

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2011 Legislative Session

Bill No. CB-12-2011

Chapter No. _____

Proposed and Presented by Council Member Johnson

Introduced by Council Members Johnson, Turner, Lehman and Olson

Co-Sponsors _____

Date of Introduction May 17, 2011

BILL

1 AN ACT concerning

2 Common Ownership Communities Program

3 For the purpose of amending the Common Ownership Communities Program to assist governing
4 bodies, owners, and residents of homeowners' associations, residential condominiums, and
5 cooperative housing corporations with education, training, and dispute resolution and/or
6 administrative hearing procedures in matters relating to these communities.

7 BY repealing and reenacting with amendments:

8 SUBTITLE 13. HOUSING AND PROPERTY

9 STANDARDS.

10 Sections 13-314, 13-316,

11 The Prince George's County Code

12 (2007 Edition, 2010 Supplement).

13 BY adding:

14 SUBTITLE 13. HOUSING AND PROPERTY

15 STANDARDS.

16 Section 13-319,

17 The Prince George's County Code

18 (2007 Edition, 2010 Supplement).

19 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
20 Maryland, that Sections 13-314 and 13-316 of the Prince George's County Code be and the same
21 are hereby repealed and reenacted with the following amendments:

SUBTITLE 13. HOUSING AND PROPERTY STANDARDS.

DIVISION 11. COMMON OWNERSHIP COMMUNITIES PROGRAM.

Sec. 13-314. Legislative findings and declaration of purpose.

The County Council for Prince George’s County, Maryland, hereby finds that Prince George’s County is facing significant issues with respect to the lack of management and oversight as it relates to Common Ownership Communities; that there is a lack of homeowner education with regard to the real estate process, governance, enforcement procedures, and resolution of disputes; that there exists a misunderstanding amongst homeowners of the responsibilities of the developer/builder as it relates to the establishment and direction of an efficiently operated homeowner association/Common Ownership Community; and that in order to effectively respond, the County Council for Prince George’s County, Maryland hereby declares that it is the public policy of Prince George’s County to establish a program to assist in addressing the needs of Common Ownership Communities by providing education, training and dispute mediation services and/or administrative hearings through the Common Ownership Communities Program.

Sec. 13-316. Definitions.

As used in this Division:

(a) **Association Document** means:

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

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

(3) Any similar document concerning the operation or governance of a common ownership community.

(b) **Common element** includes:

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

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

(c) **Common Ownership Community** means:

(1) A condominium, as defined pursuant to state law;

- (2) A cooperative housing corporation, as defined pursuant to state law; or
- (3) A homeowners association, as defined pursuant to state law.

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

(e) **Director** means the Director of the Office of Community Relations.

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

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

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

(B) Require any person to pay a fee, fine, or assessment;

(C) Spend association funds; or

(D) Alter or add to a common element; or

(2) The failure of a governing body, when required by law or an association document,

to:

(A) Properly conduct an election;

(B) Give adequate notice of a meeting or other action;

(C) Properly conduct a meeting;

(D) Properly adopt a budget or rules;

(E) Maintain or audit books and records;

(F) Allow inspection of books and records;

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

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

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

(1) Title to any unit or any common element;

(2) The percentage interest or vote allocable to a unit;

(3) The interpretation or enforcement of any warranty;

(4) The collection of an assessment validly levied against a party; or

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

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

4 (i) **Office** means the Office of Community Relations.

5 (j) **Owner** includes:

- 6 (1) A unit owner in a condominium;
- 7 (2) A lot owner in a homeowners association; and
- 8 (3) A member of a cooperative housing corporation.

9 (k) **Party** includes:

- 10 (1) An Owner;
- 11 (2) A Governing body; and
- 12 (3) An occupant of a dwelling unit in a common ownership community.

13 (l) **Unit or Lot** includes:

- 14 (1) Any physical portion of a common ownership community with distinct property
 15 boundaries that:
 - 16 (A) Provides complete, independent living facilities for one or more individuals;
 - 17 (B) Contains permanent provisions for living, sleeping, eating, cooking, and
 18 sanitation; and
 - 19 (C) Is designated for exclusive ownership, control, or occupancy by those
 20 individuals; and
- 21 (2) All legally enforceable rights and interests incidental to individual ownership or
 22 real property in a common ownership community.

23 SECTION 2. BE IT ENACTED by the County Council of Prince George's County,
 24 Maryland, that Section 13-319 of the Prince George's County Code be and the same is hereby
 25 added:

26 **SUBTITLE 13. HOUSING AND PROPERTY STANDARDS.**

27 **DIVISION 11. COMMON OWNERSHIP COMMUNITIES PROGRAM.**

28 **Sec. 13-319. Dispute resolution; filing disputes; administrative hearings.**

29 (a) Any registered community association may request mediation subject to the following:

- 30 (1) A party may not file a dispute mediation request with the Office until the party
 31 makes a good faith attempt to exhaust all procedures or remedies provided in the association

1 documents.

2 (2) If a party requests mediation, the Office shall notify all parties of the filing and of
3 the mediation session.

4 (3) The Office shall provide a qualified mediator to meet with the parties within thirty
5 (30) days after a party requests mediation to attempt to settle the dispute.

6 (4) A party may file a dispute with the Office sixty (60) days after any procedure or
7 remedy provided in the association documents has been initiated before the association. If a
8 community association finds that a dispute exists, the association shall notify the other parties of
9 their rights to file the dispute with the Office.

10 (5) The community association may not take any action to enforce or implement its
11 decision for fourteen (14) days after the association notifies the other parties of their rights.

12 (6) When a dispute is filed with the Office, a community association may not take any
13 action to enforce or implement the association's decision, other than filing a civil action under
14 this Subsection, until the process under this Section is completed. Any party may file a civil
15 action in Court arising out of an association document or law regulating the community
16 association's powers and procedures at any time.

17 (7) The Court may stay all proceedings for at least ninety (90) days after the Court is
18 notified that a dispute has been properly filed under this section so that a mediation may be
19 completed. Whether or not a stay is issued, the Court may hear the action de novo only if a
20 mediation decision has not been issued.

21 (8) The Office may investigate facts and assemble documents relevant to a party if, in
22 its opinion, a dispute was not properly filed with the Office, and may inform each party of
23 possible sanctions. The Office may dismiss a dispute if it finds that there are no reasonable
24 grounds to conclude that a violation of applicable law or a violation of any association document
25 has occurred, or it may investigate further.

26 (9) The Office may reconsider the dismissal of a dispute under this subsection if any
27 party, in a motion to reconsider filed within thirty (30) days after the dispute is dismissed shows
28 that:

29 (A) The Office erroneously interpreted or applied applicable law or an
30 association document; or

31 (B) Material issues of fact that are necessary to a fair resolution of the dispute

1 remain unresolved.

2 (b) If any party refuses to attend a mediation session, or if mediation does not successfully
3 resolve the dispute within ten (10) days after the mediation session is held, the matter will be
4 scheduled for a mandatory administrative hearing subject to the following:

5 (1) If a hearing is scheduled to decide a dispute the County Executive shall designate a
6 Hearing Examiner to conduct the hearing and issue a decision and order in compliance with the
7 Administrative Procedures Act. Any such Hearing Examiner shall be an attorney from the
8 Office of Law or be an attorney admitted to practice before the highest court of a state or the
9 District of Columbia.

10 (2) The Hearing Examiner shall swear in all witnesses, hear testimony of all parties
11 involved, allow reasonable cross-examination of witnesses, receive and review all evidence, rule
12 upon procedural matters, questions of law, evidence, motions, or objections or ask questions of
13 any witnesses.

14 (3) The recommended decision of the Hearing Examiner shall be issued within sixty
15 (60) days after conducting the hearing on the dispute. All parties must be delivered by certified
16 mail (return receipt) copies of the decision.

17 (4) The recommended decision of the Hearing Examiner must include a description of
18 how the decision can be enforced and the parties' appeal rights.

19 (5) Immediately upon the expiration of the appeal time period the recommended
20 decision of the Hearing Examiner shall be final and binding upon the parties.

21 (6) Any person who does not comply with the final decision of the Hearing Examiner
22 shall be deemed to have committed a civil violation subject to a fine of Five Hundred Dollars
23 (\$500) for a first offense and a fine of Seven Hundred Fifty Dollars (\$750) for each subsequent
24 offense. Each day that a person does not comply with the final order is a separate offense.

25 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
26 calendar days after it becomes law.

Adopted this 14th day of June, 2011.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Ingrid M. Turner
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

VETOED:

DATE: July 7, 2011 BY: _____
Rushern L. Baker, III
County Executive

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.