

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 374

(Senator Washington, *et al.*)

Judicial Proceedings

Real Property - Maryland Condominium Act - Priority of Liens

This bill increases, from four to six months, or the equivalent of six months, the amount of unpaid regular assessments for common expenses that may be included in the portion of a condominium's liens that are given priority over a claim of the holder of a first mortgage or first deed of trust that is recorded against a unit in the event of a foreclosure. The bill also authorizes specified interest, costs, charges, fines, fees, and special assessments to be included in the portion of a condominium's liens given priority. Thus, the bill repeals the \$1,200 limit on the amount that may be given priority. The bill applies prospectively and may not have any effect on any first mortgage or deed of trust on a condominium unit that is recorded before the bill's October 1, 2019 effective date.

Fiscal Summary

State Effect: The bill is not anticipated to affect State finances or operations.

Local Effect: The bill is not anticipated to affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law: Generally, in the case of a foreclosure of a mortgage or deed of trust on a unit in a condominium, a portion of the condominium's liens on the unit must have priority over a claim of the holder of a first mortgage or a first deed of trust that is recorded against the unit on or after October 1, 2011. The portion of the condominium's liens that has priority consists *only* of up to four months, or the equivalent of four months, of unpaid regular assessments for common expenses that are levied by the condominium; that portion

may not include (1) interest; (2) costs of collection; (3) late charges; (4) fines; (5) attorney's fees; (6) special assessments; or (7) any other costs or sums due under the declaration or bylaws of the condominium or as specified in any contract, law, or court order. Further, the portion of the liens that has priority may not exceed a maximum of \$1,200.

With specified exceptions, at the request of the holder of a first mortgage or first deed of trust on a unit in a condominium, the governing body must provide to the holder written information about the portion of any lien filed under the Maryland Contract Lien Act (MCLA) that has priority, including information that is sufficient to allow the holder to determine the basis for the portion of the lien that has priority. If the governing body of the condominium fails to provide written information to the holder within 30 days after the filing of the statement of lien among the land records of each county in which the condominium is located, the portion of the condominium's liens does not have priority.

In order to recover any unpaid assessment or charge, in addition to any other remedies available at law, a condominium may enforce the payment of the assessments and charges provided in the governing documents by the imposition of a lien on a unit in accordance with MCLA. Generally, under MCLA, a person seeking to create a lien as a result of a breach of contract must give written notice, within 2 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, as of December 2018, 2,691 condominium regimes have been registered with the State. The State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 229,859 condominium units in the State as of December 2018. For more information on condominiums, a type of common ownership community, see the **Appendix – Common Ownership Communities**.

Additional Information

Prior Introductions: None.

Cross File: HB 250 (Delegate Stewart, *et al.*) - Environment and Transportation.

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

Fiscal Note History: First Reader - February 10, 2019
md/kdm

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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). SOS registration records show that, as of December 2018, 2,691 condominium regimes have been registered with the State.¹ The State Department of Assessments and Taxation, which maintains

¹ This number is lower than the 2,875 condominium regimes reported by SOS in 2017. The inflated number was the result of a miscalculation, and the revised number does not reflect a decrease in the number of regimes.

assessment records based on class of property, reports that there are 229,859 condominium units in the State as of December 2018. The Foundation for Community Association Research estimated that there were 6,750 community associations in the State in 2017.

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 2017:

- 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 condominiums and HOAs to amend their governing documents (Chapters 144 and 145 of 2008 and Chapter 480 of 2017);
- 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);
- 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); and
- altered the contents of a required disclosure for the resale of a condominium unit, authorized the assessment of specified fees by a condominium council of unit owners or an HOA for providing specified information, and required the Department of Housing and Community Development to adjust the maximum authorized fees every two years (Chapter 735 of 2016 and Chapter 817 of 2017).

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 pertain to reserves of COCs, an insurance deductible cap for unit owners, and the uniformity of COC depository requirements.