

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2024 Legislative Session

Bill No. CB-031-2024

Chapter No. _____

Proposed and Presented by Council Member Blegay

Introduced by _____

Co-Sponsors _____

Date of Introduction _____

BILL

1 AN ACT concerning

2 Common Ownership Communities - Alternative Dispute Resolution

3 For the purpose of providing for certain powers; providing for certain definitions; providing for
4 alternative dispute resolution and the exhaustion of administrative remedies; providing for a
5 request for relief from a stay; providing for acceptance of jurisdiction of complaints; providing for
6 the production of evidence; providing for mediation and dismissal before a hearing; providing for
7 a hearing panel; providing for an administrative hearing; providing for the settlement of disputes
8 and assistance to parties; and generally relating to alternative dispute resolution in common
9 ownership communities.

10 BY repealing and reenacting with amendments:

11 SUBTITLE 13. HOUSING AND PROPERTY

12 STANDARDS.

13 Sections 13-314.07, 13-316 and 13-319,

14 The Prince George's County Code

15 (2023 Edition).

16 BY adding:

17 SUBTITLE 13. HOUSING AND PROPERTY

18 STANDARDS.

19 Sections 13-320, 13-321, 13-322, 13-323, 13-324,

20 13-325 and 13-326,

The Prince George's County Code
(2023 Edition).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 13-314.07, 13-316 and 13-319 of the Prince George's County Code be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 13. HOUSING AND PROPERTY STANDARDS.

DIVISION 11. COMMON OWNERSHIP COMMUNITIES PROGRAM.

Sec. 13-314.07. - Powers.

(a) The Commission for Common Ownership Communities is provided the following additional powers to accomplish the intent of this Division:

(1) The Commission shall review and evaluate the alternative dispute resolution process, pursuant to its authority set forth in Sections 13-319 through 13-326 of this Division.

* * * * *

Sec. 13-316. Definitions.

As used in this Division:

[(a) Alternative Dispute Resolution means a process for people in conflict, which includes two or more participants, and one or two trained alternative dispute resolution specialists.]

[(b) Alternative Dispute Resolution Specialist(s) are trained, impartial people who help people in conflict to communicate with one another, understand each other, explore options for mutual gain, and if possible, reach agreements that satisfy the participants' needs. An alternative dispute resolution specialist(s) does not provide legal advice.]

[(c)] (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.

[(d)] (b) Common element includes:

(1) in a homeowners association, any [property] real estate which is owned or leased by a homeowners association; and

(2) in a condominium or cooperative, all portions of the condominium except the units; and
 (3) in all common ownership communities, any other interest in real estate for the benefit of owners that is subject to the declaration.

[(e)] (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.

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

[(g)] (e) Director means the Director of the 2q of Community Relations.

[(h)] (f) Dispute means any disagreement between two (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.

[(i)] (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.

[(j)] (h) 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.

[(k)] (i) Office means the Office of Community Relations.

[(l)] (j) Owner includes:

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

[(m)] (k) Party includes:

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

[(n)] (l) Unit or Lot includes:

(1) Any physical portion of a common ownership community with distinct property boundaries that:

- (A) Provides complete, independent living facilities for one or more individuals;
- (B) Contains permanent provisions for living, sleeping, eating, cooking, and sanitation; and
- (C) Is designated for exclusive ownership, control, or occupancy by those individuals; and

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

* * * * *

[Sec. 13-319. - Mandatory Alternative Dispute Resolution ; filing disputes].

[(a) Any registered community association and/or an owner may request alternative dispute resolution subject to the following:

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

1 association documents.]

2 [(2) If a party requests the alternative dispute resolution procedure, the Office shall
3 notify all parties of the filing and of the alternative dispute resolution session.]

4 [(3) The Office shall provide a qualified alternative dispute resolution specialist to meet
5 with the parties within thirty (30) days after a party requests the alternative dispute resolution
6 procedure to attempt to settle the dispute and render a written decision within 60 days.]

7 [(4) A party may file a dispute with the Office thirty (30) days after any procedure or
8 remedy provided in the association documents has been initiated before the association.]

9 [(5) The community association may not take any action to enforce or implement its
10 decision until the time to file a request for alternative dispute resolution process has been exhausted
11 and the opposing party has not requested alternative resolution process.]

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 until the process under this Section is
14 completed.]

15 [(7) A community association member may not file an action in any Prince George's
16 County Court until he/she has first attempted conflict resolution as outlined in this Section.]

17 [(8) The Office may investigate facts and assemble documents relevant to a party if, in
18 its opinion, a dispute was not properly filed with the Office. The Office may dismiss a dispute if it
19 finds that there are no reasonable grounds to conclude that a violation of applicable law or a
20 violation of any association document has occurred, or it may investigate further.]

21 [(9) No association member or its representatives will be allowed to petition the courts
22 for resolution to a matter until all options in this Section/Subsection have been exhausted.]

23 [(10) The Office may reconsider the dismissal of a dispute under this Subsection if any
24 party, within thirty (30) days after the dispute is dismissed shows that:

25 (A) The Office erroneously interpreted or applied applicable law or an association document;
26 or

27 (B) Material issues of fact that are necessary to a fair resolution of the dispute remain
28 unresolved.]

29 [(11) Dismissal of a dispute shall not prevent a parties' rights to file a claim in the appropriate
30 court.]

31 [(b) The parties to an alternative dispute resolution session may not use any statement or

information from an alternative dispute resolution session in any later court proceedings and alternative dispute resolution specialists and intake staff in the Office may not be compelled to testify in a court proceeding related to an alternative dispute resolution session.]

Sec. 13-319. Alternative Dispute Resolution; 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 13-320, 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 Division 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 Division so that a hearing under Section 13-325 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 13-325.

SECTION 2. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 13-320, 13-321, 13-322, 13-323, 13-324, 13-325, and 13-326 of the Prince George's County Code be and the same are hereby added:

SUBTITLE 13. HOUSING AND PROPERTY STANDARDS.

DIVISION 11. COMMON OWNERSHIP COMMUNITIES PROGRAM.

Sec. 13-320. Request for relief from stay.

(a) At any time after a dispute is filed under Section 13-319, a party to the dispute may submit

1 a request to lift the automatic stay required under Section 13-319(e) to a hearing panel appointed
 2 under Section 13-324, or if no hearing panel has been appointed, a special standing panel
 3 authorized to consider requests for relief from stays.

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

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

10 (d) If a request for relief from a stay which states facts sufficient to show a need for immediate
 11 action is not granted or denied within 20 days after the request was filed, the request must be
 12 treated as granted.

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

15 (1) enforcing the stay would result in undue harm to a party; and

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

18 **Sec. 13-321. Acceptance of jurisdiction of complaints.**

19 (a) If the Commission does not accept jurisdiction of a complaint, the Director must notify the
 20 parties in writing of the decision and the reason for the Commission's denial of jurisdiction within
 21 10 business days after the decision.

22 (b) The Commission's decision not to accept jurisdiction of a complaint is not subject to judicial
 23 review.

24 **Sec. 13-322. Production of evidence.**

25 (a) The Commission may:

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

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

31 (b) If any person does not comply with any summons issued under this Division to compel the

attendance of persons or the production of documents, records, or other evidence in any matter to which this Division applies, the County Attorney, on behalf of the Commission, may enforce the summons in a court with jurisdiction.

(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.

Sec. 13-323. Mediation; dismissal before hearing.

(a) The Director may investigate facts and assemble documents relevant to a dispute filed with the Commission and may summarize the issues in the dispute. The Director may notify a party if, in the Director's opinion, a dispute was not properly filed with the Commission, and may inform each party of the possible sanctions under Section 13-325(d).

(b) If the Director, after reviewing a dispute, finds that, assuming all facts alleged by the party that filed the dispute are true, there are no reasonable grounds to conclude that a violation of applicable law or any association document has occurred, the Director must so inform the Commission. The Commission must 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 Director 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 that are necessary to a fair resolution of the dispute remain unresolved.

(c) If the Director, after reviewing a dispute and any investigation, finds reasonable grounds to conclude that a violation of applicable law or an association document has occurred, the Director must attempt to resolve the matter through informal negotiation including, in the Director's discretion, mediation. Each party named in the dispute or its representative must attend any mediation conference scheduled by the Director under this Section unless excused by the Director. If the party that files the dispute refuses or fails to participate in the mediation, the Director must dismiss the dispute. If the party that is the subject of the dispute refuses or fails to participate in the mediation, the Director must refer the dispute to the Commission for resolution. The party that is the subject of the dispute may not appear at the hearing, and the hearing panel may award relief to any party that the facts on the record warrant.

(d) Unless otherwise agreed to by the parties in writing, a mediation conference is informal and nothing said or done during a mediation conference is admissible in any subsequent hearing under this Division.

(e) The Commission must promptly schedule a hearing under Section 13-325 if either:

(1) mediation has not occurred within 90 days after the Director found reasonable grounds to believe a violation occurred; or

(2) the Director decides at any time that mediation would be fruitless. The Director may extend the mediation deadline by mutual consent of the parties.

(f) If a dispute is resolved by mediation, the terms of mediation agreed to by the parties must be reduced to writing and incorporated into a consent agreement to be signed by the parties. The agreement must be for mediation purposes only and is not an admission by any party that a violation of applicable law or an association document has occurred.

(g) In addition to any other penalty allowed by law, failure by a party to adhere to any provision of a consent agreement has committed a civil penalty with a maximum of \$500 for an initial offense and \$750 for each repeat offense. Each day that a person does not comply with a Commission order is a separate offense. Any failure by the Director to enforce any provision of a consent agreement does not waive any private right of action against the violating party.

Sec. 13-324. 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 two members of the panel from the voting members of the

Commission. The persons selected must represent the two different membership groups of the Commission. The Chair of the Commission 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 designate 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) Each volunteer arbitrator must not represent any parties in disputes before other hearing panels convened under this Division.

(e) 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 a hearing examiner to conduct the hearing.

Sec. 13-325. Administrative hearing.

(a) A hearing panel appointed under Section 13-324 must hold a hearing on each dispute that is not resolved by mediation under Section 13-323 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) 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 reasonable attorney's fees, to any party if the other party:

(1) filed or maintained a frivolous dispute, or filed or maintained a dispute in bad faith;

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

or

(3) substantially delayed or hindered the dispute resolution process without good cause. 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 caselaw to the facts of

1 the dispute and may order the payment of damages and any other relief that the law and the facts
 2 warrant. The decision of the hearing panel is binding on the parties, subject to judicial review.

3 (f) A party aggrieved by a final decision in a case governed by this Division may seek judicial
 4 review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure
 5 governing judicial review of administrative agency decisions. A party aggrieved by the decision
 6 of the Circuit Court may appeal that decision to the Maryland Court of Appeals. Unless the court
 7 reviewing the decision of the hearing authority orders a stay, the hearing authority's decision
 8 remains in effect pending a final decision of the court.

9 (g) If the hearing has been held under Section 13-324(d), the hearing examiner must forward a
 10 recommended decision and an order to a Commission panel. The Commission panel may adopt,
 11 reverse, modify, or remand the recommended decision before issuing its final order as provided in
 12 this Section.

13 (h) An appeal of a decision under this Section must be consolidated with any case filed under
 14 Section 13-319 that arises out of the same facts.

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

17 (1) inconsistent with applicable law;

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

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

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

22 (k) In addition to any other penalty allowed by law, any person who does not comply with a
 23 final Commission order issued under this Division has committed a civil penalty with a maximum
 24 of a \$500 fine for an initial offense and a \$750 fine for each repeat offense. Each day that a person
 25 does not comply with a Commission order is a separate offense.

26 **Sec. 13-326. Settlement of disputes; assistance to parties.**

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

29 (b) The Director may inform any party who has settled a dispute by mediation, or any party who
 30 prevails in a hearing held under Section 13-325, about how the agreement or decision can be
 31 enforced.

1 SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby
2 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
3 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
4 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words,
5 phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since
6 the same would have been enacted without the incorporation in this Act of any such invalid or
7 unconstitutional word, phrase, clause, sentence, paragraph, subparagraph, subsection, or section.

8 SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
9 calendar days after it becomes law.

Adopted this _____ day of _____, 2024.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Jolene Ivey
Chair

ATTEST:

Donna J. Brown
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Angela D. Alsobrooks
County Executive