

HOUSE BILL 1246

N1
HB 842/10 – ENV

11r2786
CF SB 946

By: **Delegates Conway, Arora, Bobo, Braveboy, Cullison, Frush, Kramer, ~~and Niemann Niemann, Healey, and Cane~~**

Introduced and read first time: February 21, 2011

Assigned to: Rules and Executive Nominations

Re-referred to: Environmental Matters, March 7, 2011

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 31, 2011

Returned to second reading: April 1, 2011

House action: Adopted with floor amendments

Read second time: April 1, 2011

CHAPTER _____

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Priority of ~~Liens~~ “The**
3 **~~Residential Association Sustainability Act of 2011” Liens~~**

4 FOR the purpose of providing that, in the case of a foreclosure of a mortgage or deed of
5 trust on ~~or for~~ a condominium unit, a certain portion of ~~a certain lien~~ the
6 condominium’s liens on the ~~condominium~~ unit, ~~including certain late fees,~~
7 ~~interest, and any attorney’s fees and costs for establishing the lien,~~ has priority
8 over the claim of the holder of a first mortgage or first deed of trust under
9 certain circumstances; providing that the portion of a condominium’s liens that
10 has a certain priority shall consist of a certain amount of unpaid regular
11 assessments not exceeding a certain amount; requiring the governing body of a
12 condominium to provide certain information to the holder of a first mortgage or
13 first deed of trust under certain circumstances; providing that a certain portion
14 of a condominium’s liens does not have priority under certain circumstances;
15 providing that certain lot owners in a homeowners association are liable for
16 certain assessments and charges; allowing a homeowners association to enforce
17 the payment of certain assessments and charges by imposition of a contract lien
18 under certain circumstances; providing that, in the case of a foreclosure of a
19 mortgage or deed of trust on a lot in a homeowners association, a certain portion
20 of a ~~the~~ homeowners ~~association~~ association’s lien, including certain late fees,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~interest, and any attorney's fees and costs for establishing the lien,~~ liens on the
 2 lot has priority over the claim of the holder of a first mortgage or first deed of
 3 trust under certain circumstances; providing that certain provisions of this Act
 4 ~~do not affect or limit the priority of certain liens, mortgages, or deeds of trust;~~
 5 ~~providing for the abrogation of certain provisions of this Act on the occurrence of~~
 6 ~~certain contingencies~~ providing that the portion of a homeowners association's
 7 liens that has a certain priority shall consist of a certain amount of unpaid
 8 regular assessments not exceeding a certain amount; requiring the governing
 9 body of a homeowners association to provide certain information to the holder of
 10 a first mortgage or first deed of trust under certain circumstances; providing
 11 that a certain portion of a homeowner association's liens does not have priority
 12 under certain circumstances; requiring a statement of lien for certain liens
 13 under the Maryland Contract Lien Act to include certain information about
 14 regular monthly assessments for common expenses under certain
 15 circumstances; providing for the application of this Act; making stylistic
 16 changes; and generally relating to liens on condominium units and lots in
 17 ~~developments with~~ homeowners associations.

18 BY renumbering

19 Article – Real Property
 20 Section 11B–117
 21 to be Section 11B–118
 22 Annotated Code of Maryland
 23 (2010 Replacement Volume and 2010 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Real Property
 26 Section 11–110(d) and 14–203(j)
 27 Annotated Code of Maryland
 28 (2010 Replacement Volume and 2010 Supplement)

29 BY adding to

30 Article – Real Property
 31 Section 11–110(f) and 11B–117
 32 Annotated Code of Maryland
 33 (2010 Replacement Volume and 2010 Supplement)

34 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 35 MARYLAND, That Section(s) 11B–117 of Article – Real Property of the Annotated
 36 Code of Maryland be renumbered to be Section(s) 11B–118.

37 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 38 read as follows:

39 **Article – Real Property**

40 11–110.

1 (d) (1) Payment of assessments, together with interest, late charges, if
 2 any, costs of collection and reasonable attorney's fees may be enforced by the
 3 imposition of a lien on a unit in accordance with the provisions of the Maryland
 4 Contract Lien Act.

5 (2) Suit for any deficiency following foreclosure may be maintained in
 6 the same proceeding, and suit to recover any money judgment for unpaid assessments
 7 may also be maintained in the same proceeding, without waiving the right to seek to
 8 impose a lien under the Maryland Contract Lien Act.

9 ~~(3) (i) THIS PARAGRAPH DOES NOT LIMIT OR AFFECT THE~~
 10 ~~PRIORITY OF A MORTGAGE OR DEED OF TRUST HELD BY OR FOR THE BENEFIT~~
 11 ~~OF, PURCHASED BY, ASSIGNED TO, OR SECURING AN INDEBTEDNESS TO:~~

12 ~~1. THE STATE;~~

13 ~~2. A UNIT OF STATE GOVERNMENT; OR~~

14 ~~3. AN INSTRUMENTALITY OF THE STATE.~~

15 ~~(ii) IN THE CASE OF A FORECLOSURE OF A DEED OF TRUST,~~
 16 ~~A MORTGAGE INSTRUMENT, OR AN ENCUMBRANCE RECORDED BEFORE A~~
 17 ~~CONDOMINIUM'S LIEN, THE PORTION OF THE CONDOMINIUM'S LIEN ON A UNIT~~
 18 ~~CONSISTING OF NOT MORE THAN 6 MONTHS OF UNPAID ASSESSMENTS, LATE~~
 19 ~~FEES, INTEREST, AND ANY ATTORNEY'S FEES AND COSTS ASSOCIATED WITH~~
 20 ~~ESTABLISHING THE LIEN, LEVIED IN ACCORDANCE WITH THE REQUIREMENTS~~
 21 ~~OF THE DECLARATION OR BYLAWS OF THE CONDOMINIUM, SHALL HAVE~~
 22 ~~PRIORITY OVER A CLAIM OF THE HOLDER OF A FIRST MORTGAGE OR DEED OF~~
 23 ~~TRUST RECORDED AGAINST THE UNIT ON OR AFTER OCTOBER 1, 2011.~~

24 (F) (1) THIS SUBSECTION DOES NOT LIMIT OR AFFECT THE PRIORITY
 25 OF ANY LIEN, SECURED INTEREST, OR OTHER ENCUMBRANCE WITH PRIORITY
 26 THAT IS HELD BY OR FOR THE BENEFIT OF, PURCHASED BY, ASSIGNED TO, OR
 27 SECURING ANY INDEBTEDNESS TO:

28 (i) THE STATE OR ANY COUNTY OR MUNICIPAL
 29 CORPORATION IN THE STATE;

30 (ii) ANY UNIT OF STATE GOVERNMENT OR THE
 31 GOVERNMENT OF ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE; OR

32 (iii) AN INSTRUMENTALITY OF THE STATE OR ANY COUNTY
 33 OR MUNICIPAL CORPORATION IN THE STATE.

1 **(2) IN THE CASE OF A FORECLOSURE OF A MORTGAGE OR DEED**
2 **OF TRUST ON A UNIT IN A CONDOMINIUM, A PORTION OF THE CONDOMINIUM'S**
3 **LIENS ON THE UNIT, AS PRESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION,**
4 **SHALL HAVE PRIORITY OVER A CLAIM OF THE HOLDER OF A FIRST MORTGAGE**
5 **OR A FIRST DEED OF TRUST THAT IS RECORDED AGAINST THE UNIT ON OR**
6 **AFTER OCTOBER 1, 2011.**

7 **(3) THE PORTION OF THE CONDOMINIUM'S LIENS THAT HAS**
8 **PRIORITY UNDER PARAGRAPH (2) OF THIS SUBSECTION:**

9 **(i) SHALL CONSIST SOLELY OF NOT MORE THAN 4 MONTHS,**
10 **OR THE EQUIVALENT OF 4 MONTHS, OF UNPAID REGULAR ASSESSMENTS FOR**
11 **COMMON EXPENSES THAT ARE LEVIED BY THE CONDOMINIUM IN ACCORDANCE**
12 **WITH THE REQUIREMENTS OF THE DECLARATION OR BYLAWS OF THE**
13 **CONDOMINIUM;**

14 **(ii) MAY NOT INCLUDE:**

- 15 **1. INTEREST;**
- 16 **2. COSTS OF COLLECTION;**
- 17 **3. LATE CHARGES;**
- 18 **4. FINES;**
- 19 **5. ATTORNEY'S FEES;**
- 20 **6. SPECIAL ASSESSMENTS; OR**
- 21 **7. ANY OTHER COSTS OR SUMS DUE UNDER THE**
22 **DECLARATION OR BYLAWS OF THE CONDOMINIUM OR AS PROVIDED UNDER ANY**
23 **CONTRACT, LAW, OR COURT ORDER; AND**

24 **(iii) MAY NOT EXCEED A MAXIMUM OF \$1,200.**

25 **(4) (i) SUBJECT TO SUBPARAGRAPH (ii) OF THIS PARAGRAPH,**
26 **AT THE REQUEST OF THE HOLDER OF A FIRST MORTGAGE OR FIRST DEED OF**
27 **TRUST ON A UNIT IN A CONDOMINIUM, THE GOVERNING BODY SHALL PROVIDE**
28 **TO THE HOLDER WRITTEN INFORMATION ABOUT THE PORTION OF ANY LIEN**
29 **FILED UNDER THE MARYLAND CONTRACT LIEN ACT THAT HAS PRIORITY AS**
30 **PRESCRIBED UNDER PARAGRAPH (3) OF THIS SUBSECTION, INCLUDING**
31 **INFORMATION THAT IS SUFFICIENT TO ALLOW THE HOLDER TO DETERMINE THE**
32 **BASIS FOR THE PORTION OF THE LIEN THAT HAS PRIORITY.**

1 **(II) AT THE TIME OF MAKING A REQUEST UNDER**
2 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE HOLDER SHALL PROVIDE THE**
3 **GOVERNING BODY OF THE CONDOMINIUM WITH THE WRITTEN CONTACT**
4 **INFORMATION OF THE HOLDER.**

5 **(III) IF THE GOVERNING BODY OF THE CONDOMINIUM FAILS**
6 **TO PROVIDE WRITTEN INFORMATION TO THE HOLDER UNDER SUBPARAGRAPH**
7 **(I) OF THIS PARAGRAPH WITHIN 30 DAYS AFTER THE FILING OF THE STATEMENT**
8 **OF LIEN AMONG THE LAND RECORDS OF EACH COUNTY IN WHICH THE**
9 **CONDOMINIUM IS LOCATED, THE PORTION OF THE CONDOMINIUM'S LIENS DOES**
10 **NOT HAVE PRIORITY AS PRESCRIBED UNDER PARAGRAPH (2) OF THIS**
11 **SUBSECTION.**

12 **11B-117.**

13 **(A) AS PROVIDED IN THE DECLARATION, A LOT OWNER SHALL BE**
14 **LIABLE FOR ALL HOMEOWNERS ASSOCIATION ASSESSMENTS AND CHARGES**
15 **THAT COME DUE DURING THE TIME THAT THE LOT OWNER OWNS THE LOT.**

16 **(B) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW, A**
17 **HOMEOWNERS ASSOCIATION MAY ENFORCE THE PAYMENT OF THE**
18 **ASSESSMENTS AND CHARGES PROVIDED IN THE DECLARATION BY THE**
19 **IMPOSITION OF A LIEN ON A LOT IN ACCORDANCE WITH THE MARYLAND**
20 **CONTRACT LIEN ACT.**

21 ~~**(C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IN THE CASE OF A**~~
22 ~~**FORECLOSURE OF A DEED OF TRUST, A MORTGAGE INSTRUMENT, OR AN**~~
23 ~~**ENCUMBRANCE RECORDED BEFORE A HOMEOWNERS ASSOCIATION'S LIEN,**~~
24 ~~**THAT PORTION OF A HOMEOWNERS ASSOCIATION'S LIEN ON A LOT CONSISTING**~~
25 ~~**OF NOT MORE THAN 6 MONTHS OF UNPAID ASSESSMENTS, LATE FEES,**~~
26 ~~**INTEREST, AND ANY ATTORNEY'S FEES AND COSTS ASSOCIATED WITH**~~
27 ~~**ESTABLISHING THE LIEN, LEVIED IN ACCORDANCE WITH THE REQUIREMENTS**~~
28 ~~**OF THE DECLARATION OR BYLAWS OF THE HOMEOWNERS ASSOCIATION, SHALL**~~
29 ~~**HAVE PRIORITY OVER A CLAIM OF THE HOLDER OF A FIRST MORTGAGE OR DEED**~~
30 ~~**OF TRUST RECORDED AGAINST THE LOT ON OR AFTER OCTOBER 1, 2011.**~~

31 ~~**(D) THIS SECTION DOES NOT LIMIT OR AFFECT THE PRIORITY OF:**~~

32 ~~**(1) A HOMEOWNERS ASSOCIATION'S LIEN PROVIDED FIRST**~~
33 ~~**PRIORITY OVER A DEED OF TRUST OR MORTGAGE BY THE HOMEOWNERS**~~
34 ~~**ASSOCIATION'S DECLARATION OR BYLAWS; OR**~~

1 ~~(2) A MORTGAGE OR DEED OF TRUST HELD BY OR FOR THE~~
 2 ~~BENEFIT OF, PURCHASED BY, ASSIGNED TO, OR SECURING AN INDEBTEDNESS~~
 3 ~~TO:~~

4 ~~(I) THE STATE;~~

5 ~~(II) A UNIT OF STATE GOVERNMENT; OR~~

6 ~~(III) AN INSTRUMENTALITY OF THE STATE.~~

7 (C) (1) THIS SUBSECTION DOES NOT LIMIT OR AFFECT THE PRIORITY
 8 OF ANY:

9 ~~(I) A HOMEOWNERS ASSOCIATION'S LIEN PROVIDED FIRST~~
 10 ~~PRIORITY OVER A DEED OF TRUST OR MORTGAGE BY THE HOMEOWNERS~~
 11 ~~ASSOCIATION'S DECLARATION OR BYLAWS; OR~~

12 (I) A LIEN FOR THE ANNUAL CHARGE PROVIDED FIRST
 13 PRIORITY OVER A DEED OF TRUST OR MORTGAGE BY THE DEED, AGREEMENT,
 14 AND DECLARATION OF COVENANTS, EASEMENTS, CHARGES, AND LIENS DATED
 15 DECEMBER 13, 1966, AND RECORDED IN THE LAND RECORDS OF HOWARD
 16 COUNTY (THE COLUMBIA ASSOCIATION DECLARATION); OR

17 (II) ANY LIEN, SECURED INTEREST, OR OTHER
 18 ENCUMBRANCE WITH PRIORITY THAT IS HELD BY OR FOR THE BENEFIT OF,
 19 PURCHASED BY, ASSIGNED TO, OR SECURING ANY INDEBTEDNESS TO:

20 ~~(I)~~ 1. THE STATE OR ANY COUNTY OR MUNICIPAL
 21 CORPORATION IN THE STATE;

22 ~~(II)~~ 2. ANY UNIT OF STATE GOVERNMENT OR THE
 23 GOVERNMENT OF ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE; OR

24 ~~(III)~~ 3. AN INSTRUMENTALITY OF THE STATE OR ANY
 25 COUNTY OR MUNICIPAL CORPORATION IN THE STATE.

26 (2) IN THE CASE OF A FORECLOSURE OF A MORTGAGE OR DEED
 27 OF TRUST ON A LOT IN A HOMEOWNERS ASSOCIATION, A PORTION OF THE
 28 HOMEOWNERS ASSOCIATION'S LIENS ON THE LOT, AS PRESCRIBED IN
 29 PARAGRAPH (3) OF THIS SUBSECTION, SHALL HAVE PRIORITY OVER A CLAIM OF
 30 THE HOLDER OF A FIRST MORTGAGE OR A FIRST DEED OF TRUST THAT IS
 31 RECORDED AGAINST THE LOT ON OR AFTER OCTOBER 1, 2011.

1 **(3) THE PORTION OF THE HOMEOWNERS ASSOCIATION'S LIENS**
2 **THAT HAS PRIORITY UNDER PARAGRAPH (2) OF THIS SUBSECTION:**

3 **(I) SHALL CONSIST SOLELY OF NOT MORE THAN 4 MONTHS,**
4 **OR THE EQUIVALENT OF 4 MONTHS, OF UNPAID REGULAR ASSESSMENTS FOR**
5 **COMMON EXPENSES THAT ARE LEVIED BY THE HOMEOWNERS ASSOCIATION IN**
6 **ACCORDANCE WITH THE REQUIREMENTS OF THE DECLARATION OR BYLAWS OF**
7 **THE HOMEOWNERS ASSOCIATION;**

8 **(II) MAY NOT INCLUDE:**

- 9 **1. INTEREST;**
- 10 **2. COSTS OF COLLECTION;**
- 11 **3. LATE CHARGES;**
- 12 **4. FINES;**
- 13 **5. ATTORNEY'S FEES;**
- 14 **6. SPECIAL ASSESSMENTS; OR**
- 15 **7. ANY OTHER COSTS OR SUMS DUE UNDER THE**
16 **DECLARATION OR BYLAWS OF THE HOMEOWNERS ASSOCIATION OR AS**
17 **PROVIDED UNDER ANY CONTRACT, LAW, OR COURT ORDER; AND**

18 **(III) MAY NOT EXCEED A MAXIMUM OF \$1,200.**

19 **(4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
20 **AT THE REQUEST OF THE HOLDER OF A FIRST MORTGAGE OR FIRST DEED OF**
21 **TRUST ON A LOT IN A HOMEOWNERS ASSOCIATION, THE GOVERNING BODY**
22 **SHALL PROVIDE TO THE HOLDER WRITTEN INFORMATION ABOUT THE PORTION**
23 **OF ANY LIEN FILED UNDER THE MARYLAND CONTRACT LIEN ACT THAT HAS**
24 **PRIORITY AS PRESCRIBED UNDER PARAGRAPH (3) OF THIS SUBSECTION,**
25 **INCLUDING INFORMATION THAT IS SUFFICIENT TO ALLOW THE HOLDER TO**
26 **DETERMINE THE BASIS FOR THE PORTION OF THE LIEN THAT HAS PRIORITY.**

27 **(II) AT THE TIME OF MAKING A REQUEST UNDER**
28 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE HOLDER SHALL PROVIDE THE**
29 **GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION WITH THE WRITTEN**
30 **CONTACT INFORMATION OF THE HOLDER.**

(III) IF THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION FAILS TO PROVIDE WRITTEN INFORMATION TO THE HOLDER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN 30 DAYS AFTER THE FILING OF THE STATEMENT OF LIEN AMONG THE LAND RECORDS OF EACH COUNTY IN WHICH THE HOMEOWNERS ASSOCIATION IS LOCATED, THE PORTION OF THE HOMEOWNERS ASSOCIATION'S LIENS DOES NOT HAVE PRIORITY AS PRESCRIBED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

14-203.

(i) (1) [A] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A statement of lien is sufficient for purposes of this subtitle if it is in substantially the following form:

STATEMENT OF LIEN

This is to certify that the property described as _____ is subject to a lien under Title 14, Subtitle 2 of the Real Property Article, Maryland Annotated Code, in the amount of \$ _____. The property is owned by _____.

I hereby affirm under the penalty of perjury that notice was given under § 14-203(a) of the Real Property Article, and that the information contained in the foregoing statement of lien is true and correct to the best of my knowledge, information, and belief.

(name of party claiming lien)

(2) (I) THIS PARAGRAPH APPLIES ONLY TO A LIEN THAT IS SUBJECT TO § 11-110(F) OR § 11B-117(C) OF THIS ARTICLE.

(II) IN ADDITION TO SATISFYING THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION, A STATEMENT OF LIEN IS SUFFICIENT FOR PURPOSES OF THIS SUBTITLE IF THE STATEMENT INCLUDES SPECIFIC INFORMATION ABOUT THE AMOUNT OF THE REGULAR MONTHLY ASSESSMENTS, OR THE EQUIVALENT OF THE REGULAR MONTHLY ASSESSMENTS, FOR COMMON EXPENSES IN SUBSTANTIALLY THE FOLLOWING FORM:

THE AMOUNT OF THE REGULAR MONTHLY ASSESSMENTS, OR THE EQUIVALENT OF THE REGULAR MONTHLY ASSESSMENTS, FOR COMMON EXPENSES, THAT IS THE BASIS OF THE PRIORITY PORTION OF THIS LIEN AS PROVIDED IN § 11-110(F) OR § 11B-117(C) OF THE REAL PROPERTY ARTICLE, IS \$ _____. THIS SUM REPRESENTS _____ MONTHS OF UNPAID REGULAR ASSESSMENTS, AT \$ _____ PER MONTH.

1 ~~SECTION 3. AND BE IT FURTHER ENACTED, That the changes to § 11-110~~
 2 ~~of the Real Property Article, as enacted by Section 2 of this Act, shall be abrogated and~~
 3 ~~of no further force or effect if the Federal Home Loan Mortgage Corporation or the~~
 4 ~~Federal National Mortgage Association by rule, regulation, or policy ceases to~~
 5 ~~purchase first mortgages on condominium units in this State. The Secretary of State,~~
 6 ~~within 5 days of determining that the contingency provided in this section has been~~
 7 ~~met, shall notify in writing the Department of Legislative Services, Legislative~~
 8 ~~Services Building, 90 State Circle, Annapolis, Maryland 21401.~~

9 ~~SECTION 4. AND BE IT FURTHER ENACTED, That the addition of~~
 10 ~~§ 11B-117 to the Real Property Article, as enacted by Section 2 of this Act, shall be~~
 11 ~~abrogated and of no further force or effect if the Federal Home Loan Mortgage~~
 12 ~~Corporation or the Federal National Mortgage Association by rule, regulation, or~~
 13 ~~policy ceases to purchase first mortgages on lots in developments with homeowners~~
 14 ~~associations in this State. The Secretary of State, within 5 days of determining that~~
 15 ~~the contingency provided in this section has been met, shall notify in writing the~~
 16 ~~Department of Legislative Services, Legislative Services Building, 90 State Circle,~~
 17 ~~Annapolis, Maryland 21401.~~

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
 19 construed to apply only prospectively and may not be applied or interpreted to have
 20 any effect on or application to any first mortgage or first deed of trust on a
 21 condominium unit or a lot in a homeowners association that is recorded before the
 22 effective date of this Act.

23 ~~SECTION 5.~~ 4. AND BE IT FURTHER ENACTED, That, ~~subject to the~~
 24 ~~provisions of Sections 3 and 4 of this Act,~~ this Act shall take effect October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.