

*Winter 2007*

## *Community Association LawLetter*

### **MARYLAND TASK FORCE ON COMMON OWNERSHIP COMMUNITIES RECOMMENDS NEW LEGISLATION**

A Maryland task force charged with studying common ownership communities issued its report in December 2006, recommending several new laws regarding the operation and management of Maryland condominiums, homeowners associations and housing cooperatives.

The Maryland Task Force on Common Ownership Communities ("Task Force") was comprised of government officials, community association board members, individual homeowners, and professionals serving community associations. The Task Force examined the following subjects:

- the education and training needs of common ownership community boards and new and prospective owners of homes in common ownership communities;
- alternative dispute resolution services for common ownership communities;
- the desirability of adopting the Uniform Common Interest Ownership Act;
- issues facing aging common ownership communities;
- issues relating to the collection of assessments; and

- issues relating to the resale of homes located in common ownership communities.

### **Education and Training**

With regard to education of homeowners and boards of directors, the Task Force recommended the creation of a **state-sponsored and approved web site** regarding the rights and responsibilities of living in a common ownership community. The Task Force also recommended that the Maryland Higher Education Commission provide affordable **educational materials and services** on what it means to be a homeowner living in a common ownership community and what it means to be a member of a board governing such communities.

Additionally, the Task Force recommended that a brochure regarding the rights and responsibilities of living in a common ownership communities be distributed through real estate agents, lenders and title companies.

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**Alternative Dispute Resolution**

The Task Force recommended that local governments, either individually or through regional groupings, be required to consider offering common ownership community **alternative dispute resolution services**, such as ombuds programs, mediation, arbitration, and administrative hearings. Additionally, the Task Force recommended that common ownership communities consider **internal dispute resolution systems** to promote collaborative approaches to conflict resolution.



The Task Force also recommended that local governments coordinate referral of disputes involving alleged violations of state common ownership community laws to the Office of Attorney General for review and appropriate enforcement action.

**Uniform Common Interest Ownership Act**

Amendments to the 1994 version of the Uniform Common Interest Ownership Act ("1994 UCIOA") -- model legislation recommended by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") -- are currently under consideration of the UCIOA subcommittee of NCCUSL. The Task Force has recommended that further consideration of UCIOA as a model for amending Maryland common ownership community laws be deferred until after a final revised version of the 1994 UCIOA has been issued by NCCUSL. Similarly, the Task Force recommended deferring further consideration of a "**homeowners bill of rights**" since that

subject is also under consideration by the NCCUSL UCIOA subcommittee.

**Aging Communities**

**Developer Transition.** The Task Force made several recommendations regarding **transition from developer control to homeowner control** in common ownership communities. The recommendations include:

- an **independent reserve study** should be prepared and paid for by the developer;
- the developer should transfer **reserve funds** based upon unsold units/lots owned by the developer and the developer may not pay less into reserves per unit/lot than other owners;
- the developer should be required to supply the homeowner-controlled board with a **list of all common elements and all contracts**;
- homeowner-controlled boards should be given the **right to reject the transfer of common elements** if incomplete or not reasonably useable by the community (such as small strips of land between two homes); and



- an **independent audit of funds** transferred to the homeowner-controlled board should be conducted to ensure that the developer has contributed the proper amount.

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**Replacement Reserves.** The Task Force also recommended that the board of directors of a common ownership community be required to conduct a **reserve study** at least once every five years to determine the amount and necessity of reserves for anticipated capital replacements, repairs and improvements. The reserve study should be reviewed annually to determine the amount of reserves to be included in the budget for such replacements to maintain adequate reserves for such replacements.



**Governing Documents.** The Task Force determined that many older common ownership communities are severely restricted as to how often they may change their governing documents and the percentage of owners required to approve such changes. Accordingly, the Task Force recommended that a law be passed to permit every common ownership community to **amend its governing documents** at least once every five years, and to permit approval of any amendment by the affirmative vote of not more than 66-2/3% of all owners or such lesser majority of owners as may be provided for in the association's governing documents.

**Statutory Exemptions.** Additionally, the Task Force recommended that, to the extent feasible, common ownership communities currently exempt from any portion of the state common ownership community laws should be phased in so that current and future laws regarding common ownership communities apply to all communities and any **exemption for older communities be eliminated.**

**Manager Licensing.** With regard to common ownership communities which hire

outside management companies, the Task Force recommended that the **management companies be licensed** by the State of Maryland and should be required to post a bond in order to obtain a license. The bond is intended to protect common ownership communities by providing recourse in the event of financial losses caused by the management company.

**Receivership.** Based upon its finding that some common ownership communities are "dysfunctional", the Task Force recommended that an owner be permitted to file a court petition to place the community in **receivership** under supervision of the court.

**Insurance Deductibles.** With regard to condominium insurance deductibles, the Task Force noted that existing law allows up to \$1,000 of the **condominium insurance deductible** for property damage losses to be shifted to the unit owner under certain circumstances. The Task Force recommended that the current \$1,000 cap on the property insurance deductible be increased to \$10,000.



### Collection of Assessments

The Task Force recommended that common ownership community assessments be given **lien priority** as of the date of recording in the land records of the declaration or other document that authorized the imposition and collection of assessments by the common ownership community. The lien priority would be limited to an amount equal to six months' worth of delinquent assessments, plus any late

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fees, attorneys' fees, and costs of suit, if authorized under the declaration or other governing document.

The Task Force also recommended that all common ownership communities be given statutory authority to institute policies for **suspension of privileges** of delinquent owners provided that such policies are set forth in a document recorded in the land records. Additionally, the Task Force recommended that owners with a "bona fide dispute" with a common ownership community be given the right to file an **assessment escrow action** and pay assessments to a court administered account until judicial resolution of the dispute.

**Resale of Homes**

With regard to resale of homes in common ownership communities, the Task Force recommended that **disclosure requirements** be made uniform for all kinds of common ownership communities with regard

to time deadlines and the contents of such disclosures, to the maximum extent possible.

Additionally, the Task Force recommended that the homeowner association **depository requirements** be extended to condominiums and housing cooperatives. All common ownership communities would be required to update their depository filings at least annually.

**Proposed Legislation**

During the 2007 legislative session of the Maryland General Assembly, it is anticipated that numerous bills will be introduced to implement various Task Force recommendations.

The full Task Force report can be obtained from the website of the Maryland Department of Housing and Community Development, [www.dhcd.state.md.us](http://www.dhcd.state.md.us).

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**THOMAS SCHILD LAW GROUP, LLC** represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. The firm advises 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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