

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 842

(Delegate Conway, *et al.*)

Environmental Matters

Judicial Proceedings

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**Condominiums and Homeowners Associations - Security Deposits and Priority of Liens - "The Residential Association Sustainability Act of 2010"**

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The bill amends the Maryland Condominium Act and the Maryland Homeowners Association Act to state that, in the event of a foreclosure of a deed of trust, mortgage instrument, or an encumbrance recorded before a condominium's or homeowners association's lien, the respective lien has priority in an amount of up to four months of unpaid assessments and up to \$500 of related interest and fees. The bill further requires a board of directors of a condominium council of unit owners to impose a security deposit on each unit owner in the amount of two months of common assessments, charges, fees, and prorated common utilities and establishes related procedures and requirements.

The provisions of the bill are void under specified circumstances. The security deposit provisions apply only prospectively to an owner who purchases a condominium unit after October 1, 2010.

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**Fiscal Summary**

**State Effect:** If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources. No effect on revenues.

**Local Effect:** The bill does not directly affect local finances or operations.

**Small Business Effect:** Potential minimal.

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## Analysis

**Bill Summary:** If the board of directors of a condominium council of unit owners imposes a security deposit in excess of what is established in the bill, a unit owner may recover up to three times the extra amount charged and reasonable attorney's fees. Also, if the board of directors fails to return any part of the security deposit plus accrued interest, within 45 days after termination of the unit owner's legal title to the unit, the unit owner has a cause of action to recover up to three times of the withheld amount and reasonable attorney's fees.

The bill amends the Maryland Homeowners Association Act to state that, as provided in the declaration of a homeowners association, a lot owner is liable for all association assessments and charges that come due while the lot owner owns the lot. In addition to any other available remedies, the governing body of a homeowners association can enforce the payment of unpaid association assessments and charges provided in the declaration by imposing a lien on a lot under the Maryland Contract Lien Act (MCLA).

The bill does not limit or affect the priority of (1) a mortgage or deed of trust recorded against a unit or lot held by or for the benefit of the State, a unit of State government, or an instrumentality of the State; or (2) a lien imposed in accordance with a declaration of a homeowners association that provides for a first priority lien. The priority lien provisions of the bill are void under specified circumstances. Specifically, if the Federal Home Loan Mortgage Corporation (Freddie Mac) or the Federal National Mortgage Association (Fannie Mae) cease to purchase first mortgages on condominiums or lots in developments with homeowners associations in this State, the priority lien provisions of the bill that apply to condominiums or homeowners' lots are of no force or effect. The Secretary of State must notify the Department of Legislative Services within five days of determining that this contingency has been met.

**Current Law:** Under the Maryland Condominium Act, a council of unit owners may impose a lien on a unit in accordance with MCLA to recover unpaid assessments (with interest), late charges, collection costs, and reasonable attorney's fees. A deficiency lawsuit following a foreclosure along with a lawsuit to recover a money judgment for unpaid assessments may be maintained in the same proceeding without waiving the right to impose a lien under MCLA. However, a homeowners association, under the Maryland Homeowners Association Act, is not specifically authorized to impose a lien for unpaid assessments.

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.

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 three years following recordation of the lien statement. Generally, liens against real property take priority in the order in which they are recorded.

**Background:** The bill is intended to render buyers of condominium units or homeowners association lots through foreclosure (other than banks and others who are mortgage holders) liable for up to four months of any assessments or dues that were not paid by the previous owner prior to foreclosure.

Chapter 469 of 2005 established the Task Force on Common Ownership Communities. The full task force met 10 times during 2006 and conducted five public hearings, at which public comments were solicited. In addition, subcommittees comprising task force members met several times. The task force made several recommendations on various topics in its final report, issued December 2006. This bill, as introduced, reflected one of those recommendations, as applied to foreclosure sales. The task force reported that many communities faced increased financial burdens due to difficulty in collecting unpaid assessments.

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### Additional Information

**Prior Introductions:** Similar bills were introduced in 2008 and 2009. HB 682 of 2008 and HB 74 of 2009 both received unfavorable reports from the House Environmental Matters Committee. A cross file, SB 874 of 2008, was heard by the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2010  
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