



1994

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Ownership Communities Does Not Violate State  
Law Prohibiting Local Legislation Which  
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Kristen L. Orff

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Recommended Citation

Orff, Kristen L. (1994) "Recent Developments: Dumont Oaks Community Assoc., Inc. v. Montgomery County: County's Registration Fee for Common Ownership Communities Does Not Violate State Law Prohibiting Local Legislation Which Discriminates against Condominiums and Home Owners' Associations," *University of Baltimore Law Forum*: Vol. 24 : No. 3 , Article 16. Available at: <http://scholarworks.law.ubalt.edu/lf/vol24/iss3/16>

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***Dumont Oaks  
Community Assoc., Inc.  
v. Montgomery County:***

**COUNTY'S  
REGISTRATION FEE  
FOR COMMON  
OWNERSHIP  
COMMUNITIES  
DOES NOT VIOLATE  
STATE LAW  
PROHIBITING LOCAL  
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A registration fee that Montgomery County imposes on common ownership communities does not violate Maryland law prohibiting local legislation that discriminates against condominiums and homeowners' associations. In *Dumont Oaks Community Ass'n., Inc. v. Montgomery County*, 333 Md. 202, 634 A.2d 459 (1993), the Court of Appeals of Maryland reasoned that the registration charge does not directly affect the planning or zoning of any common ownership community.

In section 10B-7 of its county code, Montgomery County imposed an annual registration charge on common ownership communities. Common ownership communities are defined in chapter 10B of the Montgomery County Code as homeowners' associations, condominiums, and cooperatives. The proceeds of this fee are used to fund dispute resolution, development of services and manuals, and to provide technical assistance. The services are conducted by the Office of Common Ownership Communities within the county's Department of Housing and Community Development.

Dumont Oaks Community Association, six other community associations, and thirteen condominium associations (collectively, "Dumont Oaks") brought an action for a declaratory judgment invalidating the registration fee. They alleged that Article XI-A, section 3 of the Maryland Constitution required that two sections of the Maryland Real Property article supersede the imposition of such a fee by the county. To evaluate the plaintiffs' claim, the Circuit Court for Montgomery County reviewed sections 11-122 of the Maryland Condominium Act and 11B-104 of the Maryland Homeowners' Asso-

ciation Act, both of which prohibit local legislation that discriminates against condominiums and homeowners' associations. First, section 11-122(b) provides that a "jurisdiction may not enact any law...which would impose a burden or restriction on a condominium that is not imposed on all other property of a similar character." *Dumont Oaks* at 206, 634 A.2d at 459. Next, section 11B-104(b) states that local governments may not enact laws that impose a burden on property which is part of a development simply for being part of a development. *Id.*, 634 A.2d at 460-61. "Development" was defined as property subject to a "declaration." *Id.* A declaration was defined as an instrument creating authority in a homeowners' association. *Id.* Therefore, section 11B-104(b) prohibits local ordinances that discriminate against homeowners' associations. Granting the County's motion for summary judgment, the circuit court held that these two sections do not prohibit the fee enacted by section 10B-7, and Dumont Oaks appealed.

In an unreported opinion, the Court of Special Appeals of Maryland affirmed the lower court's ruling. *Id.* at 206, 634 A.2d at 461. It held that the registration fee was not discriminatory because it was imposed on property of "similar character." *Id.* Appellants argued on appeal that the fee discriminated against homeowners' associations and condominiums since it was not applicable to apartments. *Id.* at 207, 634 A.2d at 461. However, the court used *Rockville Grosvenor, Inc. v. Montgomery County*, 289 Md. 74, 422 A.2d 353 (1980), to conclude that homeowners' associations and condominiums are different than apart-

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ment dwellings in their form of ownership, and thus the fee was not discriminatory. *Id.* at 206, 634 A.2d at 461.

The Court of Appeals of Maryland granted Dumont Oaks's petition for certiorari on the limited issue of whether the omission of apartment buildings from the required fee is discriminatory under state law. Because both parties relied on *Rockville Grosvenor*, the court reexamined its holding in that case. *Id.* at 207, 634 A.2d at 461. There, a Montgomery County ordinance required that apartment complexes wishing to convert to condominiums would have to reimburse tenants for their relocation expenses. *Id.* at 207, 634 A.2d at 461 (citing *Rockville Grosvenor, Inc. v. Montgomery County*, 289 Md. 74, 422 A.2d 353 (1980)). The *Rockville Grosvenor* court held that this ordinance conflicted with section 11-120(b) (which is now 11-122(b)) of the Horizontal Property Act ("H.P.A."). *Id.* Furthermore, apartment buildings converting to cooperatives or other uses did not have to pay reimbursement expenses. Therefore, the ordinance put a burden on condominiums that was not placed on property of similar character and was a violation of the H.P.A. *Id.*

The H.P.A., predecessor of today's section 11-122, originated in a report of the Condominium Revision Committee of the Maryland Real Property, Planning and Zoning section of the Maryland State Bar Association. *Id.* at 208, 634 A.2d at 462. Dumont Oaks relied upon this report, discussed in *Rockville Grosvenor*, which maintained that counties were preying upon the popularity of condominiums in order to impose regulations that were stricter than those governing apartments. *Id.* Be-

cause the proffered comment concerned building and zoning laws, the court cited part (a) of Section 11-120. *Id.* The court determined that the registration charge must be tested by the rule of section 11-122(b). *Rockville Grosvenor* does not require that a determination be made as to whether the other property is of similar character by comparing physical characteristics. *Id.* The ordinance at issue in *Rockville Grosvenor*, then, did not cover conversion of apartments to cooperative housing or commercial use. *Id.* at 209, 634 A.3d at 462. Properties of similar character were apartments whose owners wanted to continue to rent. *Id.* Since only conversions to condominiums were regulated, the ordinance in *Rockville Grosvenor* was held discriminatory. *Id.*

In contrast, the ordinance at issue in *Dumont Oaks* focused on common ownership communities generally. Technical assistance and dispute resolution services provided by the Office of Common Ownership Communities are different than a landlord/tenant relationship. *Id.* Therefore, the court found that the registration fees do not violate section 11-122(b). *Id.* The court added that its conclusion was consistent with that reached by the Attorney General of Maryland in his opinion to the County Attorney for Montgomery County. *Id.* at 210, 634 A.2d at 462. Contrasting the *Rockville Grosvenor* ordinance with the bill which was later enacted as the ordinance at issue in *Dumont Oaks*, the Attorney General opined that state law would not prevent Montgomery County's council from judging that rental housing did not constitute property of "similar character." *Id.* at 210, 634 A.2d at 463.

Dumont Oaks also claimed that

the registration fee violated section 11B-104(b). *Id.* The court easily dismissed this assertion, reasoning that homeowners' associations are included in Chapter 10B because they fall within the definition of common ownership communities. *Id.* Again, the court found that section 10B-7 does not affect planning and zoning of common ownership communities; therefore, the registration charge would not violate 11B-104(b). *Id.* at 211, 634 A.2d at 463.

Montgomery County instituted the registration fee of section 10B-7 to help alleviate an increase in demand for technical assistance and dispute resolution. Because these needs are unique to common ownership communities and not apartment complexes, the registration charge was held not to be discriminatory. Due to an increased demand on public services that stems from the rise in population, Maryland jurisdictions have charged developers "impact fees" to fund public improvements such as new schools and roads. In upholding the annual registration fee in *Dumont Oaks Community Assoc., Inc. v. Montgomery County*, the Court of Appeals of Maryland validated a type of "impact fee" to compensate for the increase in county officials' services.

- Kristen L. Orff