

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 971 (Delegate Niemann, *et al.*)
Environmental Matters

Condominiums and Homeowners Associations - Unpaid Assessments and Fees -
Petition for Relief

This bill authorizes the governing body of a condominium or homeowners association (HOA) to petition the District Court for relief if a unit owner or lot owner has failed to pay assessments and fees for a unit or lot for 90 days or longer *and* is renting the unit or lot to a tenant under a residential lease. The bill authorizes the District Court, after a hearing, to enter an order directing the tenant to pay all or a portion of the rent as the rent comes due under the lease to either the governing body or a designated custodian.

Fiscal Summary

State Effect: The bill's changes may result in the creation of new forms for actions in the District Court. In addition, the bill may require changes to brochures, manuals, and the District Court website. However, any changes and increases in District Court caseloads can likely be handled with existing resources.

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

Small Business Effect: Minimal.

Analysis

Bill Summary: A certified copy of the petition filed in the District Court must be served on the unit owner or lot owner and the tenant by personal service in accordance with the Maryland Rules.

If the District Court enters an order directing the tenant to pay rent to the governing body or designated custodian, the bill requires the District Court to order the governing body or designated custodian to apply all or a portion of the rent paid by the tenant under the order to payment of any future assessments and fees.

The bill authorizes the District Court to impose reasonable attorney's fees and court costs on the unit owner or lot owner and order that those fees and costs be paid out of any future rent payments. The District Court's order directing the tenant to pay rent to the governing body or a designated custodian expires when the District Court has determined that all assessments and fees have been satisfied.

If the District Court enters an order under the bill, the unit owner or lot owner may not bring or threaten to bring an action for possession against the tenant for failure to pay rent, arbitrarily increase the rent or decrease the services to which the tenant is entitled, or arbitrarily terminate the lease before the end of the term of the lease.

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 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 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.

Chapter 449 of 2013 limits the situations in which the governing body of a common ownership community (COC) may foreclose on a lien against a unit owner or lot owner. Notwithstanding the COC's governing documents, the governing body may foreclose on the lien only if the damages secured by the lien consist solely of (1) delinquent periodic or special assessments and (2) reasonable costs and attorney's fees directly related to filing of the lien and not exceeding the amount of the delinquent assessments. The damages may not include fines imposed by the governing body or attorney's fees related to recovering the fines. A governing body may enforce a lien through any other means.

Chapter 387 of 2011 required specific information about the amount of regular monthly assessments to be included in a statement of lien filed under MCLA.

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

Additional Information

Prior Introductions: SB 685 of 2012, a similar bill pertaining to councils of unit owners, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 850, passed the House and was referred to the Senate Judicial Proceedings Committee but received no further action.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2014
mm/kdm

Analysis by: Joshua A. Lowery

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

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. Collectively, these associations are often referred to as common ownership communities (COCs).

The affairs of a condominium are governed by a council of unit owners, which comprises all unit owners. Among other powers, the council of unit owners has the power to impose assessments on the unit owners to pay common expenses. A council of unit owners may delegate its powers to a board of directors, officers, or a managing agent.

Many new housing developments are subject to governing documents that create a homeowners association (HOA) with the authority to impose mandatory fees on lots in the development in connection with the provision of services or for the benefit of the lots, the owners of lots, or the common areas.

A cooperative housing corporation or “cooperative” is a corporation that owns real property. A resident of a cooperative does not own his or her unit; rather, the person owns an interest in the corporation, which leases the unit to the person for residential use. Cooperatives are governed by the laws applicable to corporations.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees.

A growing number of homes are located in condominiums, HOAs, and cooperative housing corporations. The Secretary of State reports that there were more than 2,500 condominiums in the State of Maryland registered with the office in 2013. The Foundation for Community Association Research estimates that there were 6,400 community associations in the State in 2012.

Task Force on Common Ownership Communities

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 created the Task Force on Common Ownership Communities in 2005 (Chapter 469 of 2005). 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 2013:

- authorized a group of three or more unit owner 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);
- 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);
- eased restrictions on the ability of certain older HOAs to amend their governing documents by allowing an amendment at least once every five years by a specified percentage of votes (Chapters 144 and 145 of 2008);
- strengthened the transition process from developer to the governing body of a condominium or HOA by allowing the governing body to terminate specified contracts and requiring the developer to provide specified documents (Chapters 95 and 96 of 2009);
- 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 and Chapter 615 of 2010);
- granted priority to a specified portion of a lien of a condominium or HOA over the claim of a holder of a first mortgage or first deed of trust in the event of a foreclosure on a unit or lot (Chapter 387 of 2011);
- limited the amount of damages for which the governing body of a condominium or HOA may foreclose on a lien against a unit owner or lot owner (Chapter 449 of 2013); and
- expanded the purposes for which a condominium's board of directors may hold a closed meeting, similar to the law for an HOA, by allowing a meeting to be closed to consider terms or conditions of a business transaction in the negotiation stage if disclosure could adversely affect the economic interests of the council of unit owners (Chapter 110 of 2013).

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 HOAs, residential condominiums, and cooperative housing corporations with education, training, and alternative dispute resolution. Charles County also has an office dedicated to COCs that predates the task force.

Finally, findings and recommendations of the report that 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.