

Fall 2010

Community Association LawLetter

ASSOCIATIONS SUFFER FROM LENDER FORECLOSURE DELAYS

There is no end in sight to the continuing rise in delinquent assessments which most community associations will face in 2011. Owners who are not paying the mortgage typically are also not paying the association assessments.

Delay in Lender Foreclosures

The pace of lender foreclosures in Maryland slowed after a new Maryland foreclosure mediation law went into effect in July 2010. Before a lender can sell a home at a foreclosure sale, the owner must now be allowed an opportunity for mediation to discuss alternatives to foreclosure such as loan modification or short sale.

The foreclosure mediation process can delay foreclosures by 60 to 90 days. This is in addition to the several month delay due to foreclosure notices required by the 2008 changes in the Maryland foreclosure laws.

Foreclosures are also being delayed by lenders who are re-examining the accuracy of loan and foreclosure documents in response to legal challenges and government criticism of lender foreclosure procedures.

In some instances, lenders favor “short sales” over foreclosures to allow the owner to sell the property directly with the lender accepting less than the amount owed on the mortgage. In a short sale, the owner may also ask the association to accept less than the full amount owed for assessments and related charges. If a short sale is unsuccessful, the lender then proceeds with a foreclosure sale.

Plan for More Delinquent Assessments

Faced with delays in lender foreclosures and owner requests to “short” the amount paid to the association, boards of directors should plan for continued assessment delinquencies. Every community association board should promptly take the following actions:

- Maintain clear and complete owner account records showing all charges and payments.
- Review the association governing documents and applicable statutes to determine the remedies for collection of assessments, such as liens or court suit.
- Implement the available remedies by adopting a collection policy which clearly states the procedures to be followed to collect delinquent assessments.

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- Notify owners of the association collection policy, including applicable late fees, interest and collection costs which delinquent owners will incur.
- Take prompt collection action against delinquent owners, such as filing liens against their property or suit against them personally.
- Review notices regarding lender foreclosures and homeowner bankruptcies and take appropriate action.
- Designate a person to consult with the association attorney and act on owner short sale and payment plan proposals.
- Amend the association governing documents, where needed, to provide for late fees, interest, collection costs and attorney fees to be assessed against delinquent owners and to permit acceleration of payment of assessments.
- Amend the governing documents to deny use of recreation facilities and other common areas by owners who are delinquent in payment of assessments.



Although association boards cannot prevent delinquent association assessments, planning ahead now to address the expected increase in the number of delinquent owners can cushion the financial impact on the association in 2011.

MARYLAND LEGISLATIVE UPDATE

The Maryland General Assembly has enacted several new laws which impact the operation of condominiums and homeowner associations. These include:

- **Homeowner Association Annual Budgets (HB 695/SB 416).** Homeowner associations are now required to prepare and submit an annual proposed budget to owners at least 30 days prior to adoption. The new law also requires specified budget items including “reserves” and requires adoption of the budget at an open meeting. This is similar to the long-standing budget requirements of the Maryland Condominium Act.
- **Developer Warranties (HB 620/SB 597).** This new law alters the duration of implied warranties to three years on completed condominium common elements or two years after a homeowner board of directors is elected, whichever is later. It also alters the duration of implied warranties for homeowner associations to two years on completed common areas or two years after a homeowner board of directors is elected, whichever is later.
- **Clotheslines or “Right to Dry” (SB 224).** This eco-friendly law allows an owner or tenant to use a clothesline or other similar laundry drying device notwithstanding the terms in the declaration, bylaws, or other documents. The board may still adopt reasonable regulations regarding the time, placement and manner of use of clotheslines.
- **Manager Registration – Prince George’s County (HB 566).** Community association management companies which manage properties in Prince George’s County must now register with the Prince George’s County Office of Community Relations.

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These newly-enacted laws take effect October 1, 2010.

Many other bills regarding condominium and homeowner associations were considered but not adopted. These include:

- **Priority Assessment Lien (“Residential Association Sustainability Act of 2010”) (HB 842).** As introduced, this bill would have established a priority for condominium and homeowner association liens of up to 6 months of past due assessments when a lender sells a property at foreclosure sale. The House of Delegates passed a revised version of the bill to establish a 4-month lien priority coupled with a security deposit of 2-months of assessments paid to the condominium by each owner.



- **Annual Registration of Common Ownership Communities (HB 1124).** All common ownership communities would have been required to register annually with the Consumer Protection Division of the Maryland Office of Attorney General and pay an annual registration fee.
- **Reserves (HB 28/SB 345).** This bill would have required condominium and homeowner associations to conduct a reserve study of common areas at least every five years.
- **Community Manager Licensing and Regulation (HB 1300/SB 931).** A Maryland State Board of Common Interest Community Managers would have been created to license

and regulate community association managers and management companies.

- **“Free Speech” Activities (SB 212).** The proposed legislation would have invalidated restrictions on non-residents’ entry on association common areas for political activities. It also would have prevented associations from prohibiting non-commercial signs, posters, flags or banners.
- **Surcharge on Condominium Assessments (HB 460).** Condominium bylaws would be allowed to establish a ten percent assessment surcharge for rental or vacant units.
- **Rental Restrictions (SB 945).** Enforcement of a condominium or homeowner association restriction against leasing would have been disallowed until June 30, 2013.

The text and legislative history of all bills can be found on the website of the Maryland General Assembly, mlis.state.md.us.

FHA ADOPTS NEW REQUIREMENTS FOR CONDOMINIUM LOANS

The Federal Housing Administration (FHA) no longer allows “spot loans” which allowed borrowers to qualify a condominium for FHA-insured loans on an individual basis. Now the entire condominium must obtain FHA approval in order for individual condominium units to be financed with an FHA-insured loan.

A condominium which has FHA approval benefits by enabling owners to refinance 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.

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Over 50 percent of first-time homebuyers now use FHA loans. FHA loans offer borrowers lower down payments, lower closing costs, and easier credit qualifications than conventional loans. The FHA loan limit is \$729,750 in the Washington metro area and \$560,000 in the Baltimore metro area.

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 over 30 percent.

New FHA initiatives for refinanced loans and reverse mortgages may further increase demand for FHA-insured condo loans.

FHA Approval Standards

A condominium association can apply to the FHA directly to become an FHA-approved condominium. The 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;
- No more than 50 percent of the units in a condominium may have FHA insurance;
- 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.

Re-certification Requirement

Any FHA approval obtained prior to October 1, 2008 will expire on December 7, 2010. To remain eligible for FHA loans, such condominiums must obtain re-certification under the new FHA requirements.

For condominiums which received FHA approval after October 1, 2008, recertification must be obtained within 2 years after the initial approval.

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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