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Community Association LawLetter

FEDERAL BANKRUPTCY LAW OVERHAUL AIDS COMMUNITY ASSOCIATIONS

Major changes in the federal bankruptcy laws will benefit community associations in collecting assessments. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("2005 Bankruptcy Act") establishes the most comprehensive bankruptcy law revisions in nearly 30 years.

Prevention of Bankruptcy Abuse

The new bankruptcy law makes it more difficult for individuals to eliminate personal obligations to pay debts through a chapter 7 bankruptcy. By establishing an income/expense-based "means" test, fewer people will qualify to file a chapter 7 bankruptcy and will only be eligible for a chapter 13 bankruptcy. In a chapter 13 bankruptcy, all or part of the debt is typically repaid in 3 to 5 years.

The 2005 Bankruptcy Act also increases the amounts debtors pay in a chapter 13 bankruptcy so associations will receive more of the pre-bankruptcy assessments than in the past.

Before filing bankruptcy, individuals will be required to be briefed by credit counseling agencies. And, debtors must complete a financial management course as a condition for obtaining court approval of a chapter 13 or chapter 7 bankruptcy.

The new law also makes it harder to file serial bankruptcies by increasing the time periods individuals must wait to file a new bankruptcy after a discharge of debt has been granted by the bankruptcy court.

Community Association Assessments

The 2005 Bankruptcy Act also includes a specific provision which aids community associations in collecting assessments which are due after a chapter 7 bankruptcy is filed. An individual will continue to be responsible for payment of condominium, cooperative and homeowner association assessments for so long as the individual or bankruptcy trustee has a legal, equitable, or possessory ownership interest in the property.

"The new bankruptcy law makes it more difficult for individuals to eliminate personal obligations to pay debts through a chapter 7 bankruptcy".

Previously, a chapter 7 debtor was not liable for post-bankruptcy condominium or cooperative assessments if he no longer occupied the dwelling or received rent from leasing it.

The 2005 Bankruptcy Act applies to any bankruptcy filed after October 16, 2005.

MARYLAND TASK FORCE TO STUDY COMMON OWNERSHIP COMMUNITIES

The Maryland General Assembly has established a state Task Force on Common Ownership Communities to study various issues regarding community associations. The Task Force is to study and report to the Governor and General Assembly regarding:

1. the **education and training needs** of common ownership community boards and owners;
2. alternative **dispute resolution services** for common ownership communities;
3. the desirability of adopting provisions of the **Uniform Common Interest Ownership Act**;
4. issues facing **aging communities**;
5. issues relating to the **collection of assessments**;
6. issues relating to the **resale of homes** and common ownership;

The Task Force report is to be completed by December 31, 2006.



During the 2005 legislative session, the Maryland General Assembly also considered – but did not enact – bills regarding rules adoption and enforcement, board meetings, construction defects, resale disclosures, volunteer immunity, and representation before common ownership commissions.

MARYLAND COURT OF APPEALS UPHOLDS CONDOMINIUM LIEN FORECLOSURE

A condominium foreclosure sale on an assessment lien was upheld by the Maryland Court of Appeals in *Greenbriar Condominium, Phase I v. Brooks*, where the unit owner who contested the amount of debt failed to seek a court injunction to stop the foreclosure.

Prior Ruling Reversed

The ruling of the Court of Appeals – the highest Maryland appellate court – reversed the prior decisions of the trial court and Court of Special Appeals which had invalidated the foreclosure sale because the Condominium had refused to accept the condominium unit owner's good faith tender of payment prior to the sale.

Greenbriar Condominium, Phase I (“Condominium”) initiated foreclosure proceedings against a condominium unit for the owner's failure to pay 1995 condominium assessments and homeowner association assessments collected through the Condominium. At the foreclosure sale in May, 1996, the unit was purchased for \$2,500 subject to a deed of trust in the amount of approximately \$16,700. The court auditor determined the assessment debt was \$3,411 at the time of the foreclosure.

The trial court ratified the sale and the owner appealed. After the appeals court reviewed the circumstances of the foreclosure sale, the trial court determined in 1998 that the purchase price was so far below fair market value that it “shocked the conscience of the court”, and invalidated the sale.

The Condominium then started a new foreclosure sale. Prior to the sale, the owner tendered payment based on the auditor's report in the prior foreclosure by submitting a cashier's check for \$3,411 in full satisfaction of the assessment lien. The Condominium refused to accept the check and indicated that it would not accept any amount less than \$31,114. This amount included the assessment debt, late fees,

accrued interest and attorneys' fees (including attorneys' fees for the first foreclosure sale which was invalidated). Since the owner did not pay the amount demanded by the Condominium, the condominium unit was sold at the second foreclosure sale for \$21,600 subject to a deed of trust in the amount of approximately \$13,100.

The owner contested the sale and in July, 1999 the trial court invalidated the second foreclosure sale based upon its determination that the Condominium improperly refused to accept the owner's tendered payment prior to the sale. The written trial court order inexplicably was not issued for over three years until September, 2002. The Condominium appealed the decision, contending that the second foreclosure was valid.

On appeal, the Maryland Court of Special Appeals – the intermediate appeals court -- in September, 2004 upheld the trial court's decision and ruled that the sale was invalid because the Condominium impermissibly denied the owner the right to stop the foreclosure by requiring the owner to pay \$31,114. The court agreed that the owner properly relied on the auditor's statement from the invalidated first sale that the amount due at the time of the 1996 foreclosure was \$3,411. The intermediate appeals court also concluded that the Condominium could not legally assert a right to attorneys fees and costs from the first foreclosure sale proceeding which was never ratified by the court.

However, on further appeal, the Court of Appeals reached a different conclusion in June, 2005, ruling that the unit owner did not properly exercise the right to stop a foreclosure sale and redeem the property by tendering an amount less than that claimed by the Condominium.

Rather, a debtor must offer to pay the stated outstanding debt or must file a court motion to enjoin the sale from occurring based on a dispute over the amount actually owed. The Court of Appeals ruled that a debtor's good faith offer of an incorrect amount is not sufficient to invalidate a foreclosure sale.

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After the sale occurs, it can be challenged based on irregularities in the foreclosure sale procedures. Further, a debtor may challenge the amount of debt after a sale by filing exceptions to the court auditor's determination of the debt due.

However, the Court of Appeals held that, once the sale occurs, the debtor no longer has a right to redeem the property. Therefore, the appeals court directed the trial court to ratify the Condominium's second foreclosure sale.

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Our website also includes articles and law links of interest to condominiums, cooperatives, and homeowner associations.

“LEGAL” WAYS FOR MARYLAND ASSOCIATIONS TO SAVE \$\$\$

Recent changes in the law give Maryland condominiums and homeowner associations new ways to save money “legally”.

Insurance Deductible. Maryland condominium bylaws can shift up to \$1,000 of the master insurance policy deductible to a unit owner where the loss originates in a unit. If a condominium's bylaws do not already require the deductible to be paid by the unit owner in these circumstances, bylaws can be amended to allocate to the unit owner the responsibility for the insurance deductible amount up to the maximum amount permitted by law.

Quorum for Owners' Meetings. Where condominium associations have difficulty obtaining a quorum at owners' meetings, a new law allows a quorum to be established based on the owners present at a second convened meeting where certain notice of the reduced quorum is delivered to owners.

Maryland homeowners associations can use a similar reduced quorum procedure by

publishing newspaper notice of the second meeting.

By utilizing these statutory notice procedures, associations can reduce the cost of membership meetings.

Storm Water Facilities. Montgomery County condos, co-ops, and homeowner associations can save on the cost of future structural maintenance expenses for storm water ponds and other facilities by having Montgomery County pay for these expenses.

This can be accomplished by revising existing easements and covenants which require associations to pay all maintenance expenses for storm water facilities located on association property.

THOMAS SCHILD LAW GROUP, LLP represents condominiums, cooperatives, and homeowner associations in Maryland and Washington, D.C. Since 1985, the firm has advised community associations on all aspects of association operations including covenant enforcement, assessment collections, 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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