

MONTGOMERY COUNTY CODE, CHAPTER 10B**COMMON OWNERSHIP COMMUNITIES****Article 1. Commission on Common Ownership Communities.****§ 10B-1. Findings; purpose.**

The Council finds that there is often unequal bargaining power between governing bodies, owners, and residents of homeowners' associations, residential condominiums, and cooperative housing projects. Owners and residents in these common ownership communities are in effect citizens of quasi-governments, which provide services in lieu of government services, levy assessments, and otherwise have a significant impact on the lives and property of owners and residents.

Owners and residents in common ownership communities require the protection of democratic governance. In furtherance of this goal, the Council finds a need to regulate elections, budget adoption, enforcement procedures, and resolution of disputes with adequate due process protections. The Council also finds that the creation of a Commission on Common Ownership Communities will through regulation and education promote an equitable balance between the powers of governing bodies, owners, and residents.

The County Council finds that a Commission on Common Ownership Communities is necessary to advise the County Council, the County Executive, and offices of County government as necessary on ways to:

- (a) ensure proper establishment and operation of homeowners' associations, condominium associations, and cooperative housing corporations;
- (b) promote education, public awareness and association membership understanding of the rights and obligations of living in a common ownership community;

- (c) reduce the number and divisiveness of disputes, and encourage informal resolution of disputes;
- (d) maintain property values and quality of life in these communities;
- (e) assist and oversee in the development of coordinated community and government policies, programs, and services which support these communities; and
- (f) prevent potential public financial liability for repair or replacement of common ownership community facilities.

§ 10B-2. Definitions.

In this Chapter, the following words have the following meanings:

- (a) Commission means the Commission on Common Ownership Communities.
- (b) Common ownership community includes:
 - (1) a development subject to a declaration enforced by a homeowners' association, as those terms are used in state law;
 - (2) a residential condominium, as that term is used in state law; and
 - (3) a cooperative housing project, as that term is used in state law.
- (c) Department means the Department of Housing and Community Affairs.

§ 10B-3. Commission on Common Ownership Communities.

(a) The County Executive must appoint, subject to confirmation by the Council, a Commission on Common Ownership Communities. The Commission consists of 15 voting members.

(1) Eight members should be selected from unit or lot owners or residents of self-managed and professionally managed condominiums, self-managed and professionally managed cooperative housing corporations, and self-managed and professionally managed homeowners' associations, and may include members or former members of governing boards.

(2) Seven members should be selected from persons who are members of professions associated with common ownership communities (such as persons involved in housing development and real estate sales and attorneys who represent associations, developers, housing management or tenants), including at least one person who is a professional community association manager.

(b) Designees of the County Council, Planning Board, Department of Environmental Protection, Department of Permitting Services, Department of Public Works and Transportation, and Department of Housing and Community Affairs are ex-officio nonvoting members of the Commission.

(c) Each voting member serves a 3-year term. Of the members first appointed, one-third must be appointed for 1-year terms, one-third must be appointed for 2-year terms, and one-third must be appointed for 3-year terms. A member must not serve more than 2 consecutive full terms. A member appointed to fill a vacancy serves the rest of the unexpired term. Members continue in office until their successors are appointed and qualified.

(d) The County Executive, with the consent of the Council, may remove a voting member of the Commission for neglect of or inability to perform the duties of the office, misconduct in office, or serious violation of law. Before the Executive removes a member, the Executive must give the member notice of the reason for removal and a fair opportunity to reply.

(e) Section 2-148(c) applies only to voting members of the Commission.

(f) The Commission must elect one voting member as chair and another as vice chair, to serve at the pleasure of the Commission, and may elect other officers as it determines.

(g) Voting members of the Commission receive no compensation for their services.

(h) The Commission meets at the call of the chair as often as required to perform its duties, but at least once each month. A majority of the voting members are a quorum for the transaction of business, and a majority of the voting members present at any meeting may take any official action.

(i) The Department must provide the Commission with staff, offices and supplies as are appropriated for it.

(j) The Commission must submit an annual report by September 1 to the County Executive and the County Council summarizing its activities, needs, and recommendations, and the extent to which the goals of this Chapter are being met.

§ 10B-4. Administrative support.

In selecting staff to carry out the Department's responsibilities under this Chapter, the Director must consider the recommendations of the Commission.

§ 10B-5. Duties of the Department of Housing and Community Affairs.

The Department, in consultation with the Commission, must:

(a) research, assemble, analyze and disseminate pertinent data and educational materials about activities and programs which assist common ownership communities; plan and conduct educational and other programs, meetings and conferences to promote the operation of common ownership communities;

(b) maintain a master roster of homeowners' associations, condominiums, and cooperatives, their

leadership, and their professional management companies if applicable;

(c) develop and maintain an information and referral system for all services in the County related directly to common ownership communities, and recommend other services when needed;

(d) maintain a collection of common ownership community association documents for use as a model and for reference;

(e) provide technical assistance to association governing bodies on matters such as transition, elections, rules adoption and enforcement, selection of association managers, storm water management and other services;

(f) develop and maintain a manual for the mutual benefit of common ownership communities and government agencies;

(g) develop and maintain an operations manual which will serve as a guide on operations to common ownership community leadership;

(h) advise common ownership communities and professional association managers of changes in the laws and regulations that affect their communities or operations; and

(i) operate a dispute resolution process to furnish mediation and administrative hearings.

(j) assist the Commission in carrying out its duties and in implementing Commission decisions under Article 2.

§ 10B-6. Duties of the Commission on Common Ownership Communities.

The Commission must:

(a) adopt rules and procedures as necessary to carry out the purposes of this Chapter;

(b) keep a record of its activities and minutes of all meetings, which must be kept on file and open to the public at reasonable business hours upon request;

(c) cooperate with the County Executive and all government agencies concerned with matters within the jurisdiction of the Commission;

(d) examine by means of public or private meetings, conferences, and public hearings, conditions in common ownership communities which may result in unmet community, resident, or public needs; and

(e) advise the citizens of the County, the County Council, and the County Executive, and County, state, and federal agencies on matters involving common ownership communities, and recommend such programs, procedures, or legislation as it finds necessary.

§ 10B-7. Registration; fees.

(a) (1) Each common ownership community must register with the Commission annually, and identify its elected leadership and managing agents, on a form provided by the Commission.

(2) Failure to register, or making a false statement on a registration form, is a class A violation and also makes the community ineligible to file a dispute under Article 2.

(3) The governing body of a homeowners' association, the council of unit owners of a condominium, and the board of directors of a cooperative housing corporation are responsible for compliance with this subsection, including the payment of any registration fee.

(b) The County Executive by regulation adopted under method (2) may establish reasonable fees in amounts sufficient to fund the provision of dispute resolution and technical assistance by the Commission and the Department. These fees may include:

(1) a per unit annual charge to common ownership communities to renew registration;

(2) fees for service, that seek to recover the actual cost of the service, for technical assistance and dispute resolution; and

(3) a per unit charge to developers when documents are recorded.

§ 10B-7A. Notification Requirements

The governing body of a community association must, at least annually, distribute information in a form reasonably calculated to notify all owners about the availability of dispute resolution, education, and other services to owners and residents of common ownership communities through the Office and the Commission. The governing body may satisfy this requirement by including with any annual notice or other mailing to all members of the community association any written materials developed by the Office to describe the Commission's services.

Article 2. Dispute Resolution.

§ 10B-8. Defined terms.

In this Article and Article 3, the following terms have the following meanings:

(1) Association document means:

(A) the master deeds, declaration, incorporation documents, bylaws, and rules of any common ownership community;

(B) any written private agreement between any parties concerning the operation of the community or maintenance or control of common or limited common property; and

(C) any similar document concerning the operation or governance of a common ownership community. Association document does not include a lease covered by Chapter 29 unless the lease provides that it may be enforced under this Chapter.

(2) Common element includes:

(A) in a condominium or cooperative, all portions of the common ownership community other than the units; or

(B) in a homeowners' association, any real estate in a homeowners' association community that is owned or leased by the association, other than a unit; and

(C) in all common ownership communities, any other interest in real estate for the benefit of owners which is subject to the declaration.

(3) Community association means the legal entity, incorporated or unincorporated, that is responsible for the governance or common property of a common ownership community.

(4) Dispute means any disagreement between 2 or more parties that involves:

(A) the authority of a governing body, under any law or association document, to:

(i) require any person to take any action, or not to take any action, involving a unit or common element;

(ii) require any person to pay a fee, fine, or assessment;

(iii) spend association funds; or

(iv) alter or add to a common element; or

(B) the failure of a governing body, when required by law or an association document, to:

(i) properly conduct an election;

(ii) give adequate notice of a meeting or other action;

(iii) properly conduct a meeting;

(iv) properly adopt a budget or rules;

(v) maintain or audit books and records;

(vi) allow inspection of books and records;

(vii) maintain or repair a common element if the failure results in significant personal injury or property damage; or

(viii) exercise its judgment in good faith concerning the enforcement of the association documents against any person that is subject to those documents.

(5) Dispute does not include any disagreement that only involves:

(A) title to any unit or any common element;

(B) the percentage interest or vote allocable to a unit;

(C) the interpretation or enforcement of any warranty;

(D) the collection of an assessment validly levied against a party; or

(E) the exercise of a governing body's judgment or discretion in taking or deciding not to take any legally authorized action.

(6) Governing body of a community association means the council of unit owners, board of directors, or any other body authorized by an association document to adopt binding rules or regulations.

(7) Owner includes:

(A) a unit owner in a condominium;

(B) a lot owner in a homeowners' association, and

(C) a member of a cooperative housing corporation.

(8) Party includes:

(A) an owner;

(B) a governing body; and

(C) an occupant of a dwelling unit in a common ownership community.

(9) Unit or lot includes:

(A) any physical portion of a common ownership community with distinct property boundaries that:

(i) provides complete, independent living facilities for one or more individuals,

(ii) contains permanent provisions for living, sleeping, eating, cooking, and sanitation, and

(iii) is designated for exclusive ownership, control, or occupancy by those individuals; and

(B) all legally enforceable rights and interests incidental to individual ownership of real property in a common ownership community.

§ 10B-9. Filing disputes; exhaustion of association remedies.

(a) The Commission may hear any dispute between or among parties.

(b) A party must not file a dispute with the Commission until the party makes a good faith attempt to exhaust all procedures or remedies provided in the association documents.

(c) However, a party may file a dispute with the Commission 60 days after any procedure or remedy provided in the association documents has been initiated before the association.

(d) After a community association finds that a dispute exists, the association must notify the other parties of their rights to file the dispute with the Commission. The association must not take any action to enforce or implement

its decision for 14 days after it notifies the other parties of their rights.

(e) Except as provided in Section 10B-9A, when a dispute is filed with the Commission, a community association must not take any action to enforce or implement the association's decision, other than filing a civil action under subsection (f), until the process under this Article is completed.

(f) Any party may file a civil action arising out of an association document or a law regulating the association's powers and procedures at any time. The court may stay all proceedings for at least 90 days after the court is notified that a dispute has been properly filed under this Article so that a hearing under Section 10B-13 may be completed. Whether or not a stay is issued, the court may hear the action *de novo* only if a hearing panel assigned to the dispute has not issued a decision under Section 10B-13(e).

§ 10B-9A. Request for relief from stay.

(a) At any time after a dispute is filed under Section 10B-9, a community association may submit a request to lift the automatic stay required under Section 10B-9(e) to a hearing panel appointed under Section 10B-12, or if no hearing panel has been appointed, a special standing panel authorized to consider requests for relief from stays.

(b) The special panel must consist of 3 voting members of the Commission designated by the chair, and must include at least one representative of each membership category.

(c) An association that requests relief from a stay must serve a copy of its request on any other party named in the dispute by certified mail or personal service. A certificate of service must accompany any request submitted under this Section. A party served with a copy of the request must file its opposition, if any, within 10 days after receiving service.

(d) If a request for relief from a stay which states facts sufficient to show a need for immediate action is not granted

or denied within 20 days after the request was filed, the request must be treated as granted.

(e) Except as provided in subsection (d), a request for relief from stay may only be granted if the assigned panel finds that:

(1) enforcing the stay would result in undue harm to the community association; and

(2) lifting the stay will not result in undue harm to the rights or interests of any opposing party.

§ 10B-10. Production of evidence.

(a) The Commission may:

(1) compel the attendance at a hearing of witnesses and parties, administer oaths, take the testimony of any person under oath and, in connection with any dispute, require the production of any relevant evidence; and

(2) issue summonses to compel the attendance of witnesses and parties and the production of documents, records and other evidence in any matter to which this Article applies.

(b) If any person does not comply with any summons issued under this Article to compel the attendance of persons or the production of documents, records or other evidence in any matter to which this Article applies, the County Attorney, on behalf of the Commission, may enforce the summons in a court with jurisdiction. Failure to comply with a Commission summons is also a class A violation.

(c) Any court with jurisdiction may, on request of the Commission, in accordance with state law and the Maryland Rules of Procedure:

(1) require compliance with a summons;

(2) require the attendance of a named person before the Commission at a specified time and place;

(3) require the production of records, documents, or other evidence;

(4) require the transfer of custody of records, documents, or other evidence to the court; or

(5) prohibit the destruction of any records, documents, or other evidence until a lawful investigation by the Commission is ended.

(d) A court may punish any disobedience of any order entered under this Section as a contempt of court

§ 10B-11. Mediation; dismissal before hearing.

(a) The Department may investigate facts and assemble documents relevant to a dispute filed with the Commission, and may summarize the issues in the dispute. The Department may notify a party if, in its opinion, a dispute was not properly filed with the Commission, and may inform each party of the possible sanctions under Section 10B-13(d).

(b) If the Department, after reviewing a dispute, finds that, assuming all facts alleged by the party which filed the dispute are true, there are no reasonable grounds to conclude that a violation of applicable law or any association document has occurred, it may so inform the Commission. The Commission, in its discretion, may dismiss a dispute if it finds that there are no reasonable grounds to conclude that a violation of applicable law or any association document has occurred, or it may order the Department to investigate further. The Commission may reconsider the dismissal of a dispute under this subsection if any party, in a motion to reconsider filed within 30 days after the dispute is dismissed, shows that:

(1) the Commission erroneously interpreted or applied applicable law or an association document; or

(2) material issues of fact which are necessary to a fair resolution of the dispute remain unresolved.

(c) Any party may request mediation.

(d) If a party requests mediation, the Commission must notify all parties of the filing and of the mediation session.

(e) The Commission must provide a qualified mediator to meet with the parties within 30 days after a party requests mediation to attempt to settle the dispute.

(f) If any party refuses to attend a mediation session, or if mediation does not successfully resolve the dispute within 10 days after the first mediation session is held, the Commission must promptly schedule a hearing under Section 10B-13 unless a hearing has already been held under Section 10B-13.

§ 10B-12. Hearing Panel.

(a) If a hearing is scheduled, the chair of the Commission must convene a 3-member panel to hear the dispute.

(b) The chair must choose 2 members of the panel from the voting members of the Commission. The persons selected must represent 2 different membership groups of the Commission. The 2 Commission members must designate the third member from a list of volunteer arbitrators trained or experienced in common ownership community issues maintained by the Commission. The third member must chair the panel. If a suitable arbitrator is not available, the chair of the Commission must choose the third panelist from among the voting members of the Commission, and must designate the chair of the panel.

(c) Each panelist must not have any interest in the dispute to be heard.

(d) If the Commission chair decides that a hearing should be held by a hearing examiner instead of a hearing panel, the chair, with the approval of the Commission, may designate the Office of Zoning and Administrative Hearings to conduct the hearing.

(e) If the parties to a dispute agree that the hearing should be held and the dispute decided by a hearing examiner instead of a hearing panel, the chair must designate the Office of Zoning and Administrative Hearings or

another hearing examiner to conduct the hearing and issue a decision.

§ 10B-13. Administrative hearing.

(a) A hearing panel appointed under Section 10B-12 must hold a hearing on each dispute that is not resolved by mediation under Section 10B-11 unless the Commission finds that:

(1) the dispute is essentially identical to another dispute between the same parties on which a hearing has already been held under this Section; or

(2) the dispute is clearly not within the jurisdiction of the Commission.

(b) Sections 2A-1 through 2A-11 apply to a hearing held under this Section. However, the parties need not be given more than 15 days' notice before the hearing is held, if the Commission finds that an expedited hearing is necessary. At any hearing, a party or a witness may be advised by counsel.

(c) If any party, after proper notice, does not appear at the scheduled hearing, the hearing panel may order any relief to another party that the facts on record warrant.

(d) The hearing panel may award costs, including a reasonable attorney's fee, to any party if another party:

(1) filed or maintained a frivolous dispute, or filed or maintained a dispute in other than good faith;

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

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

The hearing panel may also award costs or attorney's fees if an association document so requires and the award is reasonable under the circumstances. The hearing panel may

also require the losing party in a dispute to pay all or part of the filing fee.

(e) the hearing panel must apply state and County laws and all relevant case law to the facts of the dispute, and may order the payment of damages and any other relief that the law and the facts warrant. The decision of the hearing panel is binding on the parties, subject to judicial review under Section 2A-11.

(f) If the hearing has been held under Section 10B-12(d) by the Office of Zoning and Administrative Hearings, the hearing examiner must forward a recommended decision and order to a Commission panel. The Commission panel may adopt, reverse, modify, or remand the recommended decision before issuing its final order as provided in this Section.

(g) An appeal of a decision under this Section must be consolidated with any case filed under Section 10B-9(f) that arises out of the same facts.

(h) The court hearing an appeal must sustain the decision of the hearing panel unless the decision is:

(1) inconsistent with applicable law;

(2) not supported by substantial evidence on the record;
or

(3) arbitrary and capricious, considering all facts before the hearing panel.

(i) The Commission, acting through the Department and the County Attorney, may enforce a decision of the hearing panel by taking any appropriate legal action.

(j) In addition to any other penalty allowed by law, any person who does not comply with a final Commission order issued under this Chapter has committed a class A civil violation. Each day that a person does not comply with a Commission order is a separate offense.

§ 10B-14. Settlement of disputes; assistance to parties.

(a) Settlement of a dispute by mediation agreed to by the parties is binding, has the force and effect of a contract, and may be enforced accordingly.

(b) The Department may inform any party who has settled a dispute by mediation, or any party who prevails in a hearing held under Section 10B-13, about how the agreement or decision can be enforced.

§ 10B-15. Regulations.

The County Executive must promulgate, under method (2), regulations for the dispute resolution process.

Article 3. Open Conduct.**§ 10B-16. Repealed****§ 10B-17. Voting procedures.**

(a) Not less than 10 nor more than 90 days before an election for the governing body of an association, the governing body must notify all members of the association of election procedures and the date of the election. An initial election for the governing body must be held not later than 60 days after the date that 50 percent of the units have been conveyed by the developer to the initial purchasers.

(b) All election materials prepared with funds of the association:

- (1) must list candidates in alphabetical order; and
- (2) must not suggest a preference among candidates.
- (c) Any unsigned absentee ballot, to be valid, must be:

- (1) received in a signed, sealed envelope, bearing the identification of the dwelling unit and proportional voting percent, if any, on the outside; and

(2) opened only at a meeting at which all candidates or their delegates have a reasonable opportunity to attend.

(d) Any proxy or power of attorney valid under state law may be used at any association meeting. However, a proxy and any power of attorney created for the purpose of a governing body's election must be appointed only to meet a quorum or to vote on matters other than an election for a governing body unless the proxy or power of attorney contains a directed vote on the election. If a proxy or power of attorney form must be approved before it is cast, the approving authority must not unreasonably withhold its consent. A general power of attorney valid under state law may be used for any purpose at an association meeting that is consistent with the provisions of the general power of attorney, including for an election of the governing body.

(e) In an election for a governing body, for each unit that a members owns the member must not cast more than one vote for each candidate.

(f) Until the time for voting closes, an association must not open or count election ballots.

(g) Unless the association documents provide for other terms of office:

(1) a member elected to the governing body of an association is elected for a term of two 2 years; and

(2) the individual terms of the entire governing body are staggered, so that as close to one-third as possible are elected each year.

§ 10B-18. Budget.

Unless the association documents provide otherwise:

(a) the governing body must provide members of the association with the proposed budget of the association at least 30 days before the governing body votes on the budget; and

(b) the governing body must provide members of the association with any proposed amendment to the budget at least 30 days before the governing body votes on the amendment, if the amendment will result in an increase or decrease of more than 15 percent of the approved budget. This requirement does not apply to expenditures made to respond to an imminent threat to health or safety or of serious property damage.

§ 10B-19. Enforcement.

(a) The Commission may enforce this Article by legal action.

(b) In addition to any action by the Commission and any other action authorized by law, including the filing of a dispute under Article 2, any person may file an action:

(1) for injunctive relief to enforce this Article or correct any violation of it, and

(2) to recover damages for a loss sustained as a result of a violation of this Article.