

Chapter 387

(House Bill 1246)

AN ACT concerning

Condominiums and Homeowners Associations – Priority of Liens – ~~“The Residential Association Sustainability Act of 2011”~~ Liens

FOR the purpose of providing that, in the case of a foreclosure of a mortgage or deed of trust on ~~or for~~ a condominium unit, a certain portion of ~~a certain lien~~ the condominium’s liens on the condominium unit, including certain late fees, interest, and any attorney’s fees and costs for establishing the lien, has priority over the claim of the holder of a first mortgage or first deed of trust under certain circumstances; providing that the portion of a condominium’s liens that has a certain priority shall consist of a certain amount of unpaid regular assessments not exceeding a certain amount; requiring the governing body of a condominium to provide certain information to the holder of a first mortgage or first deed of trust under certain circumstances; providing that a certain portion of a condominium’s liens does not have priority under certain circumstances; providing that certain lot owners in a homeowners association are liable for certain assessments and charges; allowing a homeowners association to enforce the payment of certain assessments and charges by imposition of a contract lien under certain circumstances; providing that, in the case of a foreclosure of a mortgage or deed of trust on a lot in a homeowners association, a certain portion of a the homeowners association’s lien, including certain late fees, interest, and any attorney’s fees and costs for establishing the lien, liens on the lot has priority over the claim of the holder of a first mortgage or first deed of trust under certain circumstances; providing that certain provisions of this Act do not affect or limit the priority of certain liens, mortgages, or deeds of trust; providing for the abrogation of certain provisions of this Act on the occurrence of certain contingencies providing that the portion of a homeowners association’s liens that has a certain priority shall consist of a certain amount of unpaid regular assessments not exceeding a certain amount; requiring the governing body of a homeowners association to provide certain information to the holder of a first mortgage or first deed of trust under certain circumstances; providing that a certain portion of a homeowner association’s liens does not have priority under certain circumstances; requiring a statement of lien for certain liens under the Maryland Contract Lien Act to include certain information about regular monthly assessments for common expenses under certain circumstances; providing for the application of this Act; making stylistic changes; and generally relating to liens on condominium units and lots in ~~developments with~~ homeowners associations.

BY renumbering

Article – Real Property
 Section 11B–117
 to be Section 11B–118
 Annotated Code of Maryland
 (2010 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,
 Article – Real Property
 Section 11–110(d) and 14–203(j)
 Annotated Code of Maryland
 (2010 Replacement Volume and 2010 Supplement)

BY adding to
 Article – Real Property
 Section 11–110(f) and 11B–117
 Annotated Code of Maryland
 (2010 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 11B–117 of Article – Real Property of the Annotated Code of Maryland be renumbered to be Section(s) 11B–118.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Real Property

11–110.

(d) **(1)** Payment of assessments, together with interest, late charges, if any, costs of collection and reasonable attorney’s fees may be enforced by the imposition of a lien on a unit in accordance with the provisions of the Maryland Contract Lien Act.

(2) Suit for any deficiency following foreclosure may be maintained in the same proceeding, and suit to recover any money judgment for unpaid assessments may also be maintained in the same proceeding, without waiving the right to seek to impose a lien under the Maryland Contract Lien Act.

~~**(3) (1) THIS PARAGRAPH DOES NOT LIMIT OR AFFECT THE PRIORITY OF A MORTGAGE OR DEED OF TRUST HELD BY OR FOR THE BENEFIT OF, PURCHASED BY, ASSIGNED TO, OR SECURING AN INDEBTEDNESS TO:**~~

~~**1. THE STATE;**~~

~~2. A UNIT OF STATE GOVERNMENT; OR~~

~~3. AN INSTRUMENTALITY OF THE STATE.~~

~~(H) IN THE CASE OF A FORECLOSURE OF A DEED OF TRUST, A MORTGAGE INSTRUMENT, OR AN ENCUMBRANCE RECORDED BEFORE A CONDOMINIUM'S LIEN, THE PORTION OF THE CONDOMINIUM'S LIEN ON A UNIT CONSISTING OF NOT MORE THAN 6 MONTHS OF UNPAID ASSESSMENTS, LATE FEES, INTEREST, AND ANY ATTORNEY'S FEES AND COSTS ASSOCIATED WITH ESTABLISHING THE LIEN, LEVIED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DECLARATION OR BYLAWS OF THE CONDOMINIUM, SHALL HAVE PRIORITY OVER A CLAIM OF THE HOLDER OF A FIRST MORTGAGE OR DEED OF TRUST RECORDED AGAINST THE UNIT ON OR AFTER OCTOBER 1, 2011.~~

(F) (1) THIS SUBSECTION DOES NOT LIMIT OR AFFECT THE PRIORITY OF ANY LIEN, SECURED INTEREST, OR OTHER ENCUMBRANCE WITH PRIORITY THAT IS HELD BY OR FOR THE BENEFIT OF, PURCHASED BY, ASSIGNED TO, OR SECURING ANY INDEBTEDNESS TO:

(I) THE STATE OR ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE;

(II) ANY UNIT OF STATE GOVERNMENT OR THE GOVERNMENT OF ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE; OR

(III) AN INSTRUMENTALITY OF THE STATE OR ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE.

(2) IN THE CASE OF A FORECLOSURE OF A MORTGAGE OR DEED OF TRUST ON A UNIT IN A CONDOMINIUM, A PORTION OF THE CONDOMINIUM'S LIENS ON THE UNIT, AS PRESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION, SHALL HAVE PRIORITY OVER A CLAIM OF THE HOLDER OF A FIRST MORTGAGE OR A FIRST DEED OF TRUST THAT IS RECORDED AGAINST THE UNIT ON OR AFTER OCTOBER 1, 2011.

(3) THE PORTION OF THE CONDOMINIUM'S LIENS THAT HAS PRIORITY UNDER PARAGRAPH (2) OF THIS SUBSECTION:

(I) SHALL CONSIST SOLELY OF NOT MORE THAN 4 MONTHS, OR THE EQUIVALENT OF 4 MONTHS, OF UNPAID REGULAR ASSESSMENTS FOR COMMON EXPENSES THAT ARE LEVIED BY THE CONDOMINIUM IN ACCORDANCE WITH THE REQUIREMENTS OF THE DECLARATION OR BYLAWS OF THE CONDOMINIUM;

(II) MAY NOT INCLUDE:

- 1. INTEREST;**
- 2. COSTS OF COLLECTION;**
- 3. LATE CHARGES;**
- 4. FINES;**
- 5. ATTORNEY'S FEES;**
- 6. SPECIAL ASSESSMENTS; OR**
- 7. ANY OTHER COSTS OR SUMS DUE UNDER THE DECLARATION OR BYLAWS OF THE CONDOMINIUM OR AS PROVIDED UNDER ANY CONTRACT, LAW, OR COURT ORDER; AND**

(III) MAY NOT EXCEED A MAXIMUM OF \$1,200.

(4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AT THE REQUEST OF THE HOLDER OF A FIRST MORTGAGE OR FIRST DEED OF TRUST ON A UNIT IN A CONDOMINIUM, THE GOVERNING BODY SHALL PROVIDE TO THE HOLDER WRITTEN INFORMATION ABOUT THE PORTION OF ANY LIEN FILED UNDER THE MARYLAND CONTRACT LIEN ACT THAT HAS PRIORITY AS PRESCRIBED UNDER PARAGRAPH (3) OF THIS SUBSECTION, INCLUDING INFORMATION THAT IS SUFFICIENT TO ALLOW THE HOLDER TO DETERMINE THE BASIS FOR THE PORTION OF THE LIEN THAT HAS PRIORITY.

(II) AT THE TIME OF MAKING A REQUEST UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE HOLDER SHALL PROVIDE THE GOVERNING BODY OF THE CONDOMINIUM WITH THE WRITTEN CONTACT INFORMATION OF THE HOLDER.

(III) IF THE GOVERNING BODY OF THE CONDOMINIUM FAILS TO PROVIDE WRITTEN INFORMATION TO THE HOLDER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN 30 DAYS AFTER THE FILING OF THE STATEMENT OF LIEN AMONG THE LAND RECORDS OF EACH COUNTY IN WHICH THE CONDOMINIUM IS LOCATED, THE PORTION OF THE CONDOMINIUM'S LIENS DOES NOT HAVE PRIORITY AS PRESCRIBED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(A) AS PROVIDED IN THE DECLARATION, A LOT OWNER SHALL BE LIABLE FOR ALL HOMEOWNERS ASSOCIATION ASSESSMENTS AND CHARGES THAT COME DUE DURING THE TIME THAT THE LOT OWNER OWNS THE LOT.

(B) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW, A HOMEOWNERS ASSOCIATION MAY ENFORCE THE PAYMENT OF THE ASSESSMENTS AND CHARGES PROVIDED IN THE DECLARATION BY THE IMPOSITION OF A LIEN ON A LOT IN ACCORDANCE WITH THE MARYLAND CONTRACT LIEN ACT.

~~(C) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IN THE CASE OF A FORECLOSURE OF A DEED OF TRUST, A MORTGAGE INSTRUMENT, OR AN ENCUMBRANCE RECORDED BEFORE A HOMEOWNERS ASSOCIATION'S LIEN, THAT PORTION OF A HOMEOWNERS ASSOCIATION'S LIEN ON A LOT CONSISTING OF NOT MORE THAN 6 MONTHS OF UNPAID ASSESSMENTS, LATE FEES, INTEREST, AND ANY ATTORNEY'S FEES AND COSTS ASSOCIATED WITH ESTABLISHING THE LIEN, LEVIED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DECLARATION OR BYLAWS OF THE HOMEOWNERS ASSOCIATION, SHALL HAVE PRIORITY OVER A CLAIM OF THE HOLDER OF A FIRST MORTGAGE OR DEED OF TRUST RECORDED AGAINST THE LOT ON OR AFTER OCTOBER 1, 2011.~~

~~(D) THIS SECTION DOES NOT LIMIT OR AFFECT THE PRIORITY OF:~~

~~(1) A HOMEOWNERS ASSOCIATION'S LIEN PROVIDED FIRST PRIORITY OVER A DEED OF TRUST OR MORTGAGE BY THE HOMEOWNERS ASSOCIATION'S DECLARATION OR BYLAWS; OR~~

~~(2) A MORTGAGE OR DEED OF TRUST HELD BY OR FOR THE BENEFIT OF, PURCHASED BY, ASSIGNED TO, OR SECURING AN INDEBTEDNESS TO:~~

~~(i) THE STATE;~~

~~(ii) A UNIT OF STATE GOVERNMENT; OR~~

~~(iii) AN INSTRUMENTALITY OF THE STATE.~~

(C) (1) THIS SUBSECTION DOES NOT LIMIT OR AFFECT THE PRIORITY OF ANY:

~~(i) A HOMEOWNERS ASSOCIATION'S LIEN PROVIDED FIRST PRIORITY OVER A DEED OF TRUST OR MORTGAGE BY THE HOMEOWNERS ASSOCIATION'S DECLARATION OR BYLAWS; OR~~

(I) A LIEN FOR THE ANNUAL CHARGE PROVIDED FIRST PRIORITY OVER A DEED OF TRUST OR MORTGAGE BY THE DEED, AGREEMENT, AND DECLARATION OF COVENANTS, EASEMENTS, CHARGES, AND LIENS DATED DECEMBER 13, 1966, AND RECORDED IN THE LAND RECORDS OF HOWARD COUNTY (THE COLUMBIA ASSOCIATION DECLARATION); OR

(II) ANY LIEN, SECURED INTEREST, OR OTHER ENCUMBRANCE WITH PRIORITY THAT IS HELD BY OR FOR THE BENEFIT OF, PURCHASED BY, ASSIGNED TO, OR SECURING ANY INDEBTEDNESS TO:

~~(I)~~ 1. THE STATE OR ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE;

~~(II)~~ 2. ANY UNIT OF STATE GOVERNMENT OR THE GOVERNMENT OF ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE; OR

~~(III)~~ 3. AN INSTRUMENTALITY OF THE STATE OR ANY COUNTY OR MUNICIPAL CORPORATION IN THE STATE.

(2) IN THE CASE OF A FORECLOSURE OF A MORTGAGE OR DEED OF TRUST ON A LOT IN A HOMEOWNERS ASSOCIATION, A PORTION OF THE HOMEOWNERS ASSOCIATION'S LIENS ON THE LOT, AS PRESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION, SHALL HAVE PRIORITY OVER A CLAIM OF THE HOLDER OF A FIRST MORTGAGE OR A FIRST DEED OF TRUST THAT IS RECORDED AGAINST THE LOT ON OR AFTER OCTOBER 1, 2011.

(3) THE PORTION OF THE HOMEOWNERS ASSOCIATION'S LIENS THAT HAS PRIORITY UNDER PARAGRAPH (2) OF THIS SUBSECTION:

(I) SHALL CONSIST SOLELY OF NOT MORE THAN 4 MONTHS, OR THE EQUIVALENT OF 4 MONTHS, OF UNPAID REGULAR ASSESSMENTS FOR COMMON EXPENSES THAT ARE LEVIED BY THE HOMEOWNERS ASSOCIATION IN ACCORDANCE WITH THE REQUIREMENTS OF THE DECLARATION OR BYLAWS OF THE HOMEOWNERS ASSOCIATION;

(II) MAY NOT INCLUDE:

1. INTEREST;

2. COSTS OF COLLECTION;

3. LATE CHARGES;

4. FINES;

5. ATTORNEY'S FEES;

6. SPECIAL ASSESSMENTS; OR

7. ANY OTHER COSTS OR SUMS DUE UNDER THE DECLARATION OR BYLAWS OF THE HOMEOWNERS ASSOCIATION OR AS PROVIDED UNDER ANY CONTRACT, LAW, OR COURT ORDER; AND

(III) MAY NOT EXCEED A MAXIMUM OF \$1,200.

(4) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AT THE REQUEST OF THE HOLDER OF A FIRST MORTGAGE OR FIRST DEED OF TRUST ON A LOT IN A HOMEOWNERS ASSOCIATION, THE GOVERNING BODY SHALL PROVIDE TO THE HOLDER WRITTEN INFORMATION ABOUT THE PORTION OF ANY LIEN FILED UNDER THE MARYLAND CONTRACT LIEN ACT THAT HAS PRIORITY AS PRESCRIBED UNDER PARAGRAPH (3) OF THIS SUBSECTION, INCLUDING INFORMATION THAT IS SUFFICIENT TO ALLOW THE HOLDER TO DETERMINE THE BASIS FOR THE PORTION OF THE LIEN THAT HAS PRIORITY.

(II) AT THE TIME OF MAKING A REQUEST UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE HOLDER SHALL PROVIDE THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION WITH THE WRITTEN CONTACT INFORMATION OF THE HOLDER.

(III) IF THE GOVERNING BODY OF THE HOMEOWNERS ASSOCIATION FAILS TO PROVIDE WRITTEN INFORMATION TO THE HOLDER UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH WITHIN 30 DAYS AFTER THE FILING OF THE STATEMENT OF LIEN AMONG THE LAND RECORDS OF EACH COUNTY IN WHICH THE HOMEOWNERS ASSOCIATION IS LOCATED, THE PORTION OF THE HOMEOWNERS ASSOCIATION'S LIENS DOES NOT HAVE PRIORITY AS PRESCRIBED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

14-203.

(j) (1) [A] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A statement of lien is sufficient for purposes of this subtitle if it is in substantially the following form:

STATEMENT OF LIEN

This is to certify that the property described as _____ is subject to a lien under Title 14, Subtitle 2 of the Real Property Article, Maryland Annotated Code, in the amount of \$ _____. The property is owned by _____.

I hereby affirm under the penalty of perjury that notice was given under § 14-203(a) of the Real Property Article, and that the information contained in the foregoing statement of lien is true and correct to the best of my knowledge, information, and belief.

(name of party claiming lien)

(2) (I) THIS PARAGRAPH APPLIES ONLY TO A LIEN THAT IS SUBJECT TO § 11-110(F) OR § 11B-117(C) OF THIS ARTICLE.

(II) IN ADDITION TO SATISFYING THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION, A STATEMENT OF LIEN IS SUFFICIENT FOR PURPOSES OF THIS SUBTITLE IF THE STATEMENT INCLUDES SPECIFIC INFORMATION ABOUT THE AMOUNT OF THE REGULAR MONTHLY ASSESSMENTS, OR THE EQUIVALENT OF THE REGULAR MONTHLY ASSESSMENTS, FOR COMMON EXPENSES IN SUBSTANTIALLY THE FOLLOWING FORM:

THE AMOUNT OF THE REGULAR MONTHLY ASSESSMENTS, OR THE EQUIVALENT OF THE REGULAR MONTHLY ASSESSMENTS, FOR COMMON EXPENSES, THAT IS THE BASIS OF THE PRIORITY PORTION OF THIS LIEN AS PROVIDED IN § 11-110(F) OR § 11B-117(C) OF THE REAL PROPERTY ARTICLE, IS \$ _____. THIS SUM REPRESENTS _____ MONTHS OF UNPAID REGULAR ASSESSMENTS, AT \$ _____ PER MONTH.

~~SECTION 3. AND BE IT FURTHER ENACTED, That the changes to § 11-110 of the Real Property Article, as enacted by Section 2 of this Act, shall be abrogated and of no further force or effect if the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association by rule, regulation, or policy ceases to purchase first mortgages on condominium units in this State. The Secretary of State, within 5 days of determining that the contingency provided in this section has been met, shall notify in writing the Department of Legislative Services, Legislative Services Building, 90 State Circle, Annapolis, Maryland 21401.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That the addition of § 11B-117 to the Real Property Article, as enacted by Section 2 of this Act, shall be abrogated and of no further force or effect if the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association by rule, regulation, or policy ceases to purchase first mortgages on lots in developments with homeowners associations in this State. The Secretary of State, within 5 days of determining that the contingency provided in this section has been met, shall notify in writing the~~

~~Department of Legislative Services, Legislative Services Building, 90 State Circle,
Annapolis, Maryland 21401.~~

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any first mortgage or first deed of trust on a condominium unit or a lot in a homeowners association that is recorded before the effective date of this Act.

~~SECTION 5. 4. AND BE IT FURTHER ENACTED, That, subject to the provisions of Sections 3 and 4 of this Act, this Act shall take effect October 1, 2011.~~

Approved by the Governor, May 10, 2011.