



## Maryland Community Housing Statutes

### Summary of the Maryland Condominium Act

A condominium is a “communal form of estate in property consisting of individually owned units which are supported by collectively held facilities and areas.”<sup>1</sup> In exchange for the benefit of using this commonly owned property, unit owners agree to be bound by rules governing the administration, maintenance, and use of the property.<sup>2</sup> In most instances, unit owners are required to give up a certain amount of freedom which they would enjoy in a privately owned property.<sup>3</sup>

The Maryland Condominium Act (the “MCA”)<sup>4</sup> governs both incorporated and unincorporated condominiums organized under the laws of the State of Maryland and regulates the formation, management, and termination of condominiums in Maryland.<sup>5</sup> Condominiums are made up of “unit owners” which are collectively referred to as a “council of unit owners.”<sup>6</sup> A condominium’s bylaws govern its administration and management as well as establishes the rights and obligations of unit owners in the condominium.<sup>7</sup> Each unit owner, in addition to the ownership of his/her particular unit, has an interest in the condominium’s common elements.<sup>8</sup> The bylaws may also contain “any other provision regarding the management and operation of the condominium including any

<sup>1</sup> *Ridgely Condominium Ass’n, Inc. v. Smyrnioudis*, 343 Md. 357, 358 (1996) (quoting *Andrews v. City of Greenbelt*, 293 Md. 69, 71 (1982)).

<sup>2</sup> *Id.* at 359.

<sup>3</sup> *Id.*

<sup>4</sup> Section 11-101, et seq., of the Real Property Article of the Maryland Code.

<sup>5</sup> For a detailed summary of the formation and bylaw requirements under the MCA, see Sections 11-103 through 11-104 of the Real Property Article of the Maryland Code.

<sup>6</sup> MCA, Section 11-109.

<sup>7</sup> MCA, Section 11-104(a). It should be noted that condominiums are also governed by the provisions of the MCA and each condominium’s individual declaration which is filed with the Maryland Department of Assessments and Taxation at the time the condominium is formed. The declaration must include the elements set forth in Section 11-103(a) of the MCA.

<sup>8</sup> MCA, Section 11-109.

restriction on or requirement respecting the use and maintenance of the units and the common elements.”<sup>9</sup> Therefore, unit owners and their designees are granted broad discretion when it comes to establishing the rules and regulations of a condominium.

By becoming a unit owner in a condominium, you are agreeing to be bound by the rules and regulations established by the condominium’s governing documents and as determined by the condominium’s governing body in accordance with the MCA, its declaration, and its bylaws. Section 11-109(f)(1) of the MCA specifically states that “[a] unit owner’s right to possess, use, or enjoy property of the “council of unit owners” shall be as provided in the bylaws.” In addition, “[w]hen a controversy arises as to a resident’s right as a unit owner in a condominium, the courts must examine the condominium enabling statutes for relevant provisions, consider the master deed or declaration, study the bylaws, and attempt to reconcile all three.”<sup>10</sup> Under the MCA, in the event of a conflict between any of the condominium’s governing documents, the statute controls, then the declaration, plat, bylaws, and rules.<sup>11</sup> The council of unit owners (or its designee) has the authority to adopt new rules and regulations which are binding on all unit owners whether they apply to individual units, its common elements, or both, provided however, that the unit owners are given proper notice and an opportunity to be heard on the any proposed new rule or regulation.<sup>12</sup>

### **Summary of the Maryland Homeowners Association Act**

A homeowners association (“HOA”) includes an incorporated or unincorporated association comprised of homeowners residing within a particular area.<sup>13</sup> The HOAs primary purpose is to ensure the maintenance, repair, and upkeep of the common areas owned by the HOA and to enforce the various covenants and restrictions of the HOA.<sup>14</sup> Unlike in a condominium where unit owners have an interest in the common areas, the common areas in HOAs are owned by the HOA itself and each member of the HOA owns the individual lot purchased.<sup>15</sup> HOA owners are granted a right to use and enjoy the common areas in exchange for their payment of common expenses associated with the maintenance, repair, and upkeep of the common areas by the HOA.<sup>16</sup>

The Maryland Homeowners Association Act (“MHAA”) applies to the sales of properties located within a homeowners association in the state.<sup>17</sup> The MHAA requires sellers to make certain disclosures to buyers who

<sup>9</sup> MCA, Section 11-104(a)-(c). See also MCA, Section 11-109(f)(1) stating: “A unit owner’s right to possess, use, or enjoy property of the council of unit owners shall be as provided in the bylaws.”

<sup>10</sup> *Dulaney Towers Maintenance Corp. v. O’Brey*, 46 Md.App. 464, 465-66 (Md. App. 1980) (citing *Sterling Village Condominium, Inc. v. Breitenbach*, 251 So.2d 685 (Fla. 1971))

<sup>11</sup> See also *Ridgely*, 343 Md. at 361 (citing MCA, Section 11-124(e)).

<sup>12</sup> MCA, Section 11-111.

<sup>13</sup> MHAA, Section 11B-101(i)(1)-(2) (defining a homeowner’s association as “a person having the authority to enforce the provisions of a declaration” and it includes “an incorporated or unincorporated association”).

<sup>14</sup> MHAA, Section 11B-101(d)(1) (defining a declaration as “an instrument, however denominated, recorded among the land records of the county in which the property of the declarant is located, that creates the authority for a homeowners association to impose on lots, or on the owners or occupants of lots, or on another homeowners association, condominium, or cooperative housing corporation any mandatory fee in connection with the provision of services or otherwise for the benefit of some or all of the lots, the owners or occupants of lots, or the common areas”).

<sup>15</sup> MHAA, Section 11B-101(b).

<sup>16</sup> See MHAA, Section 11B-101(d)(1).

<sup>17</sup> See MHAA, Section 11B-102(a); *Lipitz v. Hurwitz*, 435 Md. 273, 280 (2013). Although the MHAA can apply to condominiums and cooperatives, “[i]t only applies to those few condominiums and cooperatives which the owners are subject to an obligation to pay fees not only to the condominium or cooperative itself but also to a separate homeowners association.” 73 Md.Op.Atty.Gen. 215, 216 (Md.A.G. 1988). Note that while the MHAA and the MCA require different disclosures, “the two acts may be read together so that, if both apply to the resale of a condominium unit, the seller is required to provide all of the disclosures required by both acts.” *Id.* at 218.

are purchasing property within a homeowners association, including but not limited to, that upon purchase of the lot the buyer automatically becomes subject to certain rights, responsibilities, restrictions, and obligations including payment of fees to the HOA.<sup>18</sup> In this way, the MHAA acts as a consumer protection statute ensuring that buyers are informed of their responsibilities as members of the HOA.<sup>19</sup> The management and operations of HOAs are generally overseen by a board of directors elected by the members.<sup>20</sup> Governing documents of the HOA include a declaration, bylaws, deed or other agreement, and recorded covenants and restrictions.<sup>21</sup>

### **Summary of the Maryland Cooperative Housing Corporation Act**

A Maryland Cooperative Housing Corporation is a “domestic or foreign corporation qualified in Maryland, either stock or nonstock, having only one class of stock or membership, in which each stockholder or member, by virtue of such ownership or membership, has a cooperative interest in the corporation.”<sup>22</sup> Cooperative housing corporations are unique in that members possess both stock or membership and a lease.<sup>23</sup> A purchaser of stock or membership in a cooperative acquires no actual title to a unit of property but rather the shares or membership interests of the cooperatives stock that are allocated to that specific unit.<sup>24</sup> Maryland courts recognize that the relationship between a cooperative corporation and individual stockholders or membership holders is that of landlord/tenant, making the cooperative housing corporation unique and distinctly different than a condominium or HOA.<sup>25</sup>

One of the distinct features of cooperative ownership and living is the control of the activities of the members living within the community.<sup>26</sup> Compliance with the rules, regulations, and restrictive covenants adopted by the cooperative is the price members pay to enjoy the benefits of the community.<sup>27</sup> Like condominiums and HOAs, housing cooperatives are governed by a board of directors or other entity established to govern the cooperative.<sup>28</sup>

### **“Reasonableness Standard” in Community Housing Arrangements**

In Maryland, rules, regulations, and restrictive covenants (as applicable) established by condominiums, HOAs, and cooperatives will be enforced by the courts as long as they are “reasonable” and in accordance with the organization’s governing documents.<sup>29</sup> The test is the same regardless of the specific type of communal entity

<sup>18</sup> See generally MHAA, Sections 11B-105 through 11B-108; see also *Lipitz*, 435 Md. at 280-82.

<sup>19</sup> *Lipitz*, 435 Md. at 282.

<sup>20</sup> See MHAA, Section 11B-106.1 (requiring the members of the homeowners association to elect a governing body within a specified period of time after a certain number of lots are sold to members of the public); see also MHAA, Section 11B-101(h) (defining “governing body” as including a board of directors); *Black v. Fox Hills North Community Ass’n, Inc.*, 90 Md.App. 75 (Md. App. 1992); *Reiner v. Ehrlich*, 212 Md.App. 142 (Md. App. 2013); *Markey v. Wolf*, 92 Md.App. 137 (Md. App. 1992); *Point’s Reach Condominium Council of Unit Owners v. Point Homeowners Ass’n, Inc.*, 213 Md.App. 222 (Md. App. 2013); *Davidson v. Seneca Crossing Section II Homeowner’s Ass’n, Inc.*, 187 Md.App. 601 (Md. App. 2009).

<sup>21</sup> MHAA, Section 11B-116(a)

<sup>22</sup> MCHCA, Section 5-6B-01(g) of the Corporations and Associations Article of the Maryland Code.

<sup>23</sup> *Village Green Mut. Homes, Inc. v. Randolph*, 361 Md. 179, 184 (2000) (quoting *Cunningham v. Georgetown Homes, Inc.*, 708 N.E.2d 623, 625 (Ind. App. 1999) and citing *Quality Management Services, Inc. v. Banker*, 291 Ill.App.3d 942, 945 (Ill. App. 1997)).

<sup>24</sup> *Village Green*, 361 Md. at 185-86 (quoting Patrick E. Kehoe, *Cooperatives and Condominiums* 14 (1974))

<sup>25</sup> *Id.* at 188 (quoting *Green v. Greenbelt Homes, Inc.*, 232 Md. 296, 503 (1963))

<sup>26</sup> *Id.* at 190

<sup>27</sup> *Id.*

<sup>28</sup> MCHCA, Section 5-6B-01(l).

<sup>29</sup> With regard to condominiums specifically, the MCA explicitly states that condominium’s governing documents are to be “liberally construed to facilitate the creation and operation of the condominium.” MCA, Section 11-124(b).

in question.<sup>30</sup> In determining what is “reasonable” courts examine whether the rule was adopted by the board or other governing body in a good faith exercise of discretion, based upon legitimate concerns for the health and welfare of the communal community.<sup>31</sup> In addition, depending on the type of restriction in question, the courts may use a two-tiered approach in determining what is “reasonable.” Specifically, if the restriction existed at the time the unit holder purchased his/her interest in the communal development it will be granted a greater level of deference than a restriction that was enacted subsequent to purchase. A more deferential standard of review is applied to use restrictions that are recorded because in that circumstance, “each individual unit owner purchases his unit knowing of and accepting the restrictions to be imposed.”<sup>32</sup> On the other hand, use restrictions adopted by a board of directors, while still requiring the application of the reasonableness test, will be more closely examined because such later-adopted restrictions are passed with less than unanimous approval of all unit owners, providing the potential for discrimination against a certain class of owners.<sup>33</sup>

Restrictions on the use of units and common areas in condominiums, homeowner’s associations, and cooperatives are extremely common. The prevailing view in Maryland is that in these types of communal living situations, “fair consideration must be given to the rights and privileges of all owners and occupants of the condominium so as to provide a harmonious residential atmosphere,”<sup>34</sup> the preservation of which is often accomplished with the existence and enactment of rules and regulations relating to a unit owner’s conduct. Reasonable rules and restrictions may be contained in the organization’s bylaws. Note that in reviewing the validity of a restriction in any communal development, the court must first determine whether the governing body had the authority to enact the restriction before reaching the issue of whether the rule or regulation itself is reasonable.<sup>35</sup>

Specifically, with respect to smoking regulations by condominiums (and what could logically be extended to apply to homeowners’ associations and cooperatives) the Maryland Attorney General’s Office has concluded that a condominium board may regulate smoking in individual units as well as common areas, so long as the bylaws do not forbid such rules: “It is my view that a rule barring smoking in individual units would be reasonable, at least in cases where the smoke seeps out to the common areas or to other units. Thus, it meets the test set both in § 11-109(d)(2) and the case law. Moreover, it seems clear that such a rule would bear a

<sup>30</sup> See *Dulaney Towers Maintenance Corp. v. O’Brey*, 46 Md.App. 464, 466 (Md. App. 1980) (discussing the reasonableness standard with respect to both condominiums and cooperatives interchangeably); see generally, *Markey, III, et al. v. Morris Wolf, et al.*, 92 Md.App. 137 (Md. App. 1992) (discussing evolution of the reasonableness standard in connection with restrictive covenants).

<sup>31</sup> See *Colandrea v. Wilde Lake Community Ass’n, Inc.*, 361 Md. 371 (2000) (quoting the trial court); see also *Sea Watch Stores Ltd. Liability Co. v. Council of Unit Owners of Sea Watch Condominium*, 115 Md. App. 5 (Md. App. 1997) (holding that a deed restriction covering commercial condominium units which prohibited deliveries through the front entrance of the condominium was a reasonable restriction as it promoted the flow of traffic); see also *Kenney v. Morgan*, 22 Md.App. 698, 707 (Md. App. 1974) (quoting *Kirkley v. Seipelt*, 212 Md. 127, 133 (1957), which stated that a decision that is reasonable is one “made in good faith, and not high-handed, whimsical or captious in manner”).

<sup>32</sup> *Ridgely Condominium Ass’n, Inc. v. Smyrnioudis*, 105 Md.App. 404, 416 (quoting *Hidden Harbour Estates, Inc. v. Basso*, 393 So.2d 637, 639-40 (Fla. Dist. 4 Ct. App. 1981)).

<sup>33</sup> *Id.* at 422. It is important to note that on appeal in the *Ridgely* case, the Court of Appeals did not reach the issue of whether the Court of Special Appeals applied the appropriate standard of review because the Court of Appeals concluded that the Association did not have the authority to enact the rule at issue by amending the bylaws. *Ridgely*, 343 Md. at 366. When examining the validity of a rule, the court must determine whether the governing body had the authority to promulgate the rule in the first place. *Id.*

<sup>34</sup> *Id.* In *Dulaney*, the appellees who were unit owners of the Dulaney Towers Townhouse Condominium No. 2 were sued by the appellants (fellow unit owners in the condominium) on the grounds that the appellees had purchased a second dog in violation of the condominium’s one dog per unit/occupant limit. On appeal, the appellants prevailed because the Court of Special Appeals found the condominium’s restriction to be reasonable. This decision follows a line of cases in multiple jurisdictions in which rules and regulations limiting the ownership of dogs and even the exclusion of dogs in communal living situations on the basis that dogs produce “potentially offensive odors, noise, possible health hazards, clean-up and maintenance problems, and the fact that pets can and do defile hallways, elevators and other common areas.” *Id.*

<sup>35</sup> See *Ridgely*, 343 Md. at 366; see also *Dulaney*, 46 Md. App. at 465-66.

relationship to the health of the residents of the condominium, both in the avoidance of secondhand smoke and by reducing the risk of fire. As a result, it is my view that current law permits condominium boards to adopt rules prohibiting smoking in condominium units, unless such a rule would be inconsistent with the bylaws for that condominium.”

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