

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1246

(Delegate Conway, *et al.*)

Environmental Matters

Judicial Proceedings

Condominiums and Homeowners Associations - Priority of Liens

This bill alters the Maryland Condominium Act and the Maryland Homeowners Association Act to specify that, in the event of a foreclosure of a mortgage or deed of trust on a unit in a condominium or a lot in a homeowners association (HOA), a portion of the condominium or HOA's liens on the unit or lot has priority over a claim of the holder of a first mortgage or first deed of trust that is recorded against the unit or lot on or after October 1, 2011. The portion of a contract lien that takes precedence over the claim of the holder of a first mortgage or first deed of trust is limited to an amount of up to four months, or the equivalent of four months, of unpaid regular assessments for common expenses up to \$1,200.

The bill applies prospectively to any first mortgage or first deed of trust on a condominium unit or a lot in an HOA that is recorded on or after October 1, 2011.

Fiscal Summary

State Effect: The bill does not materially 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. No effect on revenues.

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

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill does not limit or affect the priority of (1) any lien, secured interest, or other encumbrance with priority that is held by or for the benefit of, purchased by, assigned to, or securing any indebtedness to the State, a county or any municipal corporation in the State or its units or instrumentalities; or (2) a first priority lien for an annual charge imposed by an HOA in accordance with a deed, agreement, and declaration of covenants, easements, charges, and liens dated December 13, 1966, and recorded in Howard County.

Upon request by the holder of a first mortgage or first deed of trust on a unit in a condominium or a lot in an HOA, the governing body must provide the holder with written information about the portion of any lien filed under the Maryland Contract Lien Act (MCLA) that has priority, including any information that is sufficient to allow the holder to determine the basis for the portion of the lien that has priority. When making this request, a holder must provide the governing body of the condominium or HOA with the holder's written contact information.

If the governing body fails to provide the required information to the holder within 30 days after the filing of the "statement of lien" among the land records of each county in which the condominium or HOA is located, that portion of the lien does not have priority. Along with the form acceptable under current State law, the bill authorizes condominiums or HOAs to use a statement of lien that further specifies information about the amount of the regular monthly assessments, or the equivalent of the regular monthly assessments, for common expenses and that is substantially similar to the form as specified by the bill.

The bill amends the Maryland Homeowners Association Act to state that, as provided in the declaration of an HOA, a lot owner is liable for all association assessments and charges that come due while the lot owner owns the lot. In addition to any other available remedies, the governing body of an HOA can enforce the payment of unpaid association assessments and charges provided in the declaration by imposing a lien on a lot under MCLA.

Current Law: Under the Maryland Condominium Act, a council of unit owners may impose a lien on a unit in accordance with MCLA to recover unpaid assessments (with interest), 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. However, an HOA, under the Maryland Homeowners Association Act, is not specifically authorized to impose a lien for unpaid assessments.

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 buyers of condominium units or HOA lots through foreclosure (other than banks and others who are mortgage holders) liable for up to four months of any assessments that were not paid by the previous 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 generally 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: Similar legislation has been considered in recent years. HB 842 of 2010 was amended in the House and received an unfavorable report from the Senate Judicial Proceedings Committee. HB 29 of 2010 received an unfavorable report from the House Environmental Matters Committee. HB 682 of 2008 and HB 74 of 2009 both received unfavorable reports from the House Environmental Matters Committee. A cross file, SB 874 of 2008, was heard by the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 946 (Senators Mathias and Manno) - Judicial Proceedings.

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

Fiscal Note History:
ncs/kdm

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