

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 161

(Senators Kelley and Muse)

Judicial Proceedings

Environmental Matters

Real Property - Common Ownership Communities - Foreclosure of Liens

This bill limits the situations in which the governing body of a common ownership community (COC), as defined by the bill, may foreclose on a lien against a unit owner or lot owner. Notwithstanding the COC's governing documents, the governing body may foreclose on the lien only if the damages secured by the lien consist solely of (1) delinquent periodic or special assessments and (2) reasonable costs and attorney's fees directly related to filing of the lien and not exceeding the amount of the delinquent assessments. The damages may not include fines imposed by the governing body or attorney's fees related to recovering the fines. The bill does not preclude a governing body from enforcing a lien through any other means.

The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any lien filed before the bill's October 1, 2013 effective date.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Attorney General's Office receives 50 or fewer complaints per year stemming from the bill, the additional workload can be handled with existing resources. No effect on revenues.

Local Effect: Any reduction in foreclosure proceedings in the circuit courts is not expected to general significant savings.

Small Business Effect: Miminal.

Analysis

Current Law:

Condominiums: A unit owner is liable for all assessments or installments of assessments coming due while owning the unit. The Maryland Condominium Act (MCA) authorizes the governing body of a condominium to charge up to 18% interest on any delinquent assessment or installment not paid when due. A condominium may charge a late fee of the greater of \$15 or 10% of the total amount of any delinquent assessment or installment if the delinquency has continued for at least 15 calendar days. The late charge may not be imposed more than once for the same delinquent payment.

A council of unit owners may impose a lien on a unit in accordance with MCA and the Maryland Contract Lien Act (MCLA) to recover unpaid assessments, interest on unpaid assessments, late charges, collection costs, and reasonable attorney's fees. A deficiency lawsuit following a foreclosure along with a lawsuit to recover a money judgment for unpaid assessments may be maintained in the same proceeding without waiving the right to impose such a lien.

HOAs: As set forth in the declaration, a lot owner is liable for all homeowners association (HOA) assessments and charges that come due while the lot owner owns the lot. An HOA's declaration or bylaws may also provide for a late charge of the greater of \$15 or 10% of the total amount of any delinquent assessment or installment if the delinquency has continued for at least 15 calendar days. The late charge may not be imposed more than once for the same delinquent payment.

Under the Maryland Homeowners Association Act, in addition to any other available remedies, the governing body of an HOA can also enforce the payment of unpaid association assessments and charges provided in the declaration by imposing a lien on a lot in accordance with MCLA procedures.

MCLA: Under MCLA, a person seeking to create a lien as a result of a breach of contract must give written notice, within two years of the breach, to the person whose property is subject to the lien. Within 30 days after service of the notice, the person served may file a complaint in circuit court to determine whether probable cause exists to establish a lien. If the court orders a lien or the property owner fails to file a complaint, the person seeking to create a lien may file a statement of lien in the land records.

A lien may be enforced and foreclosed by the lien holder in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust on property containing a power of sale or an assent to a decree. An action to foreclose a lien must be brought within 12 years following recordation of the lien statement.

Chapter 387 of 2011 (HB 1246) enabled a portion of a condominium's or HOA's lien to have priority over a holder of a first mortgage or deed of trust in the event of a foreclosure of a mortgage or deed of trust on a unit or lot. The portion of the contract lien that takes precedence over the claim of the holder of a first mortgage deed of trust is limited to an amount of up to four months, or the equivalent of four months, of unpaid regular assessments for common expenses up to \$1,200. The governing body of the condominium or HOA must provide specified information to the holder of the first mortgage or deed of trust upon request in order to have priority.

Background: For more information on COCs, including the collection of assessments, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: HB 286 (Delegate Niemann, *et al.*) - Environmental Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Secretary of State, Department of Legislative Services

Fiscal Note History: First Reader - January 29, 2013
mlm/kdm Revised - Senate Third Reader - March 18, 2013
Revised - Enrolled Bill - April 11, 2013

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Appendix – Common Ownership Communities

When a person purchases a house, condominium, or an interest in a cooperative housing arrangement, he or she may also be required to join an association of owners which is intended to act in the common interests of the homeowners, condominium owners, or co-op owners in the community. These associations assess dues to property owners to achieve their goals and address community problems. Collectively, these associations are often referred to as common ownership communities (COCs). The Secretary of State reports that there were over 2,500 condominiums in the State of Maryland registered with the office in 2012. It is unclear how many homeowners associations (HOAs) and cooperatives are currently operating in the State, but the number is substantial.

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly authorized the Task Force on Common Ownership Communities in June 2005 (Chapter 469 of 2005, SB 229). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held 5 public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation, intended to improve the operation of COCs. This legislation, enacted from 2007 through 2011:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007, SB 287);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007, HB 183);
- eased restrictions on the ability of a COC to amend its governing documents by allowing an amendment at least once every five years (Chapters 144 and 145 of 2008, SB 101/HB 1129);
- strengthened the transition process from developer to COC governing body by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009, SB 742/HB 667);

- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009, SB 541/HB 687 and Chapter 615 of 2010, HB 702); and
- granted a condominium or HOA priority over a specified portion of a lien in the event of a foreclosure of a mortgage or deed of trust on a unit or lot (Chapter 387 of 2011, HB 1246).

The task force's report also featured findings and recommendations relating to alternative dispute resolutions and the creation of an ombudsman in local governments. Montgomery County's Commission on Common Ownership Communities was referenced as an alternative dispute resolution model for future local offices. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of homeowners' residential condominiums and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs which predates the task force.

Finally, findings and recommendations of the report which have not been codified in statute concern reserves of COCs, an insurance deductible cap for unit owners, the suspension of privileges of delinquent unit owners, uniformity of disclosure requirements and packages, and uniformity of COC depository requirements.