

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 1062 (Senator Muse)
Judicial Proceedings

Condominiums and Homeowners Associations - Attorney's Fees

This bill prohibits the governing body of a condominium or homeowners association (HOA) from demanding, collecting, or seeking to recover attorney's fees from a unit owner or lot owner unless the amount of the attorney's fees is reasonable in relation to the amount in controversy or the nature of the nonmonetary violation. The bill establishes a rebuttable presumption that attorney's fees are reasonable in relation to the controversy in an action in which the governing body seeks to (1) recover attorney's fees from the unit owner or lot owner; (2) impose a lien on a unit or lot based on the unit owner or lot owner's failure to pay regular or special assessments; or (3) enforce a nonmonetary violation of the declaration, bylaws, or governing documents of the condominium or HOA.

Fiscal Summary

State Effect: The bill does not materially affect State governmental operations or finances.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill authorizes the court, on its own motion, or the unit owner or lot owner to challenge this rebuttable presumption at any time before the issuance of a final judgment. If such a challenge is made, the governing body bears the burden of proving by a preponderance of the evidence that the attorney's fees are reasonable in relation to the controversy.

The bill exempts any claim, asserted by the governing body, in which all or substantially all of the claimed amount is attorney's fees from the Maryland Contract Lien Act (MCLA). Thus, the governing body is required to assert a claim in court, rather than impose a lien, to recover the amount.

Current Law:

Condominiums: A unit owner is liable for all assessments or installments of assessments coming due while owning the unit. 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.

A council of unit owners may impose a lien on a unit in accordance with MCA and 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 set forth in the declaration, a lot owner is liable for all HOA assessments and charges that come due while the lot owner owns the lot. An HOA's declaration or bylaws may also provide for a late charge 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.

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.

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.

Chapter 387 of 2011 (HB 1246) enabled a portion of a condominium's 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.

Attorney's Fees: Rule 1.5 of the Maryland Lawyers' Rules of Professional Conduct prohibits a lawyer from making an agreement for, charging, or collecting an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment of the lawyer;
- the fee customarily charged in the locality for similar legal services;
- the amount involved and the results obtained;
- the time limitations imposed by the client or by the circumstances;
- the nature and length of the professional relationship with the client;
- the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- whether the fee is fixed or contingent.

A lawyer who violates the rules of professional responsibility is subject to disciplinary action, which may include disbarment, suspension, or reprimand, or placement on inactive status.

Background: For more information on common ownership communities, including the collection of assessments, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: HB 1532 (Delegate Carter) - Environmental Matters.

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

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Appendix – Common Ownership Communities

When a person purchases a house, condominium, or an interest in a cooperative housing arrangement, he or she may also be required to join an association of owners which is intended to act in the common interests of the homeowners, condominium owners, or co-op owners in the community. These associations assess dues to property owners to achieve their goals and address community problems. Collectively, these associations are often referred to as common ownership communities (COCs). The Secretary of State reports that there were over 2,500 condominiums in the State of Maryland registered with the office in 2012. It is unclear how many homeowners associations (HOAs) and cooperatives are currently operating in the State, but the number is substantial.

With a growing number of Marylanders residing in COCs, and evidence that some COCs had issues with governance, dispute resolution, and financial stability, the General Assembly authorized the Task Force on Common Ownership Communities in June 2005 (Chapter 469 of 2005, SB 229). The issues addressed by the task force included the education and training needs of COC boards and prospective buyers, availability of alternative dispute resolution services, special considerations of aging COCs, collection of assessments, and resale of homes within COCs. The task force met 10 times, held 5 public hearings, and submitted its final report in December 2006. The report's findings and recommendations have served, in subsequent years, as the basis for numerous pieces of legislation, intended to improve the operation of COCs. This legislation, enacted from 2007 through 2011:

- authorized a group of three or more unit or lot owners in a condominium or HOA to petition a circuit court to appoint a receiver in specified situations frequently found in aging communities (Chapter 321 of 2007, SB 287);
- gave the Consumer Protection Division within the Office of the Attorney General increased authority over violations of the Maryland Homeowners Association Act (Chapter 593 of 2007, HB 183);
- eased restrictions on the ability of a COC to amend its governing documents by allowing an amendment at least once every five years (Chapters 144 and 145 of 2008, SB 101/HB 1129);
- strengthened the transition process from developer to COC governing body by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009, SB 742/HB 667);

- required the governing body of a COC to purchase fidelity insurance or a fidelity bond covering various acts of malfeasance by COC officers, directors, and other specified employees and agents (Chapters 77 and 78 of 2009, SB 541/HB 687 and Chapter 615 of 2010, HB 702); and
- granted a condominium or HOA priority over a specified portion of a lien in the event of a foreclosure of a mortgage or deed of trust on a unit or lot (Chapter 387 of 2011, HB 1246).

The task force's report also featured findings and recommendations relating to alternative dispute resolutions and the creation of an ombudsman in local governments. Montgomery County's Commission on Common Ownership Communities was referenced as an alternative dispute resolution model for future local offices. Since the report's release, Prince George's County created its Common Ownership Communities Program in 2007 with the stated purpose of assisting governing bodies as well as owners and residents of homeowners' residential condominiums and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs which predates the task force.

Finally, findings and recommendations of the report which have not been codified in statute concern reserves of COCs, an insurance deductible cap for unit owners, the suspension of privileges of delinquent unit owners, uniformity of disclosure requirements and packages, and uniformity of COC depository requirements.