

Third, the bill in § 9-201 requires that the bylaws or declaration of covenants of the association must provide for the assessment of specified charges and that the assessment is a lien. However, in §§ 9-202(B)(2) and 9-203(A) the bill refers only to the bylaws.

Fourth, the bill does not define "homeowner's association". Homeowner's associations, unlike condominium regimes, are a product of the common law and are not regulated by statute. The absence of a definition could result in the provisions of the bill applying to any incorporated voluntary community association and other types of organizations. Moreover, unlike the provisions of the Horizontal Property Act, Real Property Article, § 11-101 et seq., there is no restriction whatsoever placed upon what can be included within the assessments. Finally, unlike the declaration of covenants, the bylaws of an organization often provide for amendment by a small minority of the membership. Thus, there could be a majority of existing property owners who have not consented to the imposition of various charges or to the lien provisions and who oppose them. By contrast, in the Horizontal Property Act, either when the regime is created or when a person purchases the unit, notice of the assessments authorized by statute are in the bylaws and in the declaration which must be recorded in the land records. §§ 11-102 and 11-104. Moreover, the bylaws cannot be amended by less than the "affirmative vote of unit owners having 66 2/3 percent or more of the votes." § 11-104(e)(1).

Very truly yours,
Stephen H. Sachs
Attorney General

Senate Bill No. 473

AN ACT concerning

Real Property Liens - Homeowners' Association

FOR the purpose of providing that under certain circumstances certain assessments by homeowners' associations are liens on members' homes; requiring that a certain statement be filed to render these liens effective; requiring the recordation of these liens; entitling a homeowner to a recordable satisfaction of lien if a lien is satisfied; providing for the assessment of late charges and interest; providing for foreclosure of liens by a homeowners' association; setting certain time limitations on filing of statements and on foreclosure of liens; and generally relating to liens by homeowners' associations.