

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 78 (Delegate Braveboy)
Environmental Matters

Condominiums and Homeowners Associations - Payments Under Protest

This bill authorizes a unit owner in a condominium or a lot owner in a homeowners association (HOA) to pay any fee, assessment, or other charge owed to the condominium or HOA's governing body under protest if the unit or lot owner provides written notice at the time of payment stating both that the payment is being made under protest and the basis for the protest. By making a payment under protest, the unit or lot owner reserves the right to contest the disputed charge.

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: The bill does not directly affect governmental operations or finances.

Small Business Effect: None.

Analysis

Current Law:

Condominiums

A unit owner is liable for all assessments due while owning the unit. A unit owner may not avoid liability for the assessments by waiving the use or enjoyment of the

condominium's common elements or by abandoning the unit. A condominium may also charge assessments as part of an installment plan.

If a unit owner does not pay an assessment at the time due, the council of unit owners may choose to charge interest starting at the date due until the time paid. The council of unit owners may dictate an annual interest rate of up to 18% in the condominium's bylaws. However, if the bylaws are silent as to an annual interest rate, the rate must be 18%. In specified situations, the condominium's bylaws may also stipulate a late fee of the greater of \$15 or one-tenth of the total amount of any delinquent assessment or installment.

Homeowners Associations

The Maryland Homeowners Association Act (MHAA) does not explicitly state the liability of a lot owner for all assessments while owning the lot. However, under MHAA, in specified situations the HOA's declaration or bylaws may stipulate a late fee of the greater of \$15 or one-tenth of the total amount of any delinquent assessment or installment.

Maryland Contract Lien Act

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.

Background: In California, an owner also has the right to pay under protest any disputed charge or sum levied by the association. This includes an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure. By paying under protest, the owner specifically reserves the right to contest the disputed charge or sum in court or other appropriate forum, as specified.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 31, 2012
mlm/kdm

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510