

HOUSE BILL 1532

N1

3lr3424
CF 3lr3399

By: **Delegate Carter**

Rules suspended

Introduced and read first time: March 11, 2013

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Attorney’s Fees**

3 FOR the purpose of prohibiting a governing body of a homeowners association or
4 council of unit owners of a condominium from demanding, collecting, or seeking
5 to recover attorney’s fees from a lot owner or unit owner unless the amount of
6 the attorney’s fees is reasonable in relation to the amount in controversy or the
7 nature of a certain violation; establishing that, in a certain action against a lot
8 owner or unit owner, there is a certain rebuttable presumption that attorney’s
9 fees sought are reasonable; authorizing, in a certain action, the court or lot
10 owner or unit owner to challenge the rebuttable presumption established under
11 this Act; establishing that, if a challenge to the presumption under this Act is
12 made, the governing body or council of unit owners bears a certain evidentiary
13 burden; establishing that the Maryland Contract Lien Act does not apply to
14 certain matters under certain circumstances; and generally relating to the
15 recovery of attorney’s fees by condominiums and homeowners associations.

16 BY repealing and reenacting, with amendments,
17 Article – Real Property
18 Section 11–110(d)(1) and 14–202
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2012 Supplement)

21 BY adding to
22 Article – Real Property
23 Section 11–110.1 and 11B–117.1
24 Annotated Code of Maryland
25 (2010 Replacement Volume and 2012 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
27 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Real Property

11–110.

(d) (1) [Payment] **EXCEPT AS PROVIDED IN § 11–110.1 OF THIS TITLE,** PAYMENT of assessments, together with interest, late charges, if any, costs of collection and reasonable attorney’s fees may be enforced by the imposition of a lien on a unit in accordance with the provisions of the Maryland Contract Lien Act.

11–110.1.

(A) **A COUNCIL OF UNIT OWNERS MAY NOT DEMAND, COLLECT, OR SEEK TO RECOVER ATTORNEY’S FEES FROM A UNIT OWNER UNLESS THE AMOUNT OF THE ATTORNEY’S FEES IS REASONABLE IN RELATION TO THE AMOUNT IN CONTROVERSY OR THE NATURE OF THE NONMONETARY VIOLATION.**

(B) (1) **THIS SUBSECTION APPLIES TO AN ACTION IN WHICH A COUNCIL OF UNIT OWNERS SEEKS TO:**

(I) **RECOVER ATTORNEY’S FEES FROM A UNIT OWNER;**

(II) **IMPOSE A LIEN ON A UNIT BASED ON THE UNIT OWNER’S FAILURE TO PAY REGULAR OR SPECIAL ASSESSMENTS; OR**

(III) **ENFORCE A NONMONETARY VIOLATION OF THE DECLARATION, BYLAWS, OR GOVERNING DOCUMENTS OF A CONDOMINIUM.**

(2) **THERE IS A REBUTTABLE PRESUMPTION THAT ATTORNEY’S FEES SOUGHT BY THE COUNCIL OF UNIT OWNERS ARE REASONABLE IN RELATION TO THE CONTROVERSY.**

(3) **THE COURT, ON ITS OWN MOTION, OR THE UNIT OWNER MAY CHALLENGE THE REBUTTABLE PRESUMPTION UNDER PARAGRAPH (2) OF THIS SUBSECTION AT ANY TIME BEFORE ISSUANCE OF A FINAL JUDGMENT.**

(4) **IF A CHALLENGE IS MADE UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE COUNCIL OF UNIT OWNERS BEARS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE ATTORNEY’S FEES ARE REASONABLE IN RELATION TO THE CONTROVERSY.**

(C) **IN ANY MATTER IN WHICH A COUNCIL OF UNIT OWNERS ASSERTS A CLAIM AGAINST A UNIT OWNER IN WHICH ALL OR SUBSTANTIALLY ALL OF THE**

1 CLAIMED AMOUNT IS ATTORNEY'S FEES, THE MARYLAND CONTRACT LIEN ACT
2 DOES NOT APPLY.

3 11B-117.1.

4 (A) A GOVERNING BODY MAY NOT DEMAND, COLLECT, OR SEEK TO
5 RECOVER ATTORNEY'S FEES FROM A LOT OWNER UNLESS THE AMOUNT OF THE
6 ATTORNEY'S FEES IS REASONABLE IN RELATION TO THE AMOUNT IN
7 CONTROVERSY OR THE NATURE OF THE NONMONETARY VIOLATION.

8 (B) (1) THIS SUBSECTION APPLIES TO AN ACTION IN WHICH A
9 GOVERNING BODY SEEKS TO:

10 (I) RECOVER ATTORNEY'S FEES FROM A LOT OWNER;

11 (II) IMPOSE A LIEN ON A LOT BASED ON THE LOT OWNER'S
12 FAILURE TO PAY REGULAR OR SPECIAL ASSESSMENTS; OR

13 (III) ENFORCE A NONMONETARY VIOLATION OF THE
14 DECLARATION, BYLAWS, OR GOVERNING DOCUMENTS OF A HOMEOWNERS
15 ASSOCIATION.

16 (2) THERE IS A REBUTTABLE PRESUMPTION THAT ATTORNEY'S
17 FEES SOUGHT BY THE GOVERNING BODY ARE REASONABLE IN RELATION TO THE
18 CONTROVERSY.

19 (3) THE COURT, ON ITS OWN MOTION, OR THE LOT OWNER MAY
20 CHALLENGE THE REBUTTABLE PRESUMPTION UNDER PARAGRAPH (2) OF THIS
21 SUBSECTION AT ANY TIME BEFORE ISSUANCE OF A FINAL JUDGMENT.

22 (4) IF A CHALLENGE IS MADE UNDER PARAGRAPH (3) OF THIS
23 SUBSECTION, THE GOVERNING BODY BEARS THE BURDEN OF PROVING BY A
24 PREPONDERANCE OF THE EVIDENCE THAT THE ATTORNEY'S FEES ARE
25 REASONABLE IN RELATION TO THE CONTROVERSY.

26 (C) IN ANY MATTER IN WHICH A GOVERNING BODY ASSERTS A CLAIM
27 AGAINST A LOT OWNER IN WHICH ALL OR SUBSTANTIALLY ALL OF THE CLAIMED
28 AMOUNT IS ATTORNEY'S FEES, THE MARYLAND CONTRACT LIEN ACT DOES NOT
29 APPLY.

30 14-202.

31 (a) A lien on property may be created by a contract and enforced under this
32 subtitle if:

1 (1) The contract expressly provides for the creation of a lien; and

2 (2) The contract expressly describes:

3 (i) The party entitled to establish and enforce the lien; and

4 (ii) The property against which the lien may be imposed.

5 (b) [A] EXCEPT AS PROVIDED IN §§ 11-110.1 AND 11B-117.1 OF THIS
6 ARTICLE, A lien may only secure the payment of:

7 (1) Damages;

8 (2) Costs of collection;

9 (3) Late charges permitted by law; and

10 (4) Attorney's fees provided for in a contract or awarded by a court for
11 breach of a contract.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2013.