

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 78

(Senator Kelley)

Judicial Proceedings

Environmental Matters

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

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 in order to recover the imposed fines. The bill also requires a governing body to apply a unit or lot owner's payment for an annual assessment 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 for an annual assessment 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 late charges (including interest for a condominium);
- 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.

Current Law:

Condominiums: The Maryland Condominium Act (MCA) authorizes the governing body of a condominium to charge up to 18% interest on any delinquent assessment or installment not paid when due. A condominium may charge a late fee of the greater of \$15 or 10% of the total amount of any delinquent assessment or installment if the delinquency has continued for at least 15 calendar days. The late charge may not be imposed more than once for the same delinquent payment.

If authorized by the bylaws, a council of unit owners may impose a lien on a unit in accordance with MCA and the Maryland Contract Lien Act (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 such a lien.

HOAs: As provided by the HOA's declaration, a lot owner is liable for all association assessments and charges that come due while the lot owner owns the lot. Under the Maryland Homeowners Association Act, in addition to any other available remedies, the governing body of an HOA can also enforce the payment of unpaid association assessments and charges provided in the declaration by imposing a lien on a lot in accordance with MCLA procedures.

Condominiums and HOAs: 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.

Chapter 387 of 2011 enabled a portion of a condominium's lien or HOA's lien to have priority over a holder of a first mortgage or deed of trust in the event of a foreclosure of a mortgage or deed of trust on a unit or lot. The portion of the contract lien that takes precedence over the claim of the holder of a first mortgage 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 governing body of the condominium or HOA must provide specified information to the holder of the first mortgage or deed of trust upon request in order to have priority.

Background: A similar bill was introduced in the Texas legislature in 2011. The bill received a hearing, but no further action was taken. The Texas bill would have established the same order of priority for a payment received by a council of unit owners or HOA.

Additional Information

Prior Introductions: SB 211 of 2011, as amended, passed the Senate but received an unfavorable report from the House Environmental Matters Committee. Its cross file, HB 100, received an unfavorable report from the House Environmental Matters Committee.

Cross File: Although not designated as a cross file, HB 77 (Delegate Braveboy – Environmental Matters) is identical.

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; Secretary of State; Texas Legislature Online; Department of Legislative Services

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Analysis by: Michael F. Bender

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