

Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader

House Bill 970

(Delegate Reznik)

Environment and Transportation

Budget and Taxation

Tax Sales - Condominium Assessments and Homeowners Association Fees

This bill requires the plaintiff in an action to foreclose the right of redemption on a property to send specified notices to a condominium association, as well as a homeowners association, if the property at issue is part of the association. Notices must be sent to the last reasonably ascertainable address of the association. The bill also requires that, once a judgment in an action to foreclose the right of redemption is granted, the plaintiff immediately becomes liable for the payment of assessments or fees charged by a condominium association or a homeowners association from the date of judgment. The bill authorizes the plaintiff in an action to foreclose the right of redemption to be sued in a collection action for fees due from the date of the judgment, and specifies that it is not a defense that the deed to the property has not been recorded.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: The District Court can handle any additional cases that may be generated by the bill with existing resources. The Office of the Attorney General, Consumer Protection Division, can handle the bill's requirements with existing resources, assuming 50 or fewer new complaints are generated by the bill.

Local Effect: The bill is not anticipated to impact the operations or finances of local governments.

Small Business Effect: Potential meaningful impact on small businesses that purchase foreclosed properties to improve and resell them, due to the bill's requirement that the plaintiff in an action to foreclose the right of redemption immediately become liable for payment of assessments and fees charged by a homeowners or a condominium association.

Analysis

Current Law:

Tax Sales Generally

In general, a tax collector must sell, at an auction, not later than two years from the date the tax is in arrears, all property in the county on which the tax is in arrears. The time for the tax sale is established by local law. Failure of the collector to sell the property within the two-year period does not affect the validity or collectability of any tax, or the validity of any sale subsequently made.

The tax collector sets specified terms for the auction and publishes public notice of the tax sale, including requirements for potential bidders.

When a property is purchased at a tax sale, the purchaser must pay to the tax collector any delinquent taxes, penalties, sale expenses, and a high bid premium except as otherwise specified. Except for agricultural property, when a bidder at tax sale purchases a property in Baltimore City and Prince George's County under specified circumstances, the bidder must pay a high-bid premium that is the greater of 20% of the amount by which the highest bid exceeds the lien amount or 40% of the property's full cash value. The terms for payment of the purchase price and high-bid premiums, if any, are determined by the collector.

Generally, the property owner has the right to redeem the property within six months from the date of the tax sale by paying the total lien amount on the property, delinquent taxes, penalties, interest, and certain expenses of the purchaser. If the owner redeems the certificate, the purchaser is refunded the amounts paid to the collector plus the interest and expenses. If the owner does not redeem the certificate, the purchaser has the right to foreclose on the property after the six-month right of redemption period has passed. Under most circumstances, if the right to foreclose is not exercised by the purchaser within two years, the certificate is void and the purchaser is not entitled to a refund of any monies paid to the collector.

Filing an Action to Foreclose the Right of Redemption

When filing an action to foreclose the right of redemption, the plaintiff (the holder of the certificate of sale) may name individuals as defendants. With specified limitations, it is not necessary to name as a defendant every person that has an interest in the property. Such individuals are included as defendants by the plaintiff including "all persons that have or claim to have any interest in property," with a description of the property in substantially the same form as the description that appears on the tax collector's certificate of tax sale.

However, the plaintiff in an action to foreclose the right of redemption must send *written notice* of the proceeding to all individuals with a recorded interest, claim, or lien, including a judgment, who have not been made a defendant in the proceeding, as well as each tenant of the property who is known to the plaintiff, at the tenant's last reasonably ascertainable address. Additionally, if the property at issue is a common area owned by or legally dedicated to a homeowners association, the plaintiff is required to send specified notice to the homeowners association governing the property, at the last reasonably ascertainable address.

Liability for Taxes

Generally, after specified time limits expire, the court must enter judgment foreclosing the right of redemption. If the court finds for the plaintiff, once a judgment is granted, the plaintiff immediately becomes liable for the payment of all taxes due and payable after the judgment. The plaintiff may be sued to collect all taxes due and payable after the judgment. It is not a defense that a deed to the property has not yet been recorded. Once the judgment is entered, the plaintiff must pay the collector any surplus bid and all taxes, with interest and penalties on the taxes due.

In Baltimore City, where abandoned property has been sold for a sum less than the amount due in a foreclosure proceeding brought by the mayor and city council, the final order may include a judgment in favor of the city and against the person liable for taxes prior to the sale for any unpaid taxes, interest, penalties, and expenses otherwise due in a tax sale. In a proceeding related to owner-occupied residential property, if the court finds for the plaintiff, the final judgment must state whether there is a bid balance as a result of the tax sale, and that the former owner's portion of the bid balance may be obtained by contacting the Baltimore City Bureau of Revenue Collections.

Background: The Secretary of State advises that, in 2015, there were 2,619 condominium regimes in the State, and the State Department of Assessments and Taxation reports that there were 206,180 condominium units. The Foundation for Community Association Research estimated that there were 6,575 community associations in the State in 2014. For more information on common ownership communities, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: SB 591 (Senator King) - Budget and Taxation.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Secretary of State, Judiciary (Administrative Office of the Courts), State Department of Assessments and Taxation, Foundation for Community Association Research, Department of Legislative Services

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Analysis by: Nathan W. McCurdy

Direct Inquiries to:

(410) 946-5510

(301) 970-5510

Appendix – Common Ownership Communities

When a person purchases a single-family home, condominium, or an interest in a cooperative housing corporation, he or she may also be required to join an association of owners, which is intended to act in the common interests of all the homeowners, condominium unit owners, or cooperative owners in the community. Collectively, these associations are often referred to as common ownership communities (COCs). In Maryland, a growing number of newly constructed or newly converted residences are located in some form of a COC.

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. Condominiums are governed under Title 11 of the Real Property Article.

Many new housing developments are subject to a homeowners association (HOA) that is created by a governing document and has 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 lot owners, or the common areas. HOAs are governed under Title 11B of the Real Property Article.

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 in Title 5, Subtitle 6B of the Corporations and Associations Article.

Condominiums and HOAs may be authorized by their governing documents to impose liens on units or lots to collect unpaid assessments or fees. In a cooperative, the governing documents usually provide for the collection of delinquent fees, and evictions for unpaid fees are generally pursued by way of a landlord-tenant action.

Since registration of the various COCs is not required statewide, the exact number of COCs in Maryland is unknown. However, public offering statements for condominium regimes are required by law to be registered with the Secretary of State (SOS). Statewide for 2015, the SOS registration records show that there are 2,619 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 206,180 condominium units. The Foundation for Community Association Research estimated that there were 6,575 community associations in the State in 2014.

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 five 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 2014:

- 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);
- 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 (Chapters 448 and 449 of 2013);
- 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); and
- established meeting standards and standards for late charges for delinquent payments, eviction restrictions, an auditing process for books and records, and a dispute settlement mechanism for cooperatives under specified circumstances (Chapter 567 of 2014).

The task force's report also featured findings and recommendations relating to the creation of an ombudsman in local governments. 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 and Montgomery County have offices dedicated to COCs that predate 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, and the uniformity of COC depository requirements.