

SENATE BILL 824

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11r1097

By: **Senator Kelley**

Introduced and read first time: February 10, 2011

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Common Ownership Community Managers – Licensing and Regulation**

3 FOR the purpose of creating the State Board of Common Ownership Community
4 Managers in the Department of Labor, Licensing, and Regulation; providing for
5 the composition of the Board and the appointment, terms, and expenses of the
6 Board members; providing for the election of certain officers, size of a Board
7 quorum, and for meetings of the Board; establishing certain powers and duties
8 of the Board; requiring the Board to maintain a list of certain names and
9 addresses; requiring the Department to set certain fees by regulation; requiring
10 the Board to publish a certain fee schedule, and to pay certain fees to the
11 Comptroller; requiring the Comptroller to distribute certain fees to the State
12 Board of Common Ownership Community Managers Fund; requiring the Board
13 to establish standards for training and continuing education of licensees;
14 requiring an individual to be licensed by the Board before the individual acts as
15 a community manager in the State; requiring an applicant to meet certain
16 qualifications for a license; requiring the Department to establish qualifications
17 for the issuance and renewal of licenses by regulation; requiring the
18 Department to set certain licensing fees by regulation; requiring the Board to
19 establish by regulation, subject to certain hearing provisions, grounds for
20 denying a license, reprimanding a licensee, suspending or revoking a license, or
21 imposing a penalty against a licensee; establishing certain notice and hearing
22 provisions; establishing the State Board of Common Ownership Community
23 Managers Fund; providing for the purpose, administration, composition, use,
24 and audit of the Fund; requiring the Secretary, in consultation with the Board,
25 to calculate certain costs annually; authorizing the Department to set certain
26 fees, based on certain calculations; making the Board subject to the Maryland
27 Program Evaluation Act; providing for the termination of certain provisions of
28 this Act; specifying the terms of the initial members of the Board; requiring the
29 Department to adopt certain regulations on or before a certain date; requiring
30 common ownership community managers to be licensed on or before a certain
31 date; defining certain terms; and generally relating to the State Board of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Common Ownership Community Managers and the regulation of common
2 ownership community managers.

3 BY renumbering

4 Article – Business Regulation
5 Section 2–108(a)(10) through (34), respectively
6 to be Section 2–108(a)(11) through (35), respectively
7 Annotated Code of Maryland
8 (2010 Replacement Volume and 2010 Supplement)

9 BY renumbering

10 Article – State Government
11 Section 8–403(b)(13) through (68), respectively
12 to be Section 8–403(b)(14) through (69), respectively
13 Annotated Code of Maryland
14 (2009 Replacement Volume and 2010 Supplement)

15 BY adding to

16 Article – Business Occupations and Professions
17 Section 22–101 through 22–402 to be under the new title “Title 22. Common
18 Ownership Community Managers”
19 Annotated Code of Maryland
20 (2010 Replacement Volume)

21 BY adding to

22 Article – Business Regulation
23 Section 2–106.7, 2–106.8, and 2–108(a)(10)
24 Annotated Code of Maryland
25 (2010 Replacement Volume and 2010 Supplement)

26 BY repealing and reenacting, without amendments,

27 Article – State Government
28 Section 8–403(a)
29 Annotated Code of Maryland
30 (2009 Replacement Volume and 2010 Supplement)

31 BY adding to

32 Article – State Government
33 Section 8–403(b)(13)
34 Annotated Code of Maryland
35 (2009 Replacement Volume and 2010 Supplement)

36 Preamble

37 WHEREAS, Maryland is estimated to have 5,226 common ownership
38 communities, with over one million residents in the aggregate; and

1 WHEREAS, The Community Associations Institute estimates the aggregate
2 value of the homes in Maryland's common ownership communities to be sixty-nine
3 billion dollars and the annual operation revenue to be six hundred and ninety-six
4 million dollars; and

5 WHEREAS, Approximately 34,000 homeowner volunteers serve on the
6 governing boards of Maryland's common ownership communities; and

7 WHEREAS, These lay persons are responsible for assessing fees required for
8 the on-going repair and replacement of mechanical systems, roofs, and roadways, for
9 the maintenance of interior and exterior common areas, and for the provision of all
10 amenities cited in the declarations generated by the developers of these communities;
11 and

12 WHEREAS, Most of the volunteer boards find it impossible to carry out their
13 responsibilities without contracting with external business entities to manage
14 financial, maintenance, and/or legal affairs of their respective communities; and

15 WHEREAS, Maryland does not register or license persons who market and/or
16 provide management services to common ownership communities; and

17 WHEREAS, Because of significant operational, fiscal, and legal problems of
18 Maryland's common ownership communities (i.e. condominiums, cooperatives, and
19 homeowner associations with legal authority to assess fees), the 2005 Session of the
20 General Assembly created the Task Force on Common Ownership Communities
21 (Chapter 469); and

22 WHEREAS, Several significant problems uncovered by the Task Force remain
23 at this time; now, therefore,

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That Section(s) 2-108(a)(10) through (34), respectively, of
26 Article – Business Regulation of the Annotated Code of Maryland be renumbered to be
27 Section(s) 2-108(a)(11) through (35), respectively.

28 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 8-403(b)(13)
29 through (68), respectively, of Article – State Government of the Annotated Code of
30 Maryland be renumbered to be Section(s) 8-403(b)(14) through (69), respectively.

31 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland
32 read as follows:

33 **Article – Business Occupations and Professions**

34 **TITLE 22. COMMON OWNERSHIP COMMUNITY MANAGERS.**

35 **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

1 **22-101.**

2 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "BOARD" MEANS THE STATE BOARD OF COMMON OWNERSHIP
5 COMMUNITY MANAGERS.

6 (C) "COMMON OWNERSHIP COMMUNITY" MEANS:

7 (1) A CONDOMINIUM AS DEFINED IN § 11-101 OF THE REAL
8 PROPERTY ARTICLE;

9 (2) A COOPERATIVE HOUSING CORPORATION AS DEFINED IN §
10 5-6B-01 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; AND

11 (3) A HOMEOWNERS ASSOCIATION AS DEFINED IN § 11B-101 OF
12 THE REAL PROPERTY ARTICLE.

13 (D) "COMMON OWNERSHIP COMMUNITY MANAGER" MEANS ANY
14 PERSON THAT RECEIVES COMPENSATION FOR MARKETING, NEGOTIATING, OR
15 PROVIDING SERVICES TO A COMMON OWNERSHIP COMMUNITY.

16 (E) "LICENSE" MEANS A LICENSE ISSUED BY THE BOARD TO ACT AS A
17 COMMON OWNERSHIP COMMUNITY MANAGER.

18 **22-102.**

19 THIS SUBTITLE DOES NOT APPLY TO:

20 (1) A PERSON THAT DOES NOT RECEIVE COMPENSATION FOR
21 PROVIDING SERVICES TO THE COMMON OWNERSHIP COMMUNITY;

22 (2) A LAWYER OR CERTIFIED PUBLIC ACCOUNTANT THAT HOLDS
23 A PROFESSIONAL LICENSE AND PERFORMS AN ACTIVITY IN THE ORDINARY
24 COURSE OF THAT PERSON'S LICENSE;

25 (3) A REAL ESTATE BROKER OR REAL ESTATE SALESPERSON
26 THAT IS RESPONSIBLE FOR THE SELLING, LEASING, RENTING, OR MANAGING OF
27 INDIVIDUAL LOTS WITHIN THE COMMON OWNERSHIP COMMUNITY;

28 (4) A PERSON THAT IS ACTING UNDER THE AUTHORITY OF A
29 COURT ORDER, WILL, OR TRUST INSTRUMENT; OR

1 **(5) A DECLARANT THAT PROVIDES SERVICES TO THE COMMON**
2 **OWNERSHIP COMMUNITY.**

3 **SUBTITLE 2. STATE BOARD OF COMMON OWNERSHIP COMMUNITY MANAGERS.**
4 **22-201.**

5 **THERE IS A STATE BOARD OF COMMON OWNERSHIP COMMUNITY**
6 **MANAGERS IN THE DEPARTMENT.**

7 **22-202.**

8 **(A) THE BOARD CONSISTS OF 13 MEMBERS APPOINTED BY THE**
9 **GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE.**

10 **(B) OF THE 13 MEMBERS OF THE BOARD:**

11 **(1) 6 SHALL BE LICENSED COMMON OWNERSHIP COMMUNITY**
12 **MANAGERS;**

13 **(2) 4 SHALL BE OWNERS OF PROPERTY IN A COMMON**
14 **OWNERSHIP COMMUNITY WITH AT LEAST 2 HAVING SERVED ON THE BOARD OF A**
15 **COMMON OWNERSHIP COMMUNITY IN THE STATE;**

16 **(3) 1 SHALL BE A CERTIFIED PUBLIC ACCOUNTANT WHOSE**
17 **PRACTICE INCLUDES PROVIDING SERVICES TO COMMON OWNERSHIP**
18 **COMMUNITIES;**

19 **(4) 1 SHALL BE A DEVELOPER OF A COMMON OWNERSHIP**
20 **COMMUNITY IN THE STATE; AND**

21 **(5) 1 SHALL BE AN ATTORNEY ADMITTED TO PRACTICE LAW**
22 **WHOSE PRACTICE INCLUDES THE REPRESENTATION OF COMMON OWNERSHIP**
23 **COMMUNITIES.**

24 **(C) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD SHALL**
25 **TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND**
26 **CONSTITUTION.**

27 **(D) (1) THE TERM OF A MEMBER IS 3 YEARS AND BEGINS ON**
28 **JANUARY 1.**

1 **(2) THE TERMS OF MEMBERS ARE STAGGERED AS REQUIRED BY**
2 **THE TERMS PROVIDED FOR MEMBERS OF THE BOARD ON JULY 1, 2011.**

3 **(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE**
4 **UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.**

5 **(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN**
6 **SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS**
7 **APPOINTED AND QUALIFIES.**

8 **(5) A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE**
9 **TERMS.**

10 **22-203.**

11 **(A) FROM AMONG ITS MEMBERS, THE BOARD SHALL ELECT A CHAIR**
12 **AND VICE CHAIR.**

13 **(B) THE TERMS OF THE CHAIR AND VICE CHAIR ARE 1 YEAR.**

14 **22-204.**

15 **(A) A MAJORITY OF THE MEMBERS THEN SERVING ON THE BOARD IS A**
16 **QUORUM.**

17 **(B) THE BOARD SHALL DETERMINE THE TIMES AND PLACES OF ITS**
18 **MEETINGS.**

19 **(C) EACH MEMBER OF THE BOARD IS ENTITLED TO:**

20 **(1) COMPENSATION IN ACCORDANCE WITH THE STATE BUDGET;**
21 **AND**

22 **(2) REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD**
23 **STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.**

24 **(D) THE BOARD MAY EMPLOY STAFF IN ACCORDANCE WITH THE STATE**
25 **BUDGET.**

26 **22-205.**

27 **(A) THE BOARD SHALL MAINTAIN A LIST OF THE NAMES AND MAILING**
28 **ADDRESSES OF ALL LICENSE HOLDERS.**

1 **(B) THE BOARD MAY RELEASE THE LIST OF LICENSE HOLDERS TO THE**
2 **PUBLIC.**

3 **(C) EACH LICENSE HOLDER SHALL DESIGNATE A MAILING ADDRESS AT**
4 **THE TIME OF ISSUANCE OF THE ORIGINAL LICENSE AND ON THE RENEWAL OF**
5 **THE LICENSE.**

6 **22-206.**

7 **(A) THE BOARD SHALL PUBLISH THE FEE SCHEDULE SET BY THE**
8 **DEPARTMENT.**

9 **(B) (1) THE BOARD SHALL PAY ALL FEES COLLECTED UNDER THIS**
10 **TITLE TO THE COMPTROLLER.**

11 **(2) THE COMPTROLLER SHALL DISTRIBUTE THE FEES TO THE**
12 **STATE BOARD OF COMMON OWNERSHIP COMMUNITY MANAGERS FUND**
13 **ESTABLISHED UNDER § 2-106.7 OF THE BUSINESS REGULATION ARTICLE.**

14 **22-207.**

15 **IN ADDITION TO ANY DUTIES SET FORTH ELSEWHERE, THE BOARD SHALL:**

16 **(1) ADOPT ETHICAL STANDARDS AND RULES OF PROFESSIONAL**
17 **CONDUCT FOR COMMON OWNERSHIP COMMUNITY MANAGERS;**

18 **(2) KEEP A RECORD OF ITS PROCEEDINGS; AND**

19 **(3) ESTABLISH STANDARDS FOR TRAINING AND CONTINUING**
20 **EDUCATION OF LICENSEES.**

21 **SUBTITLE 3. LICENSING.**

22 **22-301.**

23 **AN INDIVIDUAL SHALL BE LICENSED BY THE BOARD BEFORE THE**
24 **INDIVIDUAL ACTS AS A COMMON OWNERSHIP COMMUNITY MANAGER IN THE**
25 **STATE.**

26 **22-302.**

27 **(A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL MEET THE**
28 **REQUIREMENTS ESTABLISHED BY REGULATION OF THE DEPARTMENT.**

1 **(B) (1) THE DEPARTMENT SHALL ESTABLISH QUALIFICATIONS FOR**
2 **THE ISSUANCE AND RENEWAL OF LICENSES UNDER THIS SUBTITLE BY**
3 **REGULATION.**

4 **(2) THE QUALIFICATIONS MAY INCLUDE REQUIREMENTS FOR**
5 **CERTIFICATION OF COMMON OWNERSHIP COMMUNITY MANAGERS.**

6 **22-303.**

7 **(A) THE DEPARTMENT SHALL SET LICENSING AND RENEWAL FEES FOR**
8 **COMMON OWNERSHIP COMMUNITY MANAGERS BY REGULATION.**

9 **(B) THE FEES CHARGED SHALL BE:**

10 **(1) SET TO PRODUCE FUNDS TO APPROXIMATE THE COST OF**
11 **MAINTAINING THE BOARD; AND**

12 **(2) BASED ON THE CALCULATIONS PERFORMED BY THE**
13 **SECRETARY UNDER § 2-106.8 OF THE BUSINESS REGULATION ARTICLE.**

14 **22-304.**

15 **(A) SUBJECT TO THE HEARING PROVISIONS UNDER THIS SECTION, THE**
16 **BOARD SHALL ESTABLISH BY REGULATION GROUNDS FOR DENYING A LICENSE**
17 **TO AN APPLICANT, REPRIMANDING A LICENSEE, SUSPENDING OR REVOKING A**
18 **LICENSE, OR IMPOSING A PENALTY AGAINST A LICENSEE.**

19 **(B) (1) EXCEPT AS OTHERWISE PROVIDED IN § 10-226 OF THE STATE**
20 **GOVERNMENT ARTICLE, BEFORE THE BOARD TAKES ANY FINAL ACTION UNDER**
21 **SUBSECTION (A) OF THIS SECTION, IT SHALL GIVE THE INDIVIDUAL AGAINST**
22 **WHOM THE ACTION IS CONTEMPLATED AN OPPORTUNITY FOR A HEARING**
23 **BEFORE THE BOARD.**

24 **(2) THE BOARD SHALL GIVE NOTICE AND HOLD THE HEARING IN**
25 **ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT**
26 **ARTICLE.**

27 **(3) IF, AFTER DUE NOTICE, THE INDIVIDUAL AGAINST WHOM THE**
28 **ACTION IS CONTEMPLATED FAILS OR REFUSES TO APPEAR, THE BOARD MAY**
29 **HEAR AND DETERMINE THE MATTER.**

30 **(C) AN INDIVIDUAL AGGRIEVED BY A FINAL DECISION OF THE BOARD IN**
31 **A CONTESTED CASE, AS DEFINED IN § 10-202 OF THE STATE GOVERNMENT**

1 ARTICLE, MAY TAKE AN APPEAL AS ALLOWED IN §§ 10-222 AND 10-223 OF THE
2 STATE GOVERNMENT ARTICLE.

3 SUBTITLE 4. SHORT TITLE; TERMINATION OF TITLE.

4 22-401.

5 THIS TITLE MAY BE CITED AS THE “MARYLAND COMMON OWNERSHIP
6 COMMUNITY MANAGERS ACT”.

7 22-402.

8 SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF
9 THE MARYLAND PROGRAM EVALUATION ACT, THIS TITLE AND ALL
10 REGULATIONS ADOPTED UNDER THIS TITLE SHALL TERMINATE AND BE OF NO
11 EFFECT AFTER JULY 1, 2017.

12 Article – Business Regulation

13 2-106.7.

14 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
15 MEANINGS INDICATED.

16 (2) “BOARD” MEANS THE STATE BOARD OF COMMON
17 OWNERSHIP COMMUNITY MANAGERS.

18 (3) “FUND” MEANS THE STATE BOARD OF COMMON OWNERSHIP
19 COMMUNITY MANAGERS FUND.

20 (B) THERE IS A STATE BOARD OF COMMON OWNERSHIP COMMUNITY
21 MANAGERS FUND IN THE DEPARTMENT.

22 (C) THE PURPOSE OF THE FUND IS TO COVER THE ACTUAL
23 DOCUMENTED DIRECT AND INDIRECT COSTS OF FULFILLING THE STATUTORY
24 AND REGULATORY DUTIES OF THE BOARD.

25 (D) THE SECRETARY OR A DESIGNEE OF THE SECRETARY SHALL
26 ADMINISTER THE FUND.

27 (E) (1) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT
28 SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

1 **(2) THE STATE TREASURER SHALL HOLD THE FUND**
2 **SEPARATELY, AND THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.**

3 **(F) THE FUND CONSISTS OF:**

4 **(1) REVENUE DISTRIBUTED TO THE FUND UNDER § 22-303 OF**
5 **THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE;**

6 **(2) INVESTMENT EARNINGS OF THE FUND;**

7 **(3) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND;**
8 **AND**

9 **(4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR**
10 **THE BENEFIT OF THE FUND.**

11 **(G) THE FUND MAY BE USED ONLY TO COVER THE ACTUAL**
12 **DOCUMENTED DIRECT AND INDIRECT COSTS OF FULFILLING THE STATUTORY**
13 **AND REGULATORY DUTIES OF THE BOARD.**

14 **(H) (1) THE STATE TREASURER SHALL INVEST THE MONEY OF THE**
15 **FUND IN THE SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.**

16 **(2) ANY INVESTMENT EARNINGS OF THE FUND SHALL BE**
17 **CREDITED TO THE FUND.**

18 **(I) EXPENDITURES FROM THE FUND MAY BE MADE ONLY IN**
19 **ACCORDANCE WITH THE STATE BUDGET.**

20 **(J) THE LEGISLATIVE AUDITOR SHALL AUDIT THE ACCOUNTS AND**
21 **TRANSACTIONS OF THE FUND AS PROVIDED IN § 2-1220 OF THE STATE**
22 **GOVERNMENT ARTICLE.**

23 **2-106.8.**

24 **(A) IN THIS SECTION, “BOARD” MEANS THE STATE BOARD OF COMMON**
25 **OWNERSHIP COMMUNITY MANAGERS.**

26 **(B) IN CONSULTATION WITH THE BOARD, THE SECRETARY SHALL**
27 **CALCULATE ANNUALLY THE DIRECT AND INDIRECT COSTS ATTRIBUTABLE TO**
28 **THE BOARD.**

29 **(C) THE DEPARTMENT SHALL ESTABLISH FEES BASED ON THE**
30 **CALCULATIONS PROVIDED BY THE SECRETARY UNDER THIS SECTION.**

1 2-108.

2 (a) The following units are in the Department:

3 (10) THE STATE BOARD OF COMMON OWNERSHIP COMMUNITY
4 MANAGERS.

5 Article – State Government

6 8-403.

7 (a) On or before December 15 of the 2nd year before the evaluation date of a
8 governmental activity or unit, the Legislative Policy Committee, based on a
9 preliminary evaluation, may waive as unnecessary the evaluation required under this
10 section.

11 (b) Except as otherwise provided in subsection (a) of this section, on or before
12 the evaluation date for the following governmental activities or units, an evaluation
13 shall be made of the following governmental activities or units and the statutes and
14 regulations that relate to the governmental activities or units:

15 (13) COMMON OWNERSHIP COMMUNITY MANAGERS, STATE
16 BOARD OF (§ 22-201 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS
17 ARTICLE, JULY 1, 2017);

18 SECTION 4. AND BE IT FURTHER ENACTED, That:

19 (a) The terms of the initial members of the State Board of Common
20 Ownership Community Managers shall expire as follows:

21 (1) four members in 2012;

22 (2) five members in 2013; and

23 (3) four members in 2014.

24 (b) On or after January 1, 2014, the Governor shall appoint the members of
25 the State Board of Common Ownership Community Managers in accordance with §
26 22-202 of the Business Occupations and Professions Article, as enacted by Section 3 of
27 this Act.

28 SECTION 5. AND BE IT FURTHER ENACTED, That on or before October 1,
29 2012, the Department of Labor, Licensing, and Regulation shall adopt regulations
30 required to license common ownership community managers under Title 22 of the
31 Business Occupations and Professions Article, as enacted by Section 3 of this Act.

1 SECTION 6. AND BE IT FURTHER ENACTED, That, on or before July 1,
2 2013, common ownership community managers shall be licensed by the State Board of
3 Common Ownership Community Managers.

4 SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 July 1, 2011.