By Ronald M. Bolt, ESQ.

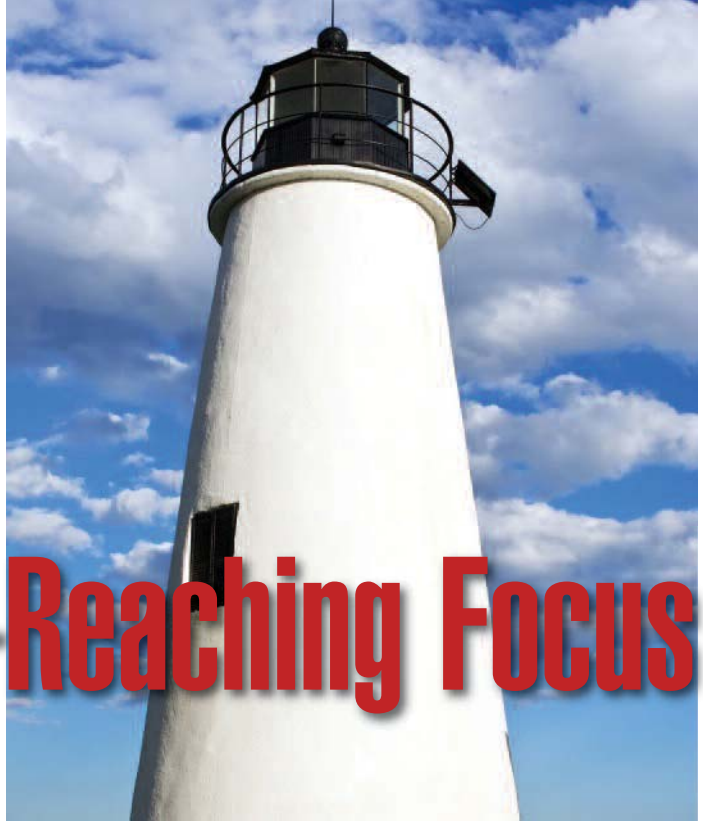
Expect Active

The 2010 session of the Maryland General Assembly involved numerous bills impacting community associations. Successful bills covered such topics as fidelity insurance, warranties, master metering of utilities, annual budgets for homeowners associations, the cancellation of condominium property and casualty insurance and even "green" legislation governing the use of clotheslines.

The 2011 session promises to be equally active and broad. In the current economic downturn, the primary concern for community association advocates will continue to be priority lien legislation. Currently, due to decreased property values, foreclosure sales rarely result in full payment of first-mortgage loan debts. These deficient sales leave no surplus proceeds to satisfy assessment liens. Priority lien legislation would help associations recoup past-due assessments by providing association liens with limited priority. Assessment priority bills have been introduced in the General Assembly in the past three sessions but legislation has yet to be adopted. The upcoming session will surely include a new bill, tailored to overcome the hurdles encountered in prior years.

The most recent draft of a priority lien law (House Bill 842) would have established a four-month priority lien for past-due association assessments and up to $500 of related interest and fees, in the event of a foreclosure. The bill originally proposed a six-month priority lien, but was reduced pursuant to an amendment by the Environmental Matters Committee. Also, the bill would have required condominium associations to impose a security deposit on each unit owner in the amount of two months of assessments in order to help offset losses from foreclosure, a provision that was opposed by Community Associations Institute's Maryland Legislative Action Committee. This version, as amended, made it through the House with a favorable vote of 133-23. After a spirited hearing in the Senate in late March, and with little time left in the session, the bill was voted unfavorably in the Senate Judicial Proceedings Committee by a vote of 6-3, with two abstentions.

Renewed support is also expected for reserve study and manager licensing legislation. Such bills failed to pass last session, despite re-



Session with Far-Reaching Focus

peated efforts in the House and Senate over prior years. The reserve study bill introduced in 2010 (Senate Bill 345) would have required associations to conduct reserve studies at least once every five years to assess the sufficiency of reserves for major repairs and replacement of common elements and areas. The Task Force on Common Ownership Communities found that many aging communities face financial difficulty because assessments have been insufficient to repair capital components. Similar bills were introduced in the last three sessions and we'll likely see such a bill again.

Currently, association managers are not licensed in Maryland. Bills introduced in both the House and Senate in the most recent regular session proposed a state board to license managers and establish penalties for violations of a manager code of conduct. This state board would have been funded by license fees. Such legislation would be consistent with a growing nationwide trend to increase the regulation of community association managers. Nine states regulate managers in some fashion. A bill was passed for Prince George's County, requiring its Office of Community Relations to establish a "community association managers registry" for 2011. Managers providing services in the county must register and renew by Jan. 31 of each year and pay an annual fee of $100 (HB 566; RP §14-131).

A bill was passed in 2010 prohibiting covenants and other restrictions that disallow the use of clotheslines (SB 224; RP §14-130). Based on current environmental trends, one would expect to see more "green" initiatives in 2011. In last year's session a bill was introduced, but not passed, that would have required condominiums containing 10 or more dwelling units to provide recycling programs for residents (SB 156). Under local code, recycling is already mandated for multifamily properties in Montgomery County having more than seven dwelling units (MCC §48-47; COMCOR § 48.00.03.03). Recycling requirements for the rest of state are on the horizon.

Based on the recent ruling of Maryland's highest court in the case of *Monmouth Meadows Homeowners Association, Inc. v. Hamilton, et al.* (2010 WL 4157521), community associations would benefit from new "fee-shifting" legislation on the issue of recovering attorneys' fees in collection. In *Monmouth*, the Court of Appeals ruled that all collection fees may not be recoverable under the Maryland Contract Lien Act if not found "reasonable" upon applying the factors set forth in the rules of ethics for lawyers.

As the court noted, fees have been awarded in the past by some lower courts based on a flat-percentage approach or a more general reasonableness test (i.e., by multiplying the number of hours reasonably spent by a reasonable hourly rate and then adjusting the award based on other external factors). This prior "hours-by-rate" approach recognizes that a certain amount of attorney time is reasonably necessary to obtain a judgment and it's possible that the attorney time could unavoidably equal or exceed the unpaid assessment amount, particularly for smaller debts. The *Monmouth* court noted that while this prior hours-by-rate approach is appropriate under "fee-shifting" statutes, it is not appropriate in a collection case under the Act. Fee-shifting statutes are intended to encourage suits to further public policy goals. The court found, however, that the Act is not a fee-shifting statute; it allows recovery of attorneys' fees as a matter of contract and not based on public policy goals. Thus, the court rejected the prior approach applied by some trial courts.

Following *Monmouth*, trial courts will be taking a closer look at what fees are recoverable by associations in collection matters. External "reasonableness" factors from the rules of ethics for lawyers now serve as the foundation of the court's inquiry. Trial courts will be first applying such factors as, among others, how the attorneys' rate compares to rates in the locality, the principal amount involved and the difficulty of the case. The inquiry is helpful in that it prevents a trial court from awarding fees that are disproportionate to the dollar amount at issue. However, one can see the chilling effect that this approach could cause in connection with smaller debts. New fee-shifting legislation recognizing the important public policy considerations underlying the collection of assessments would benefit associations, particularly associations that are already struggling with numerous small-dollar delinquencies.