

I. Overview

A. Records Relating to Real Property

The main focus of this seminar is the Land Records, but it should be noted that the Offices of the Clerks of the Circuit Courts in the State of Maryland are required to maintain a number of additional records that relate to real property, including (by way of example, and not limitation):

1. Plat Records (RP §§ 3-108, 3-108.1, 3-109.1, 3-304; E § 9-649(r)(1)(iii); Art. 28 § 7-115; Art. 66B § 5.06)
2. Homeowners Association Depository (RP §§ 11B-112 & 11B-113) – *see Part I-B below*
3. Judgment & Tax Lien Records (numerous sections plus county codes)
4. Federal Lien Records (RP §§ 3-401 through 3-405)
5. Notices to other private parties –
 - (a) Requests for Notice of Foreclosure from Subordinate Mortgagees to Superior Mortgagees (RP § 7-105(c)(3))¹
 - (b) Requests for Notice of Ejectment from Leasehold Mortgagees to Ground Lessors (RP § 8-402.2(b))²
 - (c) Bulk Transfers – Lists of Creditors and Schedules of Transferred Property (CL § 6-104(1)(c))³

¹ *But see* Island Financial, Inc. v. Ballman, 92 Md. App. 125, 607 A.2d 76 (1992) (holding that due process under the Fourteenth Amendment to federal Constitution requires actual notice to all persons with interest in property – whether senior or junior – if such persons' names and addresses are "reasonably ascertainable" by foreclosing party, and that RP § 7-105(c) is not a condition to such notice, but rather is meant to "protect those whose interest are difficult to identify or whose addresses are difficult to ascertain").

² *But see* Id. (although Island Financial dealt with subordinate mortgagees and RP § 7-105(c), its reasoning applies equally to ground-leasehold mortgagees).

³ But note that schedules of creditors and property transferred may be (and usually is) kept by the transferee instead. (CL § 6-104(1)(c) states: "a bulk transfer subject to this title is ineffective against any creditor of the transferor unless . . . the transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the clerk of the circuit court in the county in which the property was located at the time of transfer." [emphasis added])

6. Notices of Governmental Actions & Determinations –

- (a) Wetlands Maps & Regulations (E § 16-301(c)&(d))
- (b) Acts, Ordinances, & Resolutions adopted or passed by County Commissioners under authority of Art. 25, § 3 (Art. 25, § 4)
- (c) Public Drainage & Watershed "Easement Records" (Art. 25 §§ 88, 200)
- (d) Municipal Subdivision Regulations (Art 66B § 5.03)
- (e) **For counties along the Potomac River** — Potomac River Fisheries Commission Regulations (NR § 4-306 [Art. 4 § 2 of Potomac River Compact of 1958])
- (f) **For counties within the Patuxent River Watershed** — Patuxent River Watershed Plan Records (NR § 8-1306)

B. Homeowners Association Depository

1. Pursuant to RP § 11B-113(b) & (c)(4), the Clerk must maintain a "homeowners association depository," which the Clerk must make available to the public upon a request for the information to be deposited therein
2. Pursuant to RP § 11B-113(c)(1), the homeowners association depository must be a separate file from the Land Records.
3. Pursuant to RP § 11B-113(c)(2) & (d)(5), the homeowners association depository must have a master list of the names of each homeowners association in the county, be indexed under the names of such homeowners associations, and be filed so that each item deposited is placed in the file for the corresponding homeowners association (*i.e.* not recorded sequentially overall, but only sequentially within each homeowners association's file)
4. Pursuant to RP § 11B-113(d), originals are not required. Copies (whether photocopied, mimeographed, or hand-copied) are acceptable.
5. A file in the homeowners association depository must first be opened by filing a "declaration." Pursuant to RP § 11B-101(d), a "declaration" is "an instrument, however denominated, [1] [that was] recorded among the land records . . . , [and] [2] that creates the authority for a homeowners association to impose on lots, or on the owners or occupants of lots, or on another homeowners association, condominium, or cooperative housing corporation any mandatory fee in connection with the provisions of services or otherwise for the benefit of some or all of the lots, the owners or occupants of lots, or the common areas." Not everything that is titled a "Declaration" meets these two requirements. If there isn't a provision for at least one mandatory fee for services or for owner benefits, then it isn't a "declaration" within the meaning of RP Title 11B.

Pursuant to § 11B-102(h), the "homeowners association" granted authority under a "declaration" means any person (whether natural or artificial) having such authority – but also includes an unincorporated association.

If there is a "declaration," within the meaning of RP § 11B-101(d), the Clerk shall charge a fee for the initial filing (currently \$50 as set by the AOC) and, without additional charge, create a file for the named homeowners association and index such name in the master list of homeowners associations.

With the deposit of the declaration (and the opening of the homeowners association's file in the depository), the homeowners association must deposit a number of required "disclosure" documents as set forth in RP § 11B-112(c):

- (a) More than 12 lots [RP § 11B-105(b) except (6)(i), (8), (9), (12)]
 - (i) Name, principal address, and phone number of declarant
 - (ii) Name, principal address and phone number of vendor (if not declarant)
 - (iii) If vendor is a legal entity, the names and addresses of the principal officers / general partners
 - (iv) A description of the location and size of the development (including the minimum and maximum number of lots currently planned or permitted to be included in the development)
 - (v) A description of any contiguous property owned by the declarant or vendor which is to be dedicated to public use
 - (vi) If the development is or will be a part of a larger development, a general description of the overall development
 - (vii) If the declarant has reserved authority to annex additional property to the development, a description of the size and location of the additional property that may be annexed (including the approximate number of additional lots therein), and a description of any time limits within which annexation might take place
 - (viii) Bylaws of the homeowners association, together with any development rules and other restrictions (plus bylaws and rules of related developments if part of a larger overall development)
 - (ix) A description or statement of the property which is planned to be owned, leased and/or maintained by the homeowners association
 - (x) Brief description of zoning and other land-use requirements affecting the development - **or** - a written statement of where such information can be inspected
 - (xi) A statement of (1) when mandatory fees or assessments will first be levied, (2) the procedure for increasing or decreasing such fees or assessments, (3) the procedure for collected delinquent

fees or assessments, (4) whether delinquent fees or assessments are personal obligations of the lot owner, or just liens on the lot, (5) whether delinquent fees or assessments incur interest and, if so, at what rate, (6) whether delinquent fees or assessments will be enforced by imposing a lien under the Maryland Contract Lien Act [RP Title 14, Subtitle 2], and (7) whether late charges and/or attorneys' fees will be charged on delinquent fees or assessments

(xii) A statement of any special rights or exemptions reserved by or for the benefit of the declarant or vendor (such as the exclusive right to perform construction within the development, the right to pay a reduced fee or assessment, or an exemption from the use or architectural restrictions otherwise applicable to lots)

(b) 12 or fewer lots [RP § 11B-106(b) except (1), (2), (4), and (5)(i)]

(i) Name, address, and phone number of the management agent for the homeowners association (or other officer or agent authorized by the homeowners association to provide information to the public) - **or** - a written statement that no agent or officer is presently authorized by the homeowners association to provide information to the public

(ii) Bylaws of the homeowners association, together with any development rules and other restrictions (plus bylaws and rules of related developments if part of a larger overall development)

(c) Nonresidential lots [RP § 11B-107(b)]

(i) Name, principal address, and phone number of declarant

(ii) Name, principal address, and phone number of vendor (if not declarant)

(iii) A description of the location and size of the development (including the minimum and maximum number of lots currently planned or permitted to be included in the development)

(iv) A description of any contiguous property owned by the declarant or vendor which is to be dedicated to public use

(v) Bylaws of the homeowners association, together with any development rules and other restrictions (plus bylaws and rules of related developments if part of a larger overall development)

6. After the declaration and initial disclosures are recorded, the homeowners association must keep the disclosures up to date by filing any amendments thereto. The Clerk shall charge a fee for each amendment deposited (currently set by the AOC at \$5 per page, up to a maximum of \$25 per document).

7. NOTE: Similar records are maintained with the Maryland Secretary of State for condominiums (see RP § 11-127 regarding registration of public offering statement) and with the Maryland Secretary of State and the Maryland Real Estate Commission for time-share projects (see RP §§ 11A-112 & 11A-121).