

*Spring 2011*

## *Community Association LawLetter*

### **2011 MARYLAND LEGISLATIVE UPDATE**

During the 2011 Legislative Session, the Maryland General Assembly considered dozens of bills concerning condominium and homeowner associations. Most were defeated in committee. However, several bills were passed which impact governance of condominium and homeowner associations.

#### **Priority Assessment Lien**

With only hours left before the end of the 2011 Legislative Session on April 11, the Maryland General Assembly gave final approval to Priority Assessment Lien legislation to aid condominiums and homeowner associations when there is a lender foreclosure (HB 1246). After the priority lien bill was passed by a divided vote in the House of Delegates (91-43), it received unanimous Senate approval (46-0).

**The bill allows a 4-month priority up to \$1,200 for condominium and homeowner association assessments.** When there is a lender foreclosure sale, up to \$1,200 of assessments will be paid **before** the mortgage debt is paid. The new law applies to loans obtained after October 1, 2011.

Throughout the 2011 legislative session, Tom Schild and other members of the Community Associations Institute's Maryland Legislative Action Committee (CAI) met with legislators, submitted written testimony and

attended committee hearings in support of the priority lien bill. Enactment of HB 1246 caps a 15-year effort by CAI and community associations throughout Maryland to establish a statutory priority for assessment liens.

As originally introduced, the lien priority would be for 6 months plus late fees and collection costs. The legislation was vigorously opposed by the Maryland Bankers Association until early April 2011. Faced with active support from House and Senate legislative committee leaders for a lien priority for association assessments, the bankers group agreed to a 4-month lien priority up to \$1,200 of assessments.

The priority lien bill also establishes new notice procedures as a condition for establishing the lien priority. On request of a lender, the association must inform the lender of the amount of lien priority. This information must also be stated on the recorded lien.

In 2010, there were over 10,600 lender foreclosure sales in Maryland, according to the Maryland Department of Housing and Community Development. For every 1,000 foreclosures, condos and HOAs throughout Maryland will be able to recover up to \$1.2 million of unpaid assessments. **Over time, the priority lien law will provide tens of millions of dollars to Maryland associations.**

(Cont'd on page 2)

## MARYLAND LEGISLATIVE UPDATE (Cont'd from page 1)

### Condo Unit Owner Insurance

Also enacted was a bill to make it easier to amend condominium bylaws to require unit owners to purchase insurance to cover damage to a unit which is not covered by the master insurance policy (HB 679).

The Maryland Condominium Act was amended in 2009 to require a unit owner to pay up to \$5,000 of the insurance deductible under the master policy where the cause of damage – such as water or fire – originated in the owner's unit. Where such damage to the common elements or another unit occurs, the condominium and other affected owners often have difficulty collecting the deductible amount from the owner of the unit where the cause originated if the owner does not have an individual unit insurance policy -- known as an HO-6 policy.

HB 679 helps condominium associations by **allowing amendments to the condominium bylaws to require unit owners to purchase an individual HO-6 insurance policy with the approval of 51 percent of the ownership votes.** This is less than the usual 66 2/3 vote required to amend condominium bylaws.

The new law leaves it to each condominium to decide whether to require individual HO-6 policies, but encourages condominium to require such policies by making it easier to amend the bylaws.

### Association Governance

Legislation was passed to allow owners to dispute **homeowner association election procedures** by filing a complaint with the Maryland Attorney General's Consumer Protection Division (HB 99/SB 532).

A bill to ease the foreclosure procedures applicable to condominium and homeowner association liens was passed by the House of Delegates but killed by the Senate Committee which considered the bill (HB 367).

Several other bills regarding association governance were introduced but **defeated by the legislative committee which reviewed the bill.** These include bills concerning association fines and assessments (HB 100); association enforcement powers and procedures (HB 395 and HB 984/SB 266); developer transition (HB 1339 and HB 995); and assessments to comply with government requirements (HB 827/SB 548).

### Manager Licensing

Another hot topic during the 2011 legislative session was community association manager licensing. Several bills were introduced to require community association managers to be licensed by, or registered with, the State of Maryland (HB 537/HB 592/HB 942 and SB 824). The manager licensing bills proposed various eligibility criteria to obtain a license based upon a person's experience and knowledge of community association governance. A license fee would also be required.

Although none of these bills were enacted this year, **further consideration of community association manager licensing is expected again in 2012.**

Separately, a bill was proposed to require management companies to obtain fidelity insurance to protect associations against misappropriation of funds (SB 264). And, a bill was introduced to require community association management contracts to include specified provisions regarding termination of the contract; handling of association funds; association records and other matters (HB 722).

## FHA CONDO LOANS MAY SPARK HOUSING RECOVERY

With private lenders unable or unwilling to lend, the popularity of FHA-insured loans has increased significantly in the past few years. FHA-insured loans were less than 2 percent of all residential loans in 2006 and now account for nearly 40 percent.

FHA loans offer borrowers lower down payments, lower closing costs, and easier credit qualifications than conventional loans. Conventional loans now often require a down payment of 20 percent. For FHA loans, only a 3.5 percent down payment is needed. And, underwriting guidelines for FHA loans offer greater flexibility for evaluating borrowers based upon income, assets, and credit scores.

The availability of FHA loans may provide the much needed spark for a housing recovery.

### FHA-Approved Condominiums

The FHA requires that a condominium project be "approved" in order for a borrower to obtain an FHA-insured loan on an individual condominium unit. Existing FHA approvals expire on a rolling basis through September 2011. The expiration date depends on when the original FHA approval was obtained.

A condominium association can apply to the FHA directly to become an FHA-approved condominium. The current requirements for a condominium to qualify for FHA loans include:

- No more than 15 percent of the units can be in arrears in payment of condominium assessments for more than 30 days;
- At least 50 percent of the condominium units must be owner-occupied;
- No more than 10 percent of the units may be owned by one investor;

- At least 10 percent of the annual budget must be for funding replacement reserves for capital expenditures and deferred maintenance, or there must be a reserve study within the past 12 months to assess the financial stability of the condominium;
- Fidelity insurance in an amount of at least 3 months assessments plus reserves is required;
- No more than 25 percent of the unit floor area may be used for commercial purposes;
- No more than 50 percent of the units in a condominium may have FHA-insured loans.

The FHA will also consider the special assessment and litigation history of the condominium.



Although the FHA standards require at least 50 percent of units to be owner-occupied, FHA practice until recently was to deny FHA approval if a condominium has a cap on the number of units allowed to be leased. In mid-March 2011, the FHA issued new guidance to allow limits on the number of leased units and to allow a maximum length of leases.

Further clarification and refinement of the FHA condominium standards and application process are in the works.

(Cont'd on page 4)

**FHA CONDO LOANS**  
(Cont'd from page 3)

The revised guidance for obtaining FHA condominium approval is expected by June 2011. Look for changes regarding required documentation and certifications.

FHA condominium approval under the new eligibility criteria is good for 2 years. However, loan-level certifications are also required when an owner or purchaser applies for an FHA loan.

**Benefits of FHA Approval**

A condominium which has FHA approval benefits by enabling owners to re-finance to an FHA loan and by making condominium units available to more potential

purchasers. Additionally, purchasers may find an FHA-approved condominium preferable since the condominium has met FHA standards for financial stability.

With conventional loans now requiring up to 20 percent down payment and tougher credit and income standards, FHA financing may be the only option for many purchasers and owners who want to re-finance. Individual FHA-insured condominium loans are available only if the entire condominium is FHA-approved.

For additional information and updates regarding FHA condominium approvals, visit [schildlaw.com](http://schildlaw.com).

**Help Us – Help You!**

To receive future issues of the Community Association LawLetter by email, please send your email address to [law@schildlaw.com](mailto:law@schildlaw.com).

For updates on topics which impact governance of condos, HOAs and co-ops, check our website – [schildlaw.com](http://schildlaw.com).

THOMAS SCHILD LAW GROUP, LLC represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. The firm advises community associations on all aspects of association operations including covenant enforcement, assessment collection, developer warranties, maintenance and management contracts, and association document interpretation. Thomas Schild Law Group also represents community associations in court litigation and administrative hearings.

\*\*\* Copyright 2011 Thomas Schild Law Group, LLC\*\*\*

The Thomas Schild Law Group Community Association LawLetter includes general information and should not be relied on with respect to any specific facts and circumstances. Readers are encouraged to consult an attorney as to the current law applicable to particular situations.