

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 631 (Delegate Niemann, *et al.*)  
Environmental Matters

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Condominiums and Homeowners Associations - Liability for Payment of  
Assessments - Liens

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This bill alters the Maryland Condominium Act and the Maryland Homeowners Association Act to state that a grantee, other than the holder of a mortgage, 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 or lot owner under the Maryland Contract Lien Act (MCLA) the amount of liability is up to six months of regular monthly assessments and charges that are due without acceleration as of the date of the foreclosure sale.

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Fiscal Summary

**State Effect:** The bill does not directly affect State finances or operations. 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.

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Analysis

**Bill Summary:** The bill does not apply to grantees who are mortgagees who obtain title to a unit or lot: (1) in a foreclosure sale; or (2) from a mortgagee that obtained title in a foreclosure sale. Payment by the grantee of the amount due under the bill is without prejudice to the rights of the grantee to recover the amount paid from the unit or lot owner as of the date of the foreclosure sale.

The bill adds provisions to the Maryland Homeowners Association Act so that, as provided in the declaration of a homeowners association (HOA), a lot owner is liable for all association assessments and charges that come due while the lot owner owns a lot (conforming to similar provisions in the Maryland Condominium Act). The bill permits the governing body of an HOA to enforce the payment of the assessments and charges of the association by the imposition of a lien on a lot in accordance with the provisions of MCLA. The bill likewise updates MCLA to extend its provisions to declarations or bylaws recorded under the provisions of the Maryland Homeowners Association Act.

**Current Law:** Under MCLA, if authorized by the declaration or bylaws, a council of unit owners or an HOA may impose a lien on a unit or lot in accordance with MCLA to recover unpaid assessments, interest on unpaid assessments, late charges, collection costs, and reasonable attorney's fees. A deficiency lawsuit following a foreclosure along with a lawsuit to recover a money judgment for unpaid assessments may be maintained in the same proceeding without waiving the right to impose a lien under MCLA.

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 of sale or an assent to a decree. An action to foreclose a lien must be brought within 12 years following recordation of the lien statement. Generally, liens against real property take priority in the order in which they are recorded.

**Background:** The bill is intended to render foreclosure purchasers of condominiums or HOA lots (other than those who are mortgage holders) liable for up to six months of any regular monthly 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 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 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 have faced increased financial burdens due to difficulty in collecting unpaid assessments.

## **Additional Information**

**Prior Introductions:** HB 682 of 2008 received an unfavorable report from the House Environmental Matters Committee. Its cross file, SB 874, was heard in the Senate Judicial Proceedings Committee, but received no further action.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division), Judiciary (Administrative Office of the Courts), Secretary of Stat,; Department of Legislative Services

**Fiscal Note History:** First Reader - February 22, 2011  
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