

Fall 2006

Community Association LawLetter

ASSOCIATION FLAG RESTRICTIONS PRE-EMPTED BY NEW FEDERAL LAW

A new federal flag law sailed through Congress and was signed into law in late July.

Aimed specifically at condominiums, homeowners associations, and housing cooperatives, the Freedom to Display the American Flag Act prohibits an association from restricting or preventing a member of an association from displaying the flag of the United States on the member's residential property or exclusive use area.

However, community associations may establish reasonable restrictions pertaining to the "time, place, and manner of displaying the United States flag" where such restrictions are "**necessary to protect a substantial interest of the association**". Additionally, flags must be displayed in a manner consistent with the United States Flag Code and any rule or custom pertaining to proper display or use of the American flag.

According to the bill's lead sponsor, Representative Roscoe Bartlett of Maryland, the new law "gives community associations the right to establish appropriate limitations on the size and locations of flags displayed in their communities".

MARYLAND LEGISLATIVE UPDATE

In the 2006 session of the Maryland General Assembly, a variety of bills regarding condominiums and homeowners associations were introduced. Most were not enacted.

Extended Leases for Condo Conversions. In response to the surge in conversion of residential apartments to condominiums, numerous bills were introduced to aid tenants faced with displacement. Under current state law, 3-year extended leases for up to 20% of the rental units in a building converted to a condominium must be offered to households which meet qualifying criteria based on age, disability and income.

The Maryland Condominium Act was amended to include **mentally disabled individuals** among those entitled to a 3-year extended lease. Previously, the extended lease requirement only applied to a disability based on limited physical mobility. The new provision applies to any condominium where an application to register the condominium with the State is filed after March 15, 2006.

Also enacted was a law to allow counties and municipalities greater flexibility in setting **income eligibility standards** for qualifying for 3-year extended leases.

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MARYLAND LEGISLATIVE UPDATE

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This provision applies to any condominium conversion where notice of intent to convert the building is given to tenants after March 16, 2006.



Other state condo conversion bills which **did not pass** included proposals to increase the extended lease set-aside from 20% to 25% of the rental units, lower the income eligibility criteria, increase the amount of a tenant's moving expenses which a developer must pay, change the tenant notice requirement, and increase the extended lease period from 3 years to 5 years.

Dispute Resolution Hearings. In response to the position of the Montgomery County Attorney that community associations must be represented by an attorney in dispute resolution hearings before the Montgomery County Commission on Common Ownership Communities, a bill was introduced to change

the state law practice requirements to allow "any person" to represent an association in such proceedings. The final version of the bill, as enacted, was amended to allow officers and directors of an association to represent an association but not allow others who are not attorneys to do so. This law takes effect October 1, 2006.

Insurance Deductible. Also introduced was a bill to eliminate the \$1,000 cap on the amount of a condominium master policy insurance deductible which can be shifted to a unit owner by the condominium bylaws. This bill was killed in committee.

Community Governance. Several other bills directly affecting community association governance were introduced but **not enacted**. These include bills to:

- * prevent homeowner association covenants banning antennas from being enforced against owners who install amateur radio antennas;

- * bar proxy votes by condominium unit owners whose mailing address is **within 50 miles** of the condominium;

- * prevent the enforcement of a condominium or homeowners association's specific prohibition on family daycare and no-impact home business for any such use which was in operation prior to March 1, 2006;

- * require a minimum of 80 percent of homeowners to approve any amendment to a homeowners association declaration or bylaws.

More information about these bills and other Maryland legislation can be obtained from the Maryland General Assembly website, <http://mlis.state.md.us>.

MARYLAND COURT OF APPEALS PERMITS CONDOMINIUM OWNER TO INSTALL EXTERIOR DRYER VENT WITHOUT ASSOCIATION APPROVAL

In *Garfink v. The Cloisters at Charles, Inc.*, the Maryland Court of Appeals ruled that a condominium unit owner did not need to obtain approval from the condominium board of directors prior to installing an exterior dryer vent to comply with the building code.

In 1991, an owner purchased a new condominium unit in a Baltimore County, Maryland condominium. The clothes dryer vent was located in the furnace room of the unit, rather than the outside of the building as required by the building code. Dryer vents of all other owners were located on the common element exterior wall of the building.

Exterior Dryer Vent Installed

When the clothes dryer broke in 2000, the installation contractor refused to install the new dryer because the furnace room location of the vent was a violation of the building code and posed a fire hazard. As a result, the owner had the dryer vent routed through the exterior wall of the building without the permission of the condominium board of directors.

Upon learning of the installation of the exterior dryer vent, the condominium association notified the owner that it objected to the location and proximity to the front entrance of the neighboring unit. When the owner refused to remove the exterior vent, the condominium association filed suit against the owner in 2003, seeking an injunction requiring her to remove the exterior vent and submit an application to the condominium for permission to install an exterior dryer vent.

At issue were two provisions from the condominium declaration and bylaws. The declaration contained a provision granting each unit owner a right of use easement in the common elements “for the purposes of

providing maintenance, support, repair, or service for such unit to and for the ducts, pipes, conduits, vents, plumbing, wiring and other utility services to the unit.”

Additionally, a provision of the bylaws provided that, except for purposes of proper maintenance and repair, a unit owner is prohibited from making any change or alteration to the exterior of any unit or the common elements until an application is submitted to, and approved in writing by the Board.

The trial court ruled in favor of the condominium association, concluding that the easement provision in the declaration must be applied in a manner consistent with the architectural change provision in the bylaws by obtaining approval for any change in the exterior appearance of the building. The intermediate appeals court – the Maryland Court of Special Appeals – agreed with the trial court and further ruled that “traditional easement law” does not apply to condominiums.

No Approval Required

In a 4-3 decision, the Court of Appeals reversed the trial court and Court of Special Appeals, ruling that traditional easement law does apply to easements granted in condominium documents and that the owner

...an owner’s right to change the exterior of the condominium building without prior approval of the condominium board applied only “where an obvious construction defect exists relating to safety”.

was permitted by the easement in the declaration to install the dryer vent through the exterior common elements of the condominium without the prior approval of the condominium board.

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MARYLAND COURT RULING

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The Court of Appeals attempted to narrow its ruling to the particular circumstances involved, stating that an owner's right to change the exterior of the condominium building without prior approval of the condominium board applied only "where an obvious construction defect exists relating to safety". The court further explained that, in its view, installation of the exterior dryer vent was "the functional equivalent of maintenance necessary for the reasonable and safe operation of the dryer".

The three dissenting judges disagreed, concluding that nothing in the declaration easement provision or bylaw architectural change provision permit a unit owner to install a **new vent** on the exterior of the building without the approval of the board.

In their view, the terms "repair" and "maintenance" as used in the easement did not include the installation of a new exterior dryer

vent and, therefore, prior approval by the condominium board was required.

Architectural Review Standard

In considering a request for approval of an architectural change, the dissenting judges emphasized that the board must act "reasonably and in good faith". They also noted that a disapproval may constitute "a restraint on the free use and alienability of land" and, therefore, a disapproval should be "very closely scrutinized".

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THOMAS SCHILD LAW GROUP, LLP represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. Since 1985, the firm has advised community associations on all aspects of association operations including covenant enforcement, assessment collections, developer warranties, maintenance and management contracts, and association document interpretation. Thomas Schild Law Group also represents community associations in court litigation and administrative hearings.

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