

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 946

(Senators Mathias and Manno)

Judicial Proceedings

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**Condominiums and Homeowners Associations - Priority of Liens - "The Residential Association Sustainability Act of 2011"**

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The bill amends the Maryland Condominium Act and the Maryland Homeowners Association Act to specify that, in the event of a foreclosure of a deed of trust, mortgage instrument, or an encumbrance recorded before a condominium's lien or homeowners association's (HOA) lien, a portion of the lien has priority over the holder of a first mortgage or deed of trust recorded 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 deed of trust is an amount of up to six months of unpaid assessments and related interest and fees. The bill does not limit or affect the priority of (1) a mortgage or deed of trust held by or for the benefit of, purchased by, assigned to, or securing an indebtedness to the State, a unit of State government, or an instrumentality of the State; or (2) a lien imposed in accordance with the declaration or bylaws of an HOA that provides for a first priority lien.

The provisions of the bill are void under specified circumstances.

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**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.

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## Analysis

**Bill Summary:** 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 the Maryland Contract Lien Act (MCLA).

If the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae) cease to purchase first mortgages on condominiums or lots in developments with homeowners associations in this State, the bill's provisions are of no force or effect. The Secretary of State must notify the Department of Legislative Services within five days of determining that this contingency has been met.

**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.

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 six months of any assessments or dues 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 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.

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### **Additional Information**

**Prior Introductions:** HB 842 of 2010 was amended in the House and received an unfavorable report from the Senate Judicial Proceedings Committee. HB 29 of 2010, a similar bill, received an unfavorable report from the House Environmental Matters Committee. Similar bills were introduced in 2008 and 2009. 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:** HB 1246 (Delegate Conway, *et al.*) - Environmental Matters.

**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:** First Reader - March 16, 2011  
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