

HOUSING COUNSEL

Md. gives HOAs some financial relief when a lender forecloses

BY BENNY L. KASS

If you live in a Maryland condominium or are in a homeowners' association, the Maryland General Assembly has just provided you a modicum of protection from neighbors who don't pay their dues. For first-trust mortgages recorded after October 1, if the homeowner is delinquent on association fees when a lender forecloses, the lender will have to pay the association up to \$1,200 of the delinquency.

Without such a law, when a lender forecloses on a home in a community association, there is no practical way the association can recoup any money that the homeowner owes. Although a delinquency can become a lien against the home, the lien is erased by foreclosure. Suing the delinquent homeowner is often a wasted exercise; there may be no money available to collect even if the courts award a money judgment to the association.

Over the years, many states have recognized that this is unfair to the rest of the association members. Community associations rely on fees collected from homeowners in order to survive.

For example, in the District, if

an institutional lender forecloses, it must pay the association up to six months of the delinquent assessments. Virginia has no such super-assessment priority laws. But 15 other states have enacted laws that provide a priority of six months' worth of delinquent fees or more. Delaware adopted a six-month priority law in 2008; Florida extended its priority lien from 6 months to 12 months last year.

For many years, community association leaders such as the Community Associations Institute have been trying to get such a priority-lien law in Maryland. But the bankers and other financial institutions have a strong lobby and vigorously opposed any infringement on their right to foreclose. Finally, in the waning hours of the 2011 Maryland legislative session, a compromise measure was reached.

The new law gives community associations a four-month priority lien over any first mortgage recorded after October 1. But that is capped at \$1,200, which may be considerably less than the delinquency. Furthermore, while other state laws include such items as late fees, legal fees and special assessments in the computation of the delinquency, in

Maryland the amount of the delinquency can be based only on the actual, unpaid regular assessment.

According to Hugh Lewis, a community association lawyer in Bellingham, Wash., "Maryland's new law runs counter to the evolving trend. Freddie and Fannie accept project documents which give an association's lien a superpriority over the lien of the first mortgage of up to six months. Holding the superpriority to four months and capping that at \$1,200 is regressive."

But Maryland lawyers, who actively lobbied for this legislation are pleased to have gotten this far after so many frustrating years of being rejected by the legislature. According to Tom Schild, a community association lawyer in Rockville, "would we have preferred six months plus late fees, interest and collection costs? Yes. Was it achievable in light of local/state politics? No."

Foreclosures hurt community associations in their pocketbook. At least, some financial assistance will now be available in Maryland, but only for future loans that may be foreclosed upon. The new law will not practically become useful for a long time. Lenders are now very conservative in deciding whether to make loans. Credit scores must be fairly high and down payments larger than in the past. Perhaps in the long run that will reduce the huge number of foreclosures that homeowners have been experiencing. According to RealtyTrac, an organization that tracks nationwide foreclosures, in March alone there were 2,150 new foreclosure filings in the state. (For details, go to realtytrac.com/statistics/maryland.)