



# House of Representatives

General Assembly

**File No. 406**

*February Session, 2004*

House Bill No. 5356

*House of Representatives, April 1, 2004*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***AN ACT CONCERNING THE CONVEYANCING OF REAL PROPERTY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2004*) The town clerk of any  
2 town shall accept for recording any copy of a deed or other instrument  
3 affecting real property located in such town and recorded in the land  
4 records of another town, provided such copy is certified by the town  
5 clerk of the other town to be a true copy of the original deed or other  
6 instrument recorded in such other town. When such copy is so  
7 recorded, it shall have the same effect as a record of the original deed  
8 or other instrument.

9 Sec. 2. Section 1-34 of the general statutes is amended by adding  
10 subdivisions (5) and (6) as follows (*Effective October 1, 2004*):

11 (NEW) (5) By a limited liability company:

12 State of ...

13 County of ....

14 On this the .... day of ..., 20.., before me, ..., the undersigned officer,  
15 personally appeared .... who acknowledged himself to be the .... of ....., a  
16 (member managed or manager managed) limited liability company,  
17 and that he, as such ....., being authorized so to do, executed the  
18 foregoing instrument for the purposes therein contained, by signing  
19 the name of the limited liability company by himself as ....

20 In witness whereof I hereunto set my hand.

21 .....  
22 .....  
23 Title of Officer.

24 (NEW) (6) By a registered limited liability partnership:

25 State of ....  
26 County of ....

27 On this the .... day of ..., 20.., before me, ..., the undersigned officer,  
28 personally appeared .... who acknowledged himself to be the .... of ....., a  
29 registered limited liability partnership, and that he, as such ....., being  
30 authorized so to do, executed the foregoing instrument for the  
31 purposes therein contained, by signing the name of the registered  
32 limited liability partnership by himself as ....

33 In witness whereof I hereunto set my hand.

34 .....  
35 .....  
36 Title of Officer.

37 Sec. 3. Section 1-62 of the general statutes is amended by adding  
38 subdivisions (6) and (7) as follows (*Effective October 1, 2004*):

39 (NEW) (6) For a limited liability company:

40 State of ....

41 County of ....

42 The foregoing instrument was acknowledged before me this (date)  
43 by (name and capacity of acknowledging member or manager) on  
44 behalf of (name of limited liability company) a (member managed or  
45 manager managed) (state of organization) limited liability company,  
46 on behalf of the company.

47 (Signature of person taking acknowledgment)  
48 (Title or rank)  
49 (Serial number, if any)

50 (NEW) (7) For a registered limited liability partnership:

51 State of ....

52 County of ....

53 The foregoing instrument was acknowledged before me this (date)  
54 by (name of acknowledging partner), partner (or agent) on behalf of  
55 (name of registered limited liability partnership) a (state or place of  
56 filing of certificate of registered limited liability partnership) registered  
57 limited liability partnership, on behalf of the registered limited liability  
58 partnership.

59 (Signature of person taking acknowledgment)  
60 (Title or rank)  
61 (Serial number, if any)

62 Sec. 4. Subsection (j) of section 47-236 of the general statutes is  
63 repealed and the following is substituted in lieu thereof (*Effective*  
64 *October 1, 2004*):

65 (j) If the declaration of a common interest community, whether  
66 created before or after January 1, 1984, contains a provision requiring  
67 that amendments relating to the use of units, the relocation of  
68 boundaries between units and common elements or the extension or  
69 creation of development rights may be adopted only by the vote or  
70 agreement of unit owners of units to which more than eighty per cent  
71 [or more] of the votes in the association are allocated, such a proposed  
72 amendment shall be deemed approved if:

73 (1) (A) Unit owners of units to which [at least] more than eighty per  
74 cent of the votes in the association are allocated vote for or agree to the  
75 proposed amendment;

76 (B) No unit owner votes against the proposed amendment; and

77 (C) Notice of the proposed amendment is delivered to the unit  
78 owners holding the votes in the association that have not voted or  
79 agreed to the proposed amendment and no written objection of the  
80 proposed amendment is received by the association within thirty days  
81 after the association delivers notice; or

82 (2) Unit owners of units to which [at least] more than eighty per cent  
83 of the votes in the association are allocated vote for or agree to the  
84 proposed amendment but at least one unit owner objects to the  
85 proposed amendment and, pursuant to an action brought by the  
86 association in the Superior Court against all objecting unit owners, the  
87 court finds that the objecting unit owner or owners do not have a  
88 unique minority interest, different in kind from the interests of the  
89 other unit owners, that the voting requirement of the declaration was  
90 intended to protect.

91 Sec. 5. Subsection (b) of section 49-2 of the general statutes is  
92 repealed and the following is substituted in lieu thereof (*Effective*  
93 *October 1, 2004*):

94 (b) Advancements may be made by a mortgagee for repairs,  
95 alterations or improvements and are a part of the debt due the

96 mortgagee, provided (1) advancements for [those] such repairs,  
97 alterations or improvements shall not be made if the indebtedness at  
98 the time of the advancement exceeds the amount of the original  
99 mortgage debt; (2) the advancements shall not exceed the difference  
100 between the indebtedness at the time of the advancement and the  
101 original mortgage debt, if the original mortgage debt is greater than  
102 the then indebtedness; (3) the total amount of all of the advancements  
103 for repairs, alterations and improvements outstanding at any time  
104 shall not exceed (A) one thousand dollars [; (4) the original mortgage  
105 shall be executed and recorded after October 1, 1947; and (5)] as to  
106 mortgages executed and recorded after October 1, 1947, but before  
107 October 1, 2004, or (B) five thousand dollars as to mortgages executed  
108 and recorded on or after October 1, 2004; and (4) the terms of  
109 repayment of the advancements shall not increase the time of  
110 repayment of the original mortgage debt.

111 Sec. 6. Section 49-9 of the general statutes is amended by adding  
112 subsection (d) as follows (*Effective October 1, 2004*):

113 (NEW) (d) A release executed in accordance with this section shall  
114 operate to release the mortgagee's interest in the property which is the  
115 subject of the release, even if such interest is, in fact, acquired by the  
116 mortgagee after executing such release or does not appear of record  
117 until after the execution of such release.

118 Sec. 7. Section 49-10 of the general statutes is amended by adding  
119 subsection (h) as follows (*Effective October 1, 2004*):

120 (NEW) (h) An assignment executed in accordance with this section  
121 shall operate to assign the interest of the assignor in the property  
122 which is the subject of the assignment, even if such interest is, in fact,  
123 acquired by the assignor after executing such assignment or does not  
124 appear of record until after the execution of such assignment.

125 Sec. 8. Section 49-92a of the general statutes is repealed and the  
126 following is substituted in lieu thereof (*Effective October 1, 2004*):

127        (a) A purchaser's lien is created for the amount of the deposit paid  
128 pursuant to and stated in a contract for the conveyance of land by the  
129 recording of [that] such contract, or a notice thereof, in the records of  
130 the town in which the land is situated, provided the contract, or notice  
131 thereof, is executed by the owner and by the vendee of the land,  
132 witnessed and acknowledged in the same manner as required for a  
133 deed for the conveyance of land and describes the particular land to  
134 which it refers. [That] Such purchaser's lien shall be prior to any other  
135 liens and encumbrances originating after the contract, or notice  
136 thereof, is recorded. A purchaser's lien may be foreclosed in the same  
137 manner as a mortgage. Transfer of title of the land to the vendee  
138 constitutes a release and discharge of the lien.

139        (b) Any notice recorded pursuant to this section shall, in addition to  
140 the requirements set forth in subsection (a) of this section, include (1)  
141 the address of the owner and the vendee, (2) the date provided in the  
142 contract for the performance of such contract or, if such date is not  
143 provided in such contract, the date on which such contract was  
144 executed, and (3) the amount of the deposit paid pursuant to the  
145 contract. Nothing in this subsection shall be construed to affect the  
146 validity of any purchaser's lien created before the effective date of this  
147 section.

148        Sec. 9. Section 49-92e of the general statutes is repealed and the  
149 following is substituted in lieu thereof (*Effective October 1, 2004*):

150        Any person [,] having an interest in any real estate described in any  
151 recorded contract of sale, or notice thereof, creating a purchaser's lien  
152 which is invalid but not discharged of record [,] may give written  
153 notice to the lienor to discharge the lien in the office where recorded. If  
154 the request is not complied with in ten days, [that] such person may  
155 bring his complaint to the court which would have jurisdiction of the  
156 foreclosure of the lien, if valid, claiming such discharge of the lien, and  
157 the court may adjudge the validity or invalidity of the lien and may  
158 award the plaintiff damages for the failure of the defendant to make  
159 discharge upon request. A certified copy of the judgment of invalidity,

160 recorded [on] in the land records of the town where such certificate of  
 161 lien was filed, fully discharges the lien.

162 Sec. 10. Section 49-92f of the general statutes is repealed and the  
 163 following is substituted in lieu thereof (*Effective October 1, 2004*):

164 Each person who has lodged for record a contract of sale, or notice  
 165 thereof, claiming a lien on any property under the provisions of  
 166 sections 49-92a to 49-92f, inclusive, shall, after receiving satisfaction of  
 167 his claim or after the rendition of a final judgment against him  
 168 showing that nothing is due thereon, within ten days after being  
 169 requested in writing to do so by any person interested in having the  
 170 lien removed, sign and lodge, in the office in which his original  
 171 contract of sale, or notice thereof, was filed for record, a certificate that  
 172 such lien is removed, which, when recorded, shall discharge such lien.  
 173 If he fails to comply with such request, he shall pay to the party  
 174 aggrieved such sum, not exceeding half the amount claimed by his  
 175 lien, as the court having cognizance of the action brought therefor may  
 176 determine.

|  |                        |
|--|------------------------|
| This act shall take effect as follows: |                        |
| Section 1                              | <i>October 1, 2004</i> |
| Sec. 2                                 | <i>October 1, 2004</i> |
| Sec. 3                                 | <i>October 1, 2004</i> |
| Sec. 4                                 | <i>October 1, 2004</i> |
| Sec. 5                                 | <i>October 1, 2004</i> |
| Sec. 6                                 | <i>October 1, 2004</i> |
| Sec. 7                                 | <i>October 1, 2004</i> |
| Sec. 8                                 | <i>October 1, 2004</i> |
| Sec. 9                                 | <i>October 1, 2004</i> |
| Sec. 10                                | <i>October 1, 2004</i> |

**JUD**      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The provisions of the bill deal with conveyances of real property between private parties, and make minor changes that have no fiscal impact.

**OLR BILL ANALYSIS**

HB 5356

**AN ACT CONCERNING THE CONVEYANCING OF REAL PROPERTY****SUMMARY:**

The bill:

1. authorizes town clerks to record a certified copy of a deed or other instrument affecting real estate in their town, when the original was recorded in another town;
2. establishes statutory forms of acknowledgement for limited liability companies and registered limited liability partnerships;
3. clarifies certain voting requirements in condominiums and other common interest communities concerning the use of, or the boundaries between, units and common elements;
4. for mortgages executed and recorded after September 30, 2004, increases from \$1,000 to \$5,000 the maximum amount a mortgagee (lender) can add to the mortgage debt for advancements for repairs, alterations, or improvements;
5. makes mortgage releases executed according to law, effective to release the mortgagee's interest in the property that is the subject of the release even if the mortgagee acquires the interest, or does not record the interest, until after the release is executed;
6. makes mortgage assignments executed according to law effective to assign it even if the assignor does not acquire the interest until after he executed the assignment or the instrument that conveyed the interest to him is not recorded until after he executes the release; and
7. allows someone who has a contract to buy real estate to obtain a

purchaser's lien on it by recording a notice of contract that contains certain information on the land records of the town where the property is located. Under current law, the purchaser can obtain such a lien by recording the contract.

EFFECTIVE DATE: October 1, 2004

### **CERTIFIED COPIES OF DEEDS**

The bill authorizes town clerks to record a copy of a deed or other instrument affecting real estate located in their town that is recorded in the land records of another town. They may do so only if the copy is certified by the other town's clerk to be a true copy of the deed or instrument recorded in that town. When the copy is recorded, it has the same legal effect as if the original had been recorded.

### **CONDOMINIUMS**

Under current law, if the declaration of a pre- or post-1984 condominium or other common interest community contains a provision requiring that amendments on unit use, boundary relocation between units and common elements, or extension or creation of development rights need the vote or agreement of unit owners holding 80% or more of the association votes, an amendment is deemed approved if:

1. unit owners with at least 80% of the votes approve it,
2. no unit owner votes against it, and
3. unit owners who have the right to vote but have not done so are notified of the proposed amendment and the association receives no written objection within 30 days.

The amendment also is approved, even if one or more unit owner objects, if, pursuant to a legal proceeding brought by the association in Superior Court against all objecting unit owners, the court finds that the objecting parties do not have a unique minority interest different in kind from the interests of other unit owners who the declaration's voting requirements were intended to protect.

The bill specifies that this procedure applies only if the provision

requires a vote of higher than 80% and not if the provision requires an 80% vote.

### **MORTGAGE RELEASE**

The bill applies to mortgage releases that are executed according to existing law. The release must identify the mortgagor (borrower) and mortgagee (lender), the date the mortgage was executed, the town where it was recorded, and the volume and page of the land records where it appears. It must be signed by the releaser, acknowledged to be his free act and deed, and witnessed by two people.

### **MORTGAGE ASSIGNMENT**

The bill applies to mortgage assignments that:

1. contain a sufficient description to identify the mortgage, assignment of rent, or assignment of interest in a lease given as security for a mortgage debt and
2. have been executed, attested, and acknowledged in the manner prescribed by law for deeds.

Whenever an assignment of any residential mortgage loan (1) made by a lending institution organized under the laws of or having its principal office in another state and (2) secured by mortgage on residential real estate located in this state is made in writing, the instrument must also contain the name and business or mailing address of all parties to the assignment.

### **PURCHASER'S LIEN**

Under existing law, a purchaser's lien is created for the amount of the deposit paid pursuant to, and stated in, a contract for conveying land by the recording the contract in the land records of the town in which the land is situated. To create the lien, the contract must be executed by the owner and buyer, witnessed and acknowledged in the same manner as required for a deed, and describe the particular land to which it refers. The purchaser's lien has priority over any other liens and encumbrances that originate after the contract is recorded. A purchaser's lien may be foreclosed in the same manner as a mortgage. Transfer of title of the land to the purchaser constitutes a release and

discharge of the lien.

The bill allows someone also to obtain a purchaser's lien by recording a notice of contract that contains certain information on the land records of the town where the property is located. The notice must be executed by the owner and buyer, witnessed and acknowledged in the same manner as a deed, and describe the particular property to be purchased.

It must also include the

1. owner's and buyer's address,
2. date provided in the contract for the performance of the contract or, if this date is not provided, the date on which the contract was executed, and
3. deposit amount.

The bill specifies that it may not be interpreted to affect the validity of any purchaser's lien created before October 1, 2004.

The bill makes the procedures that currently apply for discharging a purchaser's lien created by recording the contract apply to a purchaser lien created by filing a notice of contract.

## **BACKGROUND**

### ***Common Interest Community***

A common interest community is real property described in a declaration with respect to which a person, by virtue of owning a unit, must pay for property taxes, insurance premiums, or maintenance or improvements of any other real property. A common interest community can be a condominium, cooperative, or planned community.

A condominium generally involves individually owned units in a multi-unit complex in which the owner acquires an undivided proportionate interest in areas and facilities that are common to all unit owners. These can range from the building's lobby, grounds, and electrical and mechanical systems to recreational facilities, such as

swimming pools and tennis courts. In a “cooperative,” an association owns all of the real property and each association member is entitled to the exclusive possession of a unit. A “planned community” is another arrangement where, by virtue of owning a unit, an individual must pay for real estate taxes, insurance premiums, or maintaining or improving of any real property other than the unit.

The main difference between a planned community and a condominium is that in the former, common areas are held in the name of the homeowners’ association instead of being divided among the unit owners as tenants in common.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Report

Yea 39      Nay 0