



COMMUNITY BUILDER

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Maryland 2022 Legislative Update

The 2022 Maryland general assembly was busy, to say the least. The session brought substantial changes, updates, and improvements to the statutes governing homeowners' associations, condominiums, and cooperatives. This special edition Community Builder has been produced to help board members better understand the significant updates affecting community associations across the state.



Below is an overview of the new laws taking effect on October 1, 2022. The regulations affect the Maryland Condominium Act and the Maryland Homeowners Association Act.

Reserve Funding

The new law alters the existing requirements, previously effective in only two counties, and expands the requirements to apply statewide. Beginning with the effective date listed above, all Maryland HOA, condo, and cooperative associations must establish and fund reserve accounts to allocate funds to pay for future replacement and repairs of major components. These components generally include items such as electrical and plumbing systems, mechanical equipment, structural systems, and other infrastructure items the association is obligated to repair or replace.

Budgeting to Fund Reserves

In accordance with the new laws, association board of directors will need to take the following actions every year when preparing the association's annual budget:

1. Review the most recent reserve study (see more below) during the preparation of the annual proposed budget;
2. The board must include budget allocations to fund annual reserve contributions as recommended in the most recent reserve study.

3. Associations that have obtained a reserve study for the first time will have three (3) budget cycles to fully fund reserves as recommended in the study.
4. A summary of the most recent reserve study must be provided to homeowners alongside the proposed annual budget.

Note that the new law also grants authority for the board to raise assessments levied to cover required reserve funding, regardless of any association governing documents that may contradict such actions. This includes verbiage that may limit, restrict, or cap the amount of assessments to be levied.

Exceptions – some associations with minimal common components are exempt from the new reserve funding laws. More specifically, associations whose common components total less than \$10,000 for initial purchase and installation may not be required to comply. Please consult with legal counsel if you believe your association does not meet the requirements.

Reserve Studies

In addition to the mandatory reserve funding requirements, the legislature also passed a new law requiring associations to obtain a professional reserve study every five (5) years. The reserve study produced must identify all of the following:

1. The list of components the association is required to replace and repair;
2. The expected and remaining useful life of each component;
3. The estimated cost to replace/repair each component;
4. The estimated amount of funds the association must set aside annually to fund each component's required replacement or repair.

Further, the law provides that reserve studies must be completed by professionals who meet specific credential requirements as follows:

1. Licensed by the state as an architect or engineer;
2. Obtain and maintain a professional designation as a reserve specialist or analyst from one of two industry associations;
3. Have experience preparing at least 30 studies in the past three (3) years or have prior employment and verified participation in preparing reserve studies with a professional firm that meets the above requirements.

The new laws set specific deadlines for an association to comply with the new requirements. Depending on particular circumstances, associations will need to do the following:

- Reserve study obtained before 10/1/2018 – the association is required to obtain a new study on or before October 1, 2023.
- Reserve study obtained on or after 10/1/2018 – the association is required to obtain a new study within five (5) years of the previous study.
- New associations created on or after 10/1/2022 - must have an independent reserve study completed no less than 30 days before the date of the transition meeting at which the developer transitions control.

All reserve studies must be updated every five (5) years thereafter, following action on one of the points above.

Covenants Enforcement Procedures

All HOA and condominium associations, as of October 1, 2022, are required to follow notice and hearing procedures before levying fines or penalties for covenants violations unless the association's governing documents provide otherwise. The newly adopted laws update existing notice and hearing procedure requirements for condos and enact new required notice and hearing processes for HOAs. The following is a summary of the required procedures:

1. Before assessing a fine or penalty, associations must send the alleged violator a demand in writing to correct the violation and provide them with 15 days to do so.
2. The notice must include information about the penalty that may be imposed after notice and an opportunity for a hearing if the violation is not corrected or recurs in the next 12 months.
3. If no timely action or the violation recurs again within a year, the association must send a second written notice advising of the penalty to be assessed and notifying the homeowner of the option to request a hearing before the board if requested within ten (10) days of the date of the notice. The notice must also specify the procedures for making the request.
4. If the alleged violator requests a hearing, the board must hold the hearing within ten (10) days of the request and send an invitation to the hearing.
5. The alleged violator must hold a hearing in executive session and allow the individual to be heard, present the evidence, and question any witnesses. Minutes of the hearing meeting must outline the results and any penalty assessed. If the alleged violator misses the hearing, the minutes shall include a copy of the hearing notice and a statement by the individual who delivered the notice of when and how it was delivered.
6. If a hearing is not requested, the board may decide at its next meeting whether a violation occurred and any penalty to be assessed. Any such decision may be appealed to a court.
7. Violators who do not comply with the decision may be sued for a court order or money damages, with the loser, in any case, being required to pay the winner's legal fees.

Condominium Warranty Claim Settlements and Disclosures

Effective October 1, 2022, the Maryland Condominium Act has changed to require the board to disclose to all unit owners its intention to settle any common element warranty claims at least 21 days before signing a settlement agreement. Settlement agreements with provisions to prevent this disclosure to homeowners are now legally unenforceable. The law also includes a new disclosure that must be made at the time of resale and incorporated with the resale certificates provided to prospective buyers. Resale certificates must now disclose any agreement to settle or release a common element warranty claim and confirm whether the board has disclosed to the unit owners its intention to enter into such a settlement. The new law also applies to developers intending to sell new condominium units.

Assessment Collection Lawsuit Changes

Changes to the laws are expected to affect how community associations can/will approach certain assessment collection lawsuits. Specifically, the law removes the ability of the association and its representatives in small claims cases to request the debtor answer written questions or to appear in court to answer questions about their assets. In other words, such questions will not be permitted where the amount of a judgment does not exceed \$5,000 (small claims).

These new laws are impactful, and boards should discuss the next steps to ensure compliance in accordance with the prescribed timelines. In addition to introducing new operational objectives, boards should also consider a review of policies and procedures to assure alignment with the new laws. As always, the board should solicit the advice of the association's legal counsel to ensure complete and timely compliance with the new regulations.

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