

SENATE BILL 1062

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CF HB 1532

By: **Senator Muse**

Constitutional Requirements Complied with for Introduction in the last 35 Days of
Session

Introduced and read first time: March 11, 2013

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Condominiums and Homeowners Associations – Attorney’s Fees**

3 FOR the purpose of prohibiting a governing body of a homeowners association or
4 council of unit owners of a condominium from demanding, collecting, or seeking
5 to recover attorney’s fees from a lot owner or unit owner unless the amount of
6 the attorney’s fees is reasonable in relation to the amount in controversy or the
7 nature of a certain violation; establishing that, in a certain action against a lot
8 owner or unit owner, there is a certain rebuttable presumption that attorney’s
9 fees sought are reasonable; authorizing, in a certain action, the court or lot
10 owner or unit owner to challenge the rebuttable presumption established under
11 this Act; establishing that, if a challenge to the presumption under this Act is
12 made, the governing body or council of unit owners bears a certain evidentiary
13 burden; establishing that the Maryland Contract Lien Act does not apply to
14 certain matters under certain circumstances; and generally relating to the
15 recovery of attorney’s fees by condominiums and homeowners associations.

16 BY repealing and reenacting, with amendments,
17 Article – Real Property
18 Section 11–110(d)(1) and 14–202
19 Annotated Code of Maryland
20 (2010 Replacement Volume and 2012 Supplement)

21 BY adding to
22 Article – Real Property
23 Section 11–110.1 and 11B–117.1
24 Annotated Code of Maryland
25 (2010 Replacement Volume and 2012 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Real Property**

4 11–110.

5 (d) (1) [Payment] **EXCEPT AS PROVIDED IN § 11–110.1 OF THIS TITLE,**
6 **PAYMENT** of assessments, together with interest, late charges, if any, costs of
7 collection and reasonable attorney’s fees may be enforced by the imposition of a lien on
8 a unit in accordance with the provisions of the Maryland Contract Lien Act.

9 **11–110.1.**

10 (A) **A COUNCIL OF UNIT OWNERS MAY NOT DEMAND, COLLECT, OR SEEK**
11 **TO RECOVER ATTORNEY’S FEES FROM A UNIT OWNER UNLESS THE AMOUNT OF**
12 **THE ATTORNEY’S FEES IS REASONABLE IN RELATION TO THE AMOUNT IN**
13 **CONTROVERSY OR THE NATURE OF THE NONMONETARY VIOLATION.**

14 (B) (1) **THIS SUBSECTION APPLIES TO AN ACTION IN WHICH A**
15 **COUNCIL OF UNIT OWNERS SEEKS TO:**

16 (I) **RECOVER ATTORNEY’S FEES FROM A UNIT OWNER;**

17 (II) **IMPOSE A LIEN ON A UNIT BASED ON THE UNIT OWNER’S**
18 **FAILURE TO PAY REGULAR OR SPECIAL ASSESSMENTS; OR**

19 (III) **ENFORCE A NONMONETARY VIOLATION OF THE**
20 **DECLARATION, BYLAWS, OR GOVERNING DOCUMENTS OF A CONDOMINIUM.**

21 (2) **THERE IS A REBUTTABLE PRESUMPTION THAT ATTORNEY’S**
22 **FEES SOUGHT BY THE COUNCIL OF UNIT OWNERS ARE REASONABLE IN**
23 **RELATION TO THE CONTROVERSY.**

24 (3) **THE COURT, ON ITS OWN MOTION, OR THE UNIT OWNER MAY**
25 **CHALLENGE THE REBUTTABLE PRESUMPTION UNDER PARAGRAPH (2) OF THIS**
26 **SUBSECTION AT ANY TIME BEFORE ISSUANCE OF A FINAL JUDGMENT.**

27 (4) **IF A CHALLENGE IS MADE UNDER PARAGRAPH (3) OF THIS**
28 **SUBSECTION, THE COUNCIL OF UNIT OWNERS BEARS THE BURDEN OF PROVING**
29 **BY A PREPONDERANCE OF THE EVIDENCE THAT THE ATTORNEY’S FEES ARE**
30 **REASONABLE IN RELATION TO THE CONTROVERSY.**

1 **(C) IN ANY MATTER IN WHICH A COUNCIL OF UNIT OWNERS ASSERTS A**
2 **CLAIM AGAINST A UNIT OWNER IN WHICH ALL OR SUBSTANTIALLY ALL OF THE**
3 **CLAIMED AMOUNT IS ATTORNEY’S FEES, THE MARYLAND CONTRACT LIEN ACT**
4 **DOES NOT APPLY.**

5 **11B-117.1.**

6 **(A) A GOVERNING BODY MAY NOT DEMAND, COLLECT, OR SEEK TO**
7 **RECOVER ATTORNEY’S FEES FROM A LOT OWNER UNLESS THE AMOUNT OF THE**
8 **ATTORNEY’S FEES IS REASONABLE IN RELATION TO THE AMOUNT IN**
9 **CONTROVERSY OR THE NATURE OF THE NONMONETARY VIOLATION.**

10 **(B) (1) THIS SUBSECTION APPLIES TO AN ACTION IN WHICH A**
11 **GOVERNING BODY SEEKS TO:**

12 **(I) RECOVER ATTORNEY’S FEES FROM A LOT OWNER;**

13 **(II) IMPOSE A LIEN ON A LOT BASED ON THE LOT OWNER’S**
14 **FAILURE TO PAY REGULAR OR SPECIAL ASSESSMENTS; OR**

15 **(III) ENFORCE A NONMONETARY VIOLATION OF THE**
16 **DECLARATION, BYLAWS, OR GOVERNING DOCUMENTS OF A HOMEOWNERS**
17 **ASSOCIATION.**

18 **(2) THERE IS A REBUTTABLE PRESUMPTION THAT ATTORNEY’S**
19 **FEES SOUGHT BY THE GOVERNING BODY ARE REASONABLE IN RELATION TO THE**
20 **CONTROVERSY.**

21 **(3) THE COURT, ON ITS OWN MOTION, OR THE LOT OWNER MAY**
22 **CHALLENGE THE REBUTTABLE PRESUMPTION UNDER PARAGRAPH (2) OF THIS**
23 **SUBSECTION AT ANY TIME BEFORE ISSUANCE OF A FINAL JUDGMENT.**

24 **(4) IF A CHALLENGE IS MADE UNDER PARAGRAPH (3) OF THIS**
25 **SUBSECTION, THE GOVERNING BODY BEARS THE BURDEN OF PROVING BY A**
26 **PREPONDERANCE OF THE EVIDENCE THAT THE ATTORNEY’S FEES ARE**
27 **REASONABLE IN RELATION TO THE CONTROVERSY.**

28 **(C) IN ANY MATTER IN WHICH A GOVERNING BODY ASSERTS A CLAIM**
29 **AGAINST A LOT OWNER IN WHICH ALL OR SUBSTANTIALLY ALL OF THE CLAIMED**
30 **AMOUNT IS ATTORNEY’S FEES, THE MARYLAND CONTRACT LIEN ACT DOES NOT**
31 **APPLY.**

32 **14-202.**

1 (a) A lien on property may be created by a contract and enforced under this
2 subtitle if:

3 (1) The contract expressly provides for the creation of a lien; and

4 (2) The contract expressly describes:

5 (i) The party entitled to establish and enforce the lien; and

6 (ii) The property against which the lien may be imposed.

7 (b) **[A] EXCEPT AS PROVIDED IN §§ 11–110.1 AND 11B–117.1 OF THIS**
8 **ARTICLE, A** lien may only secure the payment of:

9 (1) Damages;

10 (2) Costs of collection;

11 (3) Late charges permitted by law; and

12 (4) Attorney's fees provided for in a contract or awarded by a court for
13 breach of a contract.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2013.