Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 211   (Senators Kelley and Stone)

Judicial Proceedings   Environmental Matters

Real Property - Condominiums and Homeowners Associations - Foreclosure of Certain Liens Prohibited

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This bill prohibits the governing body of a condominium or homeowners association (HOA) from foreclosing a lien solely consisting of fines imposed by the governing body or attorney's fees incurred to recover the imposed fines. The bill also requires a governing body to apply a unit or lot owner's payment to the owner's accounts in a specified order of priority, unless otherwise specified in writing by the unit or lot owner.

Fiscal Summary

State Effect: If the Consumer Protection Division of the Office of the Attorney General receives 50 or fewer complaints per year stemming from the bill, the additional workload can be handled with existing resources. No effect on revenues.

Local Effect: Any reduction in foreclosure proceedings in the circuit courts is not expected to generate significant savings.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill requires that any payment from a unit or lot owner to a council of condominium unit owners or an HOA be applied in the following order, unless otherwise provided in writing by the unit or lot owner:

- any delinquent assessment;

- any current assessment;
- any interest and late charges;
- any fines imposed by the governing body; and
- any attorney's fees incurred by the governing body related only to recovering fines imposed by the governing body.

The statutory order of priority supersedes the order stipulated by a condominium or HOA's declaration or bylaws.

Current Law: Under the Maryland Contract Lien Act (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.

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 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 12 years following recordation of the lien statement. Generally, liens against real property take priority in the order in which they are recorded.

Background: This bill is similar to a pending bill in the Texas legislature. The Texas bill establishes the same order of priority (but without the inclusion of any interest or late charges) for a payment received by a council of unit owners or HOA.

Additional Information

Prior Introductions: None.

Cross File: HB 100 (Delegate Braveboy) - Environmental Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Texas Legislature Online; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2011
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