

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 74 (Delegate Niemann)
Environmental Matters

Condominiums and Homeowners Associations - Foreclosures - Imposition of and Liability for Liens

This bill amends the Maryland Condominium Act and the Maryland Homeowners Association Act to state that a grantee is jointly and severally liable with the unit or lot owner as of the date of a foreclosure sale for the portion of the lien imposed on the unit owner under the Maryland Contract Lien Act in an amount up to six months of assessments that are due without acceleration as of the date of the foreclosure sale.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill does not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill does not apply to grantees who are mortgagees who obtain title to a unit or lot in a foreclosure sale, or from a mortgagee that obtained title in a foreclosure sale. Payment by the grantee of the amount due is without prejudice to the rights of the grantee to recover from the unit or lot owner the amount paid as of the date of the foreclosure sale.

The bill amends the Maryland Homeowners Association Act to state that, as provided in the declaration of a homeowners association, a lot owner is liable for all association assessments and charges that come due while the lot owner owns a lot. The governing body of a homeowners association is authorized to enforce the payment of the association assessments and charges by the imposition of a lien on a lot in accordance with the provisions of the Maryland Contract Lien Act. The bill likewise amends the Maryland Contract Lien Act to extend its provisions to declarations or bylaws recorded under the provisions of the Maryland Homeowners Association Act.

Current Law: Under the Maryland Condominium Act, payment of assessments (with interest), late charges, collection costs, 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 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 three years following recordation of the lien statement. Generally, liens against real property take priority in the order in which they are recorded. (*See* Real Property Article §§ 11-110 and 14-203.)

Background: The bill is intended to render the buyers of condominiums or homeowners association lots through foreclosure (other than banks and others who are mortgage holders) liable for up to six months of any assessments or dues that were not paid by the owner prior to foreclosure.

Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The full task force met 10 times during 2006 and conducted five 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 in its final report, issued December 2006. This bill reflects one of those recommendations, as applied to foreclosure sales. The task force reported that many communities faced increased financial burdens due to difficulty in collecting unpaid assessments.

Additional Information

Prior Introductions: HB 682/SB 874 of 2008 received unfavorable reports from the House Environmental Matters and Senate Judicial Proceedings committees, respectively.

Cross File: None.

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

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mlm/kdm

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