

SB 605

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

Senate Bill 605 (Senator Forehand)
Judicial Proceedings

Real Property - Priority of Liens - Condominium and Homeowners Associations

This bill authorizes a homeowners association to enforce the payment of assessments by imposing a lien on a lot and gives priority to a lien for unpaid assessments established by a condominium or a homeowners association.

Fiscal Summary

State Effect: None. The bill specifically protects the interests of the State as a lien holder.

Local Effect: None, assuming the term “instrumentality of the State” includes local governments.

Small Business Effect: Meaningful.

Analysis

Bill Summary: As provided in the declaration, a lot owner is liable for all homeowners association assessments and charges that come due during the time of ownership. In addition to any other remedies available, a homeowners association may enforce the payment of the assessments and charges provided in the association's declaration by the imposition of a lien under the Maryland Contract Lien Act.

In the case of a foreclosure sale, the portion of a contract lien on a unit in a condominium or a lot in a homeowners association consisting of up to six months of unpaid assessments has priority over a first mortgage or deed of trust recorded against the

property on or after October 1, 2007, if the assessments are in accordance with the annual budget of the condominium or homeowners association.

In the case of a homeowners association, the bill does not limit or affect the priority of a lien imposed in accordance with a declaration that provides for a first priority lien. In the case of either a condominium or a homeowners association, the bill does not limit or affect the priority of a mortgage or deed of trust held by or for the benefit of, purchased by, assigned to, or securing an indebtedness to the State, a unit of State government, or an instrumentality of the State.

If the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae) ceases to purchase first mortgages on condominium units in Maryland, the provisions governing the priority of liens on condominium units would be abrogated and of no force or effect.

If Freddie Mac or Fannie Mae ceases to purchase first mortgages on lots within homeowners associations in Maryland, the provisions governing a lien by a homeowners association would be abrogated and of no force or effect.

In either case, the Secretary of State is required to notify the Department of Legislative Services within five days after determining that one of the contingencies has occurred.

Current Law: Under the Maryland Condominium Act, payment of assessments (with interest), late charges, costs of collection, and reasonable attorney's fees may be enforced by imposing a lien on a unit in accordance with the Contract Lien Act. A suit for a deficiency following a foreclosure may be maintained in the same proceeding, as can a suit to recover any money judgment for unpaid assessments, without waiving the right to seek to impose a lien under the Contract Lien Act. A homeowners association is not specifically authorized to impose a lien for unpaid assessments.

Under the Contract Lien Act, 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 against whose property the lien is intended to be imposed. 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 or sale or an assent to a decree. An action to foreclose a lien must be brought within three years following recordation of the lien statement.

Generally, liens against real property take priority in the order in which they are recorded.

Background: Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The full task force met 10 times during 2006 and conducted 5 public hearings, at which public comments were solicited. In addition, subcommittees comprising task force members met several times. The task force made several recommendations on various topics. This bill reflects one of those recommendations.

Small Business Effect: Homeowners associations and condominium councils of unit owners could be more successful in collecting assessments and charges as a result of this bill. Small mortgage lending businesses could experience revenue decreases to the extent that condominium or homeowners association liens are satisfied before their mortgages as a result of the bill. The maximum impact to any one mortgage would be limited to six months worth of assessments. Since assessments can range from as low as only a few dollars a month for a community with few common expenses to several hundred dollars for a community with large common expenses, the effect on any one mortgage could range from under \$100 to several thousand dollars.

Additional Information

Prior Introductions: Similar bills were introduced in 2001, 2000, 1999, and 1998. SB 149 of 2001, SB 4 of 2000, and SB 336 and SB 337 of 1999 received unfavorable reports from the Senate Judicial Proceedings Committee. SB 202 and SB 428 of 1998 failed on third reading in the Senate. HB 624 of 2001 and HB 255 of 2000 received unfavorable reports from the House Economic Matters Committee.

Cross File: HB 1018 (Delegate Bobo, *et al.*) – Environmental Matters.

Information Source(s): Secretary of State, Maryland Insurance Administration, Department of Legislative Services

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