

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 538

(Delegate Holmes)

Environment and Transportation

Judicial Proceedings

Real Property - Notices of Foreclosure Sale and Postponement or Cancellation of Foreclosure Sale

This bill requires the person authorized to make a sale in an action to foreclose a mortgage or deed of trust to give written notice of the proposed sale to a condominium or homeowners association (HOA) that has recorded, at least 30 days before the date of the proposed sale, a statement of lien against the property under the Maryland Contract Lien Act (MCLA). The notice must be sent to the condominium or HOA at the address shown on the statement of lien. In the event of a postponement or cancellation of a sale to foreclose a mortgage or deed of trust, the bill requires the trustee of the property to provide written notice to the record owner and, if applicable, to a condominium or HOA that was notified of the sale, within 14 days after the postponement or cancellation. The notice must be sent by first-class mail, postage prepaid.

Fiscal Summary

State Effect: The Department of Housing and Community Development and the Judiciary can handle the bill's requirements 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 materially affect the circuit courts or local finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law:

Notice of Proposed Foreclosure Sale

“Record owner” means the person holding record title to property as of the later of (1) 30 days before the day on which a foreclosure sale of the property is actually held and (2) the date on which an action to foreclose the mortgage or deed of trust is filed.

The person authorized to make a sale in an action to foreclose a mortgage or deed of trust is required to give written notice of the proposed sale to the record owner of the property. The written notice must be sent by certified mail, postage prepaid, return receipt requested, as well as by first-class mail, to the record owner not earlier than 30 days and not later than 10 days before the date of sale. The notice must state the time, place, and terms of the sale.

The person sending the notice is required to file, with the documents submitted to the court, a return receipt for the notice, or an affidavit that the notice was sent or that the address of the record owner could not reasonably be found. In the event a sale is postponed, which may be done at the discretion of the trustee, no new or additional notice is required.

The right of a record owner to file an action for the failure to provide the required notice expires three years after the date of the order ratifying the foreclosure sale.

Foreclosure Process in Maryland

Except under specified circumstances, to foreclose on residential property in Maryland, the secured party must first send a notice of intent to foreclose (NOI) to the mortgagor or grantor and the record owner, then file and serve an order to docket (OTD) or a complaint to foreclose. Whether an OTD is appropriate, or a complaint to foreclose, is based on the lien instrument held by the secured party. An action to foreclose a mortgage or deed of trust may not be filed until the later of 90 days after a default in a condition on which the mortgage or deed of trust specifies that a sale may be made, or 45 days after an NOI and accompanying loss mitigation application are sent. An OTD or complaint to foreclose must be filed with the circuit court, and a copy must be served on the mortgagor or grantor. An OTD or a complaint to foreclose must include, if applicable, the license number of both the mortgage originator and the mortgage lender. The OTD or complaint to foreclose must also contain an affidavit stating the date and nature of the default and, if applicable, that the NOI was sent and that the contents of the NOI were accurate at the time it was sent.

Perquisites for Foreclosure Sales

If the residential property *is not* owner-occupied, a foreclosure sale may not occur until at least 45 days after specified notice is given. If the residential property *is* owner-occupied, and foreclosure mediation is not held, a foreclosure sale may not occur until the later of (1) at least 45 days after providing specified notice that includes a final loss mitigation affidavit or (2) at least 30 days after a final loss mitigation affidavit is mailed. Finally, if the residential property is owner-occupied residential property and postfile mediation is requested, a foreclosure sale may not occur until at least 15 days after the date the postfile mediation is held or, if no postfile mediation is held, the date the Office of Administrative Hearings files its report with the court.

Generally, notice of the time, place, and terms of a foreclosure sale must be published in a newspaper of general circulation in the county where the action is pending at least once a week for three successive weeks. The first publication of the notice must be more than 15 days before the sale, and the last publication must be within one week of the sale.

Curing Defaults

The mortgagor or grantor of residential property has the right to cure a default and reinstate the loan at any time up to one business day before a foreclosure sale by paying all past-due payments, penalties, and fees. Upon request, and within a reasonable time, the secured party or the secured party's authorized agent must notify the mortgagor or grantor or his or her attorney of the amount necessary to cure the default and reinstate the loan as well as provide instructions for delivering the payment.

Maryland Contract Lien Act

Generally, 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.

With specified exceptions, 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.

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 condominiums and homeowners associations (commonly known as common ownership communities), see the **Appendix – Common Ownership Communities**.

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); Department of Housing and Community Development; Department of Labor, Licensing, and Regulation; Secretary of State; State Department of Assessments and Taxation; Foundation for Community Association Research; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2016
min/kdm Revised - House Third Reader - March 28, 2016

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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.