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Community Associations Newsletter

MARYLAND LEGISLATIVE UPDATE

Nicole A. Williams, Esq.

*This legislative session was certainly a hybrid to say the least. Both chambers met in person. The Senate held their committee and voting hearings in person while most of the House was virtual via Zoom. Everything was livestreamed via YouTube so you can go back any watch the hearing for any of the bills if you like. Sine Die (the last day of session) had a familiar feel of celebration and jubilee. The following bills passed the Maryland General Assembly in the 2022 session and are on Governor Hogan's desk for signature. The laws **will become effective (unless otherwise indicated) on October 1, 2022**. Please contact us if you have any questions.*

RESERVE STUDIES

This legislation, while introduced in previous years received renewed attention in light of the tragedy that occurred June 2021 in Surfside, Florida. This legislation had the support of the Maryland Legislative Action Committee (MD-LAC) of the Community Associations Institute (CAI). The language of the bill will seem familiar to those in Montgomery County and Prince George's County since it mirrors legislation passed for those two jurisdictions in previous years.

This new law amends the Cooperative Act, the Condominium Act and the Homeowners Association Act to require that all associations in the State of Maryland obtain professional reserve studies and fund their reserves to the amount recommended in the reserve study.

The reserve study must be prepared by a person who has prepared at least 30 reserve studies within the last three years; participated in the preparation of at least 30 reserve studies within the last three years at a firm that prepares reserve studies; someone who holds a license from the State Board of Architects or the State Board for Professional Engineers; or is currently designated as a reserve specialist by CAI or the Association of Professional Reserve Analysts which is slightly different from the version enacted previously for Montgomery County and Prince George's County.

If an existing association had a reserve study done on or after October 1, 2018, then it is required to have an updated reserve study done within 5 years after the date of the previous reserve study. If the association has not had a reserve study done on or after October 1, 2018, then it must obtain a reserve study *by October 1, 2023*, and all subsequent reserve studies for all associations must be updated at least every 5 years afterwards.

The law states that an association “*shall provide funds to the reserve in accordance with the most recent reserve study and shall review the reserve study annually for accuracy.*” Further, that the association “*has the authority to increase an assessment...to cover the reserve funding amount...*” notwithstanding any caps or assessment restrictions in the governing documents.

Additionally, the new law states that if the most recent reserve study was an initial reserve study, the association has three years following the fiscal year in which the reserve study was completed to attain the annual reserve funding level recommended in the initial reserve study.

Therefore, the expense of a reserve study should be planned and budgeted for 2023 (or within 5 years of the last study) and the funding mandate will have to be considered as well.

RESERVED PARKING SPACES FOR PLUG-IN ELECTRIC CHARGING SPACES

As more and more people purchase electric vehicles, we will see more and more around their use in the years to come. This most recent legislation clarifies that someone cannot park or stop their car in a parking space that is design for the use of a plug-in electric drive vehicle unless the vehicle is a plug-in electric vehicle that is plugged into the charging equipment. Any publicly accessible plug-in electric drive vehicle charging space must be designated by a sign that states the day or time restrictions and the maximum fine that may be incurred for violation which is civil penalty of up to \$100.

DISCLOSURE REQUIREMENTS TO UNIT OWNERS

This bill clarifies what items must be disclosed to unit owners at the time of the sale of a condominium unit to the public, upon settlement of a disputed common element warranty claim and that a condominium board of directors cannot withhold from unit owners the terms of any legal agreements to which the condominium association is a party.

Further, at the time of sale, the contract for sale of a condominium unit must indicate if the condominium has entered into any agreement that settles or releases the association's claims related to common element warranties.

Additionally, the association must disclose to the unit owners any agreement by the board for the purpose of settling a disputed common element warranty claim at least 21 days before the execution of the agreement. The resale package must also include in the certificate information that the association entered into an agreement to settle or release any claims related to common element warranties and that the settlement was disclosed to the unit owners prior to the execution of the agreement. Any nondisclosure provision in the settlement agreement does not prohibit disclosure by the board of directors to the unit owners or as required in the sales contract or resale certificate.

This change does not apply to homeowner's associations or cooperatives.

DISPUTE SETTLEMENT PROCEDURES

This legislation modifies the dispute settlement provision in the Condominium Act and adds a new section in the Homeowners Association Act that is similar to what we are accustomed to in the Condominium Act.

This legislation now requires at least 15 days for the alleged violator to correct the violation which is an increase from the current 10 days. Also, the legislation does not require a hearing but states that the alleged violator has the opportunity for a hearing. After the initial cease and desist notice, the association must inform the alleged that they have the right to request a hearing and provide the procedures for requesting a hearing which may not be less than 10 days from the giving of the notice. If the alleged violator does not request a hearing, then the board can decide whether a sanction is appropriate including fines, suspension of voting or other rights that may be suspended as allowed in the association's governing documents.

The provision in the Maryland Homeowners Association Act is prospective and cannot apply to any complaints or demands that arose prior to the effective date of the bill. Additionally, it does not apply to the Columbia Association or the Village Community Associations for the Villages of Columbia in Howard County.

ENFORCEMENT OF JUDGMENTS – EXAMINATION IN AID OF ENFORCEMENT AND INTERROGATORIES IN AID OF EXECUTION

This legislation basically prohibits anyone who obtains a money judgment of \$5,000 or less from calling in the judgment debtor to court for an examination in aid of enforcement or ordering the judgment debtor to answer post-judgment interrogatories to help locate assets of the judgment debtor that may be used to enforce the judgment. The reasoning behind this bill was that in small claim cases, pretrial discovery is not permitted, and the rules of evidence do not apply therefore, there is an argument that creditors should not be able to engage in post-trial discovery as well. We will see the effect that this will have in terms of collections for common ownership communities.

REVIVAL OF NONSTOCK AND RELIGIOUS CORPORATIONS

Most common ownership communities are nonstock corporations under Maryland Law. As a nonstock corporation you must file your annual report and personal property taxes even if the corporation does not own any personal property. Failure to file these reports can result in forfeiture of the association's corporate charter with the State of Maryland. If an association's charter is forfeited, then the association must file what is known as "Articles of Revival" to reinstate the corporate charter. Under this legislation that passed, the nonstock corporation will only have to file the seven most recently due annual reports and personal property tax returns when filing the articles of revival to reinstate the corporate charter.

CANNABIS AND CANNABIS REFORM

While not specific to common ownership communities, there were two bills that passed this session regarding the recreational use of cannabis. The first bill is the proposed constitutional amendment to legalize use and possession of cannabis for those who are at least 21 years old starting July 1, 2023. Because this is a proposal to amend the State Constitution, you will see this referendum question on the ballot at the next general election to be held November 2022.

The second bill is the cannabis reform bill that will only go into effect if the ballot referendum passes November 2022. This bill will legalize possession by a person of no more than 1.5 ounces of cannabis, or equivalent amounts including no more than 2 cannabis plants effective July 1, 2023. The possession of up to 2.5 ounces of cannabis is a finable civil offense. The bill repeals criminal penalties associated with cannabis paraphernalia and requires the Attorney General to provide a formal opinion regarding the impact of cannabis legalization on the authority of police

officers to conduct searches of individuals and vehicles based on the detection of the order of cannabis.

We felt it was important to mention this legislation especially for our condominium and cooperative clients given the concerns raised about the smell and effect of smoking within units and common areas. If the referendum passes, the smell of cannabis may be treated in the same manner as the smell of smoking tobacco.

MONTGOMERY COUNTY CCOC – CITY OF GAITHERSBURG

There are some municipalities in Montgomery County that are exempt from the jurisdiction of the Commission on Common Ownership Communities (CCOC). However, starting July 1, 2022, common ownership communities in the City of Gaithersburg will be required to register annually with the CCOC and will be subject to the jurisdiction of the CCOC.

NUSIANCE ABATEMENT FINES – PRINCE GEORGE’S COUNTY

Prince George’s County passed legislation that would double the fine for violations heard by the nuisance abatement board from \$500 to \$1,000. The hope is that this will crack down on nuisance properties within the County.

If you have any questions about the contents of this memo, please contact one of our Maryland-licensed community association attorneys.