

# 2014 MARYLAND LEGISLATIVE & LEGAL UPDATE

Washington Metropolitan Chapter  
Community Associations Institute

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# WMCCAI Legislative Activity

- Legislative Committees:
  - Responsible for identifying local, regional, statewide and federal legislative issues of importance to common-interest communities in the District, Maryland and Virginia.
  - The committees monitor legislation and help the chapter set specific issue priorities.
  - The chapter has three local legislative committees: D.C., Maryland and Virginia.

# 2014 MARYLAND LEGISLATIVE & LEGAL UPDATE

## RELEVANT COUNTY LAWS/RULES

**Ronald M. Bolt, Esquire**  
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# Prince George's County

## Landlord Licensing

### Sec. 13-183. Common Ownership Communities requirements.

\* \* \*

**(b)** For an application for a single-family rental facility or multifamily rental facility ... an applicant shall provide ... (2) A certification by the applicant that the dwelling unit does not have a lien placed upon it ... for non-payment of Common Ownership Community Fees and that the dwelling unit does not violate the covenants or bylaws of the Common Ownership Community. The applicant shall provide evidence with the application to the Director from the Common Ownership Community consistent with this section.

**(c)** The Director may suspend, revoke or deny a license ... where a Common Ownership Community provides documentation to the Department of a final adjudication that:

- (1) use of the dwelling unit as a rental violates the covenants or bylaws ...; or
- (2) that the dwelling unit has a lien placed upon it ... for non-payment of Common Ownership Community fees.

(CB-89-2012)



# Attorney's Fees

## Rule 3-741

### Based on law – apply factors in Rule 2-703(f)(3):

(A) time and labor required; (B) case novelty and difficulty; (C) legal skill required; (D) whether acceptance of the case precluded other employment by the attorney; (E) customary fee for similar cases; (F) whether the fee is fixed or contingent; (G) time limitations; (H) amount involved and the results obtained; (I) counsel's experience, reputation, and ability; (J) undesirability of the case; (K) nature and length of relationship with client; and (L) awards in similar cases. (Derived from Monmouth Meadows v. Hamilton, 416 Md. 325 (2010).)

### Based on contract – apply factors in Rule 2-705(f)(1):

Factors above plus: (M) principal amount in dispute; (N) the fee agreement; and (O) any other factor reasonably related to the fairness of an award.

**Exception: If less than the smaller of 15% of the principal or \$4,500, “court need not require” Rule 2-703(f)(3) factors**

# Montgomery County

## Bill 26-12 - Swimming Pools - Defibrillators

- At all times when a swimming pool is open, it must have at least one automated external defibrillator in good working order available and at least one staff member who is trained in its use.
- This regulation applies to all swimming pools except those pools built on the grounds of single-family residences, used solely by the owners of the residences and their immediate family, tenants and guests.



# Montgomery County

Bill 19-13

## Common Ownership Communities Attorney's Fees

(1) filed or Repeals the CCOC's authority to award attorney's fees based upon the authority in an association's governing documents.

May only award attorney's fees to a party in limited circumstances if the other party:

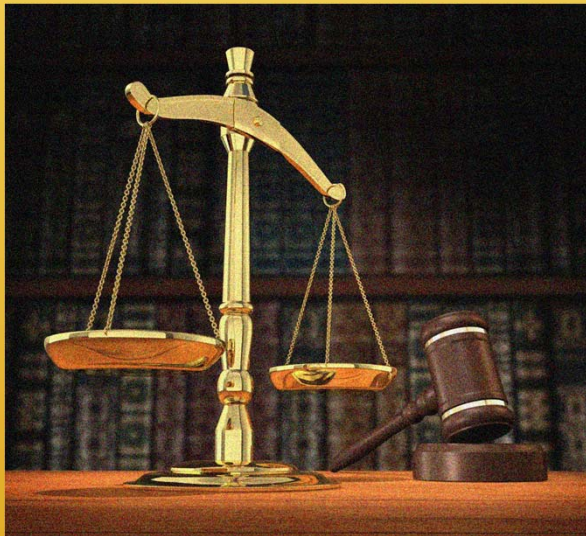
maintained a frivolous dispute, or maintained a dispute in bad faith;

(2) unreasonably refused to participate in mediation of a dispute, or unreasonably withdrew from ongoing mediation; or

(3) substantially delayed or hindered the dispute resolution process without good cause.

# 2014 MARYLAND LEGISLATIVE & LEGAL UPDATE

## CASES OF INTEREST





# Henry v. Bel Pre Recreation Association, Inc.

(Court of Special Appeals, No. 2325, Sept. Term 2012,  
filed Jan. 10, 2014)

- (1) Absent fraud or bad faith, a court will not interfere with a discretionary decision (the “business judgment rule”).
- (2) A director having a purported covenant violation on his or her property can vote on an enforcement action concerning a similar purported violation on another property, after appropriate disclosure.

**Dumbarton Improvement**  
**Association, Inc. v. Druid Ridge**  
**Cemetery Company**

(Court of Appeals, No. 128, Sept. Term 2010,  
filed Aug. 22, 2013)

- (1) Changed circumstances do not render a covenant unenforceable when there is no relationship between the change and the purpose of the covenant.
- (2) Under certain circumstances, an owner cannot void a covenant by the owner's own actions.
- (3) If a covenant is unambiguous, extrinsic evidence may not be considered to ascertain intent.

# Point's Reach Condominium v. The Point Homeowners Association, Inc.

(Court of Special Appeals, No. 1070, Sept. Term 2011,  
filed Aug. 30, 2013)

Implied Negative Reciprocal Covenants. When a developer pursues a course of conduct indicating intention to follow a general plan of development and imposes substantially uniform restrictions on lots conveyed, those same restrictions may be enforced against other property intended as part of the same development but inadvertently omitted.



## Schuman v. Greenbelt Homes, Inc.

69 A.3d 512 (2013)  
(Court of Special Appeals)

**Issue:** Is a co-op liable for failing to prevent an occupant from smoking despite receiving complaints of second hand smoke?

**Holding:** Co-Op found not liable for failing to prevent second hand smoke exposure.



# Lipitz, et al. v. Hurwitz

77 A.3<sup>rd</sup> 1088 (2013)  
(Court of Appeals)

**Issue:** Whether a buyer of property within an HOA, who already owns other lots within the association, is required to receive the mandatory disclosures required by the Maryland Homeowners Association Act?

**Holding:** Yes. Despite being a member within the association, an owner is required to receive the mandatory disclosures required by the Maryland Homeowners Association Act.

The court held, however, that in this case, since the seller offered to provide the mandatory disclosures to the buyer, but the buyer declined, he may be prevented from terminating the sales contract on the basis that he did not receive the mandatory disclosures.

# Reiner, et ux. V. Ehrlich, et al.

(Court of Special Appeals, No. 33, Sept. Term,  
2012, filed May 29, 2013)

**Issue:** Whether a homeowners association's decision to deny an owner's request to install a new roof on a home was done in error.

**Holding:** The decisions made by an association's board of directors will not be disturbed unless there is a showing of fraud or bad faith (The Business Judgment Rule).



# Maryland Legislative Session Update

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# CAI National Legislative Activity

## MARYLAND LEGISLATIVE ACTION COMMITTEE (MD-LAC)

### OUR GOAL:

*To be recognized In Annapolis and among common ownership community homeowners as the leading organization qualified as expert on common ownership community Issues.*





# Who Are We?

- **MD-LAC members** are homeowners, attorneys, businesses and professional managers who work directly with common ownership communities.
- **MD-LAC members** and its professional lobbyists work with our elected representatives to address issues and, where needed, share our expertise on legislation that will benefit common ownership communities.
- **MD-LAC members** identify and monitor bills of concern to common ownership communities (COCs); prepare position papers and/or testify.

# MD-LAC Members

- Phyllis A. Marsh, Chair
- Craig F. Wilson, Jr., CMCA®, AMS®, PCAM®, Vice Chair
- Kathleen M. Elmore, Esq., Treasurer
- Bruce Campbell, PCAM®, CPM®, CRE®, Member
- Reese Cropper, III, CIRMS, Member
- Julie E. Dymowski, Esq., Member
- Steven G. Landsman, PCAM®, Member
- Sharon Levine, Member
- Jeremy M. Tucker, Esq., Vice Chair
- Susan R. Rapaport, Esq., Secretary
- Chris Majerle, PCAM®, Member
- Robin C. Manougian, CIRMS, Member
- Buck Mann, Member
- Thomas C. Schild, Esq., Member
- Peter S. Philbin, Esq., Member



# 2013 Maryland Legislative Session Recap

- MD-LAC studied approximately 48 bills introduced in 2013.
  - 7 bills deemed harmful to common ownership communities in Maryland were actively opposed
  - 24 bills were actively supported in whole or in part.
  - The remaining 17 bills were monitored to ensure nothing got added by amendment that would warrant taking a position.

- 2013 Session Highlights
  - Manager Licensing was, again, at center stage.
    - Passed the full House of Delegates
    - Killed in Senate Committee
  - “Pit Bull” bills were the 2<sup>nd</sup> major legislative issue.
    - “Rebuttable presumption” standards were debated.
    - All bills would have expressly removed community associations from the direct *“line of fire”*
    - House and Senate leaders could not agree on liability standard, all bills failed.

- 2013 Session Highlights, continued
  - HB286 - Real Property - Common Ownership Communities - Foreclosure of Liens
    - Community associations may now only foreclose on a lien consisting solely of delinquent assessments and attorney's fees "***directly related to the filing of the lien***".
    - MD-LAC vigorously opposed this legislation to no avail.
    - Does not preclude an association from "using any other means to enforce a lien against a unit owner".
  - 2014 – HB602 introduced on behalf of MD-LAC to "correct" this



# 2014 Maryland Legislative Session Update

- MD-LAC has studied approximately 47 bills introduced in the 2014 session.
  - 10 bills deemed harmful to common ownership communities in Maryland were actively opposed
    - 3 were subsequently changed to “Monitor” due to passage of other bills.
  - 17 bills were actively supported in whole or in part.
  - The remaining 20 bills were monitored to ensure nothing got added by amendment that would warrant taking a position.

# **Regulation of Common Ownership Community Managers**

**House Bill 10 (2013: HB576)**

**CAI Position:**

**Support with Amendments, qualified on fiscal note**

For the purpose of creating the State Board of Common Interest Community Managers in the Department of Labor, Licensing, and Regulation.



# introduction

- History

- This is the sixth (6<sup>th</sup>) year for Manager Licensing legislation in the Maryland General Assembly.
- **Neither CAI nor its Maryland Legislative Action Committee (MD-LAC) has been the genesis of any legislation.**
- All CAI efforts have been guided by national public policy on manager licensing which can be found on CAI's website at:

[www.caionline.org/govt](http://www.caionline.org/govt)

- History, continued
  - Sponsors remain bound and determined to regulate community managers to ***“rid the industry of the bad apples”***.
  - For the past 5 years, MD-LAC has adopted a ***“be part of the solution”*** posture in an effort to positively influence the legislation.
  - The legislation in 2013 was developed over several “work sessions” with legislators and other stakeholders.
  - The MD-LAC continues to work with the bill sponsors right up to the preparation of this presentation.

# *the legislation*

## **Primary Components:**

- Creates 2 distinct licensing classifications:
  - Licensee
  - “Limited” Licensee
- Defines what “provide management services” means.
- Creates standards to qualify for a license.
- Includes a continuing education component.
- Establishes a minimum requirement for manager fidelity insurance.
- Allows for a “trainee” to work under the supervision of a licensee.
- Creates a State Board of Common Ownership Managers.
  - 9 members
    - 5 Licensed managers
    - 1 attorney
    - 3 residents of a common ownership community
- Creates criteria for revocation of a license and a due process for doing so.

# *the legislation*

The Department of Labor, Licensing & Regulation (DLLR) projected a biennial licensing fee of **\$875.00**.

MD-LAC withdrew support based upon projected fee.

Sponsors were also concerned and DLLR proposed a redraft of bill in effort to reduce cost.

# *the legislation*

**Status:** HB10 was **withdrawn** by the sponsor due to much wrangling between stakeholders about changes offered in an effort to reduce the licensing costs.

**Rest assured, legislation will be back AGAIN in 2015.**

**NOTE:** SB274 - Business Occupations - Common Ownership Community Managers – Registration was reported as **UNFAVORABLE**.

# Real Property - Condominiums and Homeowners Associations - Disclosures to Purchasers on Resale of Unit or Lot – Limitation on Fees

## House Bill 412 / Senate Bill 229

- Modifies the MD Condominium Act to limit the maximum fee that may be charged by a council of unit owners for a resale certificate to \$50.00, **AND**
- Imports the condominium resale disclosure provisions into the MD Homeowner Association Act.

**CAI Position: OPPOSED** - low fee does not comport with effort necessary to prepare certificate and liability exposure.

# *the legislation*

## **Issues:**

- “Many” complaints from Realtors about “excessive” fees being charged.
- “Out of State Third party” companies now being used causing fees to rise.
- Condominiums are using this document as a “profit center”.
- Purchasers are “captive” as resale certificate is not available anywhere else.
- Sponsors believe that effort to prepare and deliver a resale certificate is just “push a button”.

# Status

- **SB229** has passed the full Senate.
  - Bill limits fee for Condominium resale certificate to \$100.00
  - HOA requirement eliminated
- **HB412** has had hearing and is being “held” pending House hearing on **SB229** (March 20<sup>th</sup>)
  - E-mail the members of the House Environmental Matters **Real Property Subcommittee** and Maggie McIntosh ASAP to urge **UNFAVORABLE REPORT**



# Condominiums and Homeowners Associations - Sales - Disclosure and Cancellation Requirements

## House Bill 1080 / Senate Bill 820

- Imports the condominium resale disclosure provisions into the MD Homeowner Association Act.
- Amends the resale disclosure requirements to require giving purchaser "notice of any changes in mandatory fees and payments any other substantial and material amendment to the disclosure after they become known to the seller."
- Alters the time frame for providing a resale certificate from calendar 20 days after receipt of a written request to only 7 calendar days

**CAI Position: OPPOSED** – Much the same as for  
SB229/HB412

# Status

- **SB820** has had Senate hearing.
  - Reported that “amendments” being inserted into HB1080, waiting to see amendments.
- **HB1080** has had hearing and is being “held”. May be close to unfavorable.
  - E-mail the members of the House Environmental Matters **Real Property Subcommittee** and Maggie McIntosh ASAP to urge **UNFAVORABLE REPORT**

# Condominiums - Individual Exceptions to Limitations on Rentals

(Maryland Condominium Owners Emergency Relief Act)

## House Bill 1039

- Requiring the governing body of a condominium to grant individual exceptions to rentals limitations under specified circumstances;
- Requiring a condominium unit owner to be granted the individual exception if the unit owner submits a written request and specified evidence;
- Establishing that an exception would be for a 3-year term.
- **CAI Position: OPPOSED** – Legislature should not interfere on properly adopted rentals limitations
- **Status:** Currently being “held” in committee.

# Real Property - Common Ownership Communities - Foreclosure of Liens

House Bill 602

## MD-LAC INITIATED BILL

- Altering the types of “damages” permitted to be included in a lien to include
  - late fees, interest and reasonable costs
  - attorney's fees directly related to specified efforts to collect delinquent periodic or special assessmentsfor which the governing body of a condominium or homeowners association may foreclose on a lien for delinquent assessments
- Applies prospectively.

**CAI Position: Strong support**

# *the legislation*

- History

- Last year, the Legislature passed HB286 - Real Property - Common Ownership Communities - Foreclosure of Liens that limited foreclosure to a lien consisting **solely** of delinquent assessments and attorney's fees "*directly related to the filing of the lien*".
- The legislation does not preclude an association from "using any other means to enforce a lien against a unit owner", presumably leaving a lien in place and waiting for a sale or mortgage refinance to demand payoff of the lien.
- MD-LAC vigorously opposed this legislation to no avail.

# Status

- **HB602** has passed the full House.
- Senate Hearing before Judicial Proceedings is scheduled for March 19<sup>th</sup> at 1:00 p.m.
- E-mail the members of the Senate Judicial Proceedings Committee to urge a

**FAVORABLE REPORT**

# PIT BULLS

## Personal Injury or Death Caused by Dog – Rebuttable Presumption (HB73, SB247)

- If a dog caused injury that creates a rebuttable presumption that the dog is inherently dangerous
- Applies to ALL dogs, not just pit bulls
- Liability of community associations and landlords returns to pre-*Tracey v. Solesky*
- **CAI Position: Support**

Status: **BOTH** bills have passed their chambers.

# Other Proposed Legislation

- A. Rental Units, Condominiums, and Homeowners Associations - Smoking Restrictions(HB664)
- Allowing the bylaws or regulations of a condominium to contain restrictions or prohibitions on smoking tobacco products in specified areas and authorizing a homeowners association to include in its declaration, bylaws, rules, or recorded covenants and restrictions specified restrictions or prohibitions on smoking tobacco products in multi-unit dwellings or in the common areas.
  - **MD-LAC Position: Support with Amendment**

**Status:** Bill received an **UNFAVORABLE** report.



# Other Proposed Legislation

## B. Prince George's County - Condominiums – Limit on Assessments (HB1027)

- Providing that a unit owner may not be charged an assessment that exceeds 20% of any mortgage payments the unit owner is required to make on the unit during the period covered by the assessment.

**CAI Position: OPPOSED.**

**Status:** Bill received an UNFAVORABLE report and was withdrawn.

# Other Proposed Legislation

## C. Condominium Warranties (HB259/SB207)

- Would prohibit provisions in sales contracts shorten the statute of limitations applicable to condominium warranty claims.
- Would prohibit developer-imposed provisions in a condominium declaration, bylaw or other documents which require unit owner approval for a condominium association to pursue legal claims.
- Would prohibit developer imposed arbitration to pursue legal claims.

**CAI Position: Support .**

### **Status:**

- ✓ HB259 received an UNFAVORABLE report.
- ✓ SB207 has passed the full Senate and is scheduled for hearing on March 20<sup>th</sup> at 1:00 p.m. in House Environmental Matters.

# Other Proposed Legislation

## D. Maryland Cooperative Housing Act - Transparency Requirements and Member Rights (HB1328/SB865)

- Mirrors provisions of the Maryland Condominium into the Cooperative Housing Act
  - Requiring meetings to be open to the members of the cooperative housing corporation or their agents;
  - Establishing a cooperative housing corporation depository in the office of the clerk of the court in each county and the City of Baltimore;
  - Establishing a dispute settlement mechanism;
  - Prohibits eviction proceedings until tenant is 6 months delinquent.

**CAI Position: Support with amendment.**

### Status:

- ✓ HB1328 has had a House hearing, no action.
- ✓ SB865 has passed the full Senate and a hearing has not yet been scheduled in House Environmental Matters.

*thank you!*