



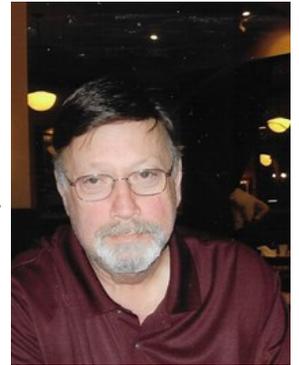
THE LOBBY OF 1401 ROCKVILLE PIKE, ROCKVILLE, HOME OF THE DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS, AND OF THE CCOC STAFF.

CCOC COMMUNICATOR Spring 2018

NEW CCOC CHAIR TAKES OFFICE

At the beginning of 2018, the CCOC elected Mark Fine as its first new chairperson in four years. Mr. Fine replaced Dr. Rand Fishbein. Michael Burrows was elected as vice-chairperson.

Commissioner Fine (right) has been a member of the CCOC since July, 2015. He served as Chair of the Education Committee as well as a member of its Legislative Committee, the Process and Procedures Committee and the Information Technology (IT) Committee. Previously, Commissioner Fine served for six years on the Charles County Homeowners' Association Dispute Review Board (similar to the CCOC), three of them as Chairman. It is one of only three HOA/Condo review boards in Maryland.



Mr. Fine also serves as the Acting President of the Maryland Homeowners' Association (MHA) and President of the Maryland Homeowners Advocacy Alliance (MHAA).

In his professional life, Commissioner Fine is an Adjunct Faculty Member of the College of Southern Maryland, teaching Hospitality Management classes. He also is co-owner of JOSHUASYSTEMS, Inc. the largest hospitality training company in Maryland. He holds a degree in Business Administration from American University and a graduate degree in finance from the University of Wisconsin Graduate School of Banking.

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New Laws for 2018

By Jason Fisher

This article highlights some of the new laws for 2018. In my next article, I will refresh your memory and knowledge of some of the most important current laws that affect your association's annual duties.

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Products Services, Tax Credits & Rebates available to Common Ownership Communities and Property Owners in Montgomery County

By Vicki Vergagni and Kathy Viney

Property owners in Montgomery County are fortunate to have a long and varied menu offering them ways to save money and to obtain products and services at reduced or no cost. But the very number of such programs can make them difficult for the average resident to find. In this article, we want to summarize some of the most important programs for you and how to find them.

County tax credit programs for Seniors and Individuals:

<http://www.montgomerycountymd.gov/Finance/senior.html>

<http://www.montgomerycountymd.gov/finance/taxes/individual.html>

Homestead Tax Credit: Phone toll-free 1-866-650-8783 or go to

<http://dat.maryland.gov/realproperty/Pages/Maryland-Homestead-Tax-Credit.aspx>

Elderly Individuals & Retired Veterans: On March 7, 2017 the Montgomery County Council passed Bill 42-16, which provides a tax credit for people who are over 65 years of age and:

have owned and lived in the dwelling that they own for at least 40 consecutive years, or are retired from one of the United States' armed forces

Contact: <https://www.montgomerycountymd.gov/Finance/bill-42-16.html> or call MC 311

Free Products and Services

Free Recycling Materials: Recycling bins, labels, promotional materials.

Contact the Montgomery County Department of Environmental Protection (Solid Waste Services) at <https://www.montgomerycountymd.gov/sws/> or call MC 311

Free Native Trees:

Tree Montgomery at <https://treemontgomery.org/> or call MC 311

Shades of Green (in Commercial Business Districts) at

<http://montgomeryplanning.org/planning/environment/forest-conservation-and-trees/shades-of-green/>

Free Bulk Trash Pickups:

The County offers residents a limited number of free bulk trash (furniture, mattresses, appliances, etc.) per year on request to residents in the areas served by the County's trash pickup services. Call MC 311 or contact the Department of Environmental Protection at MC 311 or online at <https://www.montgomerycountymd.gov/sws/>.

New Laws for 2018

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Giving Power Back to the People – Equalizing Voting Rights of Owners & Developers in Homeowners Associations

[New Law effective July 1, 2018] [Codified at Real Property, Section 11B-111.7]

The Maryland legislature provided relief to get around creative drafting by HOA developers, who evaded the property turnover election requirement by ensuring their votes would always outnumber the votes of the homeowner members. Many homeowners association documents thus provided additional weight to the voting power of the developer's undeveloped and/or unsold lots. Often these provisions provided, for example, that the developer had 10 votes for each undeveloped and/or unsold lot, to the 1 vote of a homeowner for their purchased and settled lot). The result allowed developers to maintain control of the association board of directors well after the 75% transition was supposed to occur. Under this new law, effective July 1, 2018 and codified as Section 11B-111.7 of the HOA Act, despite the language in the Declaration, the developer now only has 1 vote for each undeveloped and/or unsold lot.

Consumer Protection for Condominiums & Owners on Warranty Claims ***[New Law effective October 1, 2018] [Codified at Real Property, Section, 11-134.1]***

The legislature also adopted legislation to nullify and prevent language in sales contracts and condominium documents that restricts warranty claims against builders and developers. For many years, many developers and builders sought to make it difficult for owners and condominium associations to pursue warranty and/or defect claims by placing onerous or restrictive language in the documents requiring them to jump through hoops to pursue claims. For example, associations would be required to obtain a super majority vote to pursue litigation; be restricted in the amount of money it could spend on legal fees; or be required to go through arbitration or mediation before being able to pursue claims that rightfully existed under statute. To address these issues, the Maryland legislature enacted laws that now precludes the effect of such provisions, whether set out in sales contracts or the governing documents. The new law now specifically provides that such provisions are “unenforceable.”



Eliminating Discriminatory Language in the Governing Documents and Common Area Deeds of HOAs [New Law effective October 1, 2018] ***[portions Codified at Real Property, Section 11B-113.3].***

Believe it or not, there are association documents and deed restrictions recorded years ago that contain discriminatory language. Such provisions provide that certain classes of individuals could not own a home or land. Certainly, laws passed after the recording of those

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Free Products, Services, Tax Credits and Rebates for Montgomery County's Common Ownership Communities and Property Owners

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Financial Assistance

Heating and Air Conditioning:

Maryland Energy Assistance Program (MEAP) is a federally-funded program that helps low-income households with their home energy bills. This program may be able to offer one or more of the following types of assistance:

Bill payment assistance.

Energy crisis assistance.

Weatherization and energy-related home repairs.

Go to the state's site at <https://www.benefits.gov/benefits/benefit-details/1559> or call toll-free 1-866-674-6327. You may also contact the Montgomery County Department of Health and Human Services who administer the project at their offices at 1301 Piccard Drive, Rockville, MD 20850. Email rapohep@montgomerycountymd.gov or phone 240-777-4450.

Low-Interest Loans:

The **Montgomery County Green Bank** is a publicly-chartered nonprofit corporation providing funding to residents, property owners, and businesses in Montgomery County for clean, efficient, and affordable energy projects. Contact: <https://mcgreenbank.org/contact/> or phone 240-453-9000.

Contact: <https://www.montgomerycountymd.gov/Finance/bill-42-16.html> or call MC 311

Design for Life: Tax credits for builders and homeowners who install features to assist the disabled (e.g. "accessible" door handles, faucet handles, grab bars, roll-in showers). Contact:

<http://permittingservices.montgomerycountymd.gov/DPS/designforlife/DesignForLife.aspx>

Weatherization and Home Improvements: The Department of Housing and Community Affairs offers loans and some free weatherization repairs when funds are available to qualified owners. Call MC 311 for information.

RainScapes Rewards Rebate Program is administered through the Department of Environmental Protection and offers rebates to property owners who install RainScapes techniques such as rain gardens, rain barrels, conservation landscaping and other approved projects that help control storm water. This program is open to properties in Montgomery County outside the municipalities of Rockville, Gaithersburg, and Takoma Park. Contact MC 311 or <https://www.montgomerycountymd.gov/water/rainscapes/rebates.html>

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Free Products, Services, Tax Credits and Rebates for Montgomery County's Common Ownership Communities and Property Owners

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Tax Credit for Water Quality Protection Charge: The Water Quality Protection Charge (WQPC) is part of Montgomery County property tax bills. The WQPC raises funds to improve the water quality of our streams and reduce the impacts of storm water runoff. To apply for a tax credit, contact: MC 311 or <https://www.montgomerycountymd.gov/water/wqpc/about.html#credit>

My Green Montgomery.org, an initiative of the Montgomery County Department of Environmental Protection, this site is designed to help County residents find local conservation programs, services, and resources all in one place. Rebates and incentive programs are offered by Montgomery County as well as independent companies such as Washington Gas, Pepco and Habitat for Humanity. Go to: <https://mygreenmontgomery.org/incentives/>

Vicki Vergagni is the property manager for Glenway Gardens, a 200+ unit condominium in Wheaton, MD. She is a former vice-chairperson of the CCOC, and is active at County and State levels on behalf of common ownership communities. Kathy Viney is a CCOC Commissioner and chair of its Education Committee and a unit owner in Leisure World.

CCOC Hearing Panel Nullifies Results of Annual Meeting and Decisions of New Board Due to Improper Meeting Notice

In the recent decision of Jones v. Georgian Colonies Condominium Association, CCOC #40-17 (May 26, 2018), a CCOC hearing panel issued an important interpretation of the Maryland Condominium Act's requirements for notices calling annual meetings. Based on its interpretations, the hearing panel held that the results of the board election, and the decisions of the new board, were legal nullities. The case also illustrates how the election process can be abused and why association members should be involved in their association's elections.

In this case, the Condo had a board of 7 directors at the time the election was called. One of the directors was an absentee owner who owned 16 of the 225 units. He also co-owned another unit with a person who was a candidate for the board. The first co-owner owned 99% of that unit and the other person owned 1%.

Section 11-109 of the Condominium Act provides that under certain conditions, if there is no quorum at the annual meeting, the members present may vote to call a second meeting, at which no quorum will be required in order to do business and to conduct the election. In this case, the notice of the meeting stated that if there was no quorum at the meeting, the members present could call the second meeting *immediately* after the first one was adjourned, and could proceed to hold the election and do other business at once without any further notice or delay.

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New Laws for 2018

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laws made such provisions unenforceable, but the language still appears in the documents. To address such offensive language on the books that contain restrictions of ownership based upon race, religious belief or national origin, the legislature implemented law that now **requires** a homeowners association to be proactive to remove any such provisions from the governing documents on or before September 30, 2019. In essence, the Board of Directors is required to delete any such provision from the governing documents and record the amended version without such language by that deadline.

Master Meters no More (at least for Gas & Electric)! [New Law effective July 1, 2018] [Codified at Public Utilities, Section, 7-301]

Under a new law implemented and effective July 1, 2018, the Public Service Commission is no longer permitted to approve new gas or electric service to multi-family residential properties unless there are submeters or individual meters for the units to track usage. Such legislation was needed as the struggle of dealing with Master Meters by residential condominiums and cooperatives has existed for years. When such associations were stuck with Master Meters, many would be required to spend money to install their own submeters, pay to have them read, pay a service to have it billed back to the individual owners, and also, at times, left being the billing agent (or pay someone else) to collect the money. Alternatively, those communities that did not track individual usage would instead plead with owners to be mindful of the costs and ask residents to not abuse their usage, as the usage of all was a shared expense divided by some method not based upon use. This new law is a welcomed change for managing utility bills within associations and making sure residents are billed for their actual usage, which is then managed by the utility provider. Additionally, the legislation also requires the Public Service Commission to conduct a study to analyze transitioning existing Master Meter properties to conform with the new requirement for individual metering.



While originally included in the legislation, unfortunately, water, which is often the biggest issue for associations on a Master Water Meter system, was stricken from inclusion in the legislation before adoption. As such, water may still be Master Metered, but hopefully, at some point in the future, the legislature will address water in the same manner so Master Metering in that context is *washed* away from existence.

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In the next issue, I will review some of the most important existing laws that affect the annual duties of associations and their board members to give certain notices to their members or to the County.

(Jason Fisher is the principal of Fisher Community Association Consultants LLC where he serves as a professional consultant to community associations, management companies, individuals and developers. He is also a former president of the Metropolitan Washington DC Chapter of the Community Associations Institute with over 17 years of experience in the field of common ownership communities. The opinions expressed in this article are his own and do not necessarily reflect the opinions of the CCOC.)

Landlord Is Liable For Damage Caused by Tenant But Liability May Be Limited to \$5000

A CCOC hearing panel has ruled that a condominium association can hold a landlord liable under Section 11-114(g) of the Condominium Act for damage the tenant inflicted on the common elements, but the law limits the landlord's liability to the amount of the insurance deductible and no more than \$5,000.

Kim v. Montgomery Chase Condominium Ass'n., CCOC #31-17 (May 15, 2018) (panel: Fleischer, Branda, Fishbein).

In this case, the tenant damaged the entrance gate to the association property in the amount of \$7355 and did not pay for the repairs. The Condo sought recovery from the landlord not only under its bylaws, but also under the Condominium Act's "master insurance" statute. The Condo refused to let the landlord participate in obtaining other estimates or determining what repairs might be necessary, and it refused to file a claim with its master insurance. It obtained only one estimate.

The hearing panel held that although the rental unit itself did not cause any damage, the damage nonetheless "originated from a unit" because that's where the person lived who did cause the damage. Therefore, the landlord could be held liable for the cost of repairs even if the landlord was in no way negligent in causing them. However, the same law limits a unit owner's liability in such a case to the amount of any insurance deductible, up to a maximum of \$5000.

The panel ruled that the board's decisions to obtain just one estimate and to not file a claim with its insurance policy were within its legal authority under the "Business Judgment Rule" and valid. The panel went on to chastise the Condo for not being willing to work more closely with the landlord to explore alternatives before making its final decision even if it was not legally required to do so.

Finally, the panel ruled that the Condo's debt collection letter to the landlord, which was sent well after the Condo was notified of the complaint, was a violation of the Chapter 10B's imposition of an automatic stay on association actions to enforce their decisions, and it ordered the Condo to reimburse the landlord \$50 for his filing fees, and it ordered the Condo not to attempt to collect more than the \$5000 permitted.

CCOC Nullifies Election Due to Improper Notice

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There was no quorum at the annual meeting and the members present adjourned and immediately started the second meeting. They voted to elect the 1% co-owner to the board despite a bylaw banning co-owners of a single unit from serving on the board simultaneously. They then voted to reduce the size of the board from 7 to 5. Immediately following this meeting, the new board met to conduct business. It then voted to remove 2 members from the board, thereby reducing it from 5 to 3; and it elected the 99% co-owner as its president. The president later proceeded to make a number of decisions on expenditures and to fire the property manager.

The association members petitioned for a general meeting, which was later held. At that meeting they voted to increase the board from 3 to 5. They “ratified” the election of the disputed 1% co-owner because during the time between the annual meeting and the special meeting, the 99% co-owner had sold all his interest in the unit to the 1% co-owner, so there was no longer any bylaw violation.

The panel held that under Section 11-109, the notice of election cannot state that if there is no quorum at the annual meeting then a second meeting can be held immediately or otherwise on very short notice. The panel stated that if there was no quorum at the first meeting, the members could call a second one, but must give a new written notice *after* they made their decision, and that notice must be at least 15 days in advance of the second meeting. In effect, the second meeting cannot take place for at least 15 days after the first one.

Therefore, the votes to reduce the size of the board and elect the 1% co-owner were nullities. Since the size of the board therefore remained at 7 directors, the 3 directors attempting to do business did not have a quorum, and all their decisions were also nullities.

(Since the relevant laws on annual meeting notices for HOAs and cooperatives are very similar to Section 11-109 of the Condominium Act, the CCOC’s decision in this case is relevant to how those other statutes can be interpreted and applied. Ed.)

Behind the Scenes

This newsletter is a publication of the Department of Housing & Community Affairs (DHCA) on behalf of the Commission on Common Ownership Communities. This edition, as well as some future editions, relies upon the services of volunteer editors. The editor for this newsletter is Peter Drymalski, a former member of the DHCA staff who takes responsibility for all errors. Any opinions expressed in these newsletters are those of the authors of the articles or of the editors, and do not necessarily represent the official positions of DHCA or of the Commission.

