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Community Associations Newsletter

2012 Maryland Update

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Although many bills that would have affected community associations were introduced in the Maryland General Assembly's 2012 legislative session, very few were passed. In this memo, we will review the few bills that passed as well as a couple of court decisions that impact community associations.

Legislative Update

House Bill 126 amends Section 11-125 of the Condominium Act to authorize the council of unit owners of a condominium or its authorized designee to enter units to *investigate* damage when it reasonably appears necessary for public safety or to prevent damage to other portions of the condominium. The current language of Section 11-125 only authorizes the council to enter units to make repairs that reasonably appear necessary. Obviously, the revised language broadens a council's authority to enter units and will be very helpful for those condominiums that contain abandoned/vacant units.

Two bills passed which affect community associations located in specific localities. House Bill 906 adds a new subtitle to the Political Subdivisions article of the Maryland Code and authorizes Prince George's County to enact an ordinance to set forth procedures and processes for administrative hearing services to resolve disputes involving community associations. In addition, it authorizes Prince George's County to charge fees for these services. We will monitor the Prince George's County Council to see if an ordinance is proposed establishing these administrative hearing services.

Additionally, Senate Bill 130 modifies Section 14-123 of the Real Property Article, which relates to the right of community associations to seek judicial abatement in nuisance actions within Baltimore City. There are a number of amendments to the law, one of which is the removal of the requirement that a community association file a bond with the court before seeking nuisance abatement. Another amendment includes the removal of the previous provision that prohibited community associations from pursuing a nuisance action against a vacant dwelling if it is maintained in a boarded condition, free from trash and debris, and secure against

trespassers and weather. However, the amendment also prohibits a community association from filing an action if it has received notice from the City Department of Housing and Community Development that the property in question is part of an active code enforcement plan.

The Maryland General Assembly also added two new sections to the Real Property Article which will hopefully alleviate delays that we are noticing in mortgage foreclosures and will provide community associations with more information regarding foreclosed properties. For example, Section 14-126.1 requires that the Department of Labor, Licensing, and Regulation establish and maintain an internet based "Foreclosed Property Registry" for information relating to foreclosure sales of residential property, and also requires foreclosure purchasers of residential property to register and pay fees to the Department for purposes of the Registry.

Case Law Update

On December 1, 2011, the Maryland Court of Appeals issued an opinion confirming that the purchaser of a condominium unit at a foreclosure sale is liable for the regular and special assessments levied against the unit as of the date of the sale. The case is *Campbell v. Council of Unit Owners of Bayside Condominium*, 202 Md. App. 241 (2011). This case will make it easier for us to collect the assessments due from the date of the foreclosure sale when the lender takes ownership of a unit and then sells it to a third party.

In April 2012, the Maryland Court of Appeals issued a revised opinion in *MRA Property Management v. Armstrong, et al*, No. 93, September Term 2007, clarifying that condominium associations and management companies may be found in violation of the Maryland Consumer Protection Act ("Act"), despite the fact that the association and the management company were not the direct sellers of the unit. In *MRA*¸ a group of unit owners successfully sued the association and the management company alleging that the disclosures in the resale documents regarding the current budget and the condition of the building were misleading because they did not show that there were substantial structural damages to the building that required extraordinary expenditures to repair.

The importance of this case is that boards and managers should regularly review the resale disclosure documents with a keen eye as to whether they give an accurate depiction of the association's financial health and condition of the community. In addition, boards need to be diligent in setting budgets that are realistic and address issues within the community. One way to assist in that is to obtain a reserve study on a regular basis so that there is a third party giving advice to the association regarding the money that needs to be collected from the members.

Another important opinion, issued in April 2012, is the "pit bull" opinion, *Tracey v. Solesky*, No. 53, September Term 2012. This opinion drastically changes the previous standard of liability applied in dog bite cases. Prior to this case, a plaintiff in a dog bite/attack case would have to prove that the dog owner was negligent (i.e., knew the dog was dangerous, but took no steps to protect third parties) and that such negligence caused the damages claimed. However, the Court's opinion in *Tracey v. Solesky* states that a pit bull or a pit bull mix is inherently dangerous, and creates a strict liability standard for these dog owners.

Furthermore, the Court extended this strict liability standard to landlords. The Court stated that:

> Upon a plaintiff's sufficient proof that a dog involved in an attack is a pit bull or a pit bull mix, and that the owner, or other person(s) who has the right to control the pit bull's presence on the subject premises (*including a landlord who has the right and/or opportunity to prohibit such dogs on leased premises as in this case*) knows, or has reason to know, that the dog is a pit bull or cross-bred pit bull mix, that person is strictly liable for the damages caused to a plaintiff who is attacked by the dog on or from the owner's or lessor's premises. (Emphasis added).

The highlighted language may be interpreted to extend to community associations that have control over the common areas and/or have the authority to restrict/prohibit pets. Notably, there is a pending motion for reconsideration requesting that the Court reconsider the opinion, and numerous interested parties (i.e., the Humane Society) have filed briefs in support of the motion to reconsider. In addition, the Maryland General Assembly has created a ten member task force to review the case and to make recommendations as to possible legislation. That task force will be looking at the laws in other states and reviewing the viability of breed-specific requirements for dog owners in Maryland. Accordingly, while this opinion is currently good law, it is possible that the Court will grant the motion to reconsider and change its opinion, or that the legislature will take action.

If you have any questions regarding any of these new laws, please do not hesitate to contact our office.