



Testimony offered on behalf of:
MARYLAND MORTGAGE BANKERS & BROKERS ASSOCIATION, INC.

IN OPPOSITION TO:

HB0402 – Department of the Environment – Enforcement Authority

Education & Transportation Committee

Hearing – 2/25/2022 at 1:00 PM

The Maryland Mortgage Bankers and Brokers Association, Inc. (“MMBBA”) OPPOSE HOUSE BILL 0402 for the following reasons:

1. The lien created under HB0402 could be read to have priority ahead of a recorded deed of trust or mortgage. In five places, the bill has the following language (this example is from page 16):

(5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER DEMAND, THE AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:
 (I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL OR PERSONAL, OF THE PERSON; AND
 (II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

Note that this does not say when the lien arises. Does it arise when the agency imposes the penalty? When it writes a demand letter? When there is a hearing? When is a hearing not held? HB0402 provides that there is a lien, and it shall be recorded. At the very least, HB0402 should be amended to state that there is a lien WHEN it is recorded. Otherwise, what if a deed of trust or mortgage were executed and recorded after the lien arises but before the lien is recorded? Without the suggested change, HB0402 might create secret or silent liens on real and personal property.

2. House Bill 0402 would create a lien for penalties based upon administrative action or administrative order only – without the involvement of the courts. This is objectionable. Liens should only be placed or obtainable upon consent of a party e.g., deed of trust, mortgage, condo, HOA, contract lien act, or pursuant to court order. We are not familiar with administrative agencies being able to impose liens on properties other than for real property taxes and sewer and water charges, but these types of charges are universally recognized as exceptions to the normal rules and procedures regarding liens.

For these reasons, the MMBBA urges an UNFAVORABLE REPORT on House Bill 0402.

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