

*Spring 2012*

## *Community Association LawLetter*

### **2012 MARYLAND LEGISLATIVE SESSION ENDS WITH LIMITED ACTION ON CONDO AND HOA LEGISLATION**

The Maryland General Assembly ended its 2012 session in early April without enacting proposed legislation on community association manager licensing, developer to homeowner transition or HOA rules adoption and enforcement. After considering dozens of bills regarding governance of condominium and homeowner associations, only a few bills passed.

As a member of the Maryland Legislative Action Committee of the Community Associations Institute, Thomas Schild testified at legislative hearings, prepared written position statements and met with legislators on many of these bills.

#### **New Laws Enacted**

The Maryland Condominium Act was amended to authorize condo associations to gain access to units to investigate damage where necessary for public safety or to prevent damage to other portions of the condominium (HB 126). Also enacted was a bill to require collection and removal of recyclable material by condominium and apartment buildings with

10 or more units beginning in October 2014 (HB 1).

Legislation was approved to permit Prince George's County to enact an ordinance to impose and collect a fee for providing administrative hearing services for the resolution of disputes involving common interest communities (HB 906).

#### **Other Legislation Considered**

Many other bills were proposed but not passed by the Maryland legislature.

**Developer Warranties.** Both the Senate and House of Delegates passed a bill to prohibit condominium developers from shortening the statute of limitations on condo unit warranties in sales contracts. It also would bar developers from including provisions in condo bylaws to require unit owner approval for a condo board to pursue legal claims by litigation or arbitration. However, there were differences in the two versions passed and the bill died on the last day of the legislative session (HB 740/SB 725).

**Manager Licensing.** Legislation to regulate community association managers has been proposed for the past 4 years. The

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**2012 MARYLAND LEGISLATIVE SESSION**  
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bill considered this year would have established a State Board of Common Interest Community Managers to license and regulate managers. Each manager would be required to obtain a state-issued license to act on behalf of a Maryland condo, HOA or co-op in its business, financial, legal or other transactions such as negotiating contracts, collecting and disbursing association funds, preparing budgets and financial reports, and enforcing association governing documents.

The proposed Maryland Common Interest Community Managers Act was defeated by a Senate Committee but may be introduced again in 2013 (HB 433/SB 372).



Bills to require management contracts to include certain provisions (HB 352) and to require community association management companies to obtain fidelity insurance (HB 741/SB 74) also died in committee.

**Resale Disclosures.** Legislation regarding resale disclosures was also considered but not enacted. One bill would have required the seller of a residential condominium to provide resale disclosure documents without charge to the purchaser. It also would have required disclosure documents to be provided to the purchaser who acquires a condo unit at a foreclosure sale (HB 75/SB 1015). Another bill proposed to require a condominium association to identify in a resale certificate any "potential special assessment" which

has been mentioned in agendas, minutes or mailings during the prior 12 months. Current law requires that only approved special assessments must be disclosed.

**Assessments.** A bill to specify how owner payments must be applied to delinquent assessments and related charges was passed by the Senate but killed by a House Committee. As passed by the Senate, there was no provision for applying payment to attorneys fees and collection costs incurred by the condominium or homeowner association (HB 77/SB 78).

Legislation was also proposed to establish a special court procedure for attaching rent owed to a delinquent condo unit owner (HB 850/SB 685). Under current law, rent payments can be attached to collect any court judgment.

**MARYLAND FORECLOSURE LAWS  
REVISED.....AGAIN**

Maryland residential foreclosure laws have been revised again for the fifth consecutive year. Previously, changes were made to provide homeowners with more time, additional notices, and an opportunity for mediation before a foreclosure sale can occur.

For condominiums and homeowner associations, newly enacted mediation procedures could further delay lender foreclosure sales. But, new post-sale notice requirements could help associations track foreclosure sales and collect post-sale assessments.

Maryland Governor Martin O'Malley last year appointed Maryland Foreclosure Task Force to examine recent home

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**MARYLAND FORECLOSURE LAWS  
REVISED****(Cont'd from page 2)**

foreclosure trends in Maryland and to make recommendations regarding state government policies to aid homeowners and neighborhoods impacted by home foreclosures.

**Foreclosure Mediation**

Adopting a recommendation of the January 2012 Foreclosure Task Force report, the Maryland General Assembly amended the foreclosure laws to allow a lender and homeowner to participate in "pre-file mediation" with a government mediator before a foreclosure court suit is filed. To participate in such mediation, the owner must receive housing counseling services from a non-profit organization or government agency. Where there is "pre-file mediation", the homeowner will not be entitled to additional mediation after a foreclosure suit is filed (HB 1374).



To facilitate foreclosure of vacant residential properties, foreclosure notice and mediation requirements will no longer apply to such properties.

**Foreclosed Property Registry**

Separately, a bill to establish a Foreclosed Property Registry was enacted. A foreclosure purchaser will be required to notify the Maryland Department of Labor, Licensing, and Regulation (DLLR) after a sale has occurred and again after a deed is

recorded. This will allow government agencies to better locate the foreclosure purchaser after the sale until the property is formally transferred by recording a new deed in the land records.

The purchaser information filed with the Foreclosed Property Registry will be available only to DLLR and local government officials. Those agencies may provide the information to a person who lives on the same block as the foreclosed property and to a homeowners association or condominium where the property is located (HB 1373).

**Post-sale Notice**

Additionally, the foreclosure purchaser of residential property will now be required to provide a copy of the court ratification order to the tax office for the county where the foreclosed property is located. This is intended to enable state and local governments to collect the correct property tax due for property which is no longer owner-occupied from the date of foreclosure sale regardless of when the deed is recorded (SB 123).

**FEDERAL AGENCY OKAYS  
ASSOCIATION TRANSFER FEES**

The Federal Housing Finance Agency (FHFA) which oversees Fannie Mae and Freddie Mac has approved the continued use of transfer fees charged by condominiums, homeowner associations, and housing co-ops. Transfer fees are established by covenants which require an owner to pay a fixed amount or a percentage of the sales price to a third party when the property is sold.

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**ASSOCIATION TRANSFER FEES**  
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According to the Community Associations Institute, nearly 50 percent of all community associations have transfer fees. These fees provide an additional source of revenue for associations which helps defray operating and capital improvement expenses.

Previously, the FHFA has proposed that all transfer fees be prohibited where the owner has a mortgage purchased by Fannie Mae or Freddie Mac. However, a new FHFA rule, grandfathers all transfer fees adopted

prior to February 8, 2011. It also allows new transfer fees adopted since that time if the fee is used for the exclusive and direct benefit of the property upon which the fee is levied. This includes use of transfer fees for the "acquisition, improvement, administration and maintenance" of common property of the condominium, HOA or co-op.

The new FHFA regulation prohibits transfer fees which are paid to the original developer or investors who purchase developer rights to receive transfer fees.

**MARYLAND CONDOMINIUM & HOA LAW BLOG**

*Legal News & Trends for Maryland Community Associations*

Thomas Schild Law Group has launched an online Law Blog for managers, board members, and homeowners to keep current on law, legislation, and news affecting Maryland condos, HOAs and co-ops.

**Free to Subscribe!**

Link to the Law Blog at  
**[schildlaw.com](http://schildlaw.com) or [marylandcondominiumlaw.net](http://marylandcondominiumlaw.net)**

**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.

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