

JULY 2013

Community Associations Newsletter

2013 Maryland Legislative Update

By: Peter S. Philbin and Douglas S. Levy

During its 2013 legislative session, the Maryland General Assembly introduced a number of bills affecting community associations. However, only a relatively small number of the bills were enacted into law.

Notably, the General Assembly did not reach consensus on two prominent issues that had received quite a bit of attention recently: regulation of licensure for management companies and liability for pit bulls. Pit bulls are still considered an inherent danger and liability could still extend to community associations for attacks that occur on common areas (see our previous client alerts on this topic). It remains possible that the legislature could revisit both those issues next year.

Below is a review of the bills passed by the Maryland General Assembly this year that will have an impact on condominium and homeowners associations. Unless noted otherwise, all bills will become effective on October 1, 2013.

Lien Foreclosure - HB 286 and SB 161

Perhaps the most controversial bills affecting community associations to emerge from the 2013 legislative session were HB 286 and SB 161. The bills amend § 14-204 of the Maryland Contract Lien Act to provide that a condominium association or homeowners association may foreclose on a lien only if the damages secured by the lien consist solely of delinquent periodic or special assessments and reasonable attorney's fees and costs. However, the statute explicitly states that such attorney's fees and costs must be directly related to the filing of the lien and must not exceed the amount of delinquent assessments that are secured by the lien. Moreover, the statute provides that the lien being foreclosed upon by the association cannot include any fines assessed against the property or any attorney's fees related to the recovery of such fines.

The revisions to the statute apply only to those liens recorded on or after October 1, 2013. Additionally, the revised statute does not impact an association's ability to file a lawsuit against the delinquent owner for the unpaid sums.

The original version of the bill was specifically drafted to prohibit lien foreclosures that involved "fines" imposed by a community association. That goal was understandable and not problematic since most associations (at least the ones represented by our firm) never seek foreclosure for liens composed only of "fines," but rather for liens composed of delinquent annual or special assessments. However, as often happens during the legislative session, the original bill was amended so that the original intent was swallowed.

There are a number of problems with the new law:

- It throws into question exactly what an association may seek in foreclosure besides "periodic or special" assessments (i.e., are late fees, interest, etc., recoverable?).
- It is inconsistent with other existing provisions in the Maryland Contract Lien Act and the Maryland Condominium Act that permit an association's lien to secure sums allowed under the association's governing documents.
- It raises questions regarding whether the attorney's fees expended outside of "filing the lien" (i.e., the costs of filing a Circuit Court petition, arranging for the foreclosure sale, conducting post-sale accountings, etc.) will be recoverable.

Ultimately, the changes may make the foreclosure remedy a less attractive option for associations in light of the arguable limitations on the amount of money the association could recover from the foreclosure process. This will be especially true for associations that tend to have smaller annual assessments.

Because the changes to the statute apply only to liens recorded on or after October 1, 2013, the impact of the revisions may not be felt immediately. Strong efforts to revise/rescind the law will be made during the 2014 General Assembly and we will enlist our friends' and clients' support, so stay tuned.

Closed Sessions of Board Meetings - HB 388

HB 388 amends § 11-109.1 of the Maryland Condominium Act by expanding the purposes for which a meeting of the board of directors may be held in closed session. Under the amended statute, condominium boards of directors may now hold a meeting in closed session if the purpose involves "*consideration of the terms or conditions of a business transaction in the negotiation stage if the disclosure could adversely affect the economic interests of the council of unit owners.*"

The Maryland Homeowners Association Act already contains such a provision for allowing boards to discuss contracts in closed session.

Tenants/Utilities - HB 1090 and SB 849

HB 1090 and SB 849 are intended to help protect tenants from losing utility services when the tenant's landlord fails to pay his or her utility bills. The new law provides certain rights to tenants by enabling the tenant to prevent the termination of a utility service provided to the dwelling unit when the utility service is subject to the threat of termination or is actually terminated. This statute does not take effect until January 1, 2014.

Eviction of Occupants Post-Foreclosure - HB 1308 and SB 642

The passage of these two bills was intended to supersede the ruling of the Maryland Court of Appeals in *Nickens v. Mount Vernon Realty Group, et al.*, 429 Md. 53 (2012), and help prevent the non-judicial eviction of residents in certain circumstances. The statute, which took effect on June 1, 2013, provides that a party claiming the right to possession of a residential property may not take possession or threaten to take possession of the property from a protected resident by locking the resident out of the property, engaging in willful diminution of services to the resident (i.e., intentionally interrupting or causing the interruption of heat, electricity, gas, running water or hot water to the property), or taking any other action that deprives the resident of actual possession. A party claiming the right to possession may take possession of the property from the resident only in accordance with a writ of possession issued by a court and executed by a sheriff or constable.

However, a party claiming the right to possession may use non-judicial self-help in order to take possession if the party: 1) reasonably believes the resident has abandoned or surrendered possession of the property based on a reasonable inquiry into the occupancy status of the property; 2) provides notice in accordance with the notice provisions established in the statute; and 3) receives no responsive communication to that notice within 15 days after the later of posting or mailing the notice as required by the statute. Thereafter, if the party claiming the right to possession reasonably believes, based on a reasonable inquiry into the occupancy status, that all residents have abandoned or surrendered possession of the property, the party may post (and mail) a notice on the front door of the residence advising any occupants of the eviction and providing certain requisite information to the occupants in the notice.

The statute further provides that if a party claiming possession to a property is found to have violated the statutory requirements, the resident may recover possession of the property (if no other person then resides in the property), actual damages and reasonable attorney's fees and costs. Because the statute also applies to landlord-tenant situations, associations that own and lease properties within their communities should be aware of this statute and its requirements for repossessing the leased premises.

Smoke Detectors - HB 1413 and SB 969

HB 1413 and SB 969, which went into effect on July 1, 2013, update smoke detector requirements for all residences. Under the law, all properties constructed after July 1, 2013 are required to have battery-sealed, 10-year smoke detectors installed in compliance with new code regulations. Some nice features of the new smoke detectors are that the battery needs to be replaced only once every 10 years and the detectors have a silence/hush button that allows the device to be silenced without having to remove the battery. Although the new laws do not apply retroactively, all existing residential properties are required to upgrade to the new smoke detector versions by January 1, 2018.

On a practical level, the biggest impact of this new law will be on condominium associations and the upgrades they will need to begin making to smoke detectors installed in the common elements. As for smoke detectors installed inside condominium units, townhomes and single-family homes, the lot owner or unit owner remains responsible for the installation, repair, maintenance and replacement of smoke alarms located within the unit or home. Additionally, unit owners and homeowners are now required to disclose whether their smoke detectors are more than 10 years old and whether they have the new 10-year sealed battery, and such notices have been added to the Residential Property Disclosure and Disclaimer Statement forms. Lastly, boards and managers are encouraged to contact their local fire marshal to help determine where smoke detector upgrades are needed in the common elements or common areas.

Refinance of First Mortgage - SB 199

This new law authorizes a mortgagor or grantor to refinance the debt secured by a first mortgage or deed of trust without obtaining permission from certain junior lien holders under certain circumstances. In essence, a refinance mortgage that meets the requirements of the statute will have, upon recordation, the same lien priority as the mortgage or deed of trust that it replaces. However, because the term “junior lien” does *not* include a judgment lien or a lien filed under the Maryland Contract Lien Act, most condominium and homeowner association liens will not be impacted by this new law. Additionally, the statute applies prospectively only and thus does not apply to any mortgage refinances that occur prior to October 1, 2013.

Recycling - SB 1049

This new law, which applies to condominium associations that contain 10 or more units, provides that on or before October 1, 2014, each condominium association must provide for recycling for its residents, including the collection and removal of recyclable materials. The law further authorizes counties to require condominium associations that provide recycling to report its recycling activities to the county in a manner as determined by the county. The recycling must be carried out in accordance with the recycling plan for the county in which the condominium

association is located. Furthermore, any person who violates the statute is subject to a civil penalty not to exceed \$50.00 for each day that the violation exists. Notably, the law specifically permits counties and local governments to pass and enforce more stringent recycling requirements.

If you have any questions regarding these new laws, please feel free to contact one of the attorneys in our Community Associations department.