

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 266 (Delegate Rey, *et al.*)
Environment and Transportation

Condominiums - Lien Priority - Unpaid Water and Sewer Charges

This bill specifies that, on or after October 1, 2018, in the event of a foreclosure of a mortgage or deed of trust on a unit in a condominium, the portion of the condominium's liens on a unit that has priority over a claim of the holder of a first mortgage or first deed of trust consists *solely* of any water or sewer charges unpaid by the unit owner and owed to the condominium.

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 overall, as discussed below.

Analysis

Bill Summary: If the water and sewer charges in a condominium are not individually metered, the portion of the condominium's liens that has priority may not exceed the amount that might otherwise be owed by the unit owner based on an individual metering of the owner's unit.

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 has 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 of unpaid regular assessments for common expenses

levied by the condominium, and it 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. The total amount with priority may not exceed \$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.

Maryland Contract Lien Act

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 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 2017, there were 2,875 condominium regimes in the State, and the State Department of Assessments and Taxation reports that there were 225,947 condominium units. For more information on condominiums, see the **Appendix – Common Ownership Communities**.

Small Business Effect: While the overall effect on small businesses from the bill is anticipated to be minimal, there is the potential for meaningful impact on condominiums that qualify as small businesses due to the bill's restrictions on what portion of the condominium's liens may be given priority.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mm/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). Statewide for 2017, the SOS registration records show that there are 2,875 condominium regimes, and the State Department of Assessments and Taxation, which maintains assessment records based on class of property, reports that there are 225,947 condominium units. The Foundation for Community Association Research estimated that there were 6,700 community associations in the State in 2016.

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.