



Maryland Legislative Action Committee
The Legislative Voice of Maryland Community Association Homeowners

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251 House Office Building
6 Bladen Street
Annapolis, Maryland 21401

Re: HB803
Residential Property Foreclosure
Filing and Adjudication of Counterclaims

Position: Oppose

Dear Del. Barve & Members of the Environment and Transportation Committee:

This letter is submitted on behalf of the Maryland Legislative Action Committee (“MD-LAC”) of the Community Associations Institute (“CAI”). CAI represents individuals and professionals who reside in or work with more than 6,200 community associations (condominiums, homeowners’ associations, and cooperatives) located throughout the State of Maryland.

We are writing in opposition to HB803, which would allow a mortgagor or grantor to file a counterclaim within fifteen (15) days following the date a postfile mediation is held, or if no postfile mediation is held, the date the Office of Administrative hearings files its report with the court. We are opposed to this legislation because it will make it more difficult for community associations to collect delinquent assessments from their homeowners.

Community associations are responsible for the operation and upkeep of the common areas, amenities, and facilities that are shared by all of their residents. These may include utilities, private roads, sidewalks, street lighting, parking facilities, stormwater management facilities, street trees and landscaping, street signs, lobbies, elevators, clubhouses, pools, tennis courts, irrigation systems, furniture, etc., depending on the community. The community associations collect annual assessments from their homeowners in order to pay for the costs of operating and maintaining these common areas, amenities, and facilities. Each homeowner agrees to pay these assessments at the time the owner purchases the home, pursuant to covenants that were recorded by the developer of the community among the land records of the county where the home is located. The HOA relies on all homeowners paying their assessments in full and

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on time to have enough money to pay for the operating, upkeep and maintenance of its common areas, amenities and facilities. If even one member of the community association does not pay their dues, the community association's budget falls short. If multiple homeowners fail to pay their assessments, it may force the association to levy additional "special assessments" against every homeowner to make up the shortage. This is unfair to the majority of the homeowners to have to make up for the neglect of a few.

The community association's covenants make the payment of assessments a personal obligation of the homeowner and also provides a lien against the homeowner's property in favor of the association. The governing bodies of community associations (usually a board of directors) have the legal duty to collect these assessments as required by law and the covenants. When a homeowner fails to pay assessments, the association must enforce the covenants by hiring legal counsel to collect the delinquent assessments. The association's counsel will file a statement of lien against the property and if the delinquent owner continues to fail to pay their assessments, the association can choose to foreclose against the lien on the property. This is usually an association's last resort after several months or years of collection attempts, which often include several notices, filing liens against the property, and suing the delinquent owner personally and not being able to collect on a judgment. Community associations may end up spending thousands of dollars trying to collect delinquent assessments, which oftentimes are not recovered from the delinquent owner.

A community association's covenants may be considered a mortgage for purposes of residential property foreclosures under Title 7 of the Real Property Article of the Maryland Code, and the procedures provided in HB803 would be applicable to a foreclosure by a community association's attorney. The proposed amendment to Section 7-105.1 to allow a delinquent owner to file a counterclaim in the foreclosure proceedings would further delay an already lengthy foreclosure process and make it more costly and more difficult for an association to collect assessments from a delinquent homeowner. Moreover, a delinquent owner rarely has any legal defense for their nonpayment of assessments, much less the basis for a counterclaim against the association. Nonetheless, the foreclosure process already provides the debtor with the ability to stay the foreclosure action and/or to pursue any remedies or legal defenses available to such debtor, making the addition of the language in this Bill which authorizes the debtor to file a counterclaim unnecessary and harmful to community associations.

We are available to answer any questions the Committee Members may have. Please do not hesitate to contact Lisa Harris Jones, CAI MD-LAC lobbyist, at 410-366-1500 or by email at lisa.jones@mdlobbyist.com or Steven Randol, CAI MD-LAC Chair, by email at srandol@pineyorchard.com, or Judyann Lee, Member of the MD-LAC, at 240-778-2308, or by email at jlee@mcmillanmetro.com.

Sincerely,

Steven Randol

Steven Randol
Chair, CAI MD-LAC

Judyann Lee

Judyann Lee
Member, CAI MD-LAC

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