

Summer 2009

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Welcome to another issue of the *Community Associations Update*, a bulletin published triannually by the Community Associations practice group at Lerch, Early & Brewer as a service to our clients. Here, you will find articles written by our attorneys. We publish the *Update* as part of our ongoing efforts to provide our clients with responsive service and practical advice when needed.

This newsletter is sent via email in HTML format. If you wish to print a copy of the newsletter, you may access a .pdf version by following the "Printer-Friendly version" link below.

We appreciate any feedback and invite you to contact us with any questions. If you do not want to receive any further newsletters from us, follow the link at the bottom of this email to be removed from our list of recipients.

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In This Issue: Maryland General Legislative Update

Condominium Insurance Requirements

The Maryland General Assembly made revisions to condominium insurance requirements, including coverage, repair obligations, deductible issues and annual notice/resale requirements.

Closed Board Meeting Requirements

In an effort to address an apparent perception that community association boards of directors were improperly closing board meetings, the Maryland General Assembly adopted changes to when a board of directors may hold a closed/executive session meeting.

Books and Records Keeping and Production

In a change that will certainly impact community managers, the Maryland General Assembly has revamped the law concerning the keeping and production of the books and records of the community association.

Fidelity Insurance

Though required by many governing documents, this new law will require the boards of directors of all community associations to obtain and maintain fidelity insurance.

Elevator Maintenance

The new law requires that an owner of the elevator within a building must contract with an authorized third-party elevator inspector to perform annual inspections of the elevator.

Plus: Montgomery County Legislative Update on Restrictions on the Parking of Commercial



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Vehicles

Further restrictions on commercial vehicle parking on public streets.

Condominium Insurance Requirements

The Maryland General Assembly sought to clarify the condominium insurance requirements in light of last year's Court of Appeals decision in *Anderson v. Council of Unit Owners of the Gables on Tuckerman Station*, 404 Md. 560 (2008). The Maryland General Assembly adopted a series of revisions to Section 11-114 and Section 11-108.1 of the Maryland Condominium Act.

Coverage

Though not a change, the new law reconfirms that a condominium association is required to maintain physical damage insurance covering the common elements and the units, NOT including betterments and improvements installed by any unit owner over time. Betterments and improvements include furniture, personal property, and any improvement added to the unit by a unit owner, such as new carpeting or new appliances.

Repair Obligation

The revisions clarify that in the event damage is caused by an insured event, e.g., a pipe burst or fire, the Association is obligated to repair any damage to the condominium property, not including betterments and improvements within a unit installed by a unit owner. This repair obligation is distinct from the obligation to pay for the repairs.

Deductible Pass Through

The significant change in the law affects the responsibility for payment of the deductible under the Association's master insurance policy. Now, in the event that the damage originates in a unit, the owner of that unit is responsible for up to \$5,000 of the deductible under the condominium association's master insurance policy, regardless of whether the bylaws contain any enabling language. ***In other words, the condominium association does not need to amend its bylaws to pass through up to \$5,000 of the deductible to the owner of the unit where the damage originated, as it now automatically shifts the obligation.***

When Damage Is Less Than the Deductible

The changes in the law do not expressly address the condominium association's obligation when the damage to a unit is less than the deductible. This is the issue that gave rise to the *Gables* case. Under a strict reading of the new law, the association remains obligated to repair the Unit if the damage is caused by an insured event, regardless of the cost of repair. However, if the cost to repair the damage is less than the deductible under the master insurance policy, the owner of the unit where the damage originated is responsible for the entire cost of repairs. As a result, the condominium association can tell the unit owner that he or she has two options: 1) the condominium association will make the repairs to the unit with its contractors at the condominium association's schedule, but the unit owner is responsible for the costs, or 2) the unit owner agrees to undertake the repairs to his or her unit without further direct involvement from the condominium association. If the Association is going to allow the unit owner to make the repairs, the Association is still obligated to ensure that the repairs are made. Boards should consider adopting a policy whereby the unit owners are given a specified period of time to make the repairs; otherwise the board will reassume making the repairs. (The condominium association will still need to make sure the repairs and any remediation are done adequately.)

Annual Notice and Resale Package Requirements

The condominium association is also now required to annually provide the unit owners with a written notice of the unit owner's responsibility for the condominium association's property insurance deductible and the amount of the deductible. The same statement must also be included in all resale packages.

EFFECTIVE JUNE 1, 2009



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MD General Assembly

Closed Board Meeting Requirements

In an effort to address an apparent perception that community association boards of directors were improperly closing board meetings, the Maryland General Assembly adopted changes to the relevant statutes, enumerating with more specificity when a board of directors may hold a closed/executive session meeting.

The board of directors can now close a meeting ONLY for the following reasons:

1. Discussion of matters pertaining to employees and personnel;
2. Protection of the privacy or reputation of individuals in matters not related to the council of unit owners' business;
3. Consultation with legal counsel on legal matters;
4. Consultation with staff personnel, consultants, attorneys, board members, or other persons in connection with pending or potential litigation or other legal matters;
5. Investigative proceedings concerning possible or actual criminal misconduct;
6. Complying with a specific constitutional, statutory, or judicially imposed requirement protecting particular proceedings; or
7. Discussion of individual owner assessment accounts.

The notable additions are the ability of the board of directors to close the meeting to discuss "legal matters" and delinquent assessments accounts. Removed from the above list is the ability of the board of directors to close a meeting in the situations when the board determines that the matter to be discussed was so compelling to override the general public policy in favor of open meetings. Time will tell if these changes will have a significant impact on board operations.

EFFECTIVE OCTOBER 1, 2009

Books and Records Keeping and Production

In a change that will certainly impact community managers, the Maryland General Assembly has revamped the law concerning the keeping and production of the books and records of the community association.

Board Meeting Minutes and Financial Records Requests

Owners will be able to request delivery of copies of board meeting minutes and financial records. The association must deliver the requested minutes and/or financial records within 21 days of the receipt of the written request if the documents were prepared within three years preceding the request or within 45 days of receipt of the written request if the requested document was prepared more than three years from the date of the request.

These documents may be delivered to the requesting owner via regular mail, electronic transmission, or in person. The key is that the association must deliver these two categories of documents to the requesting owner. All other documents (other than those that are not minutes or financial) are available for inspection by the owners, but do not need to be delivered to the owners.

Documents That May Be Held From Public Inspection

The following documents may be withheld from inspection, except from the owner who is the subject of the documents:

1. Personnel records, not including information on individual salaries, wages, bonuses and other compensation paid to employees;
2. An individual's medical records;
3. An individual's personal financial records, including assets, income, liabilities, net worth, bank balances, financial history or activities, and creditworthiness;
4. Records relating to business transactions that are currently in negotiation;

State of Maryland

MD Judiciary

MD Condo Act

DC Condo Act

VA Horizontal
Property

VA Property
Owners
Association Act

Gaithersburg City
Code

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5. The written advice of legal counsel; or
6. Minutes of a closed meeting of the board of directors or other governing body of the community association, unless a majority of a quorum of the Board of Directors or governing body that held the meeting approves unsealing the minutes or a recording of the minutes for public inspection.

Cost

The reasonable charges that an association/community manager may charge the owner requesting the delivery, inspection and copying of the associations documents is LIMITED to \$.50 per page for 2009.

EFFECTIVE OCTOBER 1, 2009

Fidelity Insurance Requirement

Though required by many governing documents, this new law will require the boards of directors of all community associations to obtain and maintain fidelity insurance to protect the financial assets of community associations in the event of theft or embezzlement. The minimum coverage is three months of gross annual assessments and the total amount held in all investment accounts or \$3 million.

EFFECTIVE OCTOBER 1, 2009

Elevator Maintenance

The new law requires that an owner of the elevator within a building must contract with an authorized third-party elevator inspector to perform annual inspections of the elevator. Currently, State law requires that annual inspection be performed on all elevator units by a third party authorized inspector or utilizing State inspectors. Effective, July 1, 2009, State inspectors will no longer perform the annual inspections.

EFFECTIVE July 1, 2009

Montgomery County Legislative Update: Commercial Vehicle Parking

In January 2009, the Montgomery County Council adopted a new law further restricting the parking of commercial vehicles on public streets. The new county law prohibits the parking of heavy commercial vehicles, buses and recreational vehicles (RVs) from parking on public streets located within or abutting residential neighborhoods.

A "heavy commercial vehicle" is defined as a vehicle with:

1. A gross vehicle weight (GVW) of more than 10,000 pounds;
2. A manufacturer's rated capacity of more than 1 ton;
3. A length of more than 21 feet measured from the extremes of the vehicle. including any object loaded on the vehicle; OR
4. A height of more than 8 feet with properly inflated tires measured from the ground to the highest part of the vehicle, including racks, but not antennas.

EFFECTIVE JULY 1, 2009

We'd Like To Hear From You

We publish this newsletter as a service to our clients as a means to make them aware of certain aspects of the law. As always, we would like to hear feedback from our readers regarding the content



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of the newsletter. If there are items or topics you would like to see covered in future issues, or you have a suggestion concerning the newsletter itself, please send them to Anne Core at ascore@lercheearly.com, or via phone at 301-961-6096.

Additionally, a number of the Firm's other departments periodically issue highly informative newsletters on a variety of other subjects, including Real Estate, Community Associations, and Employment and Labor. If you would like to receive one or more of these newsletters, you may access them through our website, www.lercheearly.com.

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