By: Ronald M. Bolt, Esq.

2015 Maryland Legislative & Legal Update
Court Decisions & Local Laws of Interest

I. Court Decisions

Shader v. Hampton Improvement Association, Inc., 217 Md.App. 581 (2014).

The Court of Special Appeals ruled that property owners could not construct a second house on land they owned because a covenant, created in 1931, prevented the construction of more than one residence per lot. The covenant in question also prohibited certain accessory buildings, among other things. Among other contentions, the owners unsuccessfully argued that the covenant had been waived by the association by abandonment. The Shaders argued that the covenant had not been enforced over the years as detached garages, pool houses, guest houses, sheds, and other structures had been built without objection by the association. The Court concluded that the restrictions in the covenant must be considered separately and, although the restriction against accessory structures may have been waived, the one dwelling per lot restriction had not been abandoned, as there was no evidence that second residences had been allowed by the association.

Piney Orchard Community Association, Inc. v. Piney Pad A, LLC, Court of Special Appeals, No. 300, September Term 2013 (filed January 29, 2015).

This case concerned an attempt to prove that a parcel that was not included in the property description of a declaration of covenants was meant to be included and therefore should be bound by the covenants. Despite the omission from the recorded documents, the doctrine of implied negative reciprocal covenants provides that, when a developer pursues a course of conduct indicating intention to follow a general plan of development and imposes substantially uniform restrictions on lots conveyed, those same restrictions may be enforced against other property intended as part of the same development but inadvertently omitted. This provides a useful mechanism to address developer oversights. The doctrine can be applied, however, only where the governing documents are unclear. See *e.g.*, Points Reach Condominium v. the Point Homeowners Association, Inc., 213 Md.App. 222 (2013). In this case, the documents were deemed unambiguous and the court therefore disallowed attempts to offer evidence about the developer's intent.

Peters v. Emerald Hills Homeowners Association, Inc., Court of Appeals, No. 1364, September Term 2013 (filed February 2, 2015).

Although access easements must generally be created by a deed that complies with Maryland's recording statutes, such an easement can also be created by a subdivision plat, or other written memorandum, provided the Statute of Frauds is satisfied. In this case, the court found that property owners had an easement to access their "land-locked" property, across adjoining association land, although no deed of easement had ever been recorded. The easement was created by the recording of a subdivision plat that expressly denoted an "ingress & egress easement."

Bolt Legal, LLC - 8 Executive Park Court, Germantown, Maryland 20874
(tel) 301-528-6000 - (fax) 301-528-6001 - ron@boltlegal.com - www.boltlegal.com

Falls Garden Condominium Association, Inc. v. Falls Homeowners Association, Inc., Court of Appeals, No. 30, September Term 2014 (filed January 27, 2015).

This case concerned a dispute over ownership of some 39 parking spaces located between adjoining associations. For many years, the condominium residents had used the spaces. When the homeowners association learned that it owned the spaces, it attempted to prevent the condominium residents from using them. The condominium sought court intervention. Prior to trial, the parties attempted to settle the dispute. A letter of intent was executed, providing that a certain number of spaces would be leased for 99 years at $20 per month. The condominium sought to rescind the agreement, claiming that the letter of intent was not binding. The trial court and both Maryland appellate courts found the letter was enforceable, based on the definitive nature of the language used.

Fontell v. Hassett, Case No. 13-2270 (4th Cir. 2014), unpublished.

The U.S. Court of Appeals for the Fourth Circuit, upholding the decision of the U.S. District Court for the District of Maryland (Greenbelt Division), found that "a property management company … is not a debt collector [under the Federal Fair Debt Collection Practices Act] where it becomes responsible for collecting the subject debt before it was in default."

The appeal did not include certain other findings of the lower court, including that management companies and individual managers involved in collection activities are "debt collectors" under the Maryland Collection Agency Licensing Act and therefore must be licensed. Collecting debt without a license can be a violation of the Maryland Consumer Debt Collection Act and the Maryland Consumer Protection Act, and subject the unlicensed debt collector to liability for resulting damages.

II. Local Laws

Montgomery County Bill 44-14 (to be considered on March 3, 2015).

If enacted, this Bill would require a landlord to certify that common ownership community assessments are paid current, prior to obtaining a rental license. This Bill is similar to laws in force in Prince George's and Howard Counties. As co-chair of the Maryland Legislative Committee of the Washington Metropolitan Chapter Community Associations Institute, I submitted written support and provided testimony on the Bill. The Committee sought modification of the Bill to strengthen it. As a result of these efforts, an amendment has been proposed by the sponsor, Council President George Leventhal, to also allow licensing to be denied or revoked if a statement of lien has been recorded among the land records according to the Maryland Contract Lien Act.

Montgomery County Bill 44-15 (enacted February 3, 2015; effective January 1, 2016).

The new law provides that, after January 1, 2016, every person elected to a board of directors of a common ownership community must complete a training course to be offered by the Montgomery County Commission on Common Ownership Communities (CCOC), or others approved by the CCOC. The training must be completed within 90 days of being elected to the board. The association will need to report on its compliance to the CCOC. The CCOC will be able to enforce the new law in court and order compliance as part of a CCOC case. Failure to comply with a CCOC order could result in fines. The new law does not apply within jurisdictions where County Code Chapter 10B does not apply (*e.g.*, Gaithersburg). The training will be offered by the CCOC as an online course, but it has not yet been prepared. An outline of what is anticipated to be included in the training is attached.

III. Montgomery County Commission on Common Ownership Communities Panel decisions

McBeth v. Fountain Hills Community Association, Inc., Case No. 52-12 (2014), consolidated with **Muse v. Fountain Hills Community Association, Inc.**, Case No. 67-12 (2014).

The Maryland Homeowners Association Act requires board meetings to be held in open session, to allow owners to attend and witness the transaction of association business. The term "meeting" is not defined by the Act. The CCOC Panel was called upon in this case to determine what constitutes a "meeting." The complainants argued that meetings were being improperly held by email. The Panel found that, "[e]mail discussion among Board members does not constitute a meeting unless an action is taken usually evidenced by a vote to take or authorize a Board action which requires a vote."

Stalbaum v. Ashley Place at Tanglewood Homeowner's Association, Case No. 26-14 (2014).

Ruling in favor of the complaining homeowner, and citing Ridgely Condominium Association v. Smyrnioudis, 343 Md. 357 (1996), the CCOC Panel found that "[t]he board of directors of a common ownership community does not have the authority to adopt rules beyond the authority granted in the" association's governing documents. Where the enforcement provisions in the governing documents are limited to, *e.g.*, suspending voting rights and the use of recreational facilities, the additional sanction of towing vehicles for nonpayment of assessments or maintenance violations cannot be created by adoption of a rule or policy.

Parkside Condominium Association v. Lopez-Cayzedo, Case No. 12-13 (2014).

The CCOC Panel found that the association had a right to impose fines on a member who refused to allow annual inspections of her unit, but the accumulation of fines became unreasonable once daily fines were proven ineffective. Fines of approximately $4,000 (based on the imposition of daily fines for 6 months) were reduced by the Panel to $950. The Panel found that "the essential purpose of fines is to encourage voluntary compliance with the rules of the association … where the fines have accomplished their purpose, or where the fines have proven to be ineffective, it is no longer reasonable to continue to accumulate them" (see also Kim v. Montrose Woods Condominium Unit Owners Association, Case No. 28-13 (2014).

Brown v. Americana Finnmark Condominium Association, Case No. 51-11 (2013); OZAH Referral No. 13-03), affirmed by the Circuit Court for Montgomery County, Case No. 380530V (2014), on appeal to the Court of Special Appeals.

In this case, the complainant unit owner sought inspection of records in order to challenge the association's estimation of its annual expenses. Among other issues, he challenged the redaction of names from delinquency reports. Ruling in favor of the complaining unit owner, the CCOC Panel found that, based on Section 11-116 of the Maryland Condominium Association Act, a unit owner is entitled to examine a condominium's books and records, "including the Association's delinquency reports, without redaction of the names."

The Panel further found that the owner has the right under the governing documents to individually sue other owners for noncompliance with covenants. Thus, the enforcement provisions of the governing documents provided a secondary basis for disclosure of the identity of the delinquent owners.