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HOAs banking on proposed legislation to help collect fees

Legislators: Bills will provide relief for associations, but banking industry not pleased

by Jen Bondeson and Mimi Liu | Staff Writers

Olney resident Jim Haddow remembers 2009 and 2010 as bleak years for the Hallowell community.

Houses were in foreclosure throughout the neighborhood of 356 single-family houses and 292 townhouses situated along Baltimore Road between Olney-Sandy Spring Road and Georgia Avenue.

"We had some single-family houses and some townhouses," said Haddow, who is treasurer of the Hallowell Homeowners Association.

The number of houses in Hallowell that were in foreclosure in 2009 and 2010 was not available by Tuesday afternoon.

Not only were the foreclosures a depressing sign of the times, but it meant the homeowners association did not get the monthly fees for general upkeep of the community.

Community associations such as Hallowell and others across Montgomery County are pushing for several bills that have been introduced in the Maryland General Assembly that would alleviate some of the financial problems resulting from foreclosed properties.

Haddow said homeowners whose properties were in financial trouble stopped paying the fees for between one to three years.

The Hallowell association lost about $3,000 in fees. Fees for remaining homeowners rose 10 percent in two years, and funding for neighborhood projects such as replanting flower beds and renovating the community pool house were delayed.

"We're probably not as bad off as some other associations," Haddow said. "We've got our heads above water, but we're watching things very closely."

Between 2007 and 2010, more than 10,000 default notices were filed in Montgomery County and nearly 4,000 houses became bank owned, according to the county's Department of Housing and Community Affairs.

The Montgomery Village Foundation board is paying attention to about 30 bills that would affect the operations of homeowners associations.

There are 10 homeowners associations in that community, two of which sent representatives to testify at a hearing in support of House Bill 631 on Feb. 24.

The bill, which was introduced in the Environmental Matters Committee, states that the purchaser of a lender-foreclosed property will be held liable for as many as six months of monthly assessment fees that remained from the previous homeowner.

As of early this week, the bill had not been moved out of committee.

The bill is similar to H.B. 1246, sponsored by Del. Norman H. Conway (D-Dist. 38B) of Salisbury and delegates from Prince George's and Montgomery counties. That bill states that in the sale of a lender-foreclosed property, a homeowner or condominium association can collect as much as six months of what is owed to it from a lien on the property before a mortgage lender can.

A hearing on H.B. 1246, or "The Residential Association Sustainability Act of 2011," is scheduled for 1 p.m. Thursday in Annapolis. The bill also has been introduced to the Environmental Matters Committee.

Eric Friedman, director of the county's Office of Consumer Protection, said bills similar to H.B. 1246 have been introduced in previous sessions of the Maryland General Assembly, but always have been struck down with opposition from banking lobbyists.

"Montgomery County is certainly not immune from the foreclosure crisis," Friedman said. "Homeowners associations have been hurt when properties go into foreclosure. [When that happens], an association is not able to recoup its outstanding HOA fees or condo fees."

Kathleen Murphy, president and chief executive officer of the Maryland Bankers Association, a trade group representing banks in the state, said the association does not support H.B. 1246 and H.B. 631 because they break a long-held precedent for mortgage lenders and place an unfair burden on those lenders.

She said the average mortgage lender could stand to lose at least $60,000 from mortgage foreclosures if the laws are enacted.

"This would completely reverse a long-standing rule in the state of Maryland and create tremendous risks for those in home mortgage," Murphy said. "We believe that condominium and homeowner associations have the ability within their own communities to protect themselves. They have the ability to institute very aggressive collection practices."

Friedman said a first creditor or lender in a mortgage agreement will be paid first for remaining liens on the property, followed by a secondary creditor and so on in descending order of priority.

He said the banks almost always are the first lien holders on a property.

"There's not enough money generated by the foreclosure to pay everybody," Friedman said. "Once the banks get their mortgage paid, if there's any money left, the homeowners associations will get their dues."

Thomas Schild, an attorney for condominium and homeowners associations and a member of the Maryland Legislative Action Committee, said properties that are part of a homeowners or condominium association tend to be maintained at a higher level than properties that are not part of an association.

"The associations have people cutting the grass, fixing the roofs and making sure the insurances are being paid," he said. "With the money spent to preserve the properties, it's only fair that they require a six-month priority lien."

Schild said 16 states plus Washington, D.C., have passed laws allowing community association to have senior lien status under certain conditions.