictate that an association should be protected when it has seriously tried to follow the law.

Maryland Attorney General Releases New Consumer Guide on “Understanding Condominium Living”

Last April, Attorney General Brian Frosh published valuable new educational material on condominium life, *Understanding Condominium Living—Another Way to Meet Your Housing Needs*. The 39-page guide covers such topics as how to buy a condo, assessments, warranties and repairs, bylaws and other restrictions, developer control, boards and meetings, voting, and frequently-asked questions.

The Guide is available online at: <http://www.marylandattorneygeneral.gov/CPD%20Documents/Tips-Publications/CondoLivingweb.pdf>

The CCOC encourages its common ownership communities to publicize the Guide in their websites, newsletters, welcome packages, and other useful ways.

CCOC Publishes Updated *Manual & Resource Guide*

The CCOC has published its 2017 edition of its popular *Manual & Resource Guide* and it is online at the CCOC website. The revised Manual includes a new chapter by Commissioner Bruce Fonoroff on the thorny but important topic of “How to Complain *Effectively*,” which offers advice on members can best persuade their boards to help them, as well as advice on techniques which are likely to be self-defeating. The new Manual also contains information on changes to cooperative housing association laws and on the mandatory training class.

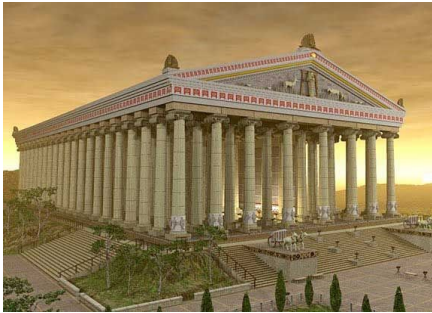
The Manual was last updated in 2015, with an informative new chapter on “Insurance” written by local community association expert Robin Manougian.

Annual Notice Reminder

Chapter 10B of the Montgomery County Code requires all common ownership communities to notify their members, at least annually, of the Commission and the services it offers. There is no fixed format for doing so, but samples of both long-form and short-form announcements are on the COC webpage and are available in Word format on emailed request. The notice can be sent by itself or included in a newsletter or other documents. The notice must be sent—it is not sufficient simply to post it on the association’s website.



ROME AND ROCKVILLE



Few, if any, Montgomery County residents imagine any connection between their community associations and the Roman Republic and Empire. But the links between them are profound and worthy to consider.

Almost 2500 years ago, the citizens of the fledgling town of Rome adopted one of Europe's first codes of law, known now as the Twelve Tables. These laws were engraved on sheets of bronze and posted in the city center so that all

could read them and learn their political and legal rights. The Tables covered such weighty matters as the powers and relationships of the two classes of citizens (patrician and plebian), the powers and the limitations of the government, and the procedures of its courts.

But they covered much more. If an animal injured a person, the animal's owner had to pay for the injury or forfeit the animal. Anyone who used black magic to harm his neighbor's crops could be executed. A farmer who let his cattle graze his neighbor's land had to surrender the cattle. A person who intentionally set fire to a building or heap of grain could be burned to death, but if he did so accidentally he could pay for the damage instead. Those who publicly abused another "in a loud voice" or wrote a slanderous poem about another, could be beaten to death with rods (a penalty some board members would probably like to see revived). A landowner could remove branches from his neighbor's trees if they overhung his property. But if the fruits of the neighbor's tree fell on the landowner's property, they remained the property of the tree's owner. Landowners had to control the flow of water on their property so that it did not damage their neighbor's property, and if they failed to do so, the state could correct the problem at the landowner's cost. Anyone who cut down a neighbor's tree without permission had to pay for it. Funeral pyres could not be held too close to any buildings. Residents could not shoot arrows or spears into someone else's property.

For the most part, writes historian Mary Beard in *SPQR*, "the Twelve Tables confront domestic problems, with a heavy focus on family life, troublesome neighbours, private property, and death." When we read these ancient laws, we are astonished at how similar many of them are to the ordinary governance and daily concerns of our own communities.

"To judge from the Twelve Tables," Beard continues, "Rome in the mid-fifth century BC was an agricultural town, . . . sophisticated enough to have devised some formal civic procedures to deal consistently with disputes, to regulate social and family relations and to impose some basic rules on such human activities as disposal of the dead."

Had the early Romans not been able to respond effectively to the need to regulate such relationships by imposing some basic rules, Rome could never have developed into one of the great cities of history. It would have collapsed into chaos and contention, and disappeared.

Our common ownership communities are based on similar principles. Those who apply and themselves obey the rules of the community are often called petty dictators, and many members complacently think the daily operations of the association are basically trivial, concerned mostly with the colors of doors and the heights of bushes. But without rules, however minor some may be, the community association idea will fail. Such failure will pass a heavy burden of responsibility back to the government. Our communities' leaders, and the members who participate in them, perform an honorable and essential role and it has been my privilege to have worked with them.

Finally, there are at least three important lessons for us from the Roman example. **First**, make the association's governing documents freely available upon request. **Second**, develop fair procedures for the handling of member complaints against other members and the association itself. **Third**, remember that community governance is based upon the concept that power is shared, not monopolized.

"Ave atque vale."

