



City of Rockville
MEMORANDUM

January 5, 2009

TO: Scott Ullery, City Manager

FROM: Jennifer Kimball, Assistant to the City Manager

SUBJECT: Montgomery County Commission on Common Ownership Communities

This memo provides information about the Montgomery County Commission on Common Ownership Communities (CCOC) for the Mayor and Council to use in considering whether Rockville should participate in the program. It describes the program purpose and operations, the City's prior consideration of participating in the program, and pros and cons of opting into the program. It concludes with a recommendation that the Mayor and Council direct staff to collect input from the leadership of some common ownership communities on the value of participating in the County's program.

What is the Montgomery County Office of Common Ownership Communities?

Montgomery County defines a common ownership community as a development, residential condominium, or cooperative housing project that is subject to a declaration enforced by a homeowners' association. The Office of Common Ownership Communities was developed in County Code Chapter 10B in 1991 to provide oversight of common ownership community activities. Chapter 10B is found at Attachment B.

The Office is organizationally located in the County's Office of Consumer Protection. The FY09 adopted operating budget for the Office of Common Ownership Communities totals \$317,321 and includes 2.5 workyears. The Office:

- Registers all common ownership communities,
- Offers a program to resolve disputes with adequate due process protections,
- Provides educational programs and technical assistance to unit owners and board members, and
- Offers a program to regulate common ownership community elections, budget adoptions, and enforcement procedures.

Chapter 10B of the Montgomery County Code requires that the leadership of each common ownership community, *excluding those located within the limits of incorporated municipalities*, register annually with the Office on Common Ownership Communities. Registration involves completing a registration form, submitting a complete and current copy of the recorded governing documents, and paying an annual registration fee based upon the number of units located in the common ownership community. In FY 2009, the registration fee is \$2.25 per housing unit. The FY 2010 budget submittal recommends a fee increase to \$2.75 per unit per year.

What is the Montgomery County Commission on Common Ownership Communities?

In conjunction with the Office on Common Ownership Communities, the Commission provides owners, tenants, residents, boards of directors, and management companies with information, assistance, and impartial dispute resolution programs. The 15-member body also advises the County Council, County Executive and County Government offices on matters related to common ownership communities. The Commission members represent condominium and homeowner association residents, persons involved in housing development and real estate sales, and persons who are members of professions associated with common ownership communities (e.g., property managers, attorneys).

The Commission's goals are to:

- Improve the quality of life in common ownership communities,
- Ensure proper establishment and operation of common ownership communities,
- Enhance the value of residential property in community associations, and
- Reduce the number of disputes and encourage informal resolution of disputes.

What is the Commission's role in resolving disputes in common ownership communities?

The Commission manages disputes between two or more parties that involve the authority of a governing body under the laws and documents of an association (documents of an association include master deeds, declarations, incorporation documents, bylaws and rules). Disputes under the Commission's jurisdiction include any disagreement involving the authority of a governing body to:

- Require any person to take any action, or not to take any action, involving a unit,
- Require any person to pay a fee, fine or assessment,
- Spend association funds, or
- Alter or add to a common area or element.

In addition, the Commission has the authority to manage a dispute that involves the failure of a governing body, when required by law or an association document, to:

- Properly conduct an election,
- Give adequate notice of a meeting or other action,
- Properly conduct a meeting,
- Properly adopt a budget or rules,
- Maintain or audit books and records, or
- Allow inspection of books and records.

Under Chapter 10B, the jurisdiction of the Commission on Common Ownership Communities does not include any disagreement that only involves:

- Title to any unit or any common area or element,
- The percentage interest or vote allocable to a unit,
- The interpretation or enforcement of any warranty,
- The collection of an assessment validly levied against a party, or
- The judgment or discretion of a governing body in taking or deciding not to take any legally authorized action.

Any party can file a complaint with the Commission after a good faith attempt has been made to exhaust all dispute resolution processes and procedures in their association documents. Staff in the Office of Common Ownership Communities share the complaint with the other interested party or parties and conducts an investigation. A complaint is dismissed if there are no reasonable grounds to conclude that a violation of law or association document has occurred.

The Commission strongly encourages parties to attempt to resolve the complaint through mediation. Any party may request mediation and the Commission will provide a qualified mediator from the Conflict Resolution Center of Montgomery County to attempt to settle the dispute. Settlement of a dispute by mediation agreed to by the parties is binding, has the force and effect of a contract, and may be enforced accordingly.

If any party refuses to attend a mediation session, or if mediation does not successfully resolve the dispute, the Commission schedules a hearing. A three-member panel hears disputes. Parties in the hearing may be represented by an attorney or may represent themselves. An officer or director may represent an association. There is a fee of \$50 for each dispute filed. The hearing panel must apply state and county laws and all relevant case law to the facts of the dispute, and may order the payment of damages and any other relief that the law and the facts warrant.

The decision of the hearing panel is binding on the parties, subject to judicial review. The Commission, acting through the Office of Consumer Protection and the County Attorney, may enforce a decision of the hearing panel by taking any appropriate legal action. Any person who does not comply with a final Commission order has committed a Class A civil violation.

County staff reported that approximately 50% of the complaints filed come from associations and most of those are related to violations of architectural controls. The other 50% of complaints are generated by property owners and involve a variety of topics such as association mismanagement, misconduct, and improper elections. County staff reported that 60% to 65% of the complaints filed with the Commission are resolved through mediation. Additional disputes are resolved between the time that a mediation fails and a Commission hearing takes place. Few cases reach the formal hearing stage.

How many common ownership communities are located in Rockville and what experience has the City had with conflicts in the communities?

Based on Montgomery County's definition, there are currently 56 common ownership communities in the City of Rockville. They represent 7,788 housing units, including single family homes, townhomes and condominiums. A list of the common ownership communities and the number and type of housing units in each begins on page 8.

Rockville's Mediation Program is currently available to assist in resolving conflicts. Over the past five years the Program received seven requests for mediation between a condo/homeowner association and a property owner. In all seven cases, a property owner approached the City for assistance in resolving a conflict with their association.

One dispute was resolved through a formal mediation. Five other disputes were resolved informally through communication and assistance from the Mediation Administrator. For the last dispute, the property owner did not attend the formal mediation meeting. Disputes involved the approach that an association took in collecting payment for property maintenance violations, association rules for use of the community swimming pool, insufficient assistance from an association in resolving conflicts between neighbors, and allegations of inconsistent application of HOA covenants.

There have been a few conflicts between property owners and HOAs over the past five years that required significant time from staff across several City departments to help resolve. This can happen when a dispute is brought to the attention of the Mayor and Council or when a dispute involves more than two parties. In some cases, additional City staff gets involved when one of the parties rejects mediation, in an attempt to bring closure to the conflict.

How would Rockville common ownership communities become eligible to use the County's Commission on Common Ownership Communities services?

Staff in the County's Office of Consumer Affairs report that the County would be happy to include Rockville's associations in the Commission's program. That would require the Mayor and Council to adopt Chapter 10B of the County Code. Adopting Chapter 10B would require all common ownership communities in Rockville to register with the County and to pay the annual fee of \$2.25 per unit (FY 2010 budget submittal

recommends an increase to \$2.75 per unit). Owners, tenants, boards of directors and management companies could then receive education and technical assistance from the Commission and go to the Commission to resolve disputes in common ownership communities.

Why don't Rockville common ownership communities currently participate in the County's Common on Ownership Communities program?

In 1991, Montgomery County approached Rockville to invite the City's common ownership communities to participate in the program. That would have made the dispute resolution, education and technical assistance provided by the Commission available to every property owner, tenant and board of directors within the Rockville City limits. It would also require that each community register with the County and pay the registration fee.

The Mayor and Council considered the request and received feedback from a considerable number of common ownership communities in the City that did not support participation, primarily because of the cost. Some boards of directors reported that the communities have a cap on the increase in association dues charged to property owners annually. For some communities, passing along the Commission registration fee to property owners would result in the Boards exceeding the allowable percentage increase. The Mayor and Council decided not to "opt in" to the County's program and urged that a volunteer organization be created to perform many of the functions of the County's Commission.

What was the Rockville Common Ownership Communities Association (RCOCA)?

The Rockville Common Ownership Communities Association (RCOCA) was created in 1991 in response to the Mayor and Council request to opt out of the County's program and form a Rockville based volunteer organization. A group of representatives of common ownership communities developed the organization. A city staff member from the Department of Community Development was assigned to serve as liaison to RCOCA and as the point of contact for persons and organizations seeking assistance from RCOCA.

RCOCA operated for five years. During its initial two years, the organization received applications to mediate 5-6 cases per year. The RCOCA board obtained the services of volunteer trained mediators to resolve the disputes. Virtually all of the cases concerned enforcement of architectural requirements by community associations, and a significant number of inquiries related to the prohibition or regulation of satellite dish installations.

In a few cases, a community association initiated a complaint. Community associations also occasionally contacted RCOCA for assistance such as information about contractors or instructions for filing for County financial assistance for providing roadways. Those types of inquiries were answered by experienced Board members or by reaching out to

the Community Association Institute, a national professional organization specializing in common ownership community concerns.

The requests for service diminished greatly after the first two years to the point where there was no interest expressed in the organization's mediation and inquiry services. In its last several months, RCOCA activity diminished to the referral of an infrequent complaint to a volunteer mediator. With the creation of the City's Mediation Program, a separate source of mediation through RCOCA was no longer necessary and the organization disbanded.

What are the benefits of participating in the Commission on Common Ownership Community program?

- 1) The Commission promotes an equitable 'balance of power'

Montgomery County Code Chapter 10B states that "The Council finds that there is often unequal bargaining power between governing bodies, owners, and residents of homeowners' associations, residential condominiums, and cooperative housing projects. Owners and residents in these common ownership communities are in effect citizens of quasi-governments, which provide services in lieu of government services, levy assessments, and otherwise have a significant impact on the lives and property of owners and residents."

The Commission on Common Ownership Communities was created to promote an equitable balance between the powers of governing bodies, owners and residents through regulation, education, and dispute resolution services. If the Mayor and Council adopted County Code Chapter 10B, Rockville's 58 common ownership communities and their residents would have access to mediation, information and support from experts in the field of common ownership communities.

- 2) The Commission's dispute resolution is not voluntary and is enforceable

The Commission's program provides an enforceable means of conflict resolution regardless of whether both parties in the dispute have cooperated. Rockville's Mediation Program is available to assist in resolving conflicts in common ownership communities. However, the City's Mediation Program is voluntary. If either party in the dispute chooses not to participate, a mediation is not held and the case is closed.

In contrast, the Commission schedules a mediation session even if only one party has expressed interest in mediation. If a party does not cooperate with a Commission attempt to mediate, a hearing is scheduled. If any party does not appear at the scheduled hearing, the hearing panel may order any relief to another party that the facts on record warrant.

While City staff follows up with mediation participants, the City of Rockville does not enforce agreements reached in mediation. A dispute brought to the County's Commission and settled by mediation agreed to by the parties is binding, has the force

and effect of a contract, and may be enforced accordingly. In addition, the decision of a hearing panel is binding on the parties and may be enforced by the Commission.

The Commission's dispute resolution process helps both associations and property owners avoid the costly and time-consuming process of going to court. If a party in a conflict is not open to mediation or a mediation is not successful in resolving a conflict, Rockville associations' and property owners' only other option is to go to court.

3) The Commission produces useful educational materials related to common ownership communities

The Commission produces information that may be valuable for association boards and property owners, and provide education programs and technical assistance to individual associations. A "Bill of Rights and Responsibilities for Owners in Common Ownership Communities" was produced by the Commission to outline best practices founded in Maryland law. A newsletter for common ownership communities is produced two times per year. The following Frequently Asked Questions brochures are also available:

- What New and Existing Homeowners Should Know About Their HOA
- Your Community's Meetings: Quick Reference to Legal Requirements and Practical Suggestions
- Condominium Elections
- Records and Documents
- Architectural Control: It's Vital to Your Community

All of these written resources are available on the public portion of the County's web site so are already accessible to Rockville communities, however the Commission could provide additional education services for Rockville residents if Rockville participated in the program. Similar information is also available to associations that participate in the Community Associations Institute.

4) There is no cost to the City to opt in to the Commission's program

Opting in would require the Mayor and Council to adopt Chapter 10B of the County Code. Common ownership communities would be required to pay the annual registration fee, but there is no cost to the City. The annual fee is currently \$2.25 per unit but may increase to \$2.75 per unit for FY10.

What are the disadvantages to participating in the Commission on Common Ownership Communities program?

1) The Commission's annual fee is mandatory

If the Mayor and Council choose to participate in the program, every common ownership community in the City of Rockville will be required to register with the County's Office on Common Ownership Communities and to pay a registration fee. An additional fee may not be well received by either association leadership or individual property owners.

Given the 7,788 units in Rockville, the total amount that the County would collect from common ownership communities in Rockville under the current \$2.25 per unit fee equals \$17,523. Fees per community would vary significantly due to the range of sizes of common ownership communities in Rockville. Examples are provided below.

Community	Units	Total Annual Fee
King Farm Citizens Assembly	1,287 townhomes and single family	\$2,896
Americana Center Condominium Association	425 condos and townhomes	\$962
Royalton at King Farm	275 condos	\$619
Courthouse Walk HOA	62 townhomes	\$140

- 2) The demand for the Commission’s service and value for the investment is unclear at this time

It is difficult to predict how many disputes will be brought to the Commission by Rockville associations and property owners. While a small number of conflicts have been brought to the City’s attention via the Mediation Program or other means, there may be more demand for this type of service than we realize. Association leaders and property owners who have not experienced conflicts in their communities or who do not foresee using the services may feel the value is not worth the expense.

Recommendation

To begin to assess the community's interest in the Commission on Common Ownership Communities, staff will collect feedback from the leadership of a sample of Rockville's common ownership communities. Staff will contact the leaders to share background information about the Commission, answer questions and gather the leaders' input. Staff will compile the feedback for the Mayor and Council. If the Mayor and Council wish to continue investigating the Commission, staff will recommend a plan to gather input from additional stakeholders, including residents of common ownership communities.