

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 1073 (Delegate Wood)
Environmental Matters

Mechanics' Liens - Notice to Purchaser

This bill provides that the filing of a petition with a circuit court for a mechanic's lien prior to passage of legal title and at least 30 days prior to recordation of the deed constitutes notice to a purchaser of real property of the possibility of a mechanic's lien being perfected, even if equitable title has passed to the purchaser. The filing of a petition concerning a mechanic's lien does not affect a bona fide purchaser for value.

The bill applies prospectively.

Fiscal Summary

State Effect: The bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: A building erected, repaired, or improved to the extent of 15% of its value is subject to the establishment of a mechanic's lien for the value of work done for or about the building and for materials furnished for or about the building. In order to obtain a judgment for a mechanic's lien, a contractor must first file a petition with a circuit court within 180 days after the work has been finished or the materials completed. The filing of the petition constitutes notice to a purchaser of the possibility of a lien being perfected on the property. The lien is established by the final order of the court.

Background: In *Himmighoefer v. Medallion Indus., Inc.*, 302 Md. 270 (1985), the court, applying the doctrine of equitable conversion, found that a purchaser who acquired equitable title prior to the filing of a petition for a mechanic's lien prevailed over mechanic's lien holder and took the property, without it being subject to a lien. The *Himmighoefer* court stated that the petition could create no lien because the lien only comes into being upon the issuing of court order.

Under the doctrine of equitable conversion, a judgment obtained by a third party against the seller of real property after a contract of sale is executed does not create a lien on the land under contract with the purchaser. Equitable title passes to the purchaser on execution of the contract while legal title remains with the seller until delivery of the deed (closing).

Small Business Effect: The bill could result in increased collections for small business contractors. To the extent land sale contracts do not close: (1) small business real estate brokers could experience reduced commission revenues; and (2) small business mortgage lenders could experience reduced interest revenues, offset by any forfeited points.

Additional Information

Prior Introductions: Identical bills were introduced in the 2000 session as SB 820 and HB 657. SB 820 received an unfavorable report from the Senate Judicial Proceedings Committee. HB 657 received an unfavorable report from the House Economic Matters Committee. Similar bills were introduced in the 1999 session as HB 768 and SB 680. HB 768 received an unfavorable report from the House Economic Matters Committee. SB 680 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 695 (Senators DeGrange and Middleton) – Judicial Proceedings.

Information Source(s): Department of Legislative Services

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