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Testimony offered on behalf of:
MARYLAND MORTGAGE BANKERS & BROKERS ASSOCIATION, INC.

IN OPPOSITION OF:

HB 1519 – Homeowners Associations - Assessments - Lien Priority

HB 1519 adds two provisions that would deal with foreclosure of mortgages or deeds of trust of lots in a homeowner's association. The first provision is very objectionable, while the second restates the law in a misleading way.

Lines 21 – 24 on page 3 of HB 1519 address unpaid HOA assessments in excess of the amount to which HOAs have priority over mortgages or deeds of trust under Real Property Article, §11B-117 (the "Excess Amount"). (There is priority over mortgages and deeds of trust for HOA assessments for up to four months' or \$1,200, but not including certain types of charges, such as attorney's fees and late charges.) Lines 21 – 24 on page 3 provide that the Excess Amount is enforceable under the Contract Lien Act. However, if there is a foreclosure of a mortgage or deed of trust, all junior liens on the property are terminated, and the junior liens attach to any proceeds in excess of the amount necessary to pay the costs and expenses of the foreclosure sale and the debt secured by the instrument being foreclosed. This general rule would wipe out the Excess Amount as a lien, or a possible lien, on the property. The Contract Lien Act is the law that is currently used to enforce homeowner associations' right to enforce unpaid assessments as liens on real property. But HB 1519 would enable the Excess Amount that is not recovered in a foreclosure sale of a mortgage or deed of trust and that would now be eliminated to remain after a sale and possibly become a lien on the property (albeit a junior lien).

There is an even more grievous problem with HB 1519. The person (the "Original Debtor") who did not pay the HOA assessments attributable to the property when the Original Debtor owned it caused the problem under consideration. HB 1519 comes into play after the Original Debtor's mortgage or deed of trust has been foreclosed because the Original Debtor also did not pay the mortgage loan on the property. After the mortgage foreclosure, the Original Debtor has no interest in the property. But HB 1519 would visit the debts of the Original Debtor upon the mortgagee, if it bought the property at the foreclosure

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sale, or upon the third party purchaser at the foreclosure sale (“Third Party”). What could be more unfair than that? If the mortgagee buys the property at foreclosure and then has to pay the Excess Amount of the HOA assessments, the whole spirit and letter of Real Property Article, §11B-117 will have been destroyed because 100 percent of unpaid HOA assessment would effectively have priority over the mortgage or deed of trust. Alternatively, a Third Party knowing that he/she/it would be buying a property at foreclosure with residual debt on it would reduce the amount that he/she/it would bid. That reduction would almost always equate to a reduction of the amount the foreclosing lender receives after a foreclosure sale.

Therefore, the Maryland Mortgage Bankers and Brokers Association, Inc. urges you to render an unfavorable finding of House Bill 1519 - Homeowners Associations - Assessments - Lien Priority

Thank you for your consideration.

