

# 2008 Legislative Update – Maryland

By Thomas C. Schild, ESQ. and Kathleen M. Elmore, ESQ.

It was a busy year for CAI's Maryland Legislative Action Committee (MD-LAC), which initiated three proposed bills and reviewed more than two dozen bills directly affecting community associations. Many bills sought to implement recommendations of the 2006 Maryland Task Force on Common Ownership Communities.

The MD-LAC's primary focus this year was on legislation regarding the financial stability of community associations.

## MD-LAC Initiatives

Two initiatives of the MD-LAC were passed by the Maryland General Assembly in 2008. One initiative, House Bill 646 (HB 646), addresses condominium master policy insurance deductibles. The second initiative, House Bill 645 (HB 645), regards condominium and homeowner association assessment liens. Following is a brief overview of each initiative:

**HB 646:** The amount of the condominium master policy insurance deductible that can be shifted to individual unit owners by a condominium's bylaws has been increased from \$1,000 to \$5,000. This reflects the current minimum insurance deductible typically available in condominium master insurance policies. Upon final approval by Maryland Governor Martin O'Malley, this new law will apply to casualty losses beginning October 1, 2008.

No change was made in the provisions of the Condominium Act that may require the bylaws to be amended to shift the allowable deductible amount where the cause of the damage originates in the unit. (Separately, the Maryland Court of Appeals in mid-April ruled that: 1) the Condominium Act requires a unit owner to repair all damage which occurs in the unit, and 2) the Act does not require the condominium master insurance policy to insure damage to units).

**HB 645:** The time for enforcing condominium/homeowner association assessment liens by foreclosure has been increased from three years to 12 years to correspond to the duration of a court judgment. This will aid collection of assessments on sale or refinancing since some title companies have not been requiring payment of assessment liens that could no longer be foreclosed after three years. This bill was signed by Governor O'Malley and will take effect October 1, 2008.

**HB 682:** An MD-LAC initiative regarding payment of assessment liens after a lender foreclosure did not pass. The proposed bill would have required the purchaser (other than the lender) to pay up to six months of assessments due prior to the foreclosure sale. If the lender purchases the property, that amount would be paid by the person who acquires the property from the lender.

Even though HB 682 does not establish a "priority lien" to be paid before the lender gets paid from the foreclosure sale proceeds, the bankers' trade association vigorously opposed this bill.

However, the MD-LAC was encouraged by the support of many legislators for the assessment lien bill and intends to pursue this legislation in 2009.

## Other Association Bills

The MD-LAC supported and offered amendments to bills introduced at the initiative of the Maryland Attorney General's Consumer Protection Division concerning association fidelity insurance (HB 1053/SB 588), association reserves (HB 993/SB 291), and developer to owner transition (HB 950/SB 587). These bills did not pass but are expected to be introduced again in 2009.

The fidelity bond bill would have required the board of a co-op, condominium, or homeowners' association to obtain a fidelity bond in an amount of not less than three months gross common charges covering the directors, officers, managers, and employees charged with operation and maintenance of the property. The association reserve bill would have required the developers of condominiums and homeowners' associations to pay assessments on each unit/lot owned until sold and would require a reserve study roughly once every five years. The developer transition bill would have required various procedures to be followed at the time of turnover of control to the homeowner.

In one of the busiest legislative sessions in many years, the MD-LAC offered amendments or opposed a variety of other bills on topics including association books and records (HB 42), meetings (HB 486), budgets (HB 1402), assessment lien disputes (HB 1420), property insurance coverage (HB 1496), document amendments (SB 101), solar collection systems (HB 117), and amateur radio antennas (SB 80). A bill regarding manager registration was reviewed before it was withdrawn (HB 992/SB 589). Except for the bills regarding solar restrictions and document amendments, none of these bills were enacted.

The solar panel bill provides that any restriction on use regarding land may not impose unreasonable limitations on the installation of a solar collector system. Essentially, solar panels will be allowed in any area under the exclusive use and control of the owner of the property, a situation very similar to satellite dishes.

The document amendment bill provides that any homeowners' association formed before January 1, 1960, may amend its governing documents by a vote of two-thirds or more of the total votes in the association or any lower percentage provided in the documents, whichever is less.

## Foreclosure and Mortgage Lending Reform

Several bills to reform the foreclosure process and mortgage lending practices were enacted. The foreclosure process will be extended from a minimum of 15 days to 150 days by requiring additional



Maryland Governor Martin O'Malley with State Senator Mike Miller (sitting left), Tom Shield and Kathleen Elmore (standing) at the April bill signing.


pre-sale notice and procedures (HB 365/SB 216). Also, lenders will be required to consider the ability of the borrower to repay a home mortgage loan (HB 363/SB 270). The bills were adopted as "emergency" legislation and became effective in April.

More information on these bills and MD-LAC positions can be found on the Government Affairs page of CAI's Web site ([www.caionline.org](http://www.caionline.org)) and the Maryland General Assembly Web site ([www.mlis.state.md.us](http://www.mlis.state.md.us)).

#### Maryland Legislator Contact Network

Thank you to those CAI members who have registered to be part of CAI's Maryland Legislator Contact Network. Calls and emails to legislators are important in "getting the word out" about how bills affect community associations.

If you have not yet signed up to be part of the CAI Maryland Legislator Contact Network, please contact the Chapter office at 703.750.3644 for additional information.

Thanks to all CAI members who sent emails to legislators in support of the LAC initiatives. This proved very helpful in letting legislators know these issues are important to community associations. 



Thomas C. Schild, Esq. of Thomas Schild Law Group, LLC in Rockville, Maryland, chairs the Maryland Legislative Action Committee and is a member of CAI's National Faculty. He represents community associations in Maryland and Washington, DC.



Kathleen M. Elmore, Esq. of Elmore & Throop, P.C. in Severna Park, Maryland is a member of the Maryland Legislative Action Committee. She represents community associations throughout Maryland.

## New Maryland Foreclosure Procedures

With foreclosure filings dramatically up nationwide and showing no signs of slowing, foreclosures and the threat of foreclosures have been front-page news for the past year.

This foreclosure crisis prompted Maryland Governor Martin O'Malley to convene a Homeownership Preservation Task Force in 2007 to develop legislation to address rising foreclosure rates.

The Maryland legislature considered the causes of this dramatic rise in foreclosures and the problems associated with the rising foreclosure rates. The state's General Assembly acted by adopting emergency foreclosure reform legislation. Two comprehensive bills (HB 365/SB 216 and HB 363/SB 270) were passed and signed into law in early April 2008.

The law now provides that mortgagees must include a name and license number (or an affidavit stating why they are exempt) on each recorded loan document. Furthermore, a foreclosure generally can not be filed until 90 days after a default or 45 days after a notice of intention to docket the foreclosure with the court is sent to the debtor via certified mail, postage prepaid (return receipt requested), and by first-class mail. A copy of this notice of intention to docket foreclosure must also be sent to the Maryland Commissioner of Financial Regulation and must be in the form prescribed by regulation.

The foreclosure suit must be served by personal delivery to the debtor. Prior to this, no personal service was required. The new law requires at least two good faith attempts on different days to serve the debtor. If these two good faith attempts fail, then an affidavit describing the attempts must be filed with the court and the foreclosure must be mailed certified mail (return receipt requested), and first class mail to the debtor at the last known address and must be posted in a conspicuous place on the property subject to the debt. The foreclosure sale then cannot be held until at least 45 days after service is made.

Notice of the time, place, and terms of the foreclosure sale must be published in a newspaper of general circulation in the county where the action is pending for three successive weeks, the first such publication to be not less than 15 days before the sale and the last not more than one week before the sale. The debtor has the right to cure the default by paying all past due payments, penalties and fees at any time up to one business day before the sale occurs. Should the foreclosing party fail to comply, a suit may be brought within three years after the date of the order ratifying the sale.

More information regarding the new Maryland foreclosure reform law can be found on the Web site of the Maryland Department of Labor, Licensing, and Regulation ([www.dlir.state.md.us](http://www.dlir.state.md.us)).