

IN THE SUPREME COURT OF THE STATE OF NEVADA

K& P HOMES, A SERIES LLC OF
DEK HOLDINGS, LLC, a Nevada
limited liability company,,

Appellant,

vs.

CHRISTIANA TRUST, A DIVISION
OF WILMINGTON SAVINGS FUND
SOCIETY, FSB, NOT IN ITS
INDIVIDUAL CAPACITY BUT AS
TRUSTEE OF ARLAP TRUST 3
Respondent.

Supreme Court Case No.: 69966

Electronically Filed
Nov 01 2016 11:35 a.m.
(A certified question from U.S. District
Court, District of Nevada, Case No.
2:15-cv-01534-RJC-VCF)
Elizabeth A. Brown
Clerk of Supreme Court

**RESPONDENT CHRISTIANA TRUST'S RESPONSE TO BRIEF OF
AMICUS CURIAE COMMUNITY ASSOCIATIONS INSTITUTE**

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I. STATEMENT OF CERTIFIED QUESTION

The following question was certified to this Court:

Does the rule of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev. 2014) that foreclosures under NRS 116.3116 extinguish first security interests apply retroactively to foreclosures occurring prior to the date of that decision?

II. SUMMARY OF THE ARGUMENT

Christiana's Answering Brief demonstrated through several avenues that this Court should find that SFR does not apply retroactively to sales taking place prior to September 18, 2014, because it decided a new principle of law on an issue of first impression whose resolution was not clearly foreshadowed, overruled past precedent upon which litigants relied, and interpreted the Statute in a manner that was *contrary* to both legislative intent and industry interpretation. The Court granted the late application of the Community Association Institute ("CAI"), the self-described organization "to provide effective and objective guidance for the creation and operation of condominiums, cooperatives, and homeowner associations"¹ to file an amicus curiae brief. This brief is Christiana's response to that amicus brief.

CAI's argument for retroactive application of SFR can be reduced to the following: an association's assessment lien under NRS 116.3116 (the "Statute") is a "true lien" superior in all regards to the first secured interest, and it is necessary to apply SFR retroactively to permit extinguishment of the first secured interest to protect the associations' interests. The first point ignores over two decades of application of the Statute where *all* lenders, legislators, HOAs and their collection agents, foreclosure trustees and attorneys, investors and most state and federal

¹ CAI Amicus Curiae ("CAI Br."), p. 2.

district court judges – all the “players in the industry” – treated the HOA lien as a payment priority not capable of extinguishing a first deed of trust. The second point ignores the fact that retroactive application of SFR and extinguishment of the first secured interests by the associations’ non-judicial sales are not necessary as the “payment priority lien” permitted the associations to collect their nine-month super-priority, which is all the Nevada Legislature intended to protect. CAI fails to overcome the weight of the evidence Christina provided showing that the three factors set forth in Chevron Oil v. Huson, 404 U.S. 97 (1971) (“Chevron”), are met because SFR announced a new principle of law that was not clearly foreshadowed, overruled past precedent upon which litigants relied, did not further the purpose of the Statute, was inherently unfair considering the industry practice to the contrary amongst all parties involved, and has produced substantial inequitable results. Despite CAI’s Brief, SFR should be applied prospectively only to HOA sales occurring after it was decided.

III. ARGUMENT

A. RETROACTIVE APPLICATION OF SFR FINDS NO SUPPORT IN CASES FROM OTHER JURISDICTIONS BECAUSE THEIR STATUTORY SCHEMES DIFFER IN MATERIAL WAYS.

CAI observes, “Twenty-three jurisdictions have adopted *a lien priority statute....*” CAI Br. at 5-6 (emphasis added). The implication appears to be that the fact that these jurisdictions may have “a lien priority statute” is a basis to conclude

that “SFR did not decide an issue of first impression whose resolution was not clearly foreshadowed by centuries of lien priority case law and decades’ experience with the statutory lien priority of the uniform acts.” CAI Br. at 6. CAI’s observation is misleading and its conclusion, untenable.

CAI relies on a summary of super lien statutes based on the “National Matrix of Association ‘Super-priority’ Lien Legislation,” by Hugh Lewis (the “Matrix”) for the inference that, “SFR was not an issue of first impression whose resolution was not clearly foreshadowed.”² **All data CAI relies on came from the Matrix, but the “data” in the study cannot be taken as reliable.** The Matrix fails to recognize the differences between the Uniform *Condominium* Act (“UCA”) and Uniform Common Interest Ownership Act (“UCIOA”) States³, and there are several instances where the characterizations of the statutes are simply wrong. For example, the Matrix falsely states that the super lien of the following states “trumps” a first mortgage, when the statutes actually provide for a payment priority and not extinguishment: Missouri (UCIOA, 2013), Minnesota, Tennessee (UCA, 2015-16), Pennsylvania, Florida, Maryland, and Hawaii.⁴

² See footnote 6, CAI’s Br. at 6, referring to page 32 of the Community Association Fact Book 2014, which cites the Matrix, found at http://www.cairf.org/research/factbook/lien_priority_matrix.pdf.

³ Nevada adopted the UCIOA (1982) in 1991 pursuant to Assembly Bill 221. See also, SFR, 334 P.3d at 410.

⁴ See “Compilation of Super-priority Lien Statutes,” ADD2292-2296.

CAI argues that “[p]rior to SFR, in every state in which this issue [i.e., whether the association’s lien is a “true” lien] has been litigated, the courts have ruled – consistent with common law precedent – that the association’s foreclosure of its priority lien extinguished all subordinate liens, and *none* held to the contrary.” CAI Br. at 8 (emphasis added). CAI overlooked contrary decisions by courts in Alaska, Colorado, Connecticut, Delaware, Minnesota, Vermont and West Virginia – the only UCIOA States besides Nevada. As discussed in Christiana’s Answering Brief, pp. 14-16, SFR ran contrary to statutes and court decisions in these UCIOA States, which have concluded that a non-judicial HOA foreclosure sale cannot eliminate the senior deed of trust. Consistent with the laws of those other UCIOA jurisdictions, the SFR Dissent argued that the plain language of NRS 116.3116(2) “mandates that a civil judicial foreclosure complaint be filed in order [for an HOA sale] to extinguish a first deed of trust.” 334 P.3d at 419.

CAI cites no cases from UCIOA jurisdictions, and the three it does cite are all sufficiently distinguished in the Answering Brief, pp. 15-16 – two cases decided prior to SFR (one three weeks before SFR⁵ and the other from a *judicial*-

⁵ Chase Plaza Condo. Ass’n, Inc. v. JPMorgan Chase Bank, N.A., 98 A.3d 166 (D.C. Aug. 28, 2014). The District of Columbia has a “standalone statute,” as it did not adopt either UCIOA or UCA.

foreclosure-only, UCA State),⁶ and one⁷ decided over a year *after* SFR, in another UCA State.⁸ These cases can hardly be taken as “clearly foreshadowing” the SFR result.

The 15 non-UCIOA jurisdictions that CAI cites as “lien priority” have adopted the UCA or neither uniform act. Taken as a whole, these States’ statutes are so disparate that they cannot “clearly foreshadow” the result in SFR. For example, for the 2013 and 2014 versions of the statutes, among UCA States, Pennsylvania and Tennessee⁹ provide for payment priority only, as do non-UCIOA/non-UCIOA States, Florida, Maryland and Hawaii. And the UCA States

⁶ Summerhill Vill. Homeowners Ass’n v. Roughly, 289 P.3d 645, 649 (Wash. Ct. App. 2012).

⁷ Twenty Eleven, LLC v. Botelho, et al., 127 A.3d 897 (R.I. 2015).

⁸ The case is also distinguishable because the Rhode Island statutes, R.I. Gen. Laws § 34-36.1-3.16 (2013), expressly require enforcement of a super-priority lien by non-judicial foreclosure, and not “institution of an action”; they expressly require certified mailing of notice to “the defaulting unit owner...and the holder of the... deed of trust,” (§ 34-36.1-3.21(a)(2)), and not just the homeowner and the lienholders subordinate to the first deed of trust (NRS 116.31162 and NRS 107.080(3) and (4)); and they expressly provide for redemption by the holder of the deed of trust (§ 34-36.1-3.21(c)), which was not added to the Nevada Statute until the 2015 amendments. The case also relied on other cases which expressly provided that extinguishment of a senior mortgage lien could only occur “[s]o long as timely and proper notice” is given to the lienholders, just as UCIOA § 3-116(r) (2008) and (2014) both provide, *for non-judicial foreclosure states*, “Foreclosure of a lien under this section does not terminate an interest that is subordinate to the lien to any extent unless the association provides notice of the foreclosure to the record holder of the subordinate interest.”

⁹ In 2016, Tennessee amended its statutes to make clear that any assessment lien “shall be subject to any prior mortgage or deed of trust...and shall not extinguish the lien of such mortgage or deed of trust.” ADD2362-2366.

Missouri and Washington provided that non-judicial foreclosures did not extinguish first deeds of trust.¹⁰ In the post-SFR landscape, the only two jurisdictions which allowed non-judicial foreclosure to extinguish a first deed of trust were Nevada and District of Columbia. Reviewing lien priority statutes before SFR would have only confused the reader, not provided clarity.¹¹ Whatever laws were in place for the UCA states and however their courts interpreted those statutes have no bearing on – and more particularly, do not “clearly foreshadow[.]”¹² – the SFR holdings that an association lien (1) has a “true priority” over the first secured interest (2) which can be extinguished by a non-judicial foreclosure sale, in a non-UCA State.

CAI acknowledges that the Court explicitly referred to SFR as a case of “first impression,” and even admits, that, until SFR, “there was not an explicit Nevada case establishing controlling precedent on the precise fact pattern with respect to the Nevada lien priority statute enacted in 1991.” CAI Br. at 6. Indeed, it was because there was no controlling precedent and because the “Nevada’s state and federal district courts [we]re divided on whether NRS 116.3116 establishes a

¹⁰ See Compilation of Super-priority Lien Statutes, ADD2292-2296, and copies of the referenced state statutes following it, ADD2299-2415.

¹¹ See “Compilation of Non-judicial Super-priority Lien Statutes,” attached hereto as ADD2297-2298.

¹² Chevron, 404 U.S. at 106-07.

true priority lien,”¹³ that this Court even had to act. CAI’s arguments merely reinforce that SFR decided “an issue of first impression whose resolution was not clearly foreshadowed.” Breithaupt v. USAA Prop. & Cas. Ins. Co., 110 Nev. 31, 867 P.2d 402, 405 (1994) (citing Chevron, 404 U.S. at 106-07).

CAI’s discussion about the “common law optional-obligatory distinction” is really a misdirection that need not be considered by this Court.¹⁴ CAI Br. at 7-8. How CAI’s examples of a split lien in the context of mortgages should have been applied by the industry considering association assessment liens is not explained. In any case, the idea that an HOA’s lien could be split and separately enforced was not the basis for the Christiana’s argument against retroactive application, namely, that all the industry players treated the HOA’s super lien as enforceable as payment priority only. Further, CAI’s reference to equitable subrogation has no application to the lien priority between an HOA and a holder of a first deed of trust because neither satisfies the entire debt of the other with the intent to step into the shoes of priority of the other. Thus, it is unreasonable to conclude that this body of case law regarding unrelated statutes “clearly foreshadowed” the SFR holdings.

SFR was not clearly foreshadowed because all the players in the industry

¹³ 334 P.3d at 412.

¹⁴ To summarize, CAI’s interpretation of Christiana’s basis for the first Chevron factor (overruling clear past precedent) is misguided because Christiana does not assert that liens cannot be split and separately enforced or that that idea was new or contrary to industry dealings prior to SFR.

treated the HOA lien as a payment priority not capable of extinguishing a first deed of trust.

B. SFR TIPPED THE BALANCE OF INTERESTS IN FAVOR OF THE HOAS, REJECTING COMPETING INTERESTS AND POLICY CONCERNS.

In Section B of its Brief, CAI makes the case that associations serve a critical role and that assessment revenue is a critical part of that role. CAI Br. at 9-11. That is not disputed. CAI quotes the Official Comments to UCIOA § 3-116 (1982): “[T]he 6 months’ priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and *the obvious necessity for protecting the priority of the security interests of lenders.*” CAI Br. at 10 (emphasis added). Section B then proceeds, as did the Majority in SFR, to abandon that balance and advance only the interests of HOAs and, of even greater concern, those of investor/speculators like K&P. Abandoning that balance was contrary to the legislative history and UCIOA.

It appears that CAI contends that, under the payment priority system where the first deed of trust could not be extinguished by an association foreclosure, “until a lender completes its foreclosure, it is not liable to pay assessments. Thus, as the association copes with loss of revenue, the lender gets a ‘free ride’ on the backs of homeowners who are paying the assessment....” CAI Br. at 10. This simplistic view fails to recognize the other side of the scale: the interests of the

lenders who face losses of hundreds of thousands of dollars per loan – compared to the association’s *delay*¹⁵ in recovering only hundreds or thousands of dollars¹⁶ – if SFR is applied retroactively. And it fails to recognize *any* interests of lenders who were prevented from foreclosing before working through consumer protection statutes and programs created by the federal government and the Nevada Legislature to keep Nevadans in their homes. *See* Christiana Br. at Section A.1.f.

CAI also ignores the actual balance of interests struck by the Nevada Legislature when amending NRS Chapter 116 in 2009 and 2011 when it expressly recognized the delays and their impacts on associations. NRS 116.3116(2)(c) was amended by AB 204 in 2009.¹⁷ In its original form, AB 204 extended the period of priority from six months to two years, but this provision was reduced to nine months. Extending the priority period was “necessary...because foreclosures are now taking up to two years,” compared to about six months at the time the original law was written.¹⁸ This amendment balanced the interests of the lenders and the

¹⁵ “Delay” because the payment priority system did not prevent the associations from recovery, but only delayed recovery until the lenders complied with the consumer protection safeguards.

¹⁶ In the instant case, Christiana faces losing security for a loan in the amount of \$284,200.00, when the amount of the monthly assessments was \$49.25 per month, which would have made the super-priority lien equal to \$443.25. *See* Christiana Br. at 26-27.

¹⁷ *See* 2009 Nev. Stat., p. 1207.

¹⁸ *See* Hearing Minutes, AB 204, March 6, 2009, Assemblyperson Ellen Spiegel, p. 34. (ADD:14).

associations as the Legislature deemed appropriate. Moreover, as argued in Christiana's Answering Brief, extending the priority period from six months to nine or 24 months of delinquent dues to protect the associations would have been unnecessary if the legislature intended or even foresaw that associations could simply foreclose on the entirety of their liens and extinguish the deed of trust before the senior deed of trust beneficiary foreclosed. Christiana Br. at 22-23.

CAI similarly ignores the fact that associations routinely had mortgage protection clauses in their CC&Rs which protected the lenders – or intentionally misled the lenders into believing their interests were protected – from extinguishment or subordination.¹⁹ And CAI also ignores the fact that many associations thwarted the efforts of lenders to pay even the super-priority portions of their liens. For example, some associations and the principal foreclosure trustees adamantly denied that there was a super-priority lien until the lender foreclosed; adamantly refused to provide any lien payoff quotes to lenders (citing the Fair Debt Collection Practices Act) or provided only a full payoff quote, rather than a quote for the super-priority portion; and then adamantly refused to accept the tender of the super-priority portion of the liens. Their complicity and financial incentive is obvious: if they accepted the super-priority payoff, the associations were limited to nine months recovery, and the trustees would collect no fees and costs, but if they

¹⁹ See Christiana Br., Section A.1.c.

refused to give super-priority payoff quotes and refused to accept the super-priority tender, they could either foreclose and collect the entire lien or strong-arm the lenders to pay the entire lien to avoid possible loss of security through foreclosure. Meanwhile, the trustees continued to tack on escalating fees and costs with each foreclosure notice which they knew they could recover upon foreclosure.

The SFR decision was clearly *not* foreshadowed – the first Chevron factor. Applying the decision retroactively does not further the purpose of the Statute – the second Chevron factor – namely, “striking an equitable balance between the need[s]” of the associations and the lenders. The decision “[w]ould produce substantial inequitable results if applied retroactively” – the third Chevron factor. Consequently, SFR should not be applied to HOA foreclosure sales that took place *prior* to the decision.

Applying SFR only to HOA sales from September 18, 2014, forward puts all participants back on an even playing field. Properties sold at HOA foreclosure sales prior to SFR would be deemed sold subject to the first deed of trust. HOAs would keep the super-priority portion of the proceeds from their sales. Professional property purchasers, such as K&P, would still be in possession of the properties, could continue collect rent until the deed of trust foreclosure, and then could choose whether to pay off the deed of trust, settle with the lender, or let the property go. Lenders could better assess their risks of lending in Nevada, and title

insurers would be not exposed to liability for unforeseeable extinguishments of first deeds of trust.

**C. FHFA, FANNIE MAE, AND FREDDIE MAC STEADFASTLY
REJECT POSSIBLE EXTINGUISHMENT OF THEIR
PROPERTY INTERESTS.**

CAI argues that the Federal Housing Finance Agency (“FHFA”) and government-sponsored entities (“GSEs”) like Fannie Mae and Freddie Mac acquiesced in or consented to the creation of a super-priority lien that could extinguish their own property interests. CAI Br. at 11-14. While CAI does not explicitly link this erroneous assertion to the issue presented to the Court – whether the SFR decision applies retroactively to HOA sales that occurred before the date of that decision – CAI appears to believe that various actions and inactions on the part of FHFA or the GSEs evince some acknowledgement that SFR did not decide a new principle of law or overrule past precedent. CAI is incorrect.

CAI contends that the involvement of Fannie Mae and Freddie Mac in drafting the UCA several decades ago confirms that the “GSEs were aware of and supported community associations’ ‘super-priority’ liens” as early as 1977 or 1980. CAI Br. at 12. However, the question that the SFR Court decided as a matter of first impression was not whether NRS 116.3116 creates a super-priority lien but rather whether that priority meant “true” priority or “payment” priority. Whatever involvement the GSEs may have had in drafting the UCA sheds no light on that

point.

CAI similarly suggests that the GSEs' "long history of directing their loan servicers to avoid the association's lien priority" by paying HOA assessments implies that Fannie Mae and Freddie Mac have accepted for "decades" that HOA sales conducted pursuant to NRS 116.3116 could extinguish their property interests. CAI Br. at 12-13. However, directives and guidelines issued by the GSEs to their loan servicers to try to protect the *priority* of their liens do not indicate that Fannie Mae or Freddie Mac anticipated that HOA sales could *extinguish* those liens.

Finally, CAI's statement that "[s]ince inception in 2008, FHFA did not direct the GSEs to change [their] directives," CAI Br. at 13, reflects a misunderstanding of the governing federal statute. Under 12 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar"), while the GSEs are in FHFA conservatorship, none of their property "shall be subject to ... foreclosure[] ... without the consent of [FHFA]." The Federal Foreclosure Bar prevents any "adverse actions ... could otherwise be imposed on FHFA's property under state law," such as NRS 116.3116. *See Skylights v. Byron*, 112 F. Supp. 3d 1145, 1153 (D. Nev. 2015). Thus, there was no need for FHFA to "direct the GSEs" to change the guidelines and instructions they provide their servicers in order to shield the GSEs' property interests from extinguishment following the Court's decision in SFR - consistent

with the principles of federal preemption, the Federal Foreclosure Bar independently and automatically protected those interests despite the change in Nevada law.

IV. CONCLUSION

For all of the above reasons, this Court should determine that the SFR decision should not be applied retroactively to HOA lien foreclosure sales occurring prior to September 18, 2014.

DATED this 31st day of October, 2016.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point, Times New Roman style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 3,262 words. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be

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found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 31st day of October, 2016.

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PROOF OF SERVICE

I certify that I electronically filed on the 31st day of October, 2016, the foregoing **RESPONDENT'S ANSWERING BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

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FIRST SUPPLEMENT
TO
RESPONDENT'S ADDENDUM

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Compilation of Super-priority Lien Statutes

State	Statute	UCIOA UCA	Judicial or Non-judicial foreclosure	Right of Redemption ₁	Notice to First Mortgagee ₂	Mortgagee Right to Payoff Demand³	Priority Modifier
Alaska	Alaska Stat. §34.08.470	UCIOA	Judicial	No	Yes	No	
Colorado	C.R.S. 38-33.3-316	UCIOA	Judicial ⁴	No	No	Yes	
Conn.	Conn. Gen. Stat. § 47-258	UCIOA	Judicial	No	Yes	Yes	
Delaware	25 Del. C. §81-316	UCIOA	Judicial		Yes	No	
Minn.	Minn. Stat. § 515B.3-116	UCIOA	Both	Yes-6 months	No	No	Payment Priority Only
Nevada Pre-SFR	NRS 116.3116	UCIOA	Non-judicial	No	No	No	
Nevada Post-SFR	Significant Changes			Yes	Yes	Yes	
Vermont	27A V.S.A. § 3-	UCIOA	Judicial	No	Yes	No	

¹ The statute explicitly provides for a right of redemption. This does not include rights of redemption provided for under other applicable statutes or case law.

² The statute requires notice to be given to a first mortgagee.

³ The statute states that a first mortgagee can request a payoff demand.

⁴ Non-judicial foreclosure is possible, but requires the use of a public trustee and a court order authorizing the sale, differentiating it from a true “non-judicial” process.

State	Statute	UCIOA UCA	Judicial or Non-judicial foreclosure	Right of Redemption	Notice to First Mortgagee ₁	Mortgagee Right to Payoff Demand ¹	Priority Modifier
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	116						
West Va.	W. Va. Code § 36B-3-116	UCIOA	Judicial	No	No	No	
Alabama	Code of Ala. § 35- 8A-316	UCA	Judicial	No	Yes	Yes	
Missouri 2013	§ 448.3- 116 R.S.Mo.	UCA	Both	No	No	No	HOA Lien not prior to first mortgagee.
Missouri 2014	Significant Change	UCA	Both	No	No	Yes	HOA loses its priority if non- judicial. HOA lien is not prior to a purchase money DOT recorded prior to 8-28-2014.
Penn. Pre-SFR	2014 68 Pa.C.S. § <u>3315</u> 2014 68 Pa.C.S. § <u>5315</u>	UPCA	Judicial	No	No	No	Payment Priority Only. HOA lien is not prior to a first mortgage or mortgage judgments.
Rhode Island	R.I. Gen. Laws § 34- 36.1-3.16	UCA	Judicial	Yes, <i>under subsection 21(c)</i>	Yes	Yes	

State	Statute	UCIOA UCA	Judicial or Non-judicial foreclosure	Right of Redemption	Notice to First Mortgagee₁	Mortgagee Right to Payoff Demand¹	Priority Modifier
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Tenn. Pre-SFR	2014Tenn. Code Ann. § 66-27- 415	UCA	Both	No	Yes	Yes	If HOA fails to give notice of delinquency to first mortgagee, it loses its priority. If non-judicial, notice to all lienholders of record required.
Tenn. Post-SFR	Significant changes.						HOA's super lien limited to a "priority in the proceeds" from a foreclosure sale, and the sale shall be subject to the first mortgage.
Wash. 2013- 2014	2014 Rev. Code Wash. (ARCW) § 64.34.364	UCA	Both	Yes	No	Yes	If HOA forecloses non-judicially, it loses its lien priority.
Hawaii	YEAR HRS §514B-146	HPRA	Both	No	No	No	Payment priority-collectible from purchaser at first mortgagee's foreclosure sale. HOA's lien is not prior to "all sums

State	Statute	UCIOA UCA	Judicial or Non-judicial foreclosure	Right of Redemption	Notice to First Mortgagee₁	Mortgagee Right to Payoff Demand¹	Priority Modifier
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							unpaid on any mortgage of record that was recorded prior to the recordation of a notice of lien by the association.”
Mass.	ALM GL ch. 183A, § 6	HPRA	Judicial	No	Yes	Yes	Super lien limited to \$2,500
D.C.	D.C. Code §42-1903.13	Pre-UCA,	Non-Judicial	No	No	No	
Florida	Fla. Stat. §718.116	Stand alone	Judicial	No	No	Yes	Payment priority, due upon the lender’s foreclosure sale.
Illinois	765 ILCS 605/9	Stand alone	Judicial	No	No	Yes	
Maryland	Md. REAL PROPERTY Code Ann. § 11-110	Stand alone	Judicial	No	No	Yes—to a super lien payoff demand	Super priority lien only applies to first DOT recorded on or after 10-01-2011. Payment priority only, upon lender’s foreclosure.

State	Statute	UCIOA UCA	Judicial or Non-judicial foreclosure	Right of Redemption	Notice to First Mortgagee₁	Mortgagee Right to Payoff Demand¹	Priority Modifier
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New Hamp.	RSA 356-B:46	Stand alone	Judicial	No	Yes	No	
New Jersey	N.J. Stat. § 46:8B-21	Stand alone	Judicial	No	Yes	Yes	The HOA's lien does not have priority if it is recorded after the HOA receives notice of the lender's foreclosure action (Summons or Lis Pendens).
Oregon Pre-SFR	ORS § 100.450	Stand alone	Judicial	No	Yes	No	HOA's lien only gains priority if the mortgagee does not initiate foreclosure or record a deed in lieu after a 90 day notice.

Compilation of Non-judicial Super-priority Lien Statutes

STATE	UCIOA UCA	Right of Redemption ¹	Notice to First Mortgagee ²	Mortgagee Right to Payoff Demand ³	Priority Modifier
Nevada Pre-SFR	UCIOA	No	No	No	
Nevada Post-SFR	UCIOA	Yes	Yes	Yes	
Minnesota	UCIOA	No	No	No	Payment Priority Only. HOA's super lien is not prior to a first mortgage.
Washington	UCIOA	Yes	No	No	If HOA forecloses non-judicially, it loses its lien priority.
Tennessee Pre-SFR	UCA	No	Yes	Yes	
Tennessee Post-SFR	UCA	No	Yes	Yes	Payment Priority Only. Foreclosure shall not extinguish first security interest.
District of Columbia	Pre- UCA	No	No	No	
Missouri Pre-SFR	UCA	No	No	No	HOA Lien not prior to first mortgagee.

¹ The statute provides a specific right of redemption for the first mortgagee after the HOA's foreclosure sale.

² The statute requires notice to be given to a first mortgagee.

³ The statute states that a first mortgagee can request a payoff demand.

Compilation of Non-judicial Super-priority Lien Statutes

Missouri 2014	UCA	No	No	Yes	HOA loses its priority if non-judicial. HOA lien is not prior to a purchase money DOT recorded before 8/28/2014.
Hawaii	HPRA	No	No	No	Payment Priority Only.

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ALASKA STATUTES TITLE 34. PROPERTY CHAPTER 08. COMMON INTEREST OWNERSHIP ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY**Sec. 34.08.470. Lien for assessments**

(a) The association has a lien on a unit for an assessment levied against the unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged under [AS 34.08.320\(a\)\(10\)](#) -- (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) a lien and encumbrance recorded before the recordation of the declaration and, in a cooperative, a lien and encumbrance which the association creates, assumes, or takes subject to; (2) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the interest of the unit owner and perfected before the date on which the assessment sought to be enforced became delinquent; and (3) a lien for real estate taxes and other governmental assessments or charges against the unit or cooperative. A lien under this section is also prior to all security interests described in (2) of this subsection if the common expense assessments based on the periodic budget adopted by the association under [AS 34.08.460\(a\)](#) would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of a mechanic's or materialman's lien, or the priority of a lien for other assessments made by the association. A lien under this section is not subject to the provisions of [AS 09.38.010](#).

(c) Unless the declaration provides otherwise, if two or more associations have liens for assessments created at any time on the same property, each lien has equal priority.

(d) The recording of the declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this section is not required.

(e) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

(f) This section does not prohibit an action to recover sums for which (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in an action brought under this section is enforceable by execution under [AS 09.35.010](#).

(h) The association upon written request shall furnish to a unit owner a statement setting out the amount of unpaid assessments against the unit. If the interest of the unit owner is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and each unit owner.

(i) In a cooperative, upon nonpayment of an assessment on a unit, a unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed under this section.

(j) The association's lien may be foreclosed under this subsection as follows:

(1) in a condominium or planned community, the lien of the association must be foreclosed as a lien is foreclosed under [AS 34.35.005](#);

(2) in a cooperative whose unit owners' interests in the units are real estate, the lien of the association must be foreclosed as a mortgage or deed of trust on real estate is foreclosed or as a lien is foreclosed under [AS 34.35.005](#); or

(3) in a cooperative whose unit owners' interests in the units are personal property, the lien of the association must be foreclosed as a security interest under AS 45.29.

(k) In a cooperative, if the interest of the unit owner in a unit is real estate,

(1) the association, upon nonpayment of an assessment and compliance with this subsection, may sell the unit at a public sale or by private negotiation, and at any time and place; each aspect of the sale, including the method, advertising, time, place, and terms must be reasonable; the association shall give reasonable written notice to the unit owner and a lessee of the unit owner of the time and place of the public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made; the same notice must also be sent to any other person who has a recorded interest in the unit that would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of a public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made; the notices required by this subsection may be sent to any address reasonable in the circumstances; sale may not be held until five weeks after the sending of the notice; the association may buy at a public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale;

(2) unless otherwise agreed, the debtor is liable for any deficiency in a foreclosure sale under [AS 09.45.170](#);

(3) the proceeds of a foreclosure sale must be applied in the following order:

(A) the reasonable expenses of sale;

CTADD2299

(B) the reasonable expenses of securing possession before sale including holding, maintaining, and preparing the unit for sale, payment of taxes and other governmental charges, premiums on hazard and liability insurance;

(C) satisfaction of the lien of the association;

(D) satisfaction in the order of priority of a subordinate claim of record; and

(E) remittance of any excess to the unit owner;

(4) a good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section; the person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed after a foreclosure of the association's lien by power of sale and that person conducting the sale was empowered to make the sale; signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority of the person to sign; further proof of authority is not required even if the association is named as grantee in the conveyance;

(5) at any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owner or the holder of a subordinate security interest may cure the default of the unit owner and prevent sale or other disposition by tendering the performance due under the security agreement, including an amount due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender.

History

(§ 1 ch 95 SLA 1985; am § 7 ch 61 SLA 1986)

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ALASKA STATUTES TITLE 34. PROPERTY CHAPTER 08. COMMON INTEREST OWNERSHIP ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY**Sec. 34.08.470. Lien for assessments**

(a) The association has a lien on a unit for an assessment levied against the unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged under [AS 34.08.320\(a\)\(10\)](#) -- (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) a lien and encumbrance recorded before the recordation of the declaration and, in a cooperative, a lien and encumbrance which the association creates, assumes, or takes subject to; (2) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the interest of the unit owner and perfected before the date on which the assessment sought to be enforced became delinquent; and (3) a lien for real estate taxes and other governmental assessments or charges against the unit or cooperative. A lien under this section is also prior to all security interests described in (2) of this subsection if the common expense assessments based on the periodic budget adopted by the association under [AS 34.08.460\(a\)](#) would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of a mechanic's or materialman's lien, or the priority of a lien for other assessments made by the association. A lien under this section is not subject to the provisions of [AS 09.38.010](#).

(c) Unless the declaration provides otherwise, if two or more associations have liens for assessments created at any time on the same property, each lien has equal priority.

(d) The recording of the declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this section is not required.

(e) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

(f) This section does not prohibit an action to recover sums for which (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in an action brought under this section is enforceable by execution under [AS 09.35.010](#).

(h) The association upon written request shall furnish to a unit owner a statement setting out the amount of unpaid assessments against the unit. If the interest of the unit owner is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and each unit owner.

(i) In a cooperative, upon nonpayment of an assessment on a unit, a unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed under this section.

(j) The association's lien may be foreclosed under this subsection as follows:

(1) in a condominium or planned community, the lien of the association must be foreclosed as a lien is foreclosed under [AS 34.35.005](#);

(2) in a cooperative whose unit owners' interests in the units are real estate, the lien of the association must be foreclosed as a mortgage or deed of trust on real estate is foreclosed or as a lien is foreclosed under [AS 34.35.005](#); or

(3) in a cooperative whose unit owners' interests in the units are personal property, the lien of the association must be foreclosed as a security interest under AS 45.29.

(k) In a cooperative, if the interest of the unit owner in a unit is real estate,

(1) the association, upon nonpayment of an assessment and compliance with this subsection, may sell the unit at a public sale or by private negotiation, and at any time and place; each aspect of the sale, including the method, advertising, time, place, and terms must be reasonable; the association shall give reasonable written notice to the unit owner and a lessee of the unit owner of the time and place of the public sale or, if a private sale is intended, of the intention of entering into a contract to sell and of the time after which a private disposition may be made; the same notice must also be sent to any other person who has a recorded interest in the unit that would be cut off by the sale, but only if the recorded interest was on record seven weeks before the date specified in the notice as the date of a public sale or seven weeks before the date specified in the notice as the date after which a private sale may be made; the notices required by this subsection may be sent to any address reasonable in the circumstances; sale may not be held until five weeks after the sending of the notice; the association may buy at a public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale;

(2) unless otherwise agreed, the debtor is liable for any deficiency in a foreclosure sale under [AS 09.45.170](#);

(3) the proceeds of a foreclosure sale must be applied in the following order:

(A) the reasonable expenses of sale;

CTADD2301

(B) the reasonable expenses of securing possession before sale including holding, maintaining, and preparing the unit for sale, payment of taxes and other governmental charges, premiums on hazard and liability insurance;

(C) satisfaction of the lien of the association;

(D) satisfaction in the order of priority of a subordinate claim of record; and

(E) remittance of any excess to the unit owner;

(4) a good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with the requirements of this section; the person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed after a foreclosure of the association's lien by power of sale and that person conducting the sale was empowered to make the sale; signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority of the person to sign; further proof of authority is not required even if the association is named as grantee in the conveyance;

(5) at any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owner or the holder of a subordinate security interest may cure the default of the unit owner and prevent sale or other disposition by tendering the performance due under the security agreement, including an amount due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender.

History

(§ 1 ch 95 SLA 1985; am § 7 ch 61 SLA 1986)

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COLORADO REVISED STATUTES TITLE 38. PROPERTY - REAL AND PERSONAL REAL PROPERTY ARTICLE 33.3. COLORADO COMMON INTEREST OWNERSHIP ACT PART 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY

38-33.3-316. Lien for assessments

(1) The association, if such association is incorporated or organized as a limited liability company, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, attorney fees, fines, and interest charged pursuant to [section 38-33.3-302 \(1\) \(i\)](#), (1) (k), and (1) (l), [section 38-33.3-313 \(6\)](#), and [section 38-33.3-315 \(2\)](#) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid association's acceleration of installment obligations.

(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:

(I) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a security interest encumbering only the unit owner's interest which has priority over all other security interests on the unit and which was perfected before the date on which the assessment sought to be enforced became delinquent; and

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under [section 38-33.3-315 \(1\)](#) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(II) (Deleted by amendment, L. 93, p. 653, § 21, effective April 30, 1993.)

(c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of [section 15-11-201, C.R.S.](#)

(d) The association shall have the statutory lien described in subsection (1) of this section for any assessment levied or fine imposed after June 30, 1992. Such lien shall have the priority described in this subsection (2) if the other lien or encumbrance is created after June 30, 1992.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments become due.

(6) This section does not prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(7) The association shall be entitled to costs and reasonable attorney fees incurred by the association in a judgment or decree in any action or suit brought by the association under this section.

(8) The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

(9) In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

(10) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(11) The association's lien may be foreclosed by any of the following means:

CTADD2303

(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate.

Editor's note: This version of paragraph (a) is effective until January 1, 2014.

(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

Editor's note: This version of paragraph (a) is effective January 1, 2014.

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of [section 38-33.3-105](#), the association's lien must be foreclosed in like manner as a mortgage on real estate.

Editor's note: This version of paragraph (b) is effective until January 1, 2014.

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of [section 38-33.3-105](#), the association's lien must be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

Editor's note: This version of paragraph (b) is effective January 1, 2014.

(c) In a cooperative whose unit owners' interests in the units are personal property, as determined in accordance with the provisions of [section 38-33.3-105](#), the association's lien must be foreclosed as a security interest under the "Uniform Commercial Code", title 4, C.R.S.

History

Source:

L. 91: Entire article added, p. 1753, § 1, effective July 1, 1992. L. 93: (1), (2)(b), (4), and (8) amended and (2)(d) added, p. 653, § 21, effective April 30. L. 98: (1) amended, p. 485, § 19, effective July 1. L. 2013: (11)(a) and (11)(b) amended, [\(HB 13-1276, ch. 351, p. 2036, § 2\)](#), effective January 1, 2014.

COLORADO REVISED STATUTES



CTADD2304

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COLORADO REVISED STATUTES TITLE 38. PROPERTY - REAL AND PERSONAL REAL PROPERTY ARTICLE 33.3. COLORADO COMMON INTEREST OWNERSHIP ACT PART 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY

38-33.3-316. Lien for assessments

(1) The association, if such association is incorporated or organized as a limited liability company, has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, attorney fees, fines, and interest charged pursuant to [section 38-33.3-302 \(1\) \(i\)](#), (1) (k), and (1) (l), [section 38-33.3-313 \(6\)](#), and [section 38-33.3-315 \(2\)](#) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid association's acceleration of installment obligations.

(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except:

(I) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;

(II) A security interest on the unit which has priority over all other security interests on the unit and which was recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a security interest encumbering only the unit owner's interest which has priority over all other security interests on the unit and which was perfected before the date on which the assessment sought to be enforced became delinquent; and

(III) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of:

(I) An amount equal to the common expense assessments based on a periodic budget adopted by the association under [section 38-33.3-315 \(1\)](#) which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(II) (Deleted by amendment, L. 93, p. 653, § 21, effective April 30, 1993.)

(c) This subsection (2) does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of part 2 of article 41 of this title or to the provisions of [section 15-11-202, C.R.S.](#)

(d) The association shall have the statutory lien described in subsection (1) of this section for any assessment levied or fine imposed after June 30, 1992. Such lien shall have the priority described in this subsection (2) if the other lien or encumbrance is created after June 30, 1992.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of assessments become due.

(6) This section does not prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(7) The association shall be entitled to costs and reasonable attorney fees incurred by the association in a judgment or decree in any action or suit brought by the association under this section.

(8) The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request.

(9) In any action by an association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner to collect all sums alleged to be due from the unit owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pending of the action to the extent of the association's common expense assessments.

(10) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(11) The association's lien may be foreclosed by any of the following means:

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(a) In a condominium or planned community, the association's lien may be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(b) In a cooperative whose unit owners' interests in the units are real estate as determined in accordance with the provisions of [section 38-33.3-105](#), the association's lien must be foreclosed in like manner as a mortgage on real estate; except that the association or a holder or assignee of the association's lien, whether the holder or assignee of the association's lien is an entity or a natural person, may only foreclose on the lien if:

(I) The balance of the assessments and charges secured by its lien, as defined in subsection (2) of this section, equals or exceeds six months of common expense assessments based on a periodic budget adopted by the association; and

(II) The executive board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific unit on an individual basis. The board may not delegate its duty to act under this subparagraph (II) to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the association or a holder or assignee of the association's lien in connection with an action that is dismissed for this reason may be assessed against the unit owner.

(c) In a cooperative whose unit owners' interests in the units are personal property, as determined in accordance with the provisions of [section 38-33.3-105](#), the association's lien must be foreclosed as a security interest under the "Uniform Commercial Code", title 4, C.R.S.

History

Source:

L. 91: Entire article added, p. 1753, § 1, effective July 1, 1992.L. 93: (1), (2)(b), (4), and (8) amended and (2)(d) added, p. 653, § 21, effective April 30.L. 98: (1) amended, p. 485, § 19, effective July 1.L. 2013: (11)(a) and (11)(b) amended, ([HB 13-1276](#)), [ch. 351, p. 2036, § 2](#), effective January 1, 2014.L. 2014: (2)(c) amended, ([HB 14-1322](#)), [ch. 296, p. 1241, § 16](#), effective August 6.

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LexisNexis® Connecticut Annotated Statutes Title 47 Land and Land Titles Chapter 828 Common Interest Ownership Act Part III Management of Common Interest Communities
Sec. 47-258. Lien for assessments and other sums due association. Enforcements.

- (a) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorneys' fees and costs, other fees, charges, late charges, fines and interest charged pursuant to subdivisions (10), (11) and (12) of subsection (a) of [section 47-244](#) and any other sums due to the association under the declaration, this chapter, or as a result of an administrative, arbitration, mediation or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
- (b) Notwithstanding any provision in the declaration or bylaws to the contrary, a lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to, (2) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the unit or cooperative. In all actions brought to foreclose a lien under this section or a security interest described in subdivision (2) of this subsection, the lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of (A) an amount equal to the common expense assessments based on the periodic budget adopted by the association pursuant to subsection (a) of [section 47-257](#) which would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce either the association's lien or a security interest described in subdivision (2) of this subsection, excluding any late fees, interest or fines which may be assessed by the association during the nine-month period, and (B) the association's costs and reasonable attorney's fees in enforcing its lien. A lien for any assessment or fine specified in subsection (a) of this section shall have the priority provided for in this subsection in an amount not to exceed the amount specified in subparagraph (A) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association.
- (c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.
- (d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.
- (e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under [Section 362 of the Bankruptcy Code](#) is lifted.
- (f) This section does not prohibit actions against unit owners to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.
- (g) A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.
- (h) The association on request made in a record shall furnish to a unit owner a statement in recordable form setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.
- (i) In a cooperative, on nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a tenant, and the lien may be foreclosed as provided by this section.
- (j) The association's lien may be foreclosed in like manner as a mortgage on real property.
- (k) In any action by the association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner pursuant to [section 52-504](#) to collect all sums alleged to be due from that unit owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to subsection (a) of [section 47-257](#).
- (l) If a holder of a first or second security interest on a unit forecloses that security interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that unit which became due before the sale, other than the assessments which are prior to that security interest under subsection (b) of this section. Any unpaid assessments not satisfied from the proceeds of sale become common expenses collectible from all unit owners, including the purchaser.
- (m)
- (1) An association may not commence an action to foreclose a lien on a unit under this section unless: (A) The unit owner, at the time the action is commenced, owes a sum equal to at least two months of common expense assessments based on the periodic budget last adopted by the association pursuant to subsection (a) of [section 47-257](#); (B) the association has made a demand for payment in a record and has simultaneously provided a copy of such record to the holder of a security

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interest described in subdivision (2) of subsection (b) of this section; and (C) the executive board has either voted to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit.

(2) Not less than sixty days prior to commencing an action to foreclose a lien on a unit under this section, the association shall provide a written notice by first class mail to the holders of all security interests described in subdivision (2) of subsection (b) of this section, which shall set forth the following: (A) The amount of unpaid common expense assessments owed to the association as of the date of the notice; (B) the amount of any attorney's fees and costs incurred by the association in the enforcement of its lien as of the date of the notice; (C) a statement of the association's intention to foreclose its lien if the amounts set forth in subparagraphs (A) and (B) of this subdivision are not paid to the association not later than sixty days after the date on which the notice is provided; (D) the association's contact information, including, but not limited to, (i) the name of the individual acting on behalf of the association with respect to the matter, and (ii) the association's mailing address, telephone number and electronic mail address, if any; and (E) instructions concerning the acceptable means of making payment on the amounts owing to the association as set forth in subparagraphs (A) and (B) of this subdivision. Any notice required to be given by the association under this subsection shall be effective when sent.

(3) When providing the written notice required by subdivision (2) of this subsection, the association may rely on the last-recorded security interest of record in identifying the name and mailing address of the holder of that interest, unless the holder of the security interest is the plaintiff in an action pending in the Superior Court to enforce that security interest, in which case the association shall provide the written notice to the attorney appearing on behalf of the holder of the security interest in such action.

(4) The failure of the association to provide the written notice required by subdivisions (2) and (3) of this subsection prior to commencing an action to foreclose its lien shall not affect the priority of its lien for an amount equal to nine months common expense assessments, but the priority amount in such action shall not include any costs or attorney's fees.

(n) Every aspect of a foreclosure, sale or other disposition under this section, including the method, advertising, time, date, place and terms, shall be commercially reasonable.

History

P.A. 83-474, S. 59, 96; P.A. 84-472, S. 16, 23; [P.A. 89-254, S. 14](#); [P.A. 91-341, S. 15](#), 19; [91-359, S. 1](#), 2; [P.A. 95-187, S. 22](#); [P.A. 09-225, S. 32](#); [P.A. 10-186, S. 13](#); [P.A. 13-156, S. 1](#), eff. June 24, 2013; [P.A. 13-156, S. 2](#), eff. Oct. 1, 2013.

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LexisNexis® Connecticut Annotated Statutes Title 47 Land and Land Titles Chapter 828 Common Interest Ownership Act Part III Management of Common Interest Communities
Sec. 47-258. Lien for assessments and other sums due association. Enforcements.

- (a) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorneys' fees and costs, other fees, charges, late charges, fines and interest charged pursuant to subdivisions (10), (11) and (12) of subsection (a) of [section 47-244](#) and any other sums due to the association under the declaration, this chapter, or as a result of an administrative, arbitration, mediation or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
- (b) Notwithstanding any provision in the declaration or bylaws to the contrary, a lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to, (2) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, a first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (3) liens for real property taxes and other governmental assessments or charges against the unit or cooperative. In all actions brought to foreclose a lien under this section or a security interest described in subdivision (2) of this subsection, the lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of (A) an amount equal to the common expense assessments based on the periodic budget adopted by the association pursuant to subsection (a) of [section 47-257](#) which would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce either the association's lien or a security interest described in subdivision (2) of this subsection, excluding any late fees, interest or fines which may be assessed by the association during the nine-month period, and (B) the association's costs and reasonable attorney's fees in enforcing its lien. A lien for any assessment or fine specified in subsection (a) of this section shall have the priority provided for in this subsection in an amount not to exceed the amount specified in subparagraph (A) of this subsection. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the association.
- (c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.
- (d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.
- (e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under [Section 362 of the Bankruptcy Code](#) is lifted.
- (f) This section does not prohibit actions against unit owners to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.
- (g) A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.
- (h) The association on request made in a record shall furnish to a unit owner a statement in recordable form setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.
- (i) In a cooperative, on nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a tenant, and the lien may be foreclosed as provided by this section.
- (j) The association's lien may be foreclosed in like manner as a mortgage on real property.
- (k) In any action by the association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the unit owner pursuant to [section 52-504](#) to collect all sums alleged to be due from that unit owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during the pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to subsection (a) of [section 47-257](#).
- (l) If a holder of a first or second security interest on a unit forecloses that security interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that unit which became due before the sale, other than the assessments which are prior to that security interest under subsection (b) of this section. Any unpaid assessments not satisfied from the proceeds of sale become common expenses collectible from all unit owners, including the purchaser.
- (m)
- (1) An association may not commence an action to foreclose a lien on a unit under this section unless: (A) The unit owner, at the time the action is commenced, owes a sum equal to at least two months of common expense assessments based on the periodic budget last adopted by the association pursuant to subsection (a) of [section 47-257](#); (B) the association has made a demand for payment in a record and has simultaneously provided a copy of such record to the holder of a security

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interest described in subdivision (2) of subsection (b) of this section; and (C) the executive board has either voted to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit.

(2) Not less than sixty days prior to commencing an action to foreclose a lien on a unit under this section, the association shall provide a written notice by first class mail to the holders of all security interests described in subdivision (2) of subsection (b) of this section, which shall set forth the following: (A) The amount of unpaid common expense assessments owed to the association as of the date of the notice; (B) the amount of any attorney's fees and costs incurred by the association in the enforcement of its lien as of the date of the notice; (C) a statement of the association's intention to foreclose its lien if the amounts set forth in subparagraphs (A) and (B) of this subdivision are not paid to the association not later than sixty days after the date on which the notice is provided; (D) the association's contact information, including, but not limited to, (i) the name of the individual acting on behalf of the association with respect to the matter, and (ii) the association's mailing address, telephone number and electronic mail address, if any; and (E) instructions concerning the acceptable means of making payment on the amounts owing to the association as set forth in subparagraphs (A) and (B) of this subdivision. Any notice required to be given by the association under this subsection shall be effective when sent.

(3) When providing the written notice required by subdivision (2) of this subsection, the association may rely on the last-recorded security interest of record in identifying the name and mailing address of the holder of that interest, unless the holder of the security interest is the plaintiff in an action pending in the Superior Court to enforce that security interest, in which case the association shall provide the written notice to the attorney appearing on behalf of the holder of the security interest in such action.

(4) The failure of the association to provide the written notice required by subdivisions (2) and (3) of this subsection prior to commencing an action to foreclose its lien shall not affect the priority of its lien for an amount equal to nine months common expense assessments, but the priority amount in such action shall not include any costs or attorney's fees.

(n) Every aspect of a foreclosure, sale or other disposition under this section, including the method, advertising, time, date, place and terms, shall be commercially reasonable.

History

P.A. 83-474, S. 59, 96; P.A. 84-472, S. 16, 23; [P.A. 89-254, S. 14](#); [P.A. 91-341, S. 15](#), 19; [91-359, S. 1](#), 2; [P.A. 95-187, S. 22](#); [P.A. 09-225, S. 32](#); [P.A. 10-186, S. 13](#); [P.A. 13-156, S. 1](#), eff. June 24, 2013; [P.A. 13-156, S. 2](#), eff. Oct. 1, 2013.

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DELAWARE CODE ANNOTATED TITLE 25. PROPERTY PART VII. COMMON INTERESTS AND OWNERSHIP OF REAL ESTATE CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT SUBCHAPTER III. MANAGEMENT OF THE COMMON INTEREST COMMUNITY

§ 81-316. Lien for assessments

(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 81-302(a)(10), (11), and (12) of this title, and any other sums due the association under the declaration, this chapter or as a result of an administrative or judicial decision, together with court costs and reasonable attorneys' fees incurred in attempting collection of the same, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due. Unless the declaration provides for a different rate of interest, interest on unpaid assessments shall accrue at the rate of the lesser of 18% per annum or the highest rate permitted by law.

(b) Except as otherwise provided in the declaration, a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien shall have priority over the security interests described in paragraph (ii) above for an amount not to exceed the aggregate customary common expense assessment against such unit for 6 months as determined by the periodic budget adopted by the association pursuant to § 81-315(a) of this title; provided that for the lien to have priority over the security interests described in paragraph (ii) above, an association with assessments shall have recorded in the county or counties in which the common interest community is located a document which contains the name of the association, the address, a contact telephone number, a contact e-mail address and a web-site address, if any. In addition, the association shall have recorded at any time, but not less than 30 days prior to the sheriff's sale of a unit in its common interest community for which common expense assessments are due, a statement of lien which shall include a description of such unit, the name of the record owner, the amount due and the date due, the amount paid for recording the statement of lien and the amount required to be paid for filing a termination thereof upon payment, and the signature and notarized statement of an officer of the association that the amount described in the statement of lien is correct and due and owing. Upon payment of the amount due in paragraph (ii) above, the payer shall be entitled to a recordable termination of lien for the amount paid. The liens recorded pursuant to this subparagraph shall expire on the first day of the sixtieth month after recording. This subsection does not affect the priority of mechanics' or materialmen's liens, nor the priority of liens for other assessments made by the association. The lien under this subsection is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if 2 or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code [\[11 U.S.C. § 101 et seq.\]](#), the period of time for instituting proceedings to enforce the association's lien shall be tolled until 30 days after the automatic stay of proceedings under [§ 362 of the Bankruptcy Code \[11 U.S.C. § 362\]](#) is lifted.

(f) This section does not prohibit actions against unit owners to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(i) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(j) The association's lien may be foreclosed or executed upon as provided in this subsection and subsection (m) of this section:

(1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate by equitable foreclosure or executed upon by other lawful procedures provided for in the declaration;

(2) In a cooperative whose unit owners' interests in the units are real estate, the association's lien must be foreclosed in like manner as a mortgage on real estate; or

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien must be foreclosed in like manner as a security interest under Article 9 of the [Uniform Commercial Code \[§ 9-101 et seq.\]](#) of Title 6.

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(4) In the case of foreclosure, the association shall give reasonable notice of its action to all lien holders of the unit whose interest would be affected and to all other persons as would be required under applicable law for the foreclosure of a mortgage on real estate.

(k) In a cooperative, if the unit owner's interest in a unit is real estate:

(1) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation, and at any time and place. Every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the unit owner reasonable written notice of the time and place of any public sale or, if a private sale is intended, or the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the unit which would be cut off by the sale, but only if the recorded interest was on record 7 weeks before the date specified in the notice as the date of any public sale or 7 weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until 5 weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(2) Unless otherwise agreed, the unit owner is liable for any deficiency in a foreclosure sale.

(3) The proceeds of a foreclosure sale must be applied in the following order:

(i) The reasonable expenses of sale;

(ii) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit owner, reasonable attorneys' fees and other legal expenses incurred by the association;

(iii) Satisfaction of the association's lien;

(iv) Satisfaction in the order of priority of any subordinate claim of record; and

(v) Remittance of any excess to the unit owner.

(4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

(5) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorneys' fees of the creditor.

(l) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to § 81-315 of this title.

(m) The following restrictions apply to any action by the association to foreclose its lien under this section:

(1) No foreclosure action may be commenced unless: (A) the unit owner, at the time the action is commenced, owes a sum equal to at least 3 months of common expense assessments based on the periodic budget last adopted by the association pursuant to § 81-315(a) of this title; and (B) the executive board expressly votes to commence a foreclosure action against that specific unit.

(2) The association shall apply any sums paid by unit owners who are delinquent in paying assessments as follows: (i) first, to unpaid assessments; (ii) then to late charges; (iii) then to attorney's fees and other reasonable collection charges and costs; and (iv) finally, to all other unpaid fees, charges, penalties, interest and late charges.

(3) If the only sums due with respect to a unit consist of fines and related sums levied against that unit, a foreclosure action may not be commenced against that unit unless the association has first secured a judgment against the unit owner with respect to those fines and has perfected a judgment lien against the unit under state law.

History

[76 Del. Laws, c. 422](#), § 2; [77 Del. Laws, c. 91](#), §§ 51, 52, 82.

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DELAWARE CODE ANNOTATED TITLE 25. PROPERTY PART VII. COMMON INTERESTS AND OWNERSHIP OF REAL ESTATE CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT SUBCHAPTER III. MANAGEMENT OF THE COMMON INTEREST COMMUNITY

§ 81-316. Lien for assessments

(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 81-302(a)(10), (11), and (12) of this title, and any other sums due the association under the declaration, this chapter or as a result of an administrative or judicial decision, together with court costs and reasonable attorneys' fees incurred in attempting collection of the same, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due. Unless the declaration provides for a different rate of interest, interest on unpaid assessments shall accrue at the rate of the lesser of 18% per annum or the highest rate permitted by law.

(b) Except as otherwise provided in the declaration, a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien shall have priority over the security interests described in paragraph (ii) above for an amount not to exceed the aggregate customary common expense assessment against such unit for 6 months as determined by the periodic budget adopted by the association pursuant to § 81-315(a) of this title; provided that for the lien to have priority over the security interests described in paragraph (ii) above, an association with assessments shall have recorded in the county or counties in which the common interest community is located a document which contains the name of the association, the address, a contact telephone number, a contact e-mail address and a web-site address, if any. In addition, the association shall have recorded at any time, but not less than 30 days prior to the sheriff's sale of a unit in its common interest community for which common expense assessments are due, a statement of lien which shall include a description of such unit, the name of the record owner, the amount due and the date due, the amount paid for recording the statement of lien and the amount required to be paid for filing a termination thereof upon payment, and the signature and notarized statement of an officer of the association that the amount described in the statement of lien is correct and due and owing. Upon payment of the amount due in paragraph (ii) above, the payer shall be entitled to a recordable termination of lien for the amount paid. The liens recorded pursuant to this subparagraph shall expire on the first day of the sixtieth month after recording. This subsection does not affect the priority of mechanics' or materialmen's liens, nor the priority of liens for other assessments made by the association. The lien under this subsection is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if 2 or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code [\[11 U.S.C. § 101 et seq.\]](#), the period of time for instituting proceedings to enforce the association's lien shall be tolled until 30 days after the automatic stay of proceedings under [§ 362 of the Bankruptcy Code \[11 U.S.C. § 362\]](#) is lifted.

(f) This section does not prohibit actions against unit owners to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(i) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(j) The association's lien may be foreclosed or executed upon as provided in this subsection and subsection (m) of this section:

(1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate by equitable foreclosure or executed upon by other lawful procedures provided for in the declaration;

(2) In a cooperative whose unit owners' interests in the units are real estate, the association's lien must be foreclosed in like manner as a mortgage on real estate; or

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien must be foreclosed in like manner as a security interest under Article 9 of the [Uniform Commercial Code \[§ 9-101 et seq.\]](#) of Title 6.

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(4) In the case of foreclosure, the association shall give reasonable notice of its action to all lien holders of the unit whose interest would be affected and to all other persons as would be required under applicable law for the foreclosure of a mortgage on real estate.

(k) In a cooperative, if the unit owner's interest in a unit is real estate:

(1) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation, and at any time and place. Every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the unit owner reasonable written notice of the time and place of any public sale or, if a private sale is intended, or the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the unit which would be cut off by the sale, but only if the recorded interest was on record 7 weeks before the date specified in the notice as the date of any public sale or 7 weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until 5 weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(2) Unless otherwise agreed, the unit owner is liable for any deficiency in a foreclosure sale.

(3) The proceeds of a foreclosure sale must be applied in the following order:

(i) The reasonable expenses of sale;

(ii) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit owner, reasonable attorneys' fees and other legal expenses incurred by the association;

(iii) Satisfaction of the association's lien;

(iv) Satisfaction in the order of priority of any subordinate claim of record; and

(v) Remittance of any excess to the unit owner.

(4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

(5) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorneys' fees of the creditor.

(l) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to § 81-315 of this title.

(m) The following restrictions apply to any action by the association to foreclose its lien under this section:

(1) No foreclosure action may be commenced unless: (A) the unit owner, at the time the action is commenced, owes a sum equal to at least 3 months of common expense assessments based on the periodic budget last adopted by the association pursuant to § 81-315(a) of this title; and (B) the executive board expressly votes to commence a foreclosure action against that specific unit.

(2) The association shall apply any sums paid by unit owners who are delinquent in paying assessments as follows: (i) first, to unpaid assessments; (ii) then to late charges; (iii) then to attorney's fees and other reasonable collection charges and costs; and (iv) finally, to all other unpaid fees, charges, penalties, interest and late charges.

(3) If the only sums due with respect to a unit consist of fines and related sums levied against that unit, a foreclosure action may not be commenced against that unit unless the association has first secured a judgment against the unit owner with respect to those fines and has perfected a judgment lien against the unit under state law.

History

[76 Del. Laws, c. 422](#), § 2; [77 Del. Laws, c. 91](#), §§ 51, 52, 82.

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Minnesota Statutes PROPERTY INTERESTS AND LIENS CHAPTER 515B. COMMON INTEREST OWNERSHIP ARTICLE 3. ORGANIZATION AND OPERATION**515B.3-116 LIEN FOR ASSESSMENTS**

(a) The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charges pursuant to section 515B.3-102(a)(10), (11) and (12) are liens, and are enforceable as assessments, under this section. Recording of the declaration constitutes record notice and perfection of any assessment lien under this section, and no further recording of any notice of or claim for the lien is required.

(b) Subject to subsection (c), a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) any first mortgage encumbering the fee simple interest in the unit, or, in a cooperative, any first security interest encumbering only the unit owner's interest in the unit, (iii) liens for real estate taxes and other governmental assessments or charges against the unit, and (iv) a master association lien under section 515B.2-121(h). This subsection shall not affect the priority of mechanic's liens.

(c) If a first mortgage on a unit is foreclosed, the first mortgage was recorded after June 1, 1994, and no owner or person who acquires the owner's interest in the unit redeems pursuant to chapter 580, 581, or 582, the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage or any person who acquires title to the unit by redemption as a junior creditor shall take title to the unit subject to a lien in favor of the association for unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding the end of the owner's period of redemption. The common expenses shall be based upon the association's then current annual budget, notwithstanding the use of an alternate common expense plan under section 515B.3-115(a)(2). If a first security interest encumbering a unit owner's interest in a cooperative unit which is personal property is foreclosed, the secured party or the purchaser at the sale shall take title to the unit subject to unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding the first day following either the disposition date pursuant to section 336.9-610 or the date on which the obligation of the unit owner is discharged pursuant to section 336.9-622.

(d) Proceedings to enforce an assessment lien shall be instituted within three years after the last installment of the assessment becomes payable, or shall be barred.

(e) The unit owner of a unit at the time an assessment is due shall be personally liable to the association for payment of the assessment levied against the unit. If there are multiple owners of the unit, they shall be jointly and severally liable.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien nor prohibit an association from taking a deed in lieu of foreclosure.

(g) The association shall furnish to a unit owner or the owner's authorized agent upon written request of the unit owner or the authorized agent a statement setting forth the amount of unpaid assessments currently levied against the owner's unit. If the unit owner's interest is real estate, the statement shall be in recordable form. The statement shall be furnished within ten business days after receipt of the request and is binding on the association and every unit owner.

(h) The association's lien may be foreclosed as provided in this subsection.

(1) In a condominium or planned community, the association's lien may be foreclosed in a like manner as a mortgage containing a power of sale pursuant to chapter 580, or by action pursuant to chapter 581. The association shall have a power of sale to foreclose the lien pursuant to chapter 580.

(2) In a cooperative whose unit owners' interests are real estate, the association's lien shall be foreclosed in a like manner as a mortgage on real estate as provided in paragraph (1).

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien shall be foreclosed in a like manner as a security interest under article 9 of chapter 336. In any disposition pursuant to section 336.9-610 or retention pursuant to sections 336.9-620 to 336.9-622, the rights of the parties shall be the same as those provided by law, except (i) notice of sale, disposition, or retention shall be served on the unit owner 90 days prior to sale, disposition, or retention, (ii) the association shall be entitled to its reasonable costs and attorney fees not exceeding the amount provided by section 582.01, subdivision 1a, (iii) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to disposition or retention, notwithstanding the value of the unit, and (iv) the notice of sale, disposition, or retention shall contain the following statement in capital letters with the name of the association or secured party filled in:

"THIS IS TO INFORM YOU THAT BY THIS NOTICE (fill in name of association or secured party) HAS BEGUN PROCEEDINGS UNDER MINNESOTA STATUTES, CHAPTER 515B, TO FORECLOSE ON YOUR INTEREST IN YOUR UNIT FOR THE REASON SPECIFIED IN THIS NOTICE. YOUR INTEREST IN YOUR UNIT WILL TERMINATE 90 DAYS AFTER SERVICE OF THIS NOTICE ON YOU UNLESS BEFORE THEN:

(a) THE PERSON AUTHORIZED BY (fill in the name of association or secured party) AND DESCRIBED IN THIS NOTICE TO RECEIVE PAYMENTS RECEIVES FROM YOU:

(1) THE AMOUNT THIS NOTICE SAYS YOU OWE; PLUS

(2) THE COSTS INCURRED TO SERVE THIS NOTICE ON YOU; PLUS

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(3) \$ 500 TO APPLY TO ATTORNEYS FEES ACTUALLY EXPENDED OR INCURRED; PLUS

(4) ANY ADDITIONAL AMOUNTS FOR YOUR UNIT BECOMING DUE TO (fill in name of association or secured party) AFTER THE DATE OF THIS NOTICE; OR

(b) YOU SECURE FROM A DISTRICT COURT AN ORDER THAT THE FORECLOSURE OF YOUR RIGHTS TO YOUR UNIT BE SUSPENDED UNTIL YOUR CLAIMS OR DEFENSES ARE FINALLY DISPOSED OF BY TRIAL, HEARING, OR SETTLEMENT. YOUR ACTION MUST SPECIFICALLY STATE THOSE FACTS AND GROUNDS THAT DEMONSTRATE YOUR CLAIMS OR DEFENSES.

IF YOU DO NOT DO ONE OR THE OTHER OF THE ABOVE THINGS WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE, YOUR OWNERSHIP RIGHTS IN YOUR UNIT WILL TERMINATE AT THE END OF THE PERIOD, YOU WILL LOSE ALL THE MONEY YOU HAVE PAID FOR YOUR UNIT, YOU WILL LOSE YOUR RIGHT TO POSSESSION OF YOUR UNIT, YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE, AND YOU WILL BE EVICTED. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY."

(4) In any foreclosure pursuant to chapter 580, 581, or 582, the rights of the parties shall be the same as those provided by law, except (i) the period of redemption for unit owners shall be six months from the date of sale or a lesser period authorized by law, (ii) in a foreclosure by advertisement under chapter 580, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of section 582.01, subdivisions 1 and 1a, (iii) in a foreclosure by action under chapter 581, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees as the court shall determine, and (iv) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to foreclosure, notwithstanding the value of the unit.

(i) If a holder of a sheriff's certificate of sale, prior to the expiration of the period of redemption, pays any past due or current assessments, or any other charges lienable as assessments, with respect to the unit described in the sheriff's certificate, then the amount paid shall be a part of the sum required to be paid to redeem under section 582.03.

(j) In a cooperative, if the unit owner fails to redeem before the expiration of the redemption period in a foreclosure of the association's assessment lien, the association may bring an action for eviction against the unit owner and any persons in possession of the unit, and in that case section 504B.291 shall not apply.

(k) An association may assign its lien rights in the same manner as any other secured party.

History

[1993 c 222 art 3 s 16](#); [1994 c 388 art 4 s 11](#); [1999 c 11 art 2 s 23](#); [1999 c 199 art 2 s 30](#); [2000 c 260 s 77](#); [2001 c 195 art 2 s 32](#); [2003 c 2 art 2 s 16](#); [2005 c 121 s 31](#); [2010 c 267 art 3 s 13](#)

Minnesota Statutes

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Minnesota Statutes PROPERTY INTERESTS AND LIENS CHAPTER 515B. COMMON INTEREST OWNERSHIP ARTICLE 3. ORGANIZATION AND OPERATION**515B.3-116 LIEN FOR ASSESSMENTS**

(a) The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charges pursuant to section 515B.3-102(a)(10), (11) and (12) are liens, and are enforceable as assessments, under this section. Recording of the declaration constitutes record notice and perfection of any assessment lien under this section, and no further recording of any notice of or claim for the lien is required.

(b) Subject to subsection (c), a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) any first mortgage encumbering the fee simple interest in the unit, or, in a cooperative, any first security interest encumbering only the unit owner's interest in the unit, (iii) liens for real estate taxes and other governmental assessments or charges against the unit, and (iv) a master association lien under section 515B.2-121(h). This subsection shall not affect the priority of mechanic's liens.

(c) If a first mortgage on a unit is foreclosed, the first mortgage was recorded after June 1, 1994, and no owner or person who acquires the owner's interest in the unit redeems pursuant to chapter 580, 581, or 582, the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage or any person who acquires title to the unit by redemption as a junior creditor shall take title to the unit subject to a lien in favor of the association for unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding the end of the owner's period of redemption. The common expenses shall be based upon the association's then current annual budget, notwithstanding the use of an alternate common expense plan under section 515B.3-115(a)(2). If a first security interest encumbering a unit owner's interest in a cooperative unit which is personal property is foreclosed, the secured party or the purchaser at the sale shall take title to the unit subject to unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding the first day following either the disposition date pursuant to section 336.9-610 or the date on which the obligation of the unit owner is discharged pursuant to section 336.9-622.

(d) Proceedings to enforce an assessment lien shall be instituted within three years after the last installment of the assessment becomes payable, or shall be barred.

(e) The unit owner of a unit at the time an assessment is due shall be personally liable to the association for payment of the assessment levied against the unit. If there are multiple owners of the unit, they shall be jointly and severally liable.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien nor prohibit an association from taking a deed in lieu of foreclosure.

(g) The association shall furnish to a unit owner or the owner's authorized agent upon written request of the unit owner or the authorized agent a statement setting forth the amount of unpaid assessments currently levied against the owner's unit. If the unit owner's interest is real estate, the statement shall be in recordable form. The statement shall be furnished within ten business days after receipt of the request and is binding on the association and every unit owner.

(h) The association's lien may be foreclosed as provided in this subsection.

(1) In a condominium or planned community, the association's lien may be foreclosed in a like manner as a mortgage containing a power of sale pursuant to chapter 580, or by action pursuant to chapter 581. The association shall have a power of sale to foreclose the lien pursuant to chapter 580.

(2) In a cooperative whose unit owners' interests are real estate, the association's lien shall be foreclosed in a like manner as a mortgage on real estate as provided in paragraph (1).

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien shall be foreclosed in a like manner as a security interest under article 9 of chapter 336. In any disposition pursuant to section 336.9-610 or retention pursuant to sections 336.9-620 to 336.9-622, the rights of the parties shall be the same as those provided by law, except (i) notice of sale, disposition, or retention shall be served on the unit owner 90 days prior to sale, disposition, or retention, (ii) the association shall be entitled to its reasonable costs and attorney fees not exceeding the amount provided by section 582.01, subdivision 1a, (iii) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to disposition or retention, notwithstanding the value of the unit, and (iv) the notice of sale, disposition, or retention shall contain the following statement in capital letters with the name of the association or secured party filled in:

"THIS IS TO INFORM YOU THAT BY THIS NOTICE (fill in name of association or secured party) HAS BEGUN PROCEEDINGS UNDER MINNESOTA STATUTES, CHAPTER 515B, TO FORECLOSE ON YOUR INTEREST IN YOUR UNIT FOR THE REASON SPECIFIED IN THIS NOTICE. YOUR INTEREST IN YOUR UNIT WILL TERMINATE 90 DAYS AFTER SERVICE OF THIS NOTICE ON YOU UNLESS BEFORE THEN:

(a) THE PERSON AUTHORIZED BY (fill in the name of association or secured party) AND DESCRIBED IN THIS NOTICE TO RECEIVE PAYMENTS RECEIVES FROM YOU:

(1) THE AMOUNT THIS NOTICE SAYS YOU OWE; PLUS

(2) THE COSTS INCURRED TO SERVE THIS NOTICE ON YOU; PLUS

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(3) \$ 500 TO APPLY TO ATTORNEYS FEES ACTUALLY EXPENDED OR INCURRED; PLUS

(4) ANY ADDITIONAL AMOUNTS FOR YOUR UNIT BECOMING DUE TO (fill in name of association or secured party) AFTER THE DATE OF THIS NOTICE; OR

(b) YOU SECURE FROM A DISTRICT COURT AN ORDER THAT THE FORECLOSURE OF YOUR RIGHTS TO YOUR UNIT BE SUSPENDED UNTIL YOUR CLAIMS OR DEFENSES ARE FINALLY DISPOSED OF BY TRIAL, HEARING, OR SETTLEMENT. YOUR ACTION MUST SPECIFICALLY STATE THOSE FACTS AND GROUNDS THAT DEMONSTRATE YOUR CLAIMS OR DEFENSES.

IF YOU DO NOT DO ONE OR THE OTHER OF THE ABOVE THINGS WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE, YOUR OWNERSHIP RIGHTS IN YOUR UNIT WILL TERMINATE AT THE END OF THE PERIOD, YOU WILL LOSE ALL THE MONEY YOU HAVE PAID FOR YOUR UNIT, YOU WILL LOSE YOUR RIGHT TO POSSESSION OF YOUR UNIT, YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE, AND YOU WILL BE EVICTED. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY."

(4) In any foreclosure pursuant to chapter 580, 581, or 582, the rights of the parties shall be the same as those provided by law, except (i) the period of redemption for unit owners shall be six months from the date of sale or a lesser period authorized by law, (ii) in a foreclosure by advertisement under chapter 580, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of section 582.01, subdivisions 1 and 1a, (iii) in a foreclosure by action under chapter 581, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees as the court shall determine, and (iv) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to foreclosure, notwithstanding the value of the unit.

(i) If a holder of a sheriff's certificate of sale, prior to the expiration of the period of redemption, pays any past due or current assessments, or any other charges lienable as assessments, with respect to the unit described in the sheriff's certificate, then the amount paid shall be a part of the sum required to be paid to redeem under section 582.03.

(j) In a cooperative, if the unit owner fails to redeem before the expiration of the redemption period in a foreclosure of the association's assessment lien, the association may bring an action for eviction against the unit owner and any persons in possession of the unit, and in that case section 504B.291 shall not apply.

(k) An association may assign its lien rights in the same manner as any other secured party.

History

[1993 c 222 art 3 s 16](#); [1994 c 388 art 4 s 11](#); [1999 c 11 art 2 s 23](#); [1999 c 199 art 2 s 30](#); [2000 c 260 s 77](#); [2001 c 195 art 2 s 32](#); [2003 c 2 art 2 s 16](#); [2005 c 121 s 31](#); [2010 c 267 art 3 s 13](#)

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Nevada Revised Statutes Annotated Title 10. Property Rights and Transactions. Chapter 116. Common-Interest Ownership (Uniform Act). Article 3 Management of Common-Interest Communities. Liens.**116.3116. Liens against units for assessments.**

1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien under this section is prior to all other liens and encumbrances on a unit except:

- (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
- (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

3. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.

4. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

5. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

6. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

7. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

8. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

9. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

10. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

- (a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.
- (b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:
 - (1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or

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(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

11. In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to NRS 116.3115.

History

1991, ch. 245, § 100, p. 567; 1999, ch. 104, § 163, p. 390; 2003, ch. 385, § 76, p. 2243; 2003, ch. 390, § 8, p. 2272; 2009, ch. 248, § 3, p. 1010; 2009, ch. 286, § 2, p. 1207; 2011, ch. 389, § 49, p. 2448; 2013, ch. 552, § 7, p. 3787.

Nevada Revised Statutes Annotated

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[Nev. Rev. Stat. Ann. § 116.3116](#)

This document is current through legislation from the Seventy-Eighth Regular Session (2015) and the Thirtieth Special Session (2016).

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116.3116. Liens against units for assessments.

1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to [NRS 116.310305](#), any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of [NRS 116.3102](#) and any costs of collecting a past due obligation charged pursuant to NRS 116.310313 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
2. A lien under this section is prior to all other liens and encumbrances on a unit except:
 - (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
 - (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, except that a lien under this section is prior to a security interest described in this paragraph to the extent set forth in subsection 3;
 - (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative; and
 - (d) Liens for any fee or charge levied pursuant to subsection 1 of NRS 444.520.
3. A lien under this section is prior to all security interests described in paragraph (b) of subsection 2 to the extent of:
 - (a) Any charges incurred by the association on a unit pursuant to [NRS 116.310312](#);
 - (b) The unpaid amount of assessments, not to exceed an amount equal to assessments for common expenses based on the periodic budget adopted by the association pursuant to [NRS 116.3115](#) which would have become due in the absence of acceleration during the 9 months immediately preceding the date on which the notice of default and election to sell is recorded pursuant to paragraph (b) of subsection 1 of NRS 116.31162; and
 - (c) The costs incurred by the association to enforce the lien in an amount not to exceed the amounts set forth in subsection 5, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) of subsection 2 must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal

regulations, the period of priority for the lien must not be less than the 6 months immediately preceding the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162 or the institution of a judicial action to enforce the lien.

4. This section does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.
5. The amount of the costs of enforcing the association's lien that are prior to the security interest described in paragraph (b) of subsection 2 must not exceed the actual costs incurred by the association, must not include more than one trustee's sale guaranty and must not exceed:
 - (a) For a demand or intent to lien letter, \$150.
 - (b) For a notice of delinquent assessment, \$325.
 - (c) For an intent to record a notice of default letter, \$90.
 - (d) For a notice of default, \$400.
 - (e) For a trustee's sale guaranty, \$400.

No costs of enforcing the association's lien, other than the costs described in this subsection, and no amount of attorney's fees may be included in the amount of the association's lien that is prior to the security interest described in paragraph (b) of subsection 2.

6. Notwithstanding any other provision of law, an association, or member of the executive board, officer, employee or unit's owner of the association, acting under the authority of this chapter or the governing documents of the association, or the community manager of the association, or any employee, agent or affiliate of the community manager, while engaged in the management of the common-interest community governed by the association, is not required to be licensed as a collection agency pursuant to chapter 649 of NRS or hire or contract with a collection agency licensed pursuant to chapter 649 of NRS to collect amounts due to the association in accordance with subsection 1 before the recording of a notice of default and election to sell pursuant to paragraph (b) of subsection 1 of NRS 116.31162.
7. The holder of the security interest described in paragraph (b) of subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound account for advance contributions for the payment of assessments for common expenses based on the periodic budget adopted by the association pursuant to [NRS 116.3115](#) if the unit's owner and the holder of that security interest consent to the establishment of such an account. If such an account is established, payments from the account for assessments for common expenses must be made in accordance with the same due dates as apply to payments of such assessments by a unit's owner.
8. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.
9. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.
10. A lien for unpaid assessments is extinguished unless a notice of default and election to sell is recorded as required by paragraph (b) of subsection 1 of NRS 116.31162, or judicial proceedings to enforce the lien are instituted, within 3 years after the full amount of the assessments becomes due.
11. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.
12. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.
13. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under [NRS 116.31162 to 116.31168](#), inclusive, the statement must

be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

14. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:
 - (a) In a cooperative where the owner's interest in a unit is real estate under [NRS 116.1105](#), the association's lien may be foreclosed under [NRS 116.31162 to 116.31168](#), inclusive.
 - (b) In a cooperative where the owner's interest in a unit is personal property under [NRS 116.1105](#), the association's lien:
 - (1) May be foreclosed as a security interest under [NRS 104.9101 to 104.9709](#), inclusive; or
 - (2) If the declaration so provides, may be foreclosed under [NRS 116.31162 to 116.31168](#), inclusive.
15. In an action by an association to collect assessments or to foreclose a lien created under this section, the court may appoint a receiver to collect all rents or other income from the unit alleged to be due and owing to a unit's owner before commencement or during pendency of the action. The receivership is governed by chapter 32 of NRS. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to [NRS 116.3115](#).
16. Notwithstanding any other provision of law, any payment of an amount due to an association in accordance with subsection 1 by the holder of any lien or encumbrance on a unit that is subordinate to the association's lien under this section becomes a debt due from the unit's owner to the holder of the lien or encumbrance.

History

[1991, ch. 245](#), § 100, p. 567; [1999, ch. 104](#), § 163, p. 390; [2003, ch. 385](#), § 76, p. 2243; [2003, ch. 390](#), § 8, p. 2272; [2009, ch. 248](#), § 3, p. 1010; [2009, ch. 286](#), § 2, p. 1207; [2011, ch. 389](#), § 49, p. 2448; [2013, ch. 552](#), § 7, p. 3787; [2015, ch. 266](#), § 1, p. 1333.

Annotations

Notes

Editor's note.

This section was amended by two 2009 acts which do not appear to conflict and have been compiled together.

Effect of amendment.

The 2009 amendment, by ch. 248, § 3, effective October 1, 2009, added "any charges incurred by the association on a unit pursuant to section 1 of this act and to the extent of" in the first sentence of the concluding language of (2).

The 2009 amendment, by ch. 286, § 2, effective October 1, 2009, in the first sentence of the concluding language of (2), substituted "9 months" for "6 months" and added "unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien."

The 2011 amendment, effective January 1, 2012, added (10).

The 2013 amendment, effective October 1, 2013, added (3); and redesignated former (3) through (10) as (4) through (11).

The 2015 amendment, effective October 1, 2015, rewrote the section.

Notes to Decisions

Lien priority.

Foreclosure sale by a homeowners' association (HOA), to collect unpaid HOA assessments, extinguished a prior filed security interest based on a first deed of trust because the HOA super priority lien was prior to the first deed of trust, and, consequently, foreclosure on the HOA super priority lien extinguished all junior security interests, including the first deed of trust. The HOA foreclosure sale extinguished only the first deed of trust holder's security interest in the property, not the underlying debt. [*7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.*, 979 F. Supp. 2d 1142, 2013 U.S. Dist. LEXIS 154250 \(D. Nev. 2013\)](#).

Court defendant's motion to dismiss a foreclosure sale buyer's suit seeking a declaration that a homeowners association's (HOA's) foreclosure on its lien against the property extinguished defendant's deed of trust lien, as Nevada law gave "super priority" status to a portion of the HOA's lien, and its foreclosure on that portion of the lien extinguished all junior liens, including defendant's first deed of trust. [*SFR Invs. Pool 1, LLC v. Wells Fargo Bank, N.A.*, 2014 U.S. Dist. LEXIS 41447 \(D. Nev. Mar. 26, 2014\)](#).

Court correctly granted preliminary injunction because this provision unambiguously explained when liens have equal priority, and when one equal priority lienholder forecloses on its lien, any other equal priority liens were extinguished and must be paid from the sale proceeds in full or on a pro-rata basis if the sale proceeds were insufficient to fully pay all equal priority liens. [*S. Highlands Cmty. Ass'n v. San Florentine Ave. Trust*, 365 P.3d 503, 132 Nev. Adv. Rep. 3, 2016 Nev. LEXIS 2 \(Nev. 2016\)](#).

Court improperly exercised diversity jurisdiction because the property owner was not shown to be fraudulently joined and the owner's presence in the action divested the court of diversity jurisdiction, and it was entirely reasonable for the foreclosure sale buyer to join the owner as a defendant to avoid potential disputes over who had title to the property. [*Weeping Hollow Ave. Trust v. Spencer*, 831 F.3d 1110, 2016 U.S. App. LEXIS 14006 \(9th Cir. Nev. 2016\)](#).

Super priority's lien.

Statute unambiguously provided that the homeowners' association's (HOA) super priority lien was prior to the first deed of trust, and the HOA could use non-judicial foreclosure procedures to enforce its lien; a foreclosure sale on the HOA super priority lien extinguished all junior interests, including the first deed of trust. [*SFR Invs. Pool 1, LLC v. Wells Fargo Bank N.A.*, 2014 U.S. Dist. LEXIS 31445 \(D. Nev. Mar. 10, 2014\)](#).

Lender's argument that a homeowners' association (HOA) had to foreclose judicially to invoke the super-priority provisions of subsection 2 was rejected, as the term "action" does not include only civil actions. This section does not appear to use the word "action" in a way that made the super-priority status dependent upon whether an action had been instituted; but rather, the word is used (in the subjunctive mode) as a way to measure the portion of an HOA lien that had super-priority status. [*Nationstar Mortgage, LLC v. Rob & Robbie, LLC*, 2014 U.S. Dist. LEXIS 100328 \(D. Nev. July 23, 2014\)](#).

Superpriority lien under this provision is a true priority lien such that its foreclosure extinguishes a first deed of trust on the property. A lien was not subordinated by the mortgage savings clause in the covenants, conditions, and restrictions. [*SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 130 Nev. Adv. Rep. 75, 2014 Nev. LEXIS 88 \(Nev. 2014\)](#).

Superpriority lien for a homeowners' association (HOA) can be foreclosed nonjudicially, and such a foreclosure did not violate the due process rights of the lender that held the first deed of trust, given that the requirement to comply with statutory notice provisions. [*SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 130 Nev. Adv. Rep. 75, 2014 Nev. LEXIS 88 \(Nev. 2014\)](#).

Foreclosure sale of property conducted by a homeowners' association (HOA) to collect unpaid HOA assessments under a super priority lien extinguished a first deed of trust on the property, since the recitals in the foreclosure deed constituted conclusive proof that required statutory notices were provided to the holder of the deed of trust. [*Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 2015 U.S. Dist. LEXIS 8057 \(D. Nev. 2015\)](#), vacated, [*2016 U.S. App. LEXIS 14857 \(9th Cir. Nev. Aug. 12, 2016\)*](#).

Substantial discrepancy between the foreclosure sale price for the amount of assessments by a homeowners' association (HOA) and the fair market value of the property did not establish that the sale price was commercially unreasonable given the uncertainty at the time of the sale concerning the risk of purchasing property in an HOA foreclosure under its super priority lien. [*Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 2015 U.S. Dist. LEXIS 8057 \(D. Nev. 2015\)](#), vacated, [*2016 U.S. App. LEXIS 14857 \(9th Cir. Nev. Aug. 12, 2016\)*](#).

Common expense assessments.

Collection fees and foreclosure costs that a homeowners' association incurred prior to the foreclosure sale were not included in a superpriority lien for common expense assessments, which is limited to an amount equal to nine months of common expense assessments. To the extent that some provisions of the covenants, conditions, and restrictions could be read as creating a superpriority lien for fees and costs incurred within six months of foreclosure, they were superseded by statute and negated. [*Horizons at Seven Hills Homeowners Ass'n v. Ikon Holdings, LLC*, 373 P.3d 66, 132 Nev. Adv. Rep. 35, 2016 Nev. LEXIS 364 \(Nev. 2016\)](#).

Attorney fees.

In a homeowners' association's suit to foreclose on the association's lien, the association's attorney fee award was reversed because (1) [*Nev. Rev. Stat. § 116.3116\(8\)*](#) required such an award to be reasonable, (2) the Nevada Supreme Court required use of the Brunzell factors to determine reasonableness, and (3) the Brunzell factors were not used in calculating the award. [*Danielson v. Falconcrest Homeowner's Ass'n*, 2016 Nev. App. Unpub. LEXIS 155 \(Nev. Ct. App. Feb. 18, 2016\)](#).

Due process.

Where a junior lienor lost its interest via a homeowners' association's (HOA) non-judicial HOA foreclosure sale at a price leaving nothing for junior lienor, notice only by publication of the time and place of the sale under relevant statutes, [*Nev. Rev. Stat. § 116.3116*](#) et seq., was not reasonable under Due Process Clause of the Fifth Amendment. [*US Bank, N.A. v. SFR Invs. Pool 1, LLC*, 124 F. Supp. 3d 1063, 2015 U.S. Dist. LEXIS 112807 \(D. Nev. 2015\)](#), dismissed, [*2016 U.S. Dist. LEXIS 113120 \(D. Nev. Aug. 23, 2016\)*](#).

Due process violation.

"Opt-in" notice scheme facially violated the lender's constitutional due process rights because the scheme shifted the burden of ensuring adequate notice from the foreclosing homeowners' association to a mortgage lender. [*Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 2016 U.S. App. LEXIS 14857 \(9th Cir. Nev. Aug. 12, 2016\)](#).

Takings clause.

Where a junior lienor lost its interest via a homeowners' association's (HOA) non-judicial HOA foreclosure sale at a price leaving nothing for junior lienor, foreclosure sale did not implicate the Takings Clause of the Fifth Amendment because the loss of a junior lienor's interest via the sale of an undersecured property was a common result. [*US*](#)

Nev. Rev. Stat. Ann. § 116.3116

Bank, N.A. v. SFR Invs. Pool 1, LLC, 124 F. Supp. 3d 1063, 2015 U.S. Dist. LEXIS 112807 (D. Nev. 2015), dismissed, 2016 U.S. Dist. LEXIS 113120 (D. Nev. Aug. 23, 2016).

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VERMONT STATUTES ANNOTATED TITLE TWENTY-SEVEN A. VERMONT COMMON INTEREST OWNERSHIP ACT (1994) PART 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY**§ 3-116. Lien for sums due association; enforcement**

(a) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to subdivisions 3-102(a)(10), (11), and (12) of this title, and any other sums due to the association under the declaration, this title, or as a result of an administrative, arbitration, mediation, or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

- (1) liens and encumbrances recorded before the recordation of the declaration; and
- (2) except as otherwise provided in subsection (c) of this section, a first mortgage or deed of trust on the unit recorded before the date on which the assessment to be enforced became delinquent; and
- (3) liens for real estate taxes and other governmental assessments or charges against the unit.

(c) A lien under this section is also prior to all security interests described in subdivision (b)(2) of this section to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection 3-115(a) of this title which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. Subsections (b) and (c) of this section do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of 27 V.S.A. chapter 3.

(d) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(e) Recording the declaration constitutes record notice and perfection of the lien. No further recording of any claim or lien for assessment under this section is required.

(f) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

(g) This section does not prohibit an action against unit owners to recover sums for which subsection (a) of this section creates a lien or an association from taking a deed in lieu of foreclosure.

(h) A judgment or decree in any action brought under this section shall include an award of costs and reasonable attorney fees to the prevailing party.

(i) The association, upon request made in a record, shall furnish to a unit owner a statement of the amount of unpaid assessments against that unit. If the unit owner's interest is real estate, the statement shall be recordable. The statement shall be provided within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(j) The association's lien may be foreclosed pursuant to 12 V.S.A. § 4531a and subsection (o) of this section. The association shall give the notice required by statute, or if there is no such requirement, reasonable notice of its action to all lienholders of the unit whose interest would be affected.

(k) A unit owner is not exempt from liability for payment of common expenses by a waiver of the use or enjoyment of any of the common elements or by abandonment of the unit.

(l) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to section 3-115 of this title.

(m) An association may not commence an action to foreclose a lien on a unit under this section unless:

- (1) the unit owner, at the time the action is commenced, owes a sum equal to at least three months of common expense assessments based on the periodic budget last adopted by the association pursuant to subsection 3-115(a) of this title and the unit owner has failed to accept or comply with a payment plan offered by the association; and
- (2) the executive board votes to commence a foreclosure action specifically against that unit.

(n) Unless the parties otherwise agree, the association shall apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

- (1) unpaid assessments;
- (2) late charges;

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(3) reasonable attorney's fees and costs and other reasonable collection charges; and

(4) all other unpaid fees, charges, fines, penalties, interest, and late charges.

(o) Notwithstanding subsection (a) of this section, unless sums due the association include an unpaid assessment, a foreclosure action may not be commenced against the unit unless the association has a judgment against the unit owner for the sums due the association and has perfected a judgment lien against the unit.

(p) Every aspect of a foreclosure, sale, or other disposition under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable.

History

Added [1997, No. 104](#) (Adj. Sess.), § 3, eff. Jan. 1, 1999; amended [2001, No. 46](#), § 13; [2009, No. 155](#) (Adj. Sess.), § 35, eff. Jan. 1, 2012.

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VERMONT STATUTES ANNOTATED TITLE TWENTY-SEVEN A. VERMONT COMMON INTEREST OWNERSHIP ACT (1994) PART 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY**§ 3-116. Lien for sums due association; enforcement**

(a) The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to subdivisions 3-102(a)(10), (11), and (12) of this title, and any other sums due to the association under the declaration, this title, or as a result of an administrative, arbitration, mediation, or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

- (1) liens and encumbrances recorded before the recordation of the declaration; and
- (2) except as otherwise provided in subsection (c) of this section, a first mortgage or deed of trust on the unit recorded before the date on which the assessment to be enforced became delinquent; and
- (3) liens for real estate taxes and other governmental assessments or charges against the unit.

(c) A lien under this section is also prior to all security interests described in subdivision (b)(2) of this section to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection 3-115(a) of this title which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. Subsections (b) and (c) of this section do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of 27 V.S.A. chapter 3.

(d) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(e) Recording the declaration constitutes record notice and perfection of the lien. No further recording of any claim or lien for assessment under this section is required.

(f) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due.

(g) This section does not prohibit an action against unit owners to recover sums for which subsection (a) of this section creates a lien or an association from taking a deed in lieu of foreclosure.

(h) A judgment or decree in any action brought under this section shall include an award of costs and reasonable attorney's fees to the prevailing party.

(i) The association, upon request made in a record, shall furnish to a unit owner a statement of the amount of unpaid assessments against that unit. If the unit owner's interest is real estate, the statement shall be recordable. The statement shall be provided within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(j) The association's lien may be foreclosed pursuant to 12 V.S.A. chapter 172 and subsection (o) of this section. The association shall give the notice required by statute, or if there is no such requirement, reasonable notice of its action to all lienholders of the unit whose interest would be affected.

(k) A unit owner is not exempt from liability for payment of common expenses by a waiver of the use or enjoyment of any of the common elements or by abandonment of the unit.

(l) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to section 3-115 of this title.

(m) An association may not commence an action to foreclose a lien on a unit under this section unless:

- (1) the unit owner, at the time the action is commenced, owes a sum equal to at least three months of common expense assessments based on the periodic budget last adopted by the association pursuant to subsection 3-115(a) of this title and the unit owner has failed to accept or comply with a payment plan offered by the association; and
- (2) the executive board votes to commence a foreclosure action specifically against that unit.

(n) Unless the parties otherwise agree, the association shall apply any sums paid by unit owners that are delinquent in paying assessments in the following order:

- (1) unpaid assessments;
- (2) late charges;

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- (3) reasonable attorney's fees and costs and other reasonable collection charges; and
 - (4) all other unpaid fees, charges, fines, penalties, interest, and late charges.
- (o) Notwithstanding subsection (a) of this section, unless sums due the association include an unpaid assessment, a foreclosure action may not be commenced against the unit unless the association has a judgment against the unit owner for the sums due the association and has perfected a judgment lien against the unit.
- (p) Every aspect of a foreclosure, sale, or other disposition under this section, including the method, advertising, time, date, place, and terms, must be commercially reasonable.
- (q) Unless other procedures are provided in the declaration, bylaws, or rules, an association of time-share unit owners may not deny an owner of a time-share access to the owner's time-share for failure to pay an assessment unless:
- (1) the time-share owner is delinquent in payment of that owner's common expense assessments based on the periodic budget last adopted by the association pursuant to section 3-115(a) of this title; and
 - (2) the association provides written notice of the delinquency to the time-share owner no less than 30 days after the date the assessment was due, but in no case later than 30 days before the date the time-share owner is entitled to occupy that owner's time-share.
 - (3) The following provisions apply to the notice required in subdivision (2) of this subsection:
 - (A) The notice shall clearly state the total amount of any delinquency which then exists, including any accrued interest and late charges permitted to be imposed under the terms of the declaration or bylaws and including a per diem amount, if any, to account for further accrual of interest and late charges between the stated effective date of the notice and the first date of use.
 - (B) The notice shall clearly state that the time-share owner will not be permitted to use his or her time-share interest, that the time-share owner will not be permitted to make a reservation in the time-share property's reservation system, or that any confirmed reservation may be canceled, as applicable, until the total amount of such delinquency is satisfied in full or until the time-share owner produces satisfactory evidence that the delinquency does not exist.
 - (C) The notice shall be mailed to the time-share owner at his or her last known address as recorded in the books and records of the time-share property, and the notice shall be effective to bar the use of the time-share owner and those claiming use rights under the time-share owner, including his or her guests, lessees, and the third parties receiving use rights in the time-share in question through a nonaffiliated exchange program, until such time as the unit owner is no longer delinquent.
 - (D) If the association elects to deny use of the owner's time-share to any third party receiving use rights through an affiliated exchange program, the association shall at the same time provide similar written notice of the owner's delinquency as required in subdivision (2) of this subsection to any affiliated exchange program. Receipt of the written notice by the affiliated exchange program is effective to bar the use of all third parties claiming through the affiliated exchange program.

History

Added [1997, No. 104](#) (Adj. Sess.), § 3, eff. Jan. 1, 1999; amended [2001, No. 46](#), § 13; [2009, No. 155](#) (Adj. Sess.), § 35, eff. Jan. 1, 2012; [2013, No. 102](#) (Adj. Sess.), § 3.

VERMONT STATUTES ANNOTATED

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Michie's TM West Virginia Code Chapter 36B. Uniform Common Interest Ownership Act. Article 3. Management of the Common Interest Community.**§ 36B-3-116. Lien for assessments.**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3-102(a)(10), (11) and (12) [\[§ 36B-3-102\]](#) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) [\[§ 36B-3-115\]](#) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. (The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions).)

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(e) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(g) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(h) For the purpose of perfecting and preserving its lien, the association shall give notice to the unit owner in the manner set forth in section one [\[§ 56-2-1\]](#), article two, chapter fifty-six of this code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the association shall cause to be recorded a notice of the lien in the office of the clerk of the county commission of any county wherein any part of the condominium is located. The notice shall contain:

- (1) A legally sufficient description of the unit;
- (2) The name or names of the owners of the unit;
- (3) The amount of unpaid assessments due together with the date when each fell due; and
- (4) The date of recordation.

The clerk of the county commission in whose office the notice is recorded shall index the notice in the appropriate deed books and lien books in the name of the unit owners and of the association. The cost of recordation shall be assessed against any unit owner found to be delinquent in a subsequent proceeding to enforce the lien.

Upon payment of the assessment, the association shall execute a written release of the lien in the manner set forth in section one [\[§ 38-12-1\]](#), article twelve, chapter thirty-eight of this code. This release shall be recorded, at the expense of the association, in the office of the clerk of the county commission wherein the notice of the lien was filed.

(i) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

History

CTADD2334

1980, c. 129; 1984, c. 38; 1986, c. 164.

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2014 West Virginia Code Archive

Michie's TM West Virginia Code Chapter 36B. Uniform Common Interest Ownership Act. Article 3. Management of the Common Interest Community.**§ 36B-3-116. Lien for assessments.**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3-102(a)(10), (11) and (12) [\[§ 36B-3-102\]](#) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) [\[§ 36B-3-115\]](#) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. (The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions).)

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(e) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(g) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(h) For the purpose of perfecting and preserving its lien, the association shall give notice to the unit owner in the manner set forth in section one [\[§ 56-2-1\]](#), article two, chapter fifty-six of this code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the association shall cause to be recorded a notice of the lien in the office of the clerk of the county commission of any county wherein any part of the condominium is located. The notice shall contain:

- (1) A legally sufficient description of the unit;
- (2) The name or names of the owners of the unit;
- (3) The amount of unpaid assessments due together with the date when each fell due; and
- (4) The date of recordation.

The clerk of the county commission in whose office the notice is recorded shall index the notice in the appropriate deed books and lien books in the name of the unit owners and of the association. The cost of recordation shall be assessed against any unit owner found to be delinquent in a subsequent proceeding to enforce the lien.

Upon payment of the assessment, the association shall execute a written release of the lien in the manner set forth in section one [\[§ 38-12-1\]](#), article twelve, chapter thirty-eight of this code. This release shall be recorded, at the expense of the association, in the office of the clerk of the county commission wherein the notice of the lien was filed.

(i) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

History

CTADD2336

1980, c. 129; 1984, c. 38; 1986, c. 164.

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MICHIE'S ALABAMA CODE ANNOTATED TITLE 35 Property CHAPTER 8A Alabama Uniform Condominium Act Article 3 Management of Condominiums**§ 35-8A-316. Lien; unpaid assessment or fine; perfection; priority.**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate but the association shall give reasonable advance notice of its proposed action to the unit owner and all lienholders of record of the unit. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions [35-8A-302\(a\)\(10\)](#), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien is also prior to the mortgages and deeds of trust described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [subsection 35-8A-315\(a\)](#) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien under this section is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this or the preceding section must include costs and reasonable attorney's fees actually incurred for the prevailing party.

(h) Any unit owner, mortgagee of a unit, person having executed a contract for the purchase of a condominium unit, or lender considering the loan of funds to be secured by a condominium unit shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that condominium unit. Such request shall be in writing, shall be delivered to the registered office of the association, and shall state an address to which the statement is to be directed. Failure on the part of the association to mail or otherwise furnish such statement regarding amounts due and payable if specified in the written request therefor within 10 business days from the receipt of such request releases the association's lien against the unit for the amount of the assessment as of that date, but does not discharge the unit owner's debt to the association. The information specified in such statement shall be binding upon the association and upon every unit owner. Payment of a fee not exceeding \$10.00 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

History[Acts 1990, No. 90-551.](#)

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MICHIE'S ALABAMA CODE ANNOTATED **TITLE 35 Property** **CHAPTER 8A Alabama Uniform Condominium Act** **Article 3 Management of Condominiums****§ 35-8A-316. Lien; unpaid assessment or fine; perfection; priority.**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate but the association shall give reasonable advance notice of its proposed action to the unit owner and all lienholders of record of the unit. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions 35-8A-302(a)(10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien is also prior to the mortgages and deeds of trust described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to subsection 35-8A-315(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien under this section is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this or the preceding section must include costs and reasonable attorney's fees actually incurred for the prevailing party.

(h) Any unit owner, mortgagee of a unit, person having executed a contract for the purchase of a condominium unit, or lender considering the loan of funds to be secured by a condominium unit shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that condominium unit. Such request shall be in writing, shall be delivered to the registered office of the association, and shall state an address to which the statement is to be directed. Failure on the part of the association to mail or otherwise furnish such statement regarding amounts due and payable if specified in the written request therefor within 10 business days from the receipt of such request releases the association's lien against the unit for the amount of the assessment as of that date, but does not discharge the unit owner's debt to the association. The information specified in such statement shall be binding upon the association and upon every unit owner. Payment of a fee not exceeding \$10.00 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

History[Acts 1990, No. 90-551.](#)

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LEXISNEXIS™ MISSOURI ANNOTATED STATUTES TITLE 29. OWNERSHIP AND CONVEYANCE OF PROPERTY (Chs. 441-448) CHAPTER 448. CONDOMINIUM PROPERTY UNIFORM CONDOMINIUM ACT**§ 448.3-116. Lien for assessments**

1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate or a power of sale pursuant to chapter 443. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions (10), (11), and (12) of subsection 1 of [section 448.3-102](#) are enforceable as assessments pursuant to this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien pursuant to this section is prior to all other liens and encumbrances on a unit except:

- (1) Liens and encumbrances recorded before the recordation of the declaration;
- (2) A mortgage and deed of trust for the purchase of a unit recorded before the date on which the assessment sought to be enforced became delinquent;
- (3) Liens for real estate taxes and other governmental assessments or charges against the unit;
- (4) Except for delinquent assessments or fines, up to a maximum of six months' assessments or fines, which are due prior to any subsequent refinancing of a unit or for any subsequent second mortgage interest.

This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien pursuant to this section is not subject to the provisions of [section 513.475](#).

3. Unless the declaration provides otherwise, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment pursuant to this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

6. This section shall not prohibit actions to recover sums for which subsection 1 of this section creates a lien, or prohibit an association from taking a deed in lieu of foreclosure.

7. A judgment or decree in any action brought pursuant to this section shall include costs and reasonable attorney's fees for the prevailing party.

8. The association shall furnish to a unit owner, upon written request, a recordable statement setting forth the amount of unpaid assessments against the unit owner's unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

History

L. 1983 H.B. 177, A.L. [1998 S.B. 852](#) & 913

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LEXISNEXIS™ MISSOURI ANNOTATED STATUTES TITLE 29. OWNERSHIP AND CONVEYANCE OF PROPERTY (Chs. 441-448) CHAPTER 448. CONDOMINIUM PROPERTY UNIFORM CONDOMINIUM ACT**§ 448.3-116. Lien for assessments**

1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate or a power of sale pursuant to chapter 443. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions (10), (11), and (12) of subsection 1 of [section 448.3-102](#) are enforceable as assessments pursuant to this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.
2. A lien pursuant to this section is prior to all other liens and encumbrances on a unit except:
 - (1) Liens and encumbrances recorded before the recordation of the declaration;
 - (2) Any mortgage or deed of trust securing a purchase money loan for the unit recorded prior to August 28, 2014;
 - (3) Any mortgage or deed of trust on a unit recorded before the date on which the assessment sought to be enforced became due except that a lien under this section has limited priority over the mortgage or deed of trust for common expense assessments in an amount not to exceed six months of the delinquent common expense assessments based on the periodic budget adopted by the association under subsection 1 of [section 448.3-115](#) which would have become due in the absence of acceleration during the six months immediately preceding the date of filing of a petition to enforce the association's lien or the date of sale by the holder of a mortgage or deed of trust;
 - (4) Liens for real estate taxes and other governmental assessments or charges against the unit;
 - (5) If the association forecloses its lien under this section in a non-judicial manner under chapter 443, the association shall not be entitled to the limited lien priority for common expense assessments provided under subdivision (3) of subsection 2 of this section;
 - (6) This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien pursuant to this section is not subject to the provisions of [section 513.475](#).
3. Unless the declaration provides otherwise, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.
4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment pursuant to this section is required.
5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.
6. This section shall not prohibit actions to recover sums for which subsection 1 of this section creates a lien, or prohibit an association from taking a deed in lieu of foreclosure.
7. The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments. A judgment or decree in any action brought pursuant to this section shall include costs and reasonable attorney's fees for the prevailing party. Attorneys' fees and costs shall not be included in the association's lien under subdivision (3) of subsection 2 of this section.
8. The association shall furnish to a unit owner or any holder of a mortgage or deed of trust, upon written request, a recordable statement setting forth the amount of unpaid assessments against the unit owner's unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner unless it is known by the recipient to be false.
9. If a unit is occupied by a tenant and the record owner is delinquent in payment of assessments in excess of sixty days, the association may demand payment of subsequent rental payments until the record owner is no longer delinquent, the association releases the tenant, or the tenant is no longer in possession of the unit. The demand to the tenant shall be in writing, with a copy to the record owner, sent via first-class United States mail, postage pre-paid, or hand delivery. A tenant is immune from any claim by the record owner related to the rent timely paid to the association after the association has made written demand. If the tenant fails to make payment to the association, the association may issue notice and evict under chapter 534. The tenant does not, by virtue of payment, have any rights of a record owner to vote in an election or examine the books and records of the association .

HistoryL. 1983 H.B. 177, A.L. [1998 S.B. 852](#) & 913, A.L. [2014 H.B. 1218](#), § A, eff. Aug. 28, 2014

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PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R) PENNSYLVANIA CONSOLIDATED STATUTES TITLE 68. REAL AND PERSONAL PROPERTY PART II. REAL PROPERTY SUBPART D. PLANNED COMMUNITIES CHAPTER 53. MANAGEMENT OF PLANNED COMMUNITY

§ 5315. Lien for assessments.

(a) General rule. -- The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in a like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage on the unit, except the mortgage for which the sale is being held, if the mortgage is prior to all other liens upon the same property except those liens identified in [42 Pa.C.S. § 8152\(a\)](#) (relating to judicial sale as affecting lien of mortgage) and liens for planned community assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged under section 5302(a)(10), (11) and (12) (relating to power of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due to the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of lien.

(1) General rule. -- A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recording of the declaration.

(A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before due date of the assessment if the assessment is not payable in installments or the due date of the unpaid installment if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by any such mortgage or deed of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Limited nondivestiture. -- The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 5314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 5314(b) other than the six months' assessment referred to in subparagraph (i), in a full amount of the unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent that the proceeds of the sale are sufficient to pay some or all of these additional assessments after satisfaction in full of the costs of the judicial sale and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), the assessments shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) Monetary exemption. -- The lien is not subject to the provisions of [42 Pa.C.S. § 8123](#) (relating to general monetary exemption).

(c) Liens having equal priority. -- If the association and one or more associations, condominium associations or cooperative associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Notice and perfection of lien. -- Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(e) Limitation of actions. -- A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the assessments become payable.

(f) Other remedies preserved. -- Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(g) Costs and attorney fees. -- A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney fees for the prevailing party.

(h) Statement of unpaid assessments. -- The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit under section 5313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

(i) Application of payments. -- Unless the declaration provides otherwise, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

CTADD2346

History

[Act 1996-180](#) (H.B. 1757), P.L. 1336, § 1, approved Dec. 19, 1996, eff. in 45 days; [Act 2004-189](#) (H.B. 1329), P.L. 1486, § 5, approved Nov. 30, 2004, eff. in 60 days.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)



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PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R) PENNSYLVANIA CONSOLIDATED STATUTES TITLE 68. REAL AND PERSONAL PROPERTY PART II. REAL PROPERTY SUBPART D. PLANNED COMMUNITIES CHAPTER 53. MANAGEMENT OF PLANNED COMMUNITY

§ 5315. Lien for assessments.

(a) General rule. -- The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in a like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage on the unit, except the mortgage for which the sale is being held, if the mortgage is prior to all other liens upon the same property except those liens identified in [42 Pa.C.S. § 8152\(a\)](#) (relating to judicial sale as affecting lien of mortgage) and liens for planned community assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged under section 5302(a)(10), (11) and (12) (relating to power of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due to the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments are not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of lien.

(1) General rule. -- A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recording of the declaration.

(A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before due date of the assessment if the assessment is not payable in installments or the due date of the unpaid installment if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by any such mortgage or deed of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Limited nondivestiture. -- The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 5314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 5314(b) other than the six months' assessment referred to in subparagraph (i), in a full amount of the unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent that the proceeds of the sale are sufficient to pay some or all of these additional assessments after satisfaction in full of the costs of the judicial sale and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), the assessments shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) Monetary exemption. -- The lien is not subject to the provisions of [42 Pa.C.S. § 8123](#) (relating to general monetary exemption).

(c) Liens having equal priority. -- If the association and one or more associations, condominium associations or cooperative associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Notice and perfection of lien. -- Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(e) Limitation of actions. -- A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the assessments become payable.

(f) Other remedies preserved. -- Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(g) Costs and attorney fees. -- A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney fees for the prevailing party.

(h) Statement of unpaid assessments. -- The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit under section 5313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

(i) Application of payments. -- Unless the declaration provides otherwise, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

CTADD2348

History

[Act 1996-180](#) (H.B. 1757), P.L. 1336, § 1, approved Dec. 19, 1996, eff. in 45 days; [Act 2004-189](#) (H.B. 1329), P.L. 1486, § 5, approved Nov. 30, 2004, eff. in 60 days.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)



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PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R) PENNSYLVANIA CONSOLIDATED STATUTES TITLE 68. REAL AND PERSONAL PROPERTY PART II. REAL PROPERTY SUBPART B. CONDOMINIUMS CHAPTER 33. MANAGEMENT OF THE CONDOMINIUM

§ 3315. Lien for assessments.

(a) General rule. -- The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage thereon, except the mortgage for which the sale is being held, if the mortgage is or shall be prior to all other liens upon the same property except those liens identified in [42 Pa.C.S. § 8152\(a\)](#) (relating to judicial sale as affecting lien of mortgage) and liens for condominium assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3302(a)(10), (11) and (12) (relating to powers of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments is not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of lien.

(1) General rule. -- A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recordation of the declaration.

(A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment, if the assessment is not payable in installments, or the due date of the unpaid installment, if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by mortgages or deeds of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Limited nondivestiture. -- The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 3314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 3314(b) other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) Monetary exemption. -- The lien is not subject to the provisions of [42 Pa.C.S. § 8123](#) (relating to general monetary exemption).

(c) Notice and perfection of lien. -- Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(d) Limitation of actions. -- A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the assessments become payable.

(e) Other remedies preserved. -- Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(f) Costs and attorney's fees. -- A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) Statement of unpaid assessments. -- The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit pursuant to section 3313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

(h) Application of payments. -- Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

CTADD2350

History

Act 1980-82 (S.B. 65), P.L. 286, § 1, approved July 2, 1980, eff. in 120 days; [Act 1992-168](#) (S.B. 862), P.L. 1279, § 5, approved Dec. 18, 1992, eff. in 45 days; [Act 2004-191](#) (H.B. 1331), P.L. 1509, § 5, approved Nov. 30, 2004, eff. in 60 days; [Act 2008-49](#) (H.B. 2295), P.L. 619, § 1, approved July 4, 2008, eff. immediately.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)



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PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R) PENNSYLVANIA CONSOLIDATED STATUTES TITLE 68. REAL AND PERSONAL PROPERTY PART II. REAL PROPERTY SUBPART B. CONDOMINIUMS CHAPTER 33. MANAGEMENT OF THE CONDOMINIUM

§ 3315. Lien for assessments.

(a) General rule. -- The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. A judicial or other sale of the unit in execution of a common element lien or any other lien shall not affect the lien of a mortgage thereon, except the mortgage for which the sale is being held, if the mortgage is or shall be prior to all other liens upon the same property except those liens identified in [42 Pa.C.S. § 8152\(a\)](#) (relating to judicial sale as affecting lien of mortgage) and liens for condominium assessments created under this section. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3302(a)(10), (11) and (12) (relating to powers of unit owners' association) and reasonable costs and expenses of the association, including legal fees, incurred in connection with collection of any sums due the association by the unit owner or enforcement of the provisions of the declaration, bylaws, rules or regulations against the unit owner are enforceable as assessments under this section. If an assessment is payable in installments and one or more installments is not paid when due, the entire outstanding balance of the assessment becomes effective as a lien from the due date of the delinquent installment.

(b) Priority of lien.

(1) General rule. -- A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recordation of the declaration.

(A) Mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment, if the assessment is not payable in installments, or the due date of the unpaid installment, if the assessment is payable in installments.

(B) Judgments obtained for obligations secured by mortgages or deeds of trust under clause (A).

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Limited nondivestiture. -- The association's lien for assessments shall be divested by a judicial sale of the unit:

(i) As to unpaid common expense assessments made under section 3314(b) (relating to assessments for common expenses) that come due during the six months immediately preceding the date of a judicial sale of a unit in an action to enforce collection of a lien against a unit by a judicial sale, only to the extent that the six months' unpaid assessments are paid out of the proceeds of the sale.

(ii) As to unpaid common expense assessments made under section 3314(b) other than the six months assessment referred to in subparagraph (i), in the full amount of these unpaid assessments, whether or not the proceeds of the judicial sale are adequate to pay these assessments. To the extent the proceeds of the sale are sufficient to pay some or all of these additional assessments, after satisfaction in full of the costs of the judicial sale, and the liens and encumbrances of the types described in paragraph (1) and the unpaid common expense assessments that come due during the six-month period described in subparagraph (i), they shall be paid before any remaining proceeds may be paid to any other claimant, including the prior owner of the unit.

(3) Monetary exemption. -- The lien is not subject to the provisions of [42 Pa.C.S. § 8123](#) (relating to general monetary exemption).

(c) Notice and perfection of lien. -- Subject to the provisions of subsection (b), recording of the declaration constitutes record notice and perfection of the lien.

(d) Limitation of actions. -- A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the assessments become payable.

(e) Other remedies preserved. -- Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.

(f) Costs and attorney's fees. -- A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) Statement of unpaid assessments. -- The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit and any credits of surplus in favor of his unit pursuant to section 3313 (relating to surplus funds). The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner.

(h) Application of payments. -- Unless the declaration otherwise provides, any payment received by an association in connection with the lien under this section shall be applied first to any interest accrued by the association, then to any late fee, then to any costs and reasonable attorney fees incurred by the association in collection or enforcement and then to the delinquent assessment. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instructions placed on or accompanying a payment.

CTADD2352

History

Act 1980-82 (S.B. 65), P.L. 286, § 1, approved July 2, 1980, eff. in 120 days; [Act 1992-168](#) (S.B. 862), P.L. 1279, § 5, approved Dec. 18, 1992, eff. in 45 days; [Act 2004-191](#) (H.B. 1331), P.L. 1509, § 5, approved Nov. 30, 2004, eff. in 60 days; [Act 2008-49](#) (H.B. 2295), P.L. 619, § 1, approved July 4, 2008, eff. immediately.

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)



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General Laws of Rhode Island TITLE 34. PROPERTY CHAPTER 36.1. CONDOMINIUM LAW ARTICLE III. MANAGEMENT OF CONDOMINIUM**§ 34-36.1-3.16. Lien for assessments**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in accordance with and subject to the provisions of [§ 34-36.1-3.21](#). Unless the declaration otherwise provides, attorney's fees, charges, late charges, fines, and interest charged pursuant to [§ 34-36.1-3.02\(a\)\(10\)](#) -- (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) (1) A lien under this section is prior to all other liens and encumbrances on a unit except:

(i) Liens and encumbrances recorded before the recordation of the declaration and not subordinated to the declaration,

(ii) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and

(iii) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) The lien is also prior to any mortgage or deed of trust described in subdivision (b)(1)(ii) of this section to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [§ 34-36.1-3.15\(a\)](#) which would have become due in the absence of acceleration during the six (6) months immediately preceding the foreclosure of the interest of the unit owner including any costs and reasonable attorney's fees not to exceed two thousand five hundred dollars (\$ 2,500), incurred in the collection of any delinquent assessment or other charges by legal proceedings or otherwise and all costs of foreclosure held pursuant to [section 34-36.1-3.21](#), including, but not limited to, publication, advertising and auctioneer costs, said foreclosure costs not to exceed five thousand dollars (\$ 5,000) (for a total aggregate of attorney's fees and costs of seven thousand five hundred dollars (\$ 7,500)).

(3) The priority amount under subdivision (b)(2) above shall not include any amounts attributable to special assessments, late charges, fines, penalties, and interest assessed by the association.

(4) When any portion of the unit owner's share of the common expenses has been delinquent for at least sixty (60) days the association shall first send a notice stating the amount of the delinquency to the unit owner by certified mail, return receipt requested, and first class mail. The association shall also send a notice by certified mail, return receipt requested, and first class mail, stating the amount of the delinquency to the holder of the first mortgage or deed of trust as it appears in the land evidence records at the address appearing in the mortgage or deed of trust or such other address as the first mortgagee may provide in writing to the association.

(5) The failure of the association to send the first mortgagee the notice of sixty (60) days delinquency of common expense assessments, as described in subsection (b)(4) above, shall not affect the priority of the lien for up to six (6) months common expense assessments, but the priority amount shall not include any costs or attorney's fees.

(6) This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(c) Unless the declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required but is permitted.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of the assessments becomes due.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association, upon written request shall furnish to a unit owner or the holder of a first mortgage or deed of trust granted with respect to such unit owner's unit a recordable statement setting forth the amount of unpaid assessments against his or her unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(i) The association may take action for failure of a unit owner to pay any assessment or other charges pursuant to this section. The delinquent unit owner shall be obligated to pay all expenses of the executive board, including reasonable attorney's fees, incurred in the collection of the delinquent assessment or other charges by legal proceedings or otherwise, such attorney's fees and other charges also being a lien on the unit. The delinquent unit owner shall also be obligated to pay any amounts paid by the executive board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

CTADD2354

History

P.L. 1982, ch. 329, § 2; [P.L. 1991, ch. 247, § 1](#); [P.L. 1991, ch. 369, § 1](#); [P.L. 1992, ch. 8, § 1](#); [P.L. 1997, ch. 324, § 1](#); [P.L. 2001, ch. 84, § 1](#); [P.L. 2008, ch. 459, § 1](#); [P.L. 2008, ch. 479, § 1](#); [P.L. 2009, ch. 246, § 1](#).

General Laws of Rhode Island

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General Laws of Rhode Island TITLE 34. PROPERTY CHAPTER 36.1. CONDOMINIUM LAW ARTICLE III. MANAGEMENT OF CONDOMINIUM**§ 34-36.1-3.16. Lien for assessments**

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due. The association's lien may be foreclosed in accordance with and subject to the provisions of [§ 34-36.1-3.21](#). Unless the declaration otherwise provides, attorney's fees, charges, late charges, fines, and interest charged pursuant to [§ 34-36.1-3.02\(a\)\(10\)](#) -- (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) (1) A lien under this section is prior to all other liens and encumbrances on a unit except:

- (i)** Liens and encumbrances recorded before the recordation of the declaration and not subordinated to the declaration,
- (ii)** A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and
- (iii)** Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) The lien is also prior to any mortgage or deed of trust described in subdivision (b)(1)(ii) of this section to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [§ 34-36.1-3.15\(a\)](#) which would have become due in the absence of acceleration during the six (6) months immediately preceding the foreclosure of the interest of the unit owner including any costs and reasonable attorney's fees not to exceed two thousand five hundred dollars (\$ 2,500), incurred in the collection of any delinquent assessment or other charges by legal proceedings or otherwise and all costs of foreclosure held pursuant to [section 34-36.1-3.21](#), including, but not limited to, publication, advertising and auctioneer costs, said foreclosure costs not to exceed five thousand dollars (\$ 5,000) (for a total aggregate of attorney's fees and costs of seven thousand five hundred dollars (\$ 7,500)).

(3) The priority amount under subdivision (b)(2) above shall not include any amounts attributable to special assessments, late charges, fines, penalties, and interest assessed by the association.

(4) When any portion of the unit owner's share of the common expenses has been delinquent for at least sixty (60) days the association shall first send a notice stating the amount of the delinquency to the unit owner by certified mail, return receipt requested, and first class mail. The association shall also send a notice by certified mail, return receipt requested, and first class mail, stating the amount of the delinquency to the holder of the first mortgage or deed of trust as it appears in the land evidence records at the address appearing in the mortgage or deed of trust or such other address as the first mortgagee may provide in writing to the association.

(5) The failure of the association to send the first mortgagee the notice of sixty (60) days delinquency of common expense assessments, as described in subsection (b)(4) above, shall not affect the priority of the lien for up to six (6) months common expense assessments, but the priority amount shall not include any costs or attorney's fees.

(6) This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(c) Unless the declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required but is permitted.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of the assessments becomes due.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association, upon written request shall furnish to a unit owner or the holder of a first mortgage or deed of trust granted with respect to such unit owner's unit a recordable statement setting forth the amount of unpaid assessments against his or her unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(i) The association may take action for failure of a unit owner to pay any assessment or other charges pursuant to this section. The delinquent unit owner shall be obligated to pay all expenses of the executive board, including reasonable attorney's fees, incurred in the collection of the delinquent assessment or other charges by legal proceedings or otherwise, such attorney's fees and other charges also being a lien on the unit. The delinquent unit owner shall also be obligated to pay any amounts paid by the executive board for taxes or on account of superior liens or otherwise to protect its lien, which expenses and amounts, together with accrued interest, shall be deemed to constitute part of the delinquent assessment and shall be collectible as such.

CTADD2356

History

P.L. 1982, ch. 329, § 2; [P.L. 1991, ch. 247, § 1](#); [P.L. 1991, ch. 369, § 1](#); [P.L. 1992, ch. 8, § 1](#); [P.L. 1997, ch. 324, § 1](#); [P.L. 2001, ch. 84, § 1](#); [P.L. 2008, ch. 459, § 1](#); [P.L. 2008, ch. 479, § 1](#); [P.L. 2009, ch. 246, § 1](#).

General Laws of Rhode Island

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TENNESSEE CODE ANNOTATED **Title 66 Property** **Chapter 27 Horizontal Property** **Part 4 Tennessee Condominium Act of 2008 -- Unit Owners' Association**
66-27-415. Lien for assessments.

(a) (1) (A) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, which lien may be foreclosed by judicial action.

(B) Notwithstanding subdivision (a)(1)(A), the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5, part 1; provided, that the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under title 35, chapter 5, part 1.

(C) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:

(i) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or

(ii) If to a lienholder, at the address set forth in the instrument of record, or, if different, at such other address as the lienholder may have on file with the association.

(D) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to [§ 66-27-402\(a\)\(10\)](#), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(b) (1) A lien under this section is prior to all other liens and encumbrances on a unit, except:

(A) Liens and encumbrances recorded before the recordation of the declaration;

(B) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and

(C) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2)

(A) The lien is also prior to the mortgages and deeds of trust described in subdivision (b)(1)(B) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [§ 66-27-414\(a\)](#) that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

(B) The lien shall not have the priority provided for in subdivision (b)(2)(A) over the mortgages and deeds of trust described in subdivision (b)(1)(B) in the event that the owner of the unit or the holder of any first mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date six (6) months of assessments for common expenses due from the unit became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party.

(3) This subsection (b) does not affect the priority of mechanics or materialmen's liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

(c) Unless the first recorded declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have priority based upon the priority of recording of the declarations creating the liens.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibits an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association, upon written request, shall furnish to a unit owner, or to a holder of any mortgage or deed of trust encumbering the unit, or their respective authorized agents, a written statement setting forth the amount of unpaid assessments against the owner's unit. The statement must be furnished within seven (7) days after receipt of the request and is binding on the association.

History

CTADD2358

[Acts 2008, ch. 766, § 1.](#)

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TENNESSEE CODE ANNOTATED Title 66 Property Chapter 27 Horizontal Property Part 4 Tennessee Condominium Act of 2008 -- Unit Owners' Association**66-27-415. Lien for assessments.**

(a) (1) (A) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, which lien may be foreclosed by judicial action.

(B) Notwithstanding subdivision (a)(1)(A), the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5, part 1; provided, that the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under title 35, chapter 5, part 1.

(C) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:

(i) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or

(ii) If to a lienholder, at the address set forth in the instrument of record, or, if different, at such other address as the lienholder may have on file with the association.

(D) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to [§ 66-27-402\(a\)\(10\)](#), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(b) (1) A lien under this section is prior to all other liens and encumbrances on a unit, except:

(A) Liens and encumbrances recorded before the recordation of the declaration;

(B) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and

(C) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2)

(A) The lien is also prior to the mortgages and deeds of trust described in subdivision (b)(1)(B) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [§ 66-27-414\(a\)](#) that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

(B) The lien shall not have the priority provided for in subdivision (b)(2)(A) over the mortgages and deeds of trust described in subdivision (b)(1)(B) in the event that the owner of the unit or the holder of any first mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date six (6) months of assessments for common expenses due from the unit became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party.

(3) This subsection (b) does not affect the priority of mechanics or materialmen's liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

(c) Unless the first recorded declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have priority based upon the priority of recording of the declarations creating the liens.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibits an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association, upon written request, shall furnish to a unit owner, or to a holder of any mortgage or deed of trust encumbering the unit, or their respective authorized agents, a written statement setting forth the amount of unpaid assessments against the owner's unit. The statement must be furnished within seven (7) days after receipt of the request and is binding on the association.

History

CTADD2360

[Acts 2008, ch. 766, § 1.](#)

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2015 Tenn. Code Ann. § 66-27-415

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TENNESSEE CODE ANNOTATED > Title 66 Property > Chapter 27 Multiple Ownership of Property > Part 4 Tennessee Condominium Act of 2008 -- Unit Owners' Association

66-27-415. Lien for assessments.

- (a) (1) (A) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, which lien may be foreclosed by judicial action.
- (B) Notwithstanding subdivision (a)(1)(A), the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5; provided, that the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under title 35, chapter 5.
- (C) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:
- (i) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or
- (ii) If to a lienholder, at the address set forth in the instrument of record, or, if different, at such other address as the lienholder may have on file with the association.
- (D) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to [§ 66-27-402\(a\)\(10\)](#), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.
- (b) (1) A lien under this section is prior to all other liens and encumbrances on a unit, except:
- (A) Liens and encumbrances recorded before the recordation of the declaration;
- (B) A first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
- (C) Liens for real estate taxes and other governmental assessments or charges against the unit.
- (2)
- (A) The lien is also prior to the mortgages and deeds of trust described in subdivision (b)(1)(B) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [§ 66-27-414\(a\)](#) that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.
- (B) The lien shall not have the priority provided for in subdivision (b)(2)(A) over the mortgages and deeds of trust described in subdivision (b)(1)(B) in the event that the owner of the unit or the holder of any first mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date six (6) months of assessments for common expenses due from the unit became delinquent, to give

written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party.

- (3) This subsection (b) does not affect the priority of mechanics or materialmens liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.
- (c) Unless the first recorded declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have priority based upon the priority of recording of the declarations creating the liens.
 - (d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.
 - (e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.
 - (f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibits an association from taking a deed in lieu of foreclosure.
 - (g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.
 - (h) The association, upon written request, shall furnish to a unit owner, or to a holder of any mortgage or deed of trust encumbering the unit, or their respective authorized agents, a written statement setting forth the amount of unpaid assessments against the owner's unit. The statement must be furnished within seven (7) days after receipt of the request and is binding on the association.

History

[*Acts 2008, ch. 766, § 1.*](#)

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66-27-415. Lien for assessments.

(a)

- (1) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, which lien may be foreclosed by judicial action.
- (2) Notwithstanding subdivision (a)(1), the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5; provided, that the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under title 35, chapter 5.
- (3) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:
 - (A) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or
 - (B) If to a lienholder, other interested party, or the nominee of record, at the address set forth in the instrument of record, or, if different, at such other address as the lienholder, the other interested party, or the nominee may have on file with the association.
- (4) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to [§ 66-27-402\(a\)\(10\)](#), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(b) (1) A lien under this section is prior to all other liens and encumbrances on a unit, except:

- (A) Liens and encumbrances recorded before the recordation of the declaration;
 - (B) A first or other contemporaneous mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
 - (C) Liens for real estate taxes and other governmental assessments or charges against the unit.
- (2) Upon a foreclosure action initiated by a lien holder or the association under title 35, chapter 5, the association shall be entitled to a priority in the proceeds from the foreclosure sale to satisfy the lien under subsection (a) up to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [§ 66-27-414](#), which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, but not exceeding one percent (1%) of the maximum principal indebtedness of a lien secured by the first mortgage or deed of trust; provided, that, notwithstanding this subsection (b) or any law to the contrary:
- (A) Any foreclosure by the association of its lien for assessments shall be subject to any prior mortgage or deed of trust encumbering the property and shall not extinguish the lien of such mortgage or deed of trust;

- (B)** Upon any foreclosure by the holder of a mortgage or deed of trust, the sale and foreclosure will be subject to the association lien up to the payment priority amount set forth in this subdivision (b)(2); and
- (C)** Any right of foreclosure or priority of the association shall not be transferable and shall be extinguished if assigned or transferred to a third party.
- (3)** This subsection (b) does not affect the priority of mechanics or materialmen's liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.
- (c)** Unless the first recorded declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens have priority based upon the priority of recording of the declarations creating the liens.
- (d)**
 - (1)** Recording of the declaration constitutes record notice of the lien. A lien for any delinquent assessment under this section up to the priority in payment provided in subdivision (b)(2) is perfected without recording. Any other delinquent amount above the priority of payment provided in subdivision (b)(2) is perfected by recording it in the lien book in the register of deeds office in the county where the real property is located, and shall have priority over any subsequently filed liens.
 - (2)** The lien shall not have the priority provided for in subdivision (b)(2)(A) over the mortgages and deeds of trust described in subdivision (b)(1)(B) if the owner of the unit or the holder of any mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date that six (6) months of assessments for common expenses due from the unit became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party.
- (e)** A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the date the lien for the assessment becomes effective.
- (f)** This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibits an association from taking a deed in lieu of foreclosure.
- (g)** A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.
- (h)** The association, upon written request, shall furnish to a unit owner, or to a holder of any mortgage or deed of trust encumbering the unit, or their respective authorized agents, a written statement setting forth the amount of unpaid assessments against the owner's unit. The statement must be furnished within seven (7) days after receipt of the request and is binding on the association.

History

[Acts 2008, ch. 766, § 1](#); [2016, ch. 866, §§ 1, 2](#).

Annotations

Notes

Compiler's Notes.

[Acts 2016, ch. 866, § 3](#) provided that the act, which amended this section, shall apply to any foreclosure action initiated on or after June 1, 2016.

Amendments.

The 2016 amendment, in (a), redesignated former (1)(A)-(D) as present (2)-(4) respectively, substituted "Notwithstanding subdivision (a)(1)" for "Notwithstanding subdivision (a)(1)(A)" at the beginning of present (2), and inserted "other interested party, or the nominee of record," following the first instance of "lienholder" and inserted "the other interested party, or the nominee" following the second instance of "lienholder" in present (3)(B); in (b), inserted "or other contemporaneous" near the beginning of (1)(B), and rewrote (2) which read: "(2)(A) The lien is also prior to the mortgages and deeds of trust described in subdivision (b)(1)(B) to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to [§ 66-27-414\(a\)](#) that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

"(B) The lien shall not have the priority provided for in subdivision (b)(2)(A) over the mortgages and deeds of trust described in subdivision (b)(1)(B) in the event that the owner of the unit or the holder of any first mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date six (6) months of assessments for common expenses due from the unit became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party."; and rewrote (d) which read:

"(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required."

Effective Dates.

[Acts 2016, ch. 866, § 3](#). June 1, 2016.

Research References & Practice Aids

Section to Section References.

This section is referred to in [§§ 66-27-202](#), [66-27-307](#), [66-27-308](#).

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**ANNOTATED REVISED CODE OF WASHINGTON TITLE 64. REAL PROPERTY AND CONVEYANCES CHAPTER 64.34. CONDOMINIUM ACT ARTICLE 3
MANAGEMENT OF CONDOMINIUM**
§ 64.34.364. Lien for assessments

- (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.
- (2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.
- (3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to [RCW 64.34.360\(1\)](#) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.
- (4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or material suppliers' liens, or the priority of liens for other assessments made by the association.
- (5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.
- (6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.
- (7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.
- (8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.
- (9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under [RCW 61.24.010](#) to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.
- (10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.
- (11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.
- (12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the

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grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under [RCW 19.52.020](#) on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law.

History

[2013 c 23 § 175](#); [1990 c 166 § 6](#); [1989 c 43 § 3](#)-117.

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Annotated Revised Code of Washington Title 64 Real Property and Conveyances Chapter 64.34 Condominium Act Article 3 Management of Condominium**64.34.364. Lien for assessments.**

- (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.
- (2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.
- (3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to [RCW 64.34.360\(1\)](#) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.
- (4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or material suppliers' liens, or the priority of liens for other assessments made by the association.
- (5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.
- (6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.
- (7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.
- (8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.
- (9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under [RCW 61.24.010](#) to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.
- (10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.
- (11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.
- (12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the

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grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under [RCW 19.52.020](#) on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law.

History

[2013 c 23 § 175](#); [1990 c 166 § 6](#); [1989 c 43 § 3](#)-117.

Annotated Revised Code of Washington

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**MICHIE'S HAWAII REVISED STATUTES ANNOTATED DIVISION 3. PROPERTY; FAMILY TITLE 28 Property CHAPTER 514B Condominiums Part VI.
Management of Condominiums C. Operations****§ 514B-146. Association fiscal matters; lien for assessments.**

(a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the unit; and
- (2) Except as provided in subsection (g), all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages;

provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code ([11 U.S.C. § 101](#) et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under [section 362 of the United States Bankruptcy Code \(11 U.S.C. § 362\)](#) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part 1A of chapter 667.

In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association chargeable to the unit that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to chapter 667; or
- (4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) No unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;

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(5) That a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) A unit owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under section 514B-162; provided that a unit owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association which are not owed.

(e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

(f) Before the board or managing agent may take the actions permitted under subsection (e), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.

(g) Subject to this subsection, and subsections (h) and (i), the board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that the mortgagee or other purchaser may require the association to provide at no charge a notice of the association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

(1) In a nonjudicial power of sale foreclosure, when the affidavit after public sale is recorded pursuant to section 667-33; and

(2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular monthly common assessments" does not include:

(1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

(4) Any lien arising out of the assessment; or

(5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.

(j) The cost of a release of any lien filed pursuant to this section shall be paid by the party requesting the release.

(k) After any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lien holders based on the priority of lien, and not on a pro rata basis, and shall be applied to the benefit of the unit owner. For purposes of this subsection, excess rental income shall be any net income received by the association after a court has issued a final judgment determining the priority of a senior mortgagee and after paying, crediting, or reimbursing the association or a third party for:

(1) The lien for delinquent assessments pursuant to subsections (a) and (b);

(2) Any maintenance fee delinquency against the unit;

(3) Attorney's fees and other collection costs related to the association's foreclosure of the unit; or

(4) Any costs incurred by the association for the rental, repair, maintenance, or rehabilitation of the unit while the association is in possession of the unit including monthly association maintenance fees, management fees, real estate commissions, cleaning and repair expenses for the unit, and general excise taxes paid on rental income;

provided that the lien for delinquent assessments under paragraph (1) shall be paid, credited, or reimbursed first.

History

L 1977, c 98, pt of § 2; am imp L 1984, c 90, § 1; am [L 1989, c 362](#), § 12; am [L 1991, c 282](#), § 1; am [L 1999, c 236](#), § 4; am [L 2003, c 53](#), § 1; am [L 2009, c 10](#), § 3, effective April 20, 2009; am [L 2011, c 48](#), § 14, effective May 5, 2011; am [L 2012, c 182](#), § 10, effective June 28, 2012; am [L 2013, c 196](#), § 1, effective June 25, 2013.

MICHIE'S HAWAII REVISED STATUTES ANNOTATED

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Michie's TM Hawaii Revised Statutes Annotated **Division 3. Property; Family** **Title 28 Property** **Chapter 514B Condominiums** **Part VI. Management of Condominiums** **C. Operations**

§ 514B-146. Association fiscal matters; lien for assessments.

(a) All sums assessed by the association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on the unit with priority over all other liens, except:

- (1) Liens for real property taxes and assessments lawfully imposed by governmental authority against the unit; and
- (2) Except as provided in subsection (g), all sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association, and costs and expenses including attorneys' fees provided in such mortgages;

provided that a lien recorded by an association for unpaid assessments shall expire six years from the date of recordation unless proceedings to enforce the lien are instituted prior to the expiration of the lien; provided further that the expiration of a recorded lien shall in no way affect the association's automatic lien that arises pursuant to this subsection or the declaration or bylaws. Any proceedings to enforce an association's lien for any assessment shall be instituted within six years after the assessment became due; provided that if the owner of a unit subject to a lien of the association files a petition for relief under the United States Bankruptcy Code ([11 U.S.C. § 101](#) et seq.), the period of time for instituting proceedings to enforce the association's lien shall be tolled until thirty days after the automatic stay of proceedings under [section 362 of the United States Bankruptcy Code \(11 U.S.C. § 362\)](#) is lifted.

The lien of the association may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board, acting on behalf of the association and in the name of the association; provided that no association may exercise the nonjudicial or power of sale remedies provided in chapter 667 to foreclose a lien against any unit that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667.

In any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws or the law, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed by the unit owner or any tenant of the unit. If the association is the plaintiff, it may request that its managing agent be appointed as receiver to collect the rent from the tenant. The managing agent or board, acting on behalf of the association and in the name of the association, unless prohibited by the declaration, may bid on the unit at foreclosure sale, and acquire and hold, lease, mortgage, and convey the unit. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association chargeable to the unit that became due prior to the acquisition of title to the unit by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the unit shall be deemed to acquire title and shall be required to pay the unit's share of common expenses and assessments beginning:

- (1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;
- (2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser;
- (3) Thirty days after the public sale in a nonjudicial power of sale foreclosure conducted pursuant to chapter 667; or
- (4) Upon the recording of the instrument of conveyance;

whichever occurs first; provided that the mortgagee of record or other purchaser of the unit shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the unit shall be deemed to acquire title upon recordation of the instrument of conveyance.

(c) No unit owner shall withhold any assessment claimed by the association. A unit owner who disputes the amount of an assessment may request a written statement clearly indicating:

- (1) The amount of common expenses included in the assessment, including the due date of each amount claimed;
- (2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;
- (3) The amount of attorneys' fees and costs, if any, included in the assessment;
- (4) That under Hawaii law, a unit owner has no right to withhold assessments for any reason;

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(5) That a unit owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the unit owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) A unit owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the unit owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under section 514B-162; provided that a unit owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the unit owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the unit owner pays all association assessments within thirty days of the date of suspension, the unit owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The unit owner shall be entitled to a refund of any amounts paid to the association which are not owed.

(e) In conjunction with or as an alternative to foreclosure proceedings under subsection (a), where a unit is owner-occupied, the association may authorize its managing agent or board to, after sixty days' written notice to the unit owner and to the unit's first mortgagee of the nonpayment of the unit's share of the common expenses, terminate the delinquent unit's access to the common elements and cease supplying a delinquent unit with any and all services normally supplied or paid for by the association. Any terminated services and privileges shall be restored upon payment of all delinquent assessments but need not be restored until payment in full is received.

(f) Before the board or managing agent may take the actions permitted under subsection (e), the board shall adopt a written policy providing for such actions and have the policy approved by a majority vote of the unit owners at an annual or special meeting of the association or by the written consent of a majority of the unit owners.

(g) Subject to this subsection, and subsections (h) and (i), the board may specially assess the amount of the unpaid regular monthly common assessments for common expenses against a mortgagee or other purchaser who, in a judicial or nonjudicial power of sale foreclosure, purchases a delinquent unit; provided that the mortgagee or other purchaser may require the association to provide at no charge a notice of the association's intent to claim lien against the delinquent unit for the amount of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent unit. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the unit.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or nonjudicial power of sale foreclosure.

(i) For purposes of subsections (g) and (h), the following definitions shall apply, unless the context requires otherwise:

"Completion" means:

(1) In a nonjudicial power of sale foreclosure, when the affidavit after public sale is recorded pursuant to section 667-33; and

(2) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

"Regular monthly common assessments" does not include:

(1) Any other special assessment, except for a special assessment imposed on all units as part of a budget adopted pursuant to section 514B-148;

(2) Late charges, fines, or penalties;

(3) Interest assessed by the association;

(4) Any lien arising out of the assessment; or

(5) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs.

(j) The cost of a release of any lien filed pursuant to this section shall be paid by the party requesting the release.

(k) After any judicial or non-judicial foreclosure proceeding in which the association acquires title to the unit, any excess rental income received by the association from the unit shall be paid to existing lien holders based on the priority of lien, and not on a pro rata basis, and shall be applied to the benefit of the unit owner. For purposes of this subsection, excess rental income shall be any net income received by the association after a court has issued a final judgment determining the priority of a senior mortgagee and after paying, crediting, or reimbursing the association or a third party for:

(1) The lien for delinquent assessments pursuant to subsections (a) and (b);

(2) Any maintenance fee delinquency against the unit;

(3) Attorney's fees and other collection costs related to the association's foreclosure of the unit; or

(4) Any costs incurred by the association for the rental, repair, maintenance, or rehabilitation of the unit while the association is in possession of the unit including monthly association maintenance fees, management fees, real estate commissions, cleaning and repair expenses for the unit, and general excise taxes paid on rental income;

provided that the lien for delinquent assessments under paragraph (1) shall be paid, credited, or reimbursed first.

History

L 1977, c 98, pt of § 2; am imp L 1984, c 90, § 1; am [L 1989, c 362](#), § 12; am [L 1991, c 282](#), § 1; am [L 1999, c 236](#), § 4; am [L 2003, c 53](#), § 1; am [L 2009, c 10](#), § 3, effective April 20, 2009; am [L 2011, c 48](#), § 14, effective May 5, 2011; am [L 2012, c 182](#), § 10, effective June 28, 2012; am [L 2013, c 196](#), § 1, effective June 25, 2013; am [L 2014, c 235](#), § 2, effective July 1, 2014.



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**ANNOTATED LAWS OF MASSACHUSETTS PART II REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS TITLE I TITLE TO REAL
PROPERTY Chapter 183A Condominiums****§ 6. Liability for Common Expenses; Distribution of Common Profits; Lien for Unpaid Common Expenses.****(a)**

(i) Except as provided in paragraph (ii), all common expenses shall be assessed against all units either in accordance with their respective percentages of undivided interest in the common areas and facilities or, if stated in the master deed or an amendment thereto duly recorded in the approximate relation that the area of the unit bears to the aggregate area of all the units, which may take into account unit location, amenities in the unit, and limited common areas and facilities benefiting the unit; provided, however, that such an amendment shall require the consent of all unit owners whose common expense assessment is materially affected. The organization of unit owners shall have a lien on a unit for any common expense assessment levied against that unit from the time the assessment becomes due. Common expense assessments must be made at least annually, based on a budget adopted at least annually in accordance with the master deed, trust, or by-laws.

(ii) If any expense is incurred by the organization of unit owners as a result of the unit owner's failure to abide by the requirements of this chapter or the requirements of the master deed, trust, by-laws, restrictions, rules or regulations, or by the misconduct of any unit owner, or his family members, tenants, or invitees, the organization of unit owners may assess that expense exclusively against the unit owner and such assessment shall constitute a lien against that unit from the time the assessment is due, and such assessment shall be enforceable as a common expense assessment under this chapter. Notwithstanding the provisions of paragraph (i), the organization of unit owners may assess the cost of maintaining, repairing or replacing a limited common area and facility, solely to the owner of the unit to which a limited common area and facility is appurtenant, allocated, or designated, and such assessment shall be enforceable as a common expense assessment under this chapter; in the alternative, the organization of unit owners may require the owner of the unit to which a limited common area and facility is appurtenant, allocated, or designated to maintain, repair, or replace such limited common area and facility without the intervention of the organization of unit owners. Notwithstanding the provisions of paragraph (i), the organization of unit owners may assess to each unit owner the direct cost of any energy conservation device installed in a unit, not already separately metered for water and utilities, including but not limited to the installation of separate water meters, low-flow toilets and showerheads, faucet aerators, windows and storm windows; provided, however, that a unit owner required to install such energy conservation device hereunder may appeal to the board of trustees of the organization of unit owners or if there is no board of trustees, the entity performing its duties. Said board or entity of said organization, in its sole and reasonable discretion, may grant to such unit owner a waiver of such required installation upon such terms and conditions as the organization of unit owners shall deem fit. The cost thereof shall be collected in the same manner as common expense assessments under this chapter. The organization of unit owners may assess to each unit owner his proportionate share of the costs for water and other utilities, as measured by the meter attached to the unit; provided however, that the board of trustees of the organization of unit owners receives the approval of the majority of unit owners in attendance at a meeting, for which notice was duly given and which was held for the purposes of issuing such an assessment. A unit owner assessed costs hereunder may appeal the assessment to said board or entity of said organization of unit owners. Such appeal shall be in writing and shall set forth a clear and concise statement of reasons for an exemption from the assessment for the unit owners. Said board or entity of said organization, in its sole and reasonable discretion, may grant to said unit owner a waiver of the assessment provided herein upon such terms and conditions as the organization of unit owners shall deem fit. In the event of a conflict between this subsection and the master deed, trust, or bylaws, and any amendment thereto, of any condominium submitted to the provisions of this chapter, the provisions of this subsection shall control. Notwithstanding the aforesaid, nothing contained herein shall be construed to be in conflict with the provisions of the state sanitary code. The organization of unit owners may also assess any fees, attorneys' fees, charges, late charges, fines, costs of collection and enforcement, court costs, and interest charged pursuant to this chapter against the unit owner and such assessment shall constitute a lien against the unit from the time the assessment is due, and shall be enforceable as common expense assessments under this chapter.

(iii) Common profits shall be distributed among unit owners in the same manner as common expenses are charged to the unit owners.

(b) The unit owner shall be personally liable for all sums assessed for his share of the common expenses including late charges, fines, penalties, and interest assessed by the organization of unit owners and all costs of collection including attorneys' fees, costs, and charges.

(c) When any portion of the unit owner's share of the common expenses has been delinquent for at least sixty days subsequent to April 1, 1993, the organization of unit owners shall send a notice stating the amount of the delinquency to the unit owner by certified and first class mail. The organization of unit owners shall also send a notice stating the amount of the delinquency to the first mortgagee by certified and first class mail, provided, that the first mortgagee has informed the organization of unit owners of its name and mailing address. Furthermore, thirty days prior to the filing of an action by the organization of unit owners to enforce its lien for delinquent common expenses, the organization of unit owners shall send a notice stating its intention to file said action to the first mortgagee by certified and first class mail, provided that the first mortgagee has informed the organization of unit owners of its name and mailing address. In the event of the appointment of a receiver for the condominium pursuant to the provisions of chapter one hundred and eleven, the lien for charges imposed for the payment of expenses incurred by the receiver shall have priority over all other liens and mortgages, except municipal liens.

A lien under this section shall be enforced in the manner provided in sections five and five A of chapter two hundred and fifty-four. Such lien is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the master deed, (ii) a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other municipal assessments or charges against the unit. This lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and to the

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extent of any costs and reasonable attorneys' fees incurred in the action to enforce the lien, provided however, that the amount of attorneys' fees incurred prior to January 1, 1993 which shall be prior to the mortgage described in clause (ii) above shall be limited to no more than two thousand and five hundred dollars, and provided further, that payment of the assessments with respect to such six month period, and to the extent of any costs or reasonable attorneys' fees incurred in said action, shall serve to discharge such lien to the extent that such lien is prior to such mortgages described in clause (ii) above. The priority amount shall not include any amounts attributable to special assessments, late charges, fines, penalties, and interest assessed by the organization of unit owners. The failure of the organization of unit owners to send the first mortgagee either the notice of sixty day delinquency of common expenses, as described above, or the thirty day notice of intent to file an action to enforce the lien for delinquent common expenses, as described above, shall not affect the priority lien of the organization of unit owners for up to six months' common expenses, but the priority amount shall not include any costs or attorneys' fees incurred in the action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens or other assessments made by the organization of unit owners. Recording of the master deed constitutes record notice and perfection of this lien; no further recordation of any claim of lien for assessment under this section is required.

Neither this section nor anything contained in sections five or five A of chapter two hundred and fifty-four shall be deemed to prohibit actions to recover sums for which this subsection creates a lien or to prohibit an organization of unit owners from taking a deed in lieu of enforcement of the lien created by this section.

The organization of unit owners shall take no further action to enforce its priority liens against a particular unit for common expenses if the first mortgagee agrees in writing that a priority lien exists without the requirement of instituting an action, as to such enforcement and pays, within 60 days of said writing, the following prescribed amounts: (1) so much of any delinquent assessments on that unit for regularly recurring budgeted common expenses over a period for six months immediately preceding the notice of delinquency that would constitute a priority amount if an action had been commenced on the date the organization gives its delinquency notice to the mortgagee; (2) costs and reasonable attorney's fees incurred by the organization at the time of said writing by the first mortgagee to collect outstanding common expenses, including, but not limited to, costs and fees to ascertain the first mortgagee's identity, examine title, and prepare and send to the unit owner and mortgagee the notices referred to in this paragraph; and to pay within 30 days of their due date; (3) all future common expenses, and special assessments other than special assessments for improvements made pursuant to section 18, assessed against that unit from the date of said notice until such time as the mortgagee's mortgage is foreclosed or otherwise no longer encumbers the unit. The amount which the first mortgagee, if it so elects, would be required to pay to cause the organization not to proceed to enforce its priority liens shall not include any amounts attributable to late charges, fines, penalties, and interest assessed by the organization of unit owners and shall only include amounts attributable to special assessments due and payable after the giving of the delinquency notice pursuant to this paragraph, and then only to the extent the special assessment is not made with respect to any improvement authorized under section 18. If the amounts described in clauses (1) and (2) are not received within said 60 day period, or if the amount of any future assessments under clause (3) is not received within 30 days of their due date, the organization may proceed to take further action to enforce its liens without voiding the first mortgagee's obligation to pay as provided in this subsection. The agreement by the first mortgagee to make payments in the amounts and for the duration specified in this paragraph shall be binding upon its successors and assigns and the successful bidder at any foreclosure but no such successor, assign, bidder or purchaser shall have any liability by virtue of the first mortgagee's undertaking pursuant to this paragraph for any amount first arising, assessed or becoming due after the mortgage is foreclosed or otherwise no longer encumbers the unit. The first mortgagee shall not be liable for the amounts described in clauses (1), (2) and (3) which arise after the first mortgagee ceases to have an interest in the unit. Such amounts shall then become the obligation of the successors and assigns of the first mortgagee.

Within ten days after receipt of the written request of the first mortgagee, the organization of unit owners shall provide a written statement in reasonable detail of the actual dollar amounts the first mortgagee would be required to pay, if it so elected, to cause the organization of unit owners not to take further action to enforce its priority liens against the unit as provided in this section. The first mortgagee shall have 14 days following the mailing of said written statement to enter into the written agreement provided for in the previous paragraph. Unless the organization of unit owners has notice of a first mortgagee's foreclosure sale actually scheduled within 30 days, the organization of unit owners shall take no further action to enforce its priority liens against a particular unit for common expenses for a period of 24 days from the receipt of the written request by the first mortgagee or 14 days following mailing of the written statement by the organization of unit owners, whichever is less. The failure of the organization of unit owners to send the written statement to the first mortgagee, as described above, shall not affect the priority lien of the organization of unit owners for up to six months' common expenses, but the priority amount shall not include any costs or attorneys' fees incurred to collect or enforce the liens.

If a unit owner fails to pay his share of the common expenses to the organization of unit owners for at least twenty-five days from the date it was due, the organization of unit owners may, as a separate and additional remedy, subject to the existing rights of a holder of a first mortgage of record, collect from any tenant renting the unit any rent then or thereafter due to the owner of such unit. Such organization shall apply such rent collected against the amount owed to it by the unit owner. Prior to taking any action hereunder, the organization of unit owners shall give to the delinquent unit owner written notice of its intent to collect the rent owed. Such notice shall be sent by any form of mail or other delivery requiring or providing a signed receipt, shall set forth the exact amount the organization of unit owners claims is due and owing by the unit owner and shall indicate the intent of the organization to collect such amount from rent, along with any other amounts which become due within the current fiscal year and which remain unpaid for twenty-five days after they become due. Further, a copy of such notice shall also be provided to any first mortgagee of record on such unit who has previously requested in writing that the organization of unit owners notify it of any delinquency in the payment amounts due to the organization by the owner of such unit.

The unit owner shall have ten days after receipt of such notice to file a written response with the organization of unit owners. Such response shall be signed under the pains and penalties of perjury; shall, in the case of monthly installments of common expenses, include proof, in the form of a cancelled check, receipt or other document, that the installment was paid or shall, in the case of any other charge, state in short and plain terms all grounds upon which said unit owner maintains that the amount claimed to be owed to the organization was incorrectly calculated or charged and shall state exactly what amount, if any, the unit owner admits he owes to the organization of unit owners.

If the unit owner fails to timely file a response in compliance with the foregoing requirements or admits in such response that he owes any amount to the organization of unit owners, the organization shall be entitled to immediately notify and direct each tenant renting such unit from such owner to thereafter pay all or a portion of the rent otherwise due by such unit owner to the organization, such rent or portion thereof to be limited to the lesser of: (i) the amount the organization claimed is due on its notice to the unit owner, if the unit owner failed to timely file a response in compliance with the requirements set forth above; or (ii) the amount such unit owner admitted was due in his timely filed response. The organization shall have a continuing right to collect any rent otherwise payable by the tenant to such unit owner, until such amount, plus any charges thereafter becoming due, are satisfied in full; provided, however, that nothing herein shall preclude the unit owner from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed; and, provided further, that nothing herein shall prevent the organization of unit owners from bringing an action under section five of chapter two hundred and fifty-four or to otherwise establish the amount owed to it by the unit owner or otherwise to seek and obtain an order requiring the tenant in such unit or tenants in other units owned by the unit owner in the condominium to pay to the organization rent otherwise due to the unit owner. If in any action brought to establish the amount owed by a unit owner to the organization, it is established that such unit owner knowingly misrepresented any material fact on any response filed pursuant to the provisions of this section, the organization shall be entitled to recover from such unit owner three times the amount determined to be owed by said unit owner at the time of his response. Further, the organization of unit owners shall be entitled to collect any charges thereafter becoming due and all of the organization's costs, including reasonable attorneys' fees, incurred in such action.

In no event shall a unit owner take any retaliatory action against any tenant who pays rent, or any portion thereof, to the organization of unit owners as provided in this section. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any reprisal taken by a unit owner against a tenant who made or expressed an intention to make a payment to the organization pursuant to this section. Any waiver of the provisions of this section in any lease or rental agreement shall be void and unenforceable as against public policy.

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Nothing herein shall be construed to prevent an organization of unit owners from adopting or amending its master deed, trust, by-laws or rules and regulations to provide additional protections, remedies, or rights for said organization.

To the extent that any first mortgagee of record is entitled to an assignment of rents and to the extent that it exercises its rights by written notice recorded at the registry of deeds or the registry district of the land court in which the property lies and by written notice sent by certified or registered mail to the presiding officer of the governing board of the condominium, then commencing with the next rental period, but not for any prior period, the first mortgagee may collect such rents. If the first mortgagee commences collection of such rents, it shall be obligated to pay all prospective expenses lawfully assessed by the organization of unit owners, including late fees, interest, late charges, collection costs, reasonable attorneys' fees, assessments and special assessments and shall be subject to all other provisions of this chapter, the master deed, trust, by-laws and rules and regulations. Further, the first mortgagee shall be obligated to pay any such expenses or other charges which were, prior to the commencement of the collection of rents by the first mortgagee, due and payable to the organization, to the extent that the rent collected monthly by the first mortgagee exceeds the installment of principal and interest which was due monthly to the first mortgagee prior to default, the monthly installments of real estate taxes and mortgage insurance, the monthly share of common expenses, and the customary and ordinary unit repair, operation and maintenance costs, until such time as all arrearages due to the organization by the prior unit owner are paid in full. The organization shall have priority to receive funds collected from the tenant of a delinquent unit owner as to any junior lien holder.

Except as provided in section twenty-one, in the event of a conflict between this subsection and the master deed, trust, or by-laws, and any amendment thereto, the provisions of this subsection shall govern, notwithstanding the date on which the condominium was submitted to the provisions of this chapter.

(d) A statement from the organization of unit owners setting forth the amount of unpaid common expenses and any other sums which have been assessed against a unit owner, including a statement of the amount which the organization of unit owners claims is entitled to priority with respect to any mortgage under subsection (c), shall operate to discharge the unit from any lien for other sums then unpaid when recorded in the appropriate registry of deeds; provided, however, that any statement or document issuing from an unincorporated organization of unit owners may be recorded in a registry of deeds and if so recorded shall indicate and specify therein the book and page, or document number if registered land, within such registry of the instrument from which the signatory or signatories of the statement obtained authority to sign on behalf of the unincorporated organization. The statement shall be furnished within ten business days after receipt of a written request, upon payment of a reasonable fee, and shall be binding on the organization of unit owners, the governing body of the organization of unit owners, and every unit owner; provided, however, that no fee shall be required of any mortgagee, in connection with a foreclosure of a mortgage, who has given the organization notice of its intention to foreclose a mortgage upon the unit.

History

1963, 493, § 1; 1964, 731, § 1; 1987, 290; 1987, 338, §§ 1, 1A; [1991, 554, § 1](#); [1992, 8](#); [1992, 400, §§ 7-10](#); [1992, 407, § 11](#); [1993, 1, §§ 1, 2](#); [1994, 319, § 1](#); [1994, 365, § 4](#); [1996, 450, § 226](#); [1998, 242, §§ 6, 7](#); [2010, 183, § 3](#); [2010, 454, §§ 55, 56](#).

ANNOTATED LAWS OF MASSACHUSETTS

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**ANNOTATED LAWS OF MASSACHUSETTS PART II REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS TITLE I TITLE TO REAL
PROPERTY Chapter 183A Condominiums****§ 6. Liability for Common Expenses; Distribution of Common Profits; Lien for Unpaid Common Expenses.****(a)**

(i) Except as provided in paragraph (ii), all common expenses shall be assessed against all units either in accordance with their respective percentages of undivided interest in the common areas and facilities or, if stated in the master deed or an amendment thereto duly recorded in the approximate relation that the area of the unit bears to the aggregate area of all the units, which may take into account unit location, amenities in the unit, and limited common areas and facilities benefiting the unit; provided, however, that such an amendment shall require the consent of all unit owners whose common expense assessment is materially affected. The organization of unit owners shall have a lien on a unit for any common expense assessment levied against that unit from the time the assessment becomes due. Common expense assessments must be made at least annually, based on a budget adopted at least annually in accordance with the master deed, trust, or by-laws.

(ii) If any expense is incurred by the organization of unit owners as a result of the unit owner's failure to abide by the requirements of this chapter or the requirements of the master deed, trust, by-laws, restrictions, rules or regulations, or by the misconduct of any unit owner, or his family members, tenants, or invitees, the organization of unit owners may assess that expense exclusively against the unit owner and such assessment shall constitute a lien against that unit from the time the assessment is due, and such assessment shall be enforceable as a common expense assessment under this chapter. Notwithstanding the provisions of paragraph (i), the organization of unit owners may assess the cost of maintaining, repairing or replacing a limited common area and facility, solely to the owner of the unit to which a limited common area and facility is appurtenant, allocated, or designated, and such assessment shall be enforceable as a common expense assessment under this chapter; in the alternative, the organization of unit owners may require the owner of the unit to which a limited common area and facility is appurtenant, allocated, or designated to maintain, repair, or replace such limited common area and facility without the intervention of the organization of unit owners. Notwithstanding the provisions of paragraph (i), the organization of unit owners may assess to each unit owner the direct cost of any energy conservation device installed in a unit, not already separately metered for water and utilities, including but not limited to the installation of separate water meters, low-flow toilets and showerheads, faucet aerators, windows and storm windows; provided, however, that a unit owner required to install such energy conservation device hereunder may appeal to the board of trustees of the organization of unit owners or if there is no board of trustees, the entity performing its duties. Said board or entity of said organization, in its sole and reasonable discretion, may grant to such unit owner a waiver of such required installation upon such terms and conditions as the organization of unit owners shall deem fit. The cost thereof shall be collected in the same manner as common expense assessments under this chapter. The organization of unit owners may assess to each unit owner his proportionate share of the costs for water and other utilities, as measured by the meter attached to the unit; provided however, that the board of trustees of the organization of unit owners receives the approval of the majority of unit owners in attendance at a meeting, for which notice was duly given and which was held for the purposes of issuing such an assessment. A unit owner assessed costs hereunder may appeal the assessment to said board or entity of said organization of unit owners. Such appeal shall be in writing and shall set forth a clear and concise statement of reasons for an exemption from the assessment for the unit owners. Said board or entity of said organization, in its sole and reasonable discretion, may grant to said unit owner a waiver of the assessment provided herein upon such terms and conditions as the organization of unit owners shall deem fit. In the event of a conflict between this subsection and the master deed, trust, or bylaws, and any amendment thereto, of any condominium submitted to the provisions of this chapter, the provisions of this subsection shall control. Notwithstanding the aforesaid, nothing contained herein shall be construed to be in conflict with the provisions of the state sanitary code. The organization of unit owners may also assess any fees, attorneys' fees, charges, late charges, fines, costs of collection and enforcement, court costs, and interest charged pursuant to this chapter against the unit owner and such assessment shall constitute a lien against the unit from the time the assessment is due, and shall be enforceable as common expense assessments under this chapter.

(iii) Common profits shall be distributed among unit owners in the same manner as common expenses are charged to the unit owners.

(b) The unit owner shall be personally liable for all sums assessed for his share of the common expenses including late charges, fines, penalties, and interest assessed by the organization of unit owners and all costs of collection including attorneys' fees, costs, and charges.

(c) When any portion of the unit owner's share of the common expenses has been delinquent for at least sixty days subsequent to April 1, 1993, the organization of unit owners shall send a notice stating the amount of the delinquency to the unit owner by certified and first class mail. The organization of unit owners shall also send a notice stating the amount of the delinquency to the first mortgagee by certified and first class mail, provided, that the first mortgagee has informed the organization of unit owners of its name and mailing address. Furthermore, thirty days prior to the filing of an action by the organization of unit owners to enforce its lien for delinquent common expenses, the organization of unit owners shall send a notice stating its intention to file said action to the first mortgagee by certified and first class mail, provided that the first mortgagee has informed the organization of unit owners of its name and mailing address. In the event of the appointment of a receiver for the condominium pursuant to the provisions of chapter one hundred and eleven, the lien for charges imposed for the payment of expenses incurred by the receiver shall have priority over all other liens and mortgages, except municipal liens.

A lien under this section shall be enforced in the manner provided in sections five and five A of chapter two hundred and fifty-four. Such lien is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the master deed, (ii) a first mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other municipal assessments or charges against the unit. This lien is also prior to the mortgages described in clause (ii) above to the extent of the common expense assessments based on the budget adopted pursuant to subsection (a) above which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and to the

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extent of any costs and reasonable attorneys' fees incurred in the action to enforce the lien, provided however, that the amount of attorneys' fees incurred prior to January 1, 1993 which shall be prior to the mortgage described in clause (ii) above shall be limited to no more than two thousand and five hundred dollars, and provided further, that payment of the assessments with respect to such six month period, and to the extent of any costs or reasonable attorneys' fees incurred in said action, shall serve to discharge such lien to the extent that such lien is prior to such mortgages described in clause (ii) above. The priority amount shall not include any amounts attributable to special assessments, late charges, fines, penalties, and interest assessed by the organization of unit owners. The failure of the organization of unit owners to send the first mortgagee either the notice of sixty day delinquency of common expenses, as described above, or the thirty day notice of intent to file an action to enforce the lien for delinquent common expenses, as described above, shall not affect the priority lien of the organization of unit owners for up to six months' common expenses, but the priority amount shall not include any costs or attorneys' fees incurred in the action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens or other assessments made by the organization of unit owners. Recording of the master deed constitutes record notice and perfection of this lien; no further recordation of any claim of lien for assessment under this section is required.

Neither this section nor anything contained in sections five or five A of chapter two hundred and fifty-four shall be deemed to prohibit actions to recover sums for which this subsection creates a lien or to prohibit an organization of unit owners from taking a deed in lieu of enforcement of the lien created by this section.

The organization of unit owners shall take no further action to enforce its priority liens against a particular unit for common expenses if the first mortgagee agrees in writing that a priority lien exists without the requirement of instituting an action, as to such enforcement and pays, within 60 days of said writing, the following prescribed amounts: (1) so much of any delinquent assessments on that unit for regularly recurring budgeted common expenses over a period for six months immediately preceding the notice of delinquency that would constitute a priority amount if an action had been commenced on the date the organization gives its delinquency notice to the mortgagee; (2) costs and reasonable attorney's fees incurred by the organization at the time of said writing by the first mortgagee to collect outstanding common expenses, including, but not limited to, costs and fees to ascertain the first mortgagee's identity, examine title, and prepare and send to the unit owner and mortgagee the notices referred to in this paragraph; and to pay within 30 days of their due date; (3) all future common expenses, and special assessments other than special assessments for improvements made pursuant to section 18, assessed against that unit from the date of said notice until such time as the mortgagee's mortgage is foreclosed or otherwise no longer encumbers the unit. The amount which the first mortgagee, if it so elects, would be required to pay to cause the organization not to proceed to enforce its priority liens shall not include any amounts attributable to late charges, fines, penalties, and interest assessed by the organization of unit owners and shall only include amounts attributable to special assessments due and payable after the giving of the delinquency notice pursuant to this paragraph, and then only to the extent the special assessment is not made with respect to any improvement authorized under section 18. If the amounts described in clauses (1) and (2) are not received within said 60 day period, or if the amount of any future assessments under clause (3) is not received within 30 days of their due date, the organization may proceed to take further action to enforce its liens without voiding the first mortgagee's obligation to pay as provided in this subsection. The agreement by the first mortgagee to make payments in the amounts and for the duration specified in this paragraph shall be binding upon its successors and assigns and the successful bidder at any foreclosure but no such successor, assign, bidder or purchaser shall have any liability by virtue of the first mortgagee's undertaking pursuant to this paragraph for any amount first arising, assessed or becoming due after the mortgage is foreclosed or otherwise no longer encumbers the unit. The first mortgagee shall not be liable for the amounts described in clauses (1), (2) and (3) which arise after the first mortgagee ceases to have an interest in the unit. Such amounts shall then become the obligation of the successors and assigns of the first mortgagee.

Within ten days after receipt of the written request of the first mortgagee, the organization of unit owners shall provide a written statement in reasonable detail of the actual dollar amounts the first mortgagee would be required to pay, if it so elected, to cause the organization of unit owners not to take further action to enforce its priority liens against the unit as provided in this section. The first mortgagee shall have 14 days following the mailing of said written statement to enter into the written agreement provided for in the previous paragraph. Unless the organization of unit owners has notice of a first mortgagee's foreclosure sale actually scheduled within 30 days, the organization of unit owners shall take no further action to enforce its priority liens against a particular unit for common expenses for a period of 24 days from the receipt of the written request by the first mortgagee or 14 days following mailing of the written statement by the organization of unit owners, whichever is less. The failure of the organization of unit owners to send the written statement to the first mortgagee, as described above, shall not affect the priority lien of the organization of unit owners for up to six months' common expenses, but the priority amount shall not include any costs or attorneys' fees incurred to collect or enforce the liens.

If a unit owner fails to pay his share of the common expenses to the organization of unit owners for at least twenty-five days from the date it was due, the organization of unit owners may, as a separate and additional remedy, subject to the existing rights of a holder of a first mortgage of record, collect from any tenant renting the unit any rent then or thereafter due to the owner of such unit. Such organization shall apply such rent collected against the amount owed to it by the unit owner. Prior to taking any action hereunder, the organization of unit owners shall give to the delinquent unit owner written notice of its intent to collect the rent owed. Such notice shall be sent by any form of mail or other delivery requiring or providing a signed receipt, shall set forth the exact amount the organization of unit owners claims is due and owing by the unit owner and shall indicate the intent of the organization to collect such amount from rent, along with any other amounts which become due within the current fiscal year and which remain unpaid for twenty-five days after they become due. Further, a copy of such notice shall also be provided to any first mortgagee of record on such unit who has previously requested in writing that the organization of unit owners notify it of any delinquency in the payment amounts due to the organization by the owner of such unit.

The unit owner shall have ten days after receipt of such notice to file a written response with the organization of unit owners. Such response shall be signed under the pains and penalties of perjury; shall, in the case of monthly installments of common expenses, include proof, in the form of a cancelled check, receipt or other document, that the installment was paid or shall, in the case of any other charge, state in short and plain terms all grounds upon which said unit owner maintains that the amount claimed to be owed to the organization was incorrectly calculated or charged and shall state exactly what amount, if any, the unit owner admits he owes to the organization of unit owners.

If the unit owner fails to timely file a response in compliance with the foregoing requirements or admits in such response that he owes any amount to the organization of unit owners, the organization shall be entitled to immediately notify and direct each tenant renting such unit from such owner to thereafter pay all or a portion of the rent otherwise due by such unit owner to the organization, such rent or portion thereof to be limited to the lesser of: (i) the amount the organization claimed is due on its notice to the unit owner, if the unit owner failed to timely file a response in compliance with the requirements set forth above; or (ii) the amount such unit owner admitted was due in his timely filed response. The organization shall have a continuing right to collect any rent otherwise payable by the tenant to such unit owner, until such amount, plus any charges thereafter becoming due, are satisfied in full; provided, however, that nothing herein shall preclude the unit owner from seeking equitable relief from a court of competent jurisdiction or seeking a judicial determination of the amount owed; and, provided further, that nothing herein shall prevent the organization of unit owners from bringing an action under section five of chapter two hundred and fifty-four or to otherwise establish the amount owed to it by the unit owner or otherwise to seek and obtain an order requiring the tenant in such unit or tenants in other units owned by the unit owner in the condominium to pay to the organization rent otherwise due to the unit owner. If in any action brought to establish the amount owed by a unit owner to the organization, it is established that such unit owner knowingly misrepresented any material fact on any response filed pursuant to the provisions of this section, the organization shall be entitled to recover from such unit owner three times the amount determined to be owed by said unit owner at the time of his response. Further, the organization of unit owners shall be entitled to collect any charges thereafter becoming due and all of the organization's costs, including reasonable attorneys' fees, incurred in such action.

In no event shall a unit owner take any retaliatory action against any tenant who pays rent, or any portion thereof, to the organization of unit owners as provided in this section. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any reprisal taken by a unit owner against a tenant who made or expressed an intention to make a payment to the organization pursuant to this section. Any waiver of the provisions of this section in any lease or rental agreement shall be void and unenforceable as against public policy.

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Nothing herein shall be construed to prevent an organization of unit owners from adopting or amending its master deed, trust, by-laws or rules and regulations to provide additional protections, remedies, or rights for said organization.

To the extent that any first mortgagee of record is entitled to an assignment of rents and to the extent that it exercises its rights by written notice recorded at the registry of deeds or the registry district of the land court in which the property lies and by written notice sent by certified or registered mail to the presiding officer of the governing board of the condominium, then commencing with the next rental period, but not for any prior period, the first mortgagee may collect such rents. If the first mortgagee commences collection of such rents, it shall be obligated to pay all prospective expenses lawfully assessed by the organization of unit owners, including late fees, interest, late charges, collection costs, reasonable attorneys' fees, assessments and special assessments and shall be subject to all other provisions of this chapter, the master deed, trust, by-laws and rules and regulations. Further, the first mortgagee shall be obligated to pay any such expenses or other charges which were, prior to the commencement of the collection of rents by the first mortgagee, due and payable to the organization, to the extent that the rent collected monthly by the first mortgagee exceeds the installment of principal and interest which was due monthly to the first mortgagee prior to default, the monthly installments of real estate taxes and mortgage insurance, the monthly share of common expenses, and the customary and ordinary unit repair, operation and maintenance costs, until such time as all arrearages due to the organization by the prior unit owner are paid in full. The organization shall have priority to receive funds collected from the tenant of a delinquent unit owner as to any junior lien holder.

Except as provided in section twenty-one, in the event of a conflict between this subsection and the master deed, trust, or by-laws, and any amendment thereto, the provisions of this subsection shall govern, notwithstanding the date on which the condominium was submitted to the provisions of this chapter.

(d) A statement from the organization of unit owners setting forth the amount of unpaid common expenses and any other sums which have been assessed against a unit owner, including a statement of the amount which the organization of unit owners claims is entitled to priority with respect to any mortgage under subsection (c), shall operate to discharge the unit from any lien for other sums then unpaid when recorded in the appropriate registry of deeds; provided, however, that any statement or document issuing from an unincorporated organization of unit owners may be recorded in a registry of deeds and if so recorded shall indicate and specify therein the book and page, or document number if registered land, within such registry of the instrument from which the signatory or signatories of the statement obtained authority to sign on behalf of the unincorporated organization. The statement shall be furnished within ten business days after receipt of a written request, upon payment of a reasonable fee, and shall be binding on the organization of unit owners, the governing body of the organization of unit owners, and every unit owner; provided, however, that no fee shall be required of any mortgagee, in connection with a foreclosure of a mortgage, who has given the organization notice of its intention to foreclose a mortgage upon the unit.

History

1963, 493, § 1; 1964, 731, § 1; 1987, 290; 1987, 338, §§ 1, 1A; [1991, 554, § 1](#); [1992, 8](#); [1992, 400, §§ 7-10](#); [1992, 407, § 11](#); [1993, 1, §§ 1, 2](#); [1994, 319, § 1](#); [1994, 365, § 4](#); [1996, 450, § 226](#); [1998, 242, §§ 6, 7](#); [2010, 183, § 3](#); [2010, 454, §§ 55, 56](#).

ANNOTATED LAWS OF MASSACHUSETTS

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DISTRICT OF COLUMBIA OFFICIAL CODE DIVISION VII. PROPERTY TITLE 42. REAL PROPERTY SUBTITLE III. CONDOMINIUMS CHAPTER 19. CONDOMINIUMS SUBCHAPTER III. CONTROL AND GOVERNANCE OF CONDOMINIUMS

§ 42-1903.13. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

- (A) A lien or encumbrance recorded prior to the recordation of the declaration;
- (B) A first mortgage for the benefit of an institutional lender or a 1st deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or
- (C) A lien for real estate taxes or municipal assessments or charges against the unit.

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. The immediately preceding institution of an action to enforce the lien. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's lien.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien and no further recordation of any claim of lien for assessment shall be required.

(c)

(1) The unit owners' association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due, unless the condominium instruments provide otherwise. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners' association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners' association from foreclosing on a unit by the power of sale procedures set forth in this section unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.

(2) A unit owner shall have the right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charge or interest due and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for the assessment.

(3) The power of sale may be exercised by the executive board on behalf of the unit owners' association, and the executive board shall have the authority to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.

(4) A foreclosure sale shall not be held until 30 days after notice is sent by certified mail to a unit owner at the mailing address of the unit and at any other address designated by the unit owner to the executive board for purpose of notice. A copy of the notice shall be sent to the Mayor or the Mayor's designated agent at least 30 days in advance of the sale. The notice shall specify the amount of any assessment past due and any accrued interest or late charge, as of the date of the notice. The notice shall notify the unit owner that if the past due assessment and accrued interest or late charge are not paid within 30 days after the date the notice is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the notice.

(5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale.

(6) The proceeds of a sale shall be applied:

- (A) To any unpaid assessment with interest or late charges;
- (B) To the cost of foreclosure, including but not limited to, reasonable attorney's fees; and
- (C) The balance to any person legally entitled to the proceeds.

(d) Unless the condominium instruments provide otherwise, the executive board shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive board may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.

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(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within 3 years from the date such assessment (or any installment thereof) become due and payable.

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to [§ 42-1902.09](#).

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to [§ 42-1903.12\(c\)](#).

(j) In addition to any other right or power conferred by this section, the executive board shall have the power to suspend the voting rights in the unit owners' association of any unit owner who is in arrears in his payment of a common expense assessment by more than 30 days, and the suspension may remain in effect until the assessment has been paid in full.

History

Mar. 29, 1977, D.C. Law 1-89, title III, § 313, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(gg), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(k), 39 DCR 683.

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District of Columbia Official Code Division VII. Property. Title 42. Real Property. Subtitle III. Condominiums. Chapter 19. Condominiums. Subchapter III. Control and Governance of Condominiums.

§ 42-1903.13. Lien for assessments against units; priority; recordation not required; enforcement by sale; notice to delinquent owner and public; distribution of proceeds; power of executive board to purchase unit at sale; limitation; costs and attorneys' fees; statement of unpaid assessments; liability upon transfer of unit.

(a) Any assessment levied against a condominium unit in accordance with the provisions of this chapter and any lawful provision of the condominium instruments, along with any applicable interest, late fees, reasonable expenses and legal fees actually incurred, costs of collection and any other reasonable amounts payable by a unit owner under the condominium instruments, shall, from the time the assessment becomes due and payable, constitute a lien in favor of the unit owners' association on the condominium unit to which the assessment pertains. If an assessment is payable in installments, the full amount of the assessment shall be a lien from the time the first installment becomes due and payable.

(1) The lien shall be prior to any other lien or encumbrance except:

- (A) A lien or encumbrance recorded prior to the recordation of the declaration;
- (B) A first mortgage for the benefit of an institutional lender or a 1st deed of trust for the benefit of an institutional lender on the unit recorded before the date on which the assessment sought to be enforced became delinquent; or
- (C) A lien for real estate taxes or municipal assessments or charges against the unit.

(2) The lien shall also be prior to a mortgage or deed of trust described in paragraph (1)(B) of this subsection and recorded after March 7, 1991, to the extent of the common expense assessments based on the periodic budget adopted by the unit owners' association which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien or recordation of a memorandum of lien against the title to the unit by the unit owners' association. The provisions of this subsection shall not affect the priority of mechanics' or materialmen's lien.

(b) The recording of the condominium instruments pursuant to the provisions of this chapter shall constitute record notice of the existence of such lien and no further recordation of any claim of lien for assessment shall be required.

(c)

(1) The unit owners' association shall have the power of sale to enforce a lien for an assessment against a condominium unit if an assessment is past due. By accepting a deed to a condominium unit, the owner shall be irrevocably deemed to have appointed the chief executive officer of the unit owners' association as trustee for the purpose of exercising the power of sale provided for herein. Any language contained in the condominium instruments that authorizes specific procedures by which a unit owners' association may recover sums for which subsection (a) of this section creates a lien, shall not be construed to prohibit a unit owners' association from foreclosing on a unit by the power of sale procedures set forth in this section unless the power of sale procedures are specifically and expressly prohibited by the condominium instruments.

(2) A unit owner shall have the right to cure any default in payment of an assessment at any time prior to the foreclosure sale by tendering payment in full of past due assessments, plus any late charge or interest due and reasonable attorney's fees and costs incurred in connection with the enforcement of the lien for the assessment.

(3) The power of sale may be exercised by the chief executive officer of the unit owners' association, as trustee, upon the direction of the executive board, on behalf of the unit owners' association, and the chief executive officer of the unit owners' association shall have the authority as trustee to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.

(4) A foreclosure sale shall not be held until 30 days after notice is sent by certified mail to a unit owner at the mailing address of the unit and at any other address designated by the unit owner to the executive board for purpose of notice. A copy of the notice shall be sent to the Mayor or the Mayor's designated agent at least 30 days in advance of the sale. The notice shall specify the amount of any assessment past due and any accrued interest or late charge, as of the date of the notice. The notice shall notify the unit owner that if the past due assessment and accrued interest or late charge are not paid within 30 days after the date the notice is mailed, the executive board shall sell the unit at a public sale at the time, place, and date stated in the notice.

(5) The date of sale shall not be sooner than 31 days from the date the notice is mailed. The executive board shall give public notice of the foreclosure sale by advertisement in at least 1 newspaper of general circulation in the District of Columbia and by any other means the executive board deems necessary and appropriate to give notice of sale. The newspaper advertisement shall appear on at least 3 separate days during the 15-day period prior to the date of the sale.

(6) The proceeds of a sale shall be applied:

- (A) To any unpaid assessment with interest or late charges;
- (B) To the cost of foreclosure, including but not limited to, reasonable attorney's fees; and

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(C) The balance to any person legally entitled to the proceeds.

(d) Unless the condominium instruments provide otherwise, the executive board shall have the power to purchase on behalf of the unit owners' association any unit at any foreclosure sale held on such unit. The executive board may take title to such unit in the name of the unit owners' association and may hold, lease, encumber or convey the same on behalf of the unit owners' association.

(e) The lien for assessments provided herein shall lapse and be of no further effect as to unpaid assessments (or installments thereof) together with interest accrued thereon and late charges, if any, if such lien is not discharged or if foreclosure or other proceedings to enforce the lien have not been instituted within 3 years from the date such assessment (or any installment thereof) become due and payable.

(f) The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for reasonable costs and attorneys' fees actually incurred by the unit owners' association.

(g) Nothing in this section shall be construed to prohibit actions at law to recover sums for which subsection (a) of this section creates a lien, maintainable pursuant to [§ 42-1902.09](#).

(h) Any unit owner or purchaser of a condominium unit shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 days from the receipt of such request shall extinguish the lien created by subsection (a) of this section as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the executive board, and every unit owner. Payment of a reasonable fee may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

(i) Upon any voluntary transfer of a legal or equitable interest in a condominium unit, except as security for a debt, all unpaid common expense assessments or installments thereof then due and payable from the grantor shall be paid or else the grantee shall become jointly and severally liable with the grantor subject to the provisions of subsection (h) of this section. Upon any involuntary transfer of a legal or equitable interest in a condominium unit, however, the transferee shall not be liable for such assessments or installments thereof as became due and payable prior to his acquisition of such interest. To the extent not collected from the predecessor in title of such transferee, such arrears shall be deemed common expenses, collectible from all unit owners (including such transferee) in proportion to their liabilities for common expenses pursuant to [§ 42-1903.12\(c\)](#).

(j) In addition to any other right or power conferred by this section, the executive board shall have the power to suspend the voting rights in the unit owners' association of any unit owner who is in arrears in his payment of a common expense assessment by more than 30 days, and the suspension may remain in effect until the assessment has been paid in full.

History

(Mar. 29, 1977, D.C. Law 1-89, title III, § 313, 23 DCR 9532b; Mar. 8, 1991, D.C. Law 8-233, § 2(gg), 38 DCR 261; Mar. 20, 1992, D.C. Law 9-82, § 2(k), 39 DCR 683; June 21, 2014, D.C. Law 20-109, § 2(l), [61 DCR 4304](#).)

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LexisNexis® Florida Annotated Statutes **TITLE XL. REAL AND PERSONAL PROPERTY (Chs. 689-723)** **CHAPTER 718. CONDOMINIUMS** **PART I. GENERAL PROVISIONS**

§ 718.116. Assessments; liability; lien and priority; interest; collection

(1) (a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

(b) 1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:

- a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
- b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in [s. 718.103\(2\)](#) or [s. 720.301\(9\)](#), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(c) The person acquiring title shall pay the amount owed to the association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the declaration or bylaws, except to the extent that the declaration or bylaws may provide to the contrary.

(e) Notwithstanding the provisions of paragraph (b), a first mortgagee or its successor or assignees who acquire title to a condominium unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded, the declaration included language incorporating by reference future amendments to this chapter, the provisions of paragraph (b) shall apply.

(f) The provisions of this subsection are intended to clarify existing law, and shall not be available in any case where the unpaid assessments sought to be recovered by the association are secured by a lien recorded prior to the recording of the mortgage. Notwithstanding the provisions of chapter 48, the association shall be a proper party to intervene in any foreclosure proceeding to seek equitable relief.

(g) For purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of \$ 25 or 5 percent of each delinquent installment for which the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or [s. 718.303\(4\)](#).

(4) If the association is authorized by the declaration or bylaws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

(5) (a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located. Nothing in this subsection shall be

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construed to bestow upon any lien, mortgage, or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which, by law, the lien, mortgage, or judgment did not have before that date.

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: (Name and address of association) You are notified that the undersigned contests the claim of lien filed by you on ___, (year), and recorded in Official Records Book ___ at Page ___, of the public records of ___ County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this ___ day of ___, (year).

Signed: (Owner or Attorney)

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(6) (a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

(c) If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. If the unit is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

(d) The association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

(7) A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(8) Within 15 days after receiving a written request therefor from a unit owner or his or her designee, or a unit mortgagee or his or her designee, the association shall provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the unit owner with respect to the condominium parcel.

(a) Any person other than the owner who relies upon such certificate shall be protected thereby.

(b) A summary proceeding pursuant to [s. 51.011](#) may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney's fees.

(c) Notwithstanding any limitation on transfer fees contained in [s. 718.112\(2\)\(i\)](#), the association or its authorized agent may charge a reasonable fee for the preparation of the certificate. The amount of the fee must be included on the certificate.

(d) The authority to charge a fee for the certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.

(9) (a) A unit owner may not be excused from payment of the unit owner's share of common expenses unless all other unit owners are likewise proportionately excluded from payment, except as provided in subsection (1) and in the following cases:

1. If authorized by the declaration, a developer who is offering units for sale may elect to be excused from payment of assessments against those unsold units for a stated period of time after the declaration is recorded. However, the developer must pay common expenses incurred during such period which exceed regular periodic assessments against other unit owners in the same condominium. The stated period must terminate no later than the first day of the fourth calendar month following the month in which the first closing occurs of a purchase contract for a unit in that condominium. If a developer-controlled association has maintained all insurance coverage required by [s. 718.111\(11\)\(a\)](#), common expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the association, may be assessed against all unit owners owning units on the date of such natural disaster or act of God, and their respective successors and assigns, including the developer with respect to units owned by the developer. In the event of such an assessment, all units shall be assessed in accordance with [s. 718.115\(2\)](#).

2. A developer who owns condominium units, and who is offering the units for sale, may be excused from payment of assessments against those unsold units for the period of time the developer has guaranteed to all purchasers or other unit owners in the same condominium that assessments will not exceed a stated dollar amount and that the developer will pay any common expenses that exceed the guaranteed amount. Such guarantee may be stated in the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of the unit owners other than the developer and may provide that, after the initial guarantee period, the developer may extend the guarantee for one or more stated periods. If a developer-controlled association has maintained all insurance coverage required by [s. 718.111\(11\)\(a\)](#), common expenses incurred during a guarantee period, as a result of a natural disaster or an act of God occurring during the same guarantee period, which are not covered by the proceeds from such insurance, may be assessed against all unit owners owning units on the date of such natural disaster or act of God, and their successors and assigns, including the developer with respect to units owned by the developer. Any such assessment shall be in accordance with [s. 718.115\(2\)](#) or (4), as applicable.

(b) If the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of unit owners other than the developer provides for the developer to be excused from payment of assessments under paragraph (a), only regular periodic assessments for common expenses as provided for in the declaration and prospectus and disclosed in the estimated operating budget shall be used for payment of common expenses during any period in which the developer is excused. Accordingly, no funds which are receivable from unit purchasers or unit owners and payable to the association, including capital contributions or startup funds collected from unit purchasers at closing, may be used for payment of such common expenses.

(c) If a developer of a multicondominium is excused from payment of assessments under paragraph (a), the developer's financial obligation to the multicondominium association during any period in which the developer is excused from payment of assessments is as follows:

1. The developer shall pay the common expenses of a condominium affected by a guarantee, including the funding of reserves as provided in the adopted annual budget of that condominium, which exceed the regular periodic assessments at the guaranteed level against all other unit owners within that condominium.

2. The developer shall pay the common expenses of a multicondominium association, including the funding of reserves as provided in the adopted annual budget of the association, which are allocated to units within a condominium affected by a guarantee and which exceed the regular periodic assessments against all other unit owners within that condominium.

(10) The specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by [s. 718.111\(11\)](#), approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

(11) (a) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

1. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to [section 718.116\(11\), Florida Statutes](#), the association demands that you pay your rent directly to the condominium association and continue doing so until the association notifies you otherwise.

Payment due the condominium association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to ____ (full address)__, payable to ____ (name)....

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to [section 718.116\(11\), Florida Statutes](#), your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the association.

2. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association.

3. The association shall, upon request, provide the tenant with written receipts for payments made.

4. A tenant is immune from any claim by the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.

(b) If the tenant paid rent to the landlord or unit owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit.

(c) The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord in the amount of moneys paid to the association.

(d) The association may issue notice under [s. 83.56](#) and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association after written demand has been made to the tenant. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under [s. 83.51](#).

(e) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(f) A court may supersede the effect of this subsection by appointing a receiver.

History

S. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 77-221; s. 7, ch. 77-222; s. 6, ch. 78-328; s. 8, ch. 84-368; s. 12, [ch. 90-151](#); s. 9, [ch. 91-103](#); ss. 4, 5, [ch. 91-426](#); s. 6, [ch.](#)

[92-49](#); s. 10, [ch. 94-350](#); s. 87, [ch. 95-211](#); s. 856, [ch. 97-102](#); s. 7, [ch. 98-322](#); s. 33, [ch. 99-6](#); s. 1, [ch. 2000-201](#); s. 56, [ch. 2000-302](#); s. 7, [ch. 2003-14](#); s. 6, [ch. 2007-80](#), eff. May 24, 2007; s. 5, [ch. 2008-240](#), eff. July 1, 2008; s. 12, [ch. 2010-174](#), eff. July 1, 2010; s. 6, [ch. 2011-196](#), eff. July 1, 2011.

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LexisNexis® Florida Annotated Statutes Title XL. Real and Personal Property. (Chs. 689-723). Chapter 718. Condominiums. Part I. General Provisions.**§ 718.116. Assessments; liability; lien and priority; interest; collection.**

(1)

(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. A present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

(b) 1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of title is limited to the lesser of:

a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in [s. 718.103\(2\)](#) or [s. 720.301\(9\)](#), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(c) The person acquiring title shall pay the amount owed to the association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the declaration or bylaws, except to the extent that the declaration or bylaws may provide to the contrary.

(e) Notwithstanding the provisions of paragraph (b), a first mortgagee or its successor or assignees who acquire title to a condominium unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded, the declaration included language incorporating by reference future amendments to this chapter, the provisions of paragraph (b) shall apply.

(f) The provisions of this subsection are intended to clarify existing law, and shall not be available in any case where the unpaid assessments sought to be recovered by the association are secured by a lien recorded prior to the recording of the mortgage. Notwithstanding the provisions of chapter 48, the association shall be a proper party to intervene in any foreclosure proceeding to seek equitable relief.

(g) For purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of \$ 25 or 5 percent of each delinquent installment for which the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or [s. 718.303\(4\)](#).

(4) If the association is authorized by the declaration or bylaws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

(5)

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(a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located. Nothing in this subsection shall be construed to bestow upon any lien, mortgage, or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which, by law, the lien, mortgage, or judgment did not have before that date.

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: (Name and address of association) You are notified that the undersigned contests the claim of lien filed by you on _____, (year), and recorded in Official Records Book _____ at Page _____, of the public records of _____ County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this ____ day of __, (year).

Signed: (Owner or Attorney)

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

[Click here to view image.](#)

(6)

(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

[Click here to view image.](#)

(c) If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. If the unit is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

(d) The association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

(7) A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(8) Within 15 days after receiving a written request therefor from a unit owner or his or her designee, or a unit mortgagee or his or her designee, the association shall provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the unit owner with respect to the condominium parcel.

(a) Any person other than the owner who relies upon such certificate shall be protected thereby.

(b) A summary proceeding pursuant to [s. 51.011](#) may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney's fees.

(c) Notwithstanding any limitation on transfer fees contained in [s. 718.112\(2\)\(i\)](#), the association or its authorized agent may charge a reasonable fee for the preparation of the certificate. The amount of the fee must be included on the certificate.

(d) The authority to charge a fee for the certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.

(9) (a) A unit owner may not be excused from payment of the unit owner's share of common expenses unless all other unit owners are likewise proportionately excluded from payment, except as provided in subsection (1) and in the following cases:

1. If authorized by the declaration, a developer who is offering units for sale may elect to be excused from payment of assessments against those unsold units for a stated period of time after the declaration is recorded. However, the developer must pay common expenses incurred during such period which exceed regular periodic assessments against other unit owners in the same condominium. The stated period must terminate no later than the first day of the fourth calendar month following the month in which the first closing occurs of a purchase contract for a unit in that condominium. If a developer-controlled association has maintained all insurance coverage required by [s. 718.111\(11\)\(a\)](#), common expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the association, may be assessed against all unit owners owning units on

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the date of such natural disaster or act of God, and their respective successors and assigns, including the developer with respect to units owned by the developer. In the event of such an assessment, all units shall be assessed in accordance with [s. 718.115\(2\)](#).

2. A developer who owns condominium units, and who is offering the units for sale, may be excused from payment of assessments against those unsold units for the period of time the developer has guaranteed to all purchasers or other unit owners in the same condominium that assessments will not exceed a stated dollar amount and that the developer will pay any common expenses that exceed the guaranteed amount. Such guarantee may be stated in the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of the unit owners other than the developer and may provide that, after the initial guarantee period, the developer may extend the guarantee for one or more stated periods. If a developer-controlled association has maintained all insurance coverage required by [s. 718.111\(11\)\(a\)](#), common expenses incurred during a guarantee period, as a result of a natural disaster or an act of God occurring during the same guarantee period, which are not covered by the proceeds from such insurance, may be assessed against all unit owners owning units on the date of such natural disaster or act of God, and their successors and assigns, including the developer with respect to units owned by the developer. Any such assessment shall be in accordance with [s. 718.115\(2\)](#) or (4), as applicable.

(b) If the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of unit owners other than the developer provides for the developer to be excused from payment of assessments under paragraph (a), only regular periodic assessments for common expenses as provided for in the declaration and prospectus and disclosed in the estimated operating budget shall be used for payment of common expenses during any period in which the developer is excused. Accordingly, no funds which are receivable from unit purchasers or unit owners and payable to the association, including capital contributions or startup funds collected from unit purchasers at closing, may be used for payment of such common expenses.

(c) If a developer of a multicondominium is excused from payment of assessments under paragraph (a), the developer's financial obligation to the multicondominium association during any period in which the developer is excused from payment of assessments is as follows:

1. The developer shall pay the common expenses of a condominium affected by a guarantee, including the funding of reserves as provided in the adopted annual budget of that condominium, which exceed the regular periodic assessments at the guaranteed level against all other unit owners within that condominium.

2. The developer shall pay the common expenses of a multicondominium association, including the funding of reserves as provided in the adopted annual budget of the association, which are allocated to units within a condominium affected by a guarantee and which exceed the regular periodic assessments against all other unit owners within that condominium.

(10) The specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by [s. 718.111\(11\)](#), approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

(11) (a) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

1. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to [section 718.116\(11\), Florida Statutes](#), the association demands that you pay your rent directly to the condominium association and continue doing so until the association notifies you otherwise.

Payment due the condominium association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to ____ (full address)____, payable to ____ (name)____.

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to [section 718.116\(11\), Florida Statutes](#), your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the association.

2. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association.

3. The association shall, upon request, provide the tenant with written receipts for payments made.

4. A tenant is immune from any claim by the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.

(b) If the tenant paid rent to the landlord or unit owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit.

(c) The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord in the amount of moneys paid to the association.

(d) The association may issue notice under [s. 83.56](#) and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association after written demand has been made to the tenant. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under [s. 83.51](#).

(e) The tenant does not, by virtue of payment of monetary obligations to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(f) A court may supersede the effect of this subsection by appointing a receiver.

History

S. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 77-221; s. 7, ch. 77-222; s. 6, ch. 78-328; s. 8, ch. 84-368; s. 12, [ch. 90-151](#); s. 9, [ch. 91-103](#); ss. 4, 5, [ch. 91-426](#); s. 6, [ch.](#)

[92-49](#); s. 10, [ch. 94-350](#); s. 87, [ch. 95-211](#); s. 856, [ch. 97-102](#); s. 7, [ch. 98-322](#); s. 33, [ch. 99-6](#); s. 1, [ch. 2000-201](#); s. 56, [ch. 2000-302](#); s. 7, [ch. 2003-14](#); s. 6, [ch. 2007-80](#), eff. May 24, 2007; s. 5, [ch. 2008-240](#), eff. July 1, 2008; s. 12, [ch. 2010-174](#), eff. July 1, 2010; s. 6, [ch. 2011-196](#), eff. July 1, 2011; s. 10, [ch. 2014-133](#), eff. July 1, 2014; s. 3, [ch. 2014-146](#), eff. July 1, 2014.

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ILLINOIS COMPILED STATUTES ANNOTATED CHAPTER 765. PROPERTY CONDOMINIUMS CONDOMINIUM PROPERTY ACT

ILCS 605/9. Sharing of expenses -- Lien for nonpayment

Sec. 9. Sharing of expenses -- Lien for nonpayment. (a) All common expenses incurred or accrued prior to the first conveyance of a unit shall be paid by the developer, and during this period no common expense assessment shall be payable to the association. It shall be the duty of each unit owner including the developer to pay his proportionate share of the common expenses commencing with the first conveyance. The proportionate share shall be in the same ratio as his percentage of ownership in the common elements set forth in the declaration.

(b) The condominium instruments may provide that common expenses for insurance premiums be assessed on a basis reflecting increased charges for coverage on certain units.

(c) Budget and reserves.

(1) The board of managers shall prepare and distribute to all unit owners a detailed proposed annual budget, setting forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income. The initial budget and common expense assessment based thereon shall be adopted prior to the conveyance of any unit. The budget shall also set forth each unit owner's proposed common expense assessment.

(2) All budgets adopted by a board of managers on or after July 1, 1990 shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common elements. To determine the amount of reserves appropriate for an association, the board of managers shall take into consideration the following: (i) the repair and replacement cost, and the estimated useful life, of the property which the association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the buildings and common elements, and energy systems and equipment; (ii) the current and anticipated return on investment of association funds; (iii) any independent professional reserve study which the association may obtain; (iv) the financial impact on unit owners, and the market value of the condominium units, of any assessment increase needed to fund reserves; and (v) the ability of the association to obtain financing or refinancing.

(3) Notwithstanding the provisions of this subsection (c), an association without a reserve requirement in its condominium instruments may elect to waive in whole or in part the reserve requirements of this Section by a vote of 2/3 of the total votes of the association. Any association having elected under this paragraph (3) to waive the provisions of subsection (c) may by a vote of 2/3 of the total votes of the association elect to again be governed by the requirements of subsection (c).

(4) In the event that an association elects to waive all or part of the reserve requirements of this Section, that fact must be disclosed after the meeting at which the waiver occurs by the association in the financial statements of the association and, highlighted in bold print, in the response to any request of a prospective purchaser for the information prescribed under Section 22.1 [\[765 ILCS 605/22.1\]](#); and no member of the board of managers or the managing agent of the association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of reserve funds in the association budget.

(d) (Blank).

(e) The condominium instruments may provide for the assessment, in connection with expenditures for the limited common elements, of only those units to which the limited common elements are assigned.

(f) Payment of any assessment shall be in amounts and at times determined by the board of managers.

(g) Lien.

(1) If any unit owner shall fail or refuse to make any payment of the common expenses or the amount of any unpaid fine when due, the amount thereof together with any interest, late charges, reasonable attorney fees incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers, or any applicable statute or ordinance, and costs of collections shall constitute a lien on the interest of the unit owner in the property prior to all other liens and encumbrances, recorded or unrecorded, except only (a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other State or federal taxes which by law are a lien on the interest of the unit owner prior to preexisting recorded encumbrances thereon and (b) encumbrances on the interest of the unit owner recorded prior to the date of such failure or refusal which by law would be a lien thereon prior to subsequently recorded encumbrances. Any action brought to extinguish the lien of the association shall include the association as a party.

(2) With respect to encumbrances executed prior to August 30, 1984 or encumbrances executed subsequent to August 30, 1984 which are neither bonafide first mortgages nor trust deeds and which encumbrances contain a statement of a mailing address in the State of Illinois where notice may be mailed to the encumbrancer thereunder, if and whenever and as often as the manager or board of managers shall send, by United States certified or registered mail, return receipt requested, to any such encumbrancer at the mailing address set forth in the recorded encumbrance a statement of the amounts and due dates of the unpaid common expenses with respect to the encumbered unit, then, unless otherwise provided in the declaration or bylaws, the prior recorded encumbrance shall be subject to the lien of all unpaid common expenses with respect to the unit which become due and payable within a period of 90 days after the date of mailing of each such notice.

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(3) The purchaser of a condominium unit at a judicial foreclosure sale, or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law [735 ILCS 5/15-1101 et seq.], shall have the duty to pay the unit's proportionate share of the common expenses for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking of possession pursuant to such court order. Such payment confirms the extinguishment of any lien created pursuant to paragraph (1) or (2) of this subsection (g) by virtue of the failure or refusal of a prior unit owner to make payment of common expenses, where the judicial foreclosure sale has been confirmed by order of the court, a deed in lieu thereof has been accepted by the lender, or a consent judgment has been entered by the court.

(4) The purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee, who takes possession of a condominium unit pursuant to a court order or a purchaser who acquires title from a mortgagee shall have the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the 6 months immediately preceding institution of an action to enforce the collection of assessments, and which remain unpaid by the owner during whose possession the assessments accrued. If the outstanding assessments are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title.

(5) The notice of sale of a condominium unit under subsection (c) of Section 15-1507 of the Code of Civil Procedure [735 ILCS 5/15-1507] shall state that the purchaser of the unit other than a mortgagee shall pay the assessments and the legal fees required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act [765 ILCS 605/9]. The statement of assessment account issued by the association to a unit owner under subsection (i) of Section 18 of this Act [765 ILCS 605/18], and the disclosure statement issued to a prospective purchaser under Section 22.1 of this Act [765 ILCS 605/22.1], shall state the amount of the assessments and the legal fees, if any, required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act.

(h) A lien for common expenses shall be in favor of the members of the board of managers and their successors in office and shall be for the benefit of all other unit owners. Notice of the lien may be recorded by the board of managers, or if the developer is the manager or has a majority of seats on the board of managers and the manager or board of managers fails to do so, any unit owner may record notice of the lien. Upon the recording of such notice the lien may be foreclosed by an action brought in the name of the board of managers in the same manner as a mortgage of real property.

(i) Unless otherwise provided in the declaration, the members of the board of managers and their successors in office, acting on behalf of the other unit owners, shall have the power to bid on the interest so foreclosed at the foreclosure sale, and to acquire and hold, lease, mortgage and convey it.

(j) Any encumbrancer may from time to time request in writing a written statement from the manager or board of managers setting forth the unpaid common expenses with respect to the unit covered by his encumbrance. Unless the request is complied with within 20 days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of the encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to the unit, and upon payment the encumbrancer shall have a lien on the unit for the amounts paid at the same rank as the lien of his encumbrance.

(k) Nothing in Public Act 83-1271 is intended to change the lien priorities of any encumbrance created prior to August 30, 1984.

History

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 30, para. 309]

Source:

[P.A. 86-991](#); [86-1156](#); [87-692](#); [87-746](#); [87-895](#); [88-417](#), § 10; [91-357](#), § 276; [94-1049](#), § 5.

ILLINOIS COMPILED STATUTES ANNOTATED

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ILLINOIS COMPILED STATUTES ANNOTATED CHAPTER 765. PROPERTY CONDOMINIUMS CONDOMINIUM PROPERTY ACT**ILCS 605/9. Sharing of expenses -- Lien for nonpayment**

Sec. 9. Sharing of expenses -- Lien for nonpayment. (a) All common expenses incurred or accrued prior to the first conveyance of a unit shall be paid by the developer, and during this period no common expense assessment shall be payable to the association. It shall be the duty of each unit owner including the developer to pay his proportionate share of the common expenses commencing with the first conveyance. The proportionate share shall be in the same ratio as his percentage of ownership in the common elements set forth in the declaration.

(b) The condominium instruments may provide that common expenses for insurance premiums be assessed on a basis reflecting increased charges for coverage on certain units.

(c) Budget and reserves.

(1) The board of managers shall prepare and distribute to all unit owners a detailed proposed annual budget, setting forth with particularity all anticipated common expenses by category as well as all anticipated assessments and other income. The initial budget and common expense assessment based thereon shall be adopted prior to the conveyance of any unit. The budget shall also set forth each unit owner's proposed common expense assessment.

(2) All budgets adopted by a board of managers on or after July 1, 1990 shall provide for reasonable reserves for capital expenditures and deferred maintenance for repair or replacement of the common elements. To determine the amount of reserves appropriate for an association, the board of managers shall take into consideration the following: (i) the repair and replacement cost, and the estimated useful life, of the property which the association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the buildings and common elements, and energy systems and equipment; (ii) the current and anticipated return on investment of association funds; (iii) any independent professional reserve study which the association may obtain; (iv) the financial impact on unit owners, and the market value of the condominium units, of any assessment increase needed to fund reserves; and (v) the ability of the association to obtain financing or refinancing.

(3) Notwithstanding the provisions of this subsection (c), an association without a reserve requirement in its condominium instruments may elect to waive in whole or in part the reserve requirements of this Section by a vote of 2/3 of the total votes of the association. Any association having elected under this paragraph (3) to waive the provisions of subsection (c) may by a vote of 2/3 of the total votes of the association elect to again be governed by the requirements of subsection (c).

(4) In the event that an association elects to waive all or part of the reserve requirements of this Section, that fact must be disclosed after the meeting at which the waiver occurs by the association in the financial statements of the association and, highlighted in bold print, in the response to any request of a prospective purchaser for the information prescribed under Section 22.1 [765 ILCS 605/22.1]; and no member of the board of managers or the managing agent of the association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of reserve funds in the association budget.

(d) (Blank).

(e) The condominium instruments may provide for the assessment, in connection with expenditures for the limited common elements, of only those units to which the limited common elements are assigned.

(f) Payment of any assessment shall be in amounts and at times determined by the board of managers.

(g) Lien.

(1) If any unit owner shall fail or refuse to make any payment of the common expenses or the amount of any unpaid fine when due, the amount thereof together with any interest, late charges, reasonable attorney fees incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers, or any applicable statute or ordinance, and costs of collections shall constitute a lien on the interest of the unit owner in the property prior to all other liens and encumbrances, recorded or unrecorded, except only (a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other State or federal taxes which by law are a lien on the interest of the unit owner prior to preexisting recorded encumbrances thereon and (b) encumbrances on the interest of the unit owner recorded prior to the date of such failure or refusal which by law would be a lien thereon prior to subsequently recorded encumbrances. Any action brought to extinguish the lien of the association shall include the association as a party.

(2) With respect to encumbrances executed prior to August 30, 1984 or encumbrances executed subsequent to August 30, 1984 which are neither bonafide first mortgages nor trust deeds and which encumbrances contain a statement of a mailing address in the State of Illinois where notice may be mailed to the encumbrancer thereunder, if and whenever and as often as the manager or board of managers shall send, by United States certified or registered mail, return receipt requested, to any such encumbrancer at the mailing address set forth in the recorded encumbrance a statement of the amounts and due dates of the unpaid common expenses with respect to the encumbered unit, then, unless otherwise provided in the declaration or bylaws, the prior recorded encumbrance shall be subject to the lien of all unpaid common expenses with respect to the unit which become due and payable within a period of 90 days after the date of mailing of each such notice.

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(3) The purchaser of a condominium unit at a judicial foreclosure sale, or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law [735 ILCS 5/15-1101 et seq.], shall have the duty to pay the unit's proportionate share of the common expenses for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking of possession pursuant to such court order. Such payment confirms the extinguishment of any lien created pursuant to paragraph (1) or (2) of this subsection (g) by virtue of the failure or refusal of a prior unit owner to make payment of common expenses, where the judicial foreclosure sale has been confirmed by order of the court, a deed in lieu thereof has been accepted by the lender, or a consent judgment has been entered by the court.

(4) The purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee, who takes possession of a condominium unit pursuant to a court order or a purchaser who acquires title from a mortgagee shall have the duty to pay the proportionate share, if any, of the common expenses for the unit which would have become due in the absence of any assessment acceleration during the 6 months immediately preceding institution of an action to enforce the collection of assessments, and which remain unpaid by the owner during whose possession the assessments accrued. If the outstanding assessments are paid at any time during any action to enforce the collection of assessments, the purchaser shall have no obligation to pay any assessments which accrued before he or she acquired title.

(5) The notice of sale of a condominium unit under subsection (c) of Section 15-1507 of the Code of Civil Procedure [735 ILCS 5/15-1507] shall state that the purchaser of the unit other than a mortgagee shall pay the assessments and the legal fees required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act [765 ILCS 605/9]. The statement of assessment account issued by the association to a unit owner under subsection (i) of Section 18 of this Act [765 ILCS 605/18], and the disclosure statement issued to a prospective purchaser under Section 22.1 of this Act [765 ILCS 605/22.1], shall state the amount of the assessments and the legal fees, if any, required by subdivisions (g)(1) and (g)(4) of Section 9 of this Act.

(h) A lien for common expenses shall be in favor of the members of the board of managers and their successors in office and shall be for the benefit of all other unit owners. Notice of the lien may be recorded by the board of managers, or if the developer is the manager or has a majority of seats on the board of managers and the manager or board of managers fails to do so, any unit owner may record notice of the lien. Upon the recording of such notice the lien may be foreclosed by an action brought in the name of the board of managers in the same manner as a mortgage of real property.

(i) Unless otherwise provided in the declaration, the members of the board of managers and their successors in office, acting on behalf of the other unit owners, shall have the power to bid on the interest so foreclosed at the foreclosure sale, and to acquire and hold, lease, mortgage and convey it.

(j) Any encumbrancer may from time to time request in writing a written statement from the manager or board of managers setting forth the unpaid common expenses with respect to the unit covered by his encumbrance. Unless the request is complied with within 20 days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of the encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to the unit, and upon payment the encumbrancer shall have a lien on the unit for the amounts paid at the same rank as the lien of his encumbrance.

(k) Nothing in Public Act 83-1271 is intended to change the lien priorities of any encumbrance created prior to August 30, 1984.

History

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 30, para. 309]

Source:

[P.A. 86-991](#); [86-1156](#); [87-692](#); [87-746](#); [87-895](#); [88-417](#), § 10; [91-357](#), § 276; [94-1049](#), § 5.

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Annotated Code of Maryland REAL PROPERTY TITLE 11. MARYLAND CONDOMINIUM ACT

§ 11-110. Common expenses and profits; assessments; liens

(a) **Disposition of common profits.** -- All common profits shall be disbursed to the unit owners, be credited to their assessments for common expenses in proportion to their percentage interests in common profits and common expenses, or be used for any other purpose as the council of unit owners decides.

(b) Funds for payment of common expenses obtained by assessments. --

(1) Funds for the payment of current common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in common expenses and common profits.

(2)

(i) Where provided in the declaration or the bylaws, charges for utility services may be assessed and collected on the basis of usage rather than on the basis of percentage interests.

(ii) If provided by the declaration, assessments for expenses related to maintenance of the limited common elements may be charged to the unit owner or owners who are given the exclusive right to use the limited common elements.

(iii) Assessments for charges under this paragraph may be enforced in the same manner as assessments for common expenses.

(c) Liability for assessments. -- A unit owner shall be liable for all assessments, or installments thereof, coming due while he is the owner of a unit. In a voluntary grant the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the voluntary grant for which a statement of lien is recorded, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee for such assessments. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(d) Imposition of lien. --

(1) Payment of assessments, together with interest, late charges, if any, costs of collection and reasonable attorney's fees may be enforced by the imposition of a lien on a unit in accordance with the provisions of the Maryland Contract Lien Act.

(2) Suit for any deficiency following foreclosure may be maintained in the same proceeding, and suit to recover any money judgment for unpaid assessments may also be maintained in the same proceeding, without waiving the right to seek to impose a lien under the Maryland Contract Lien Act.

(e) Interest on unpaid assessment; late charges; demand for payment of remaining annual assessment. --

(1) Any assessment, or installment thereof, not paid when due shall bear interest, at the option of the council of unit owners, from the date when due until paid at the rate provided in the bylaws, not exceeding 18 percent per annum, and if no rate is provided, then at 18 percent per annum.

(2) The bylaws also may provide for a late charge of \$ 15 or one tenth of the total amount of any delinquent assessment or installment, whichever is greater, provided the charge may not be imposed more than once for the same delinquent payment and may only be imposed if the delinquency has continued for at least 15 calendar days.

(3) If the declaration or bylaws provide for an annual assessment payable in regular installments, the declaration or bylaws may further provide that if a unit owner fails to pay an installment when due, the council of unit owners may demand payment of the remaining annual assessment coming due within that fiscal year. A demand by the council is not enforceable unless the council, within 15 days of a unit owner's failure to pay an installment, notifies the unit owner that if the unit owner fails to pay the monthly installment within 15 days of the notice, full payment of the remaining annual assessment will then be due and shall constitute a lien on the unit as provided in this section.

(f) Foreclosure; priority of liens. --

(1) This subsection does not limit or affect the priority of any lien, secured interest, or other encumbrance with priority that is held by or for the benefit of, purchased by, assigned to, or securing any indebtedness to:

(i) The State or any county or municipal corporation in the State;

(ii) Any unit of State government or the government of any county or municipal corporation in the State; or

(iii) An instrumentality of the State or any county or municipal corporation in the State.

(2) In the case of a foreclosure of a mortgage or deed of trust on a unit in a condominium, a portion of the condominium's liens on the unit, as prescribed in paragraph (3) of this subsection, shall have priority over a claim of the holder of a first mortgage or a first deed of trust that is recorded against the unit on or after October 1, 2011.

(3) The portion of the condominium's liens that has priority under paragraph (2) of this subsection:

(i) Shall consist solely of not more than 4 months, or the equivalent of 4 months, of unpaid regular assessments for common expenses that are levied by the condominium in accordance with the requirements of the declaration or bylaws of the condominium:

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(ii) May not include:

1. Interest;
2. Costs of collection;
3. Late charges;
4. Fines;
5. Attorney's fees;
6. Special assessments; or
7. Any other costs or sums due under the declaration or bylaws of the condominium or as provided under any contract, law, or court order; and

(iii) May not exceed a maximum of \$ 1,200.

(4)

(i) Subject to subparagraph (ii) of this paragraph, at the request of the holder of a first mortgage or first deed of trust on a unit in a condominium, the governing body shall provide to the holder written information about the portion of any lien filed under the Maryland Contract Lien Act that has priority as prescribed under paragraph (3) of this subsection, including information that is sufficient to allow the holder to determine the basis for the portion of the lien that has priority.

(ii) At the time of making a request under subparagraph (i) of this paragraph, the holder shall provide the governing body of the condominium with the written contact information of the holder.

(iii) If the governing body of the condominium fails to provide written information to the holder under subparagraph (i) of this paragraph within 30 days after the filing of the statement of lien among the land records of each county in which the condominium is located, the portion of the condominium's liens does not have priority as prescribed under paragraph (2) of this subsection.

History

An. Code, 1957, art. 21, §§ 11-116, 11-118; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1976, ch. 348, § 1; 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 563; 1984, chs. 255, 525, 581; 1985, chs. 552, 736; 1986, ch. 359; [2011, ch. 387, § 2](#).

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Annotated Code of Maryland REAL PROPERTY TITLE 11. MARYLAND CONDOMINIUM ACT**§ 11-110. Common expenses and profits; assessments; liens**

(a) Disposition of common profits. -- All common profits shall be disbursed to the unit owners, be credited to their assessments for common expenses in proportion to their percentage interests in common profits and common expenses, or be used for any other purpose as the council of unit owners decides.

(b) Funds for payment of common expenses obtained by assessments. --

(1) Funds for the payment of current common expenses and for the creation of reserves for the payment of future common expenses shall be obtained by assessments against the unit owners in proportion to their percentage interests in common expenses and common profits.

(2)

(i) Where provided in the declaration or the bylaws, charges for utility services may be assessed and collected on the basis of usage rather than on the basis of percentage interests.

(ii) If provided by the declaration, assessments for expenses related to maintenance of the limited common elements may be charged to the unit owner or owners who are given the exclusive right to use the limited common elements.

(iii) Assessments for charges under this paragraph may be enforced in the same manner as assessments for common expenses.

(c) Liability for assessments. -- A unit owner shall be liable for all assessments, or installments thereof, coming due while he is the owner of a unit. In a voluntary grant the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of the voluntary grant for which a statement of lien is recorded, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee for such assessments. Liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(d) Imposition of lien. --

(1) Payment of assessments, together with interest, late charges, if any, costs of collection and reasonable attorney's fees may be enforced by the imposition of a lien on a unit in accordance with the provisions of the Maryland Contract Lien Act.

(2) Suit for any deficiency following foreclosure may be maintained in the same proceeding, and suit to recover any money judgment for unpaid assessments may also be maintained in the same proceeding, without waiving the right to seek to impose a lien under the Maryland Contract Lien Act.

(e) Interest on unpaid assessment; late charges; demand for payment of remaining annual assessment. --

(1) Any assessment, or installment thereof, not paid when due shall bear interest, at the option of the council of unit owners, from the date when due until paid at the rate provided in the bylaws, not exceeding 18 percent per annum, and if no rate is provided, then at 18 percent per annum.

(2) The bylaws also may provide for a late charge of \$ 15 or one tenth of the total amount of any delinquent assessment or installment, whichever is greater, provided the charge may not be imposed more than once for the same delinquent payment and may only be imposed if the delinquency has continued for at least 15 calendar days.

(3) If the declaration or bylaws provide for an annual assessment payable in regular installments, the declaration or bylaws may further provide that if a unit owner fails to pay an installment when due, the council of unit owners may demand payment of the remaining annual assessment coming due within that fiscal year. A demand by the council is not enforceable unless the council, within 15 days of a unit owner's failure to pay an installment, notifies the unit owner that if the unit owner fails to pay the monthly installment within 15 days of the notice, full payment of the remaining annual assessment will then be due and shall constitute a lien on the unit as provided in this section.

(f) Foreclosure; priority of liens. --

(1) This subsection does not limit or affect the priority of any lien, secured interest, or other encumbrance with priority that is held by or for the benefit of, purchased by, assigned to, or securing any indebtedness to:

(i) The State or any county or municipal corporation in the State;

(ii) Any unit of State government or the government of any county or municipal corporation in the State; or

(iii) An instrumentality of the State or any county or municipal corporation in the State.

(2) In the case of a foreclosure of a mortgage or deed of trust on a unit in a condominium, a portion of the condominium's liens on the unit, as prescribed in paragraph (3) of this subsection, shall have priority over a claim of the holder of a first mortgage or a first deed of trust that is recorded against the unit on or after October 1, 2011.

(3) The portion of the condominium's liens that has priority under paragraph (2) of this subsection:

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(i) Shall consist solely of not more than 4 months, or the equivalent of 4 months, of unpaid regular assessments for common expenses that are levied by the condominium in accordance with the requirements of the declaration or bylaws of the condominium;

(ii) May not include:

1. Interest;
2. Costs of collection;
3. Late charges;
4. Fines;
5. Attorney's fees;
6. Special assessments; or
7. Any other costs or sums due under the declaration or bylaws of the condominium or as provided under any contract, law, or court order; and

(iii) May not exceed a maximum of \$ 1,200.

(4)

(i) Subject to subparagraph (ii) of this paragraph, at the request of the holder of a first mortgage or first deed of trust on a unit in a condominium, the governing body shall provide to the holder written information about the portion of any lien filed under the Maryland Contract Lien Act that has priority as prescribed under paragraph (3) of this subsection, including information that is sufficient to allow the holder to determine the basis for the portion of the lien that has priority.

(ii) At the time of making a request under subparagraph (i) of this paragraph, the holder shall provide the governing body of the condominium with the written contact information of the holder.

(iii) If the governing body of the condominium fails to provide written information to the holder under subparagraph (i) of this paragraph within 30 days after the filing of the statement of lien among the land records of each county in which the condominium is located, the portion of the condominium's liens does not have priority as prescribed under paragraph (2) of this subsection.


History

An. Code, 1957, art. 21, §§ 11-116, 11-118; 1974, ch. 12, § 2; ch. 641; 1975, ch. 786, § 1; 1976, ch. 348, § 1; 1981, ch. 246; 1982, ch. 836, § 3; 1983, ch. 563; 1984, chs. 255, 525, 581; 1985, chs. 552, 736; 1986, ch. 359; [2011, ch. 387, § 2](#).

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Statutes current through Chapter 330 of the 2016 Regular Session.

[LEXIS™ New Hampshire Revised Statutes Annotated](#) [Title XXXI Trade and Commerce](#) [Chapter 356-B Condominium Act](#) [III. Unit Owners' Associations](#)

356-B:46. Lien for Assessments.

I.

(a) The unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments, if perfected as hereinafter provided. The said lien, once perfected, shall be prior to all other liens and encumbrances except (1) real estate tax liens on that condominium unit, (2) liens and encumbrances recorded prior to the recordation of the declaration, and (3) sums unpaid on any first mortgages or first deeds of trust encumbering that condominium unit and securing institutional lenders.

(b) The provisions of this paragraph shall not affect the priority of mechanics' and materialmen's liens.

(c) Notwithstanding subparagraph (a), the lien for regular monthly common assessments unpaid with respect to a residential condominium unit during the 6-month period immediately preceding the filing of the memorandum specified in paragraph III, together with all costs of collection, including reasonable attorney's fees, shall be prior to the first mortgage; provided that the unit owners' association sends, within 70 days of the occurrence of any delinquency, the unit owner and the institutional lender holding the first mortgage written notice of the delinquency by certified mail and first class mail that the account is at least 60 days delinquent; and additionally, sends such lender notice by certified mail and first class mail, at least 30 days prior, of its intent to file said memorandum of lien. The lien shall not include any amounts attributable to special assessments, late charges, fines, penalties, or interest assessed by the unit owners' association, nor shall the lien apply to regular assessments or costs of collection coming due prior to the effective date of this section. In giving the foregoing notices, the unit owners' association may rely on the records of the applicable registry of deeds as to the address of the first institutional lender unless such lender has notified the unit owners' association by certified mail of a different address.

(d) The priority lien rights established under subparagraph (c) shall not entitle or permit the unit owners' association to assert more than one priority lien unless and until the existing priority lien is first discharged by the unit owners' association. The priority lien rights established under subparagraph (c) also shall not apply to any mortgage executed prior to the effective date of this section.

(e) After notification to the first mortgage institutional lender of a delinquency, in addition to any previously agreed to or required escrow amounts, the institutional lender may also require a residential unit owner to place an amount equal to not more than 6 months of current regular assessments in escrow to cover the cost of any delinquency.

II. Notwithstanding any other provision of this section, or any other provision of law, all memoranda of liens arising under this section shall be recorded in the registry of deeds in each county in which any part of the condominium is located. Such memorandum shall be indexed in the general index to deeds, and such general index shall identify the lien as a lien for condominium assessments.

III. The unit owners' association, in order to perfect the lien given by this section, shall file, before the expiration of 6 months from the time such assessment became due and payable in the registry of deeds in the county in which such condominium is situated, a memorandum, verified by the oath of the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, which contains the following:

- (a) A description of the condominium unit in accordance with [RSA 356-B:9](#);
- (b) The name or names of the persons constituting the unit owners of that condominium unit;
- (c) The amount of unpaid assessments currently due or past due together with the date when each fell due; and
- (d) The date of issuance of the memorandum.

It shall be the duty of the register in whose office such memorandum shall be filed as hereinabove provided to record and index the same as provided in paragraph II, in the names of the persons identified therein as well as in the name of the unit owners' association. The cost of recording such memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien.

IV. No suit to enforce any lien perfected under paragraph III shall be brought after 6 years from the time when the memorandum of lien was recorded; provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section; and provided further that nothing herein shall extend the time within which any such lien may be perfected.

V. The judgment or decree in an action brought pursuant to this section shall include, without limitation, reimbursement for costs and attorneys' fees, together with interest at the maximum lawful rate for the sums secured by the lien from the time such sum became due and payable.

VI. When payment or satisfaction is made of a debt secured by the lien perfected by paragraph III, said lien shall be released in the same manner as required by [RSA 479:7](#) for mortgages. For the purposes of this section, the principal officer of the unit owners' association, or such other officer or officers as the condominium instruments may specify, shall be deemed the duly authorized agent of the lien creditor and shall discharge said lien.

VII. Nothing in this section shall be construed to prohibit actions at law to recover sums for which paragraph I creates a lien, maintainable pursuant to [RSA 356-B:15](#).

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VIII. Any unit owner or purchaser of a condominium unit, having executed a contract for the disposition of the same, shall be entitled upon request to a recordable statement setting forth the amount of unpaid assessments currently levied against that unit. Such request shall be in writing, directed to the principal officer of the unit owners' association or to such other officer as the condominium instruments may specify. Failure to furnish or make available such a statement within 10 business days from the receipt of such request shall extinguish the lien created by paragraph I as to the condominium unit involved. Such statement shall be binding on the unit owners' association, the board of directors, and every unit owner. Payment of a fee not exceeding \$10 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provide.

IX. Notwithstanding any law, rule, or provision of the condominium declaration, bylaws, or rules to the contrary, the unit owners' association may authorize, pursuant to RSA 356-B, its board of directors to, after 30 days' prior written notice to the unit owner and unit owner's first mortgagee of nonpayment of common assessments, terminate the delinquent unit's common privileges and cease supplying a delinquent unit with any and all services normally supplied or paid for by the unit owners' association. Any terminated services and privileges shall be restored upon payment of all assessments.

X. The unit owners' association may collect an amount of up to 6 months' common expense assessments in advance from unit owners and hold the amount so collected in escrow and, upon default by any unit owner in the payment of common expense assessments, apply the same to cure such default.

History

1977, 468:1. [1994, 163:1](#), eff. July 22, 1994. [2010, 142:1](#), eff. January 1, 2011.

▼ Annotations

Notes

Amendments

—2010.

The 2010 amendment added the I(a) and I(b) designations; redesignated former I(a) through I(c) as I(a)(1) through I(a)(3); and added I(c) through I(e).

—1994.

Added pars. IX and X.

NOTES TO DECISIONS

Collection of condominium association fees

Trial court properly granted summary judgment to a condominium association as to plaintiffs' action challenging the association's efforts to collect association fees on plaintiffs' property, because under [RSA 80:61](#), the condominium covenants, which ran with the land, survived the tax sale at which plaintiffs purchased their property, and the actions taken by the defendant to collect fees were not unlawful under the Consumer Protection Act, [RSA 358-A:2](#), as such fee collection procedures were explicitly allowed by the Condominium Act, [RSA 356-B:46](#). [Buchholz v. Waterville Estates Ass'n](#), 156 N.H. 172, 934 A.2d 511, 2007 N.H. LEXIS 161 (N.H. 2007), modified, [2007 N.H. LEXIS 204](#) (N.H. Nov. 7, 2007).

Cited:

Cited in [Border Brook Terrace Condominium Ass'n v. Gladstone](#), 137 N.H. 11, 622 A.2d 1248, 1993 N.H. LEXIS 30 (1993).

Research References & Practice Aids

Research References and Practice Aids

Cross References.

Liens against condominiums generally, see [RSA 356-B:8](#).

Liens generally, see RSA 444.

Hierarchy Notes:

[RSA Tit. XXXI](#)

[RSA Tit. XXXI, Ch. 356-B](#)

[RSA Tit. XXXI, Ch. 356-B, Iii III](#)



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LexisNexis (TM) New Jersey Annotated Statutes **TITLE 46. PROPERTY** **SUBTITLE 2. REAL PROPERTY ONLY** **CHAPTER 8B. CONDOMINIUMS** **ARTICLE V. TAXES, ASSESSMENTS AND LIENS**
§ 46:8B-21. Liens in favor of association; priority

a. The association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon and, if authorized by the master deed or bylaws, late fees, fines and reasonable attorney's fees; provided however that an association shall not record a lien in which the unpaid assessment consists solely of late fees. Such lien shall be effective from and after the time of recording in the public records of the county in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recordable satisfaction of lien. Except as set forth in subsection b. of this section, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject and to any other lien recorded prior to the time of recording of the claim of lien.

b. A lien recorded pursuant to subsection a. of this section shall have a limited priority over prior recorded mortgages and other liens, except for municipal liens or liens for federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

(1) To a lien which is the result of customary condominium assessments as defined herein, the amount of which shall not exceed the aggregate customary condominium assessment against the unit owner for the six-month period prior to the recording of the lien.

(2) With respect to a particular mortgage, to a lien recorded prior to: (a) the receipt by the association of a summons and complaint in an action to foreclose a mortgage on that unit; or (b) the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit.

(3) In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority shall not be greater than the assessment for the six-month period specified in paragraph (1) of this subsection. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority given herein.

(4) The priority granted to a lien pursuant to this subsection shall expire on the first day of the 60th month following the date of recording of an association's lien.

(5) A lien of an association shall not be granted priority over a prior recorded mortgage or mortgages under this subsection if a prior recorded lien of the association for unpaid assessments has obtained priority over the same recorded mortgage or mortgages as provided in this subsection, for a period of 60 months from the date of recording of the lien granted priority.

(6) When recording a lien which may be granted priority pursuant to this act, an association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the association lien. An association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

For the purpose of this section, a "customary condominium assessment" shall mean an assessment for periodic payments, due the association for regular and usual operating and common area expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due must be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the condominium from purchase by the Federal National Mortgage Association as a first mortgage.

c. Upon any voluntary conveyance of a unit, the grantor and grantee of such unit shall be jointly and severally liable for all unpaid assessments pertaining to such unit duly made by the association or accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any amounts paid by the grantee, but the grantee shall be exclusively liable for those accruing while he is the unit owner.

d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to such unit and the association shall provide such certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to such unit. Any person other than the unit owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate.

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to such unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner which became due prior to acquisition of title as a result of the foreclosure. Any remaining unpaid share of common expenses and other assessments, except assessments derived from late fees or fines, shall be deemed to be common expenses collectible from all of the remaining unit owners including such acquirer, his successors and assigns.

f. Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property. The association shall have the power, unless prohibited by the master deed or bylaws to bid on the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Nothing herein shall alter the status or priority of municipal liens under [R.S.54:5-1](#) et seq.

CTADD2408

History

L. 1969, c. 257, § 21; amended [1995, c. 354](#), § 4; [1996, c. 79](#), § 5; [1997, c. 190](#), § 2.

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LexisNexis (TM) New Jersey Annotated Statutes **TITLE 46. PROPERTY** **SUBTITLE 2. REAL PROPERTY ONLY** **CHAPTER 8B. CONDOMINIUMS** **ARTICLE V. TAXES, ASSESSMENTS AND LIENS**
§ 46:8B-21. Liens in favor of association; priority

a. The association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon and, if authorized by the master deed or bylaws, late fees, fines and reasonable attorney's fees; provided however that an association shall not record a lien in which the unpaid assessment consists solely of late fees. Such lien shall be effective from and after the time of recording in the public records of the county in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recordable satisfaction of lien. Except as set forth in subsection b. of this section, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject and to any other lien recorded prior to the time of recording of the claim of lien.

b. A lien recorded pursuant to subsection a. of this section shall have a limited priority over prior recorded mortgages and other liens, except for municipal liens or liens for federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

(1) To a lien which is the result of customary condominium assessments as defined herein, the amount of which shall not exceed the aggregate customary condominium assessment against the unit owner for the six-month period prior to the recording of the lien.

(2) With respect to a particular mortgage, to a lien recorded prior to: (a) the receipt by the association of a summons and complaint in an action to foreclose a mortgage on that unit; or (b) the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit.

(3) In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority shall not be greater than the assessment for the six-month period specified in paragraph (1) of this subsection. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority given herein.

(4) The priority granted to a lien pursuant to this subsection shall expire on the first day of the 60th month following the date of recording of an association's lien.

(5) A lien of an association shall not be granted priority over a prior recorded mortgage or mortgages under this subsection if a prior recorded lien of the association for unpaid assessments has obtained priority over the same recorded mortgage or mortgages as provided in this subsection, for a period of 60 months from the date of recording of the lien granted priority.

(6) When recording a lien which may be granted priority pursuant to this act, an association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the association lien. An association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

For the purpose of this section, a "customary condominium assessment" shall mean an assessment for periodic payments, due the association for regular and usual operating and common area expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due must be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the condominium from purchase by the Federal National Mortgage Association as a first mortgage.

c. Upon any voluntary conveyance of a unit, the grantor and grantee of such unit shall be jointly and severally liable for all unpaid assessments pertaining to such unit duly made by the association or accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any amounts paid by the grantee, but the grantee shall be exclusively liable for those accruing while he is the unit owner.

d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to such unit and the association shall provide such certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to such unit. Any person other than the unit owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate.

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to such unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner which became due prior to acquisition of title as a result of the foreclosure. Any remaining unpaid share of common expenses and other assessments, except assessments derived from late fees or fines, shall be deemed to be common expenses collectible from all of the remaining unit owners including such acquirer, his successors and assigns.

f. Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property. The association shall have the power, unless prohibited by the master deed or bylaws to bid on the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Nothing herein shall alter the status or priority of municipal liens under [R.S.54:5-1](#) et seq.

CTADD2410

History

L. 1969, c. 257, § 21; amended [1995, c. 354](#), § 4; [1996, c. 79](#), § 5; [1997, c. 190](#), § 2.

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LexisNexis® Oregon Annotated Statutes TITLE 10 PROPERTY RIGHTS AND TRANSACTIONS Chapter 100 - Condominiums ASSOCIATION OF UNIT OWNERS; MANAGEMENT OF PROPERTY; ENCUMBRANCES; CONVEYANCES**100.450 Association lien against individual unit; recording notice of claim; foreclosure; priority of lien.**

(1) Whenever an association of unit owners levies any assessment against a unit, the association of unit owners shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts levied under the declaration or bylaws. The lien is prior to a homestead exemption and all other liens or encumbrances upon the unit except:

- (a) Tax and assessment liens; and
- (b) A first mortgage or trust deed of record unless:
 - (A) The condominium consists of fewer than seven units, all of which are to be used for nonresidential purposes;
 - (B) The declaration provides that the lien of any mortgage or trust deed of record affecting the property shall be subordinate to the lien of the association provided under subsection (1) of this section; and
 - (C) The holder of any mortgage or trust deed of record affecting the property when the declaration is recorded executes a separate subordination of the holder's interest to the declaration which is attached as an exhibit and which states that the holder understands that the declaration subordinates the holder's lien to the assessment lien of the association provided under subsection (1) of this section.

(2) Recording of the declaration constitutes record notice and perfection of the lien for assessments. No further recording of a claim of lien for assessments or notice of a claim of lien under this section is required to perfect the association's lien. The association shall record a notice of claim of lien for assessments under this section in the deed records of the county in which the unit is located before any suit to foreclose may proceed under subsection (4) of this section. The notice shall contain:

- (a) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;
- (b) The name of the owner of the unit, or reputed owner, if known;
- (c) The name of the condominium and the designation of the unit as stated in the declaration or applicable supplemental declaration; and
- (d) A statement that if the owner of the unit thereafter fails to pay any assessments when due, as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of assessments automatically continue to accumulate with interest without the necessity of further recording.

(3) The notice shall be verified by the oath of some person having knowledge of the facts and shall be recorded by the county recording officer. The record shall be indexed as other liens are required by law to be indexed.

(4)

(a) The proceedings to foreclose liens created by this section shall conform as nearly as possible to the proceedings to foreclose liens created by [ORS 87.010](#) except, notwithstanding [ORS 87.055](#), a lien may be continued in force for a period of time not to exceed six years from the date the assessment is due. For the purpose of determining the date the assessment is due in those cases when subsequent unpaid assessments have accumulated under a notice recorded as provided in subsection (2) of this section, the assessment and claim regarding each unpaid assessment shall be deemed to have been levied at the time the unpaid assessment became due.

(b) The lien may be enforced by the board of directors acting on behalf of the association of unit owners.

(c) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments.

(d) An action to foreclose a lien under this section or recover a money judgment for unpaid assessments may not be maintained unless the Condominium Information Report and the Annual Report described in [ORS 100.250](#) are designated current as provided in [ORS 100.255](#).

(5) Unless the declaration or bylaws provides otherwise, fees, late charges, fines and interest imposed pursuant to [ORS 100.405 \(4\)\(i\)](#), (k), (L) and (m) are enforceable as assessments under this section.

(6) With respect to condominium units also constituting timeshare property as defined by [ORS 94.803](#), liens created by this section shall be assessed to the timeshare owners in the timeshare property according to the method for determining each owner's liability for common expenses under the timeshare instrument and shall be enforced individually against each timeshare owner in the condominium unit.

(7) Notwithstanding the priority established for a lien for unpaid assessments and interest under subsection (1) of this section, the lien shall also be prior to the lien of a first mortgage or trust deed of record for the unit and the undivided interest in the common elements, if:

- (a) The association of unit owners for the condominium in which the unit is located has given the lender under the mortgage or trust deed 90 days prior written notice that the owner of the unit is in default in payment of an assessment. The notice shall contain:

CTADD2412

- (A) Name of borrower;
- (B) Recording date of trust deed or mortgage;
- (C) Recording information;
- (D) Name of condominium, unit owner and unit designation stated in the declaration or applicable supplemental declaration; and
- (E) Amount of unpaid assessment.

(b) The notice under paragraph (a) of this subsection shall set forth the following in 10-point type: _____

NOTICE: The lien of the association may become prior to that of the lender pursuant to [ORS 100.450](#). _____

- (c) The lender has not initiated judicial action to foreclose the mortgage or requested issuance of a trustee's notice of sale under the trust deed or accepted a deed in lieu of foreclosure in the circumstances described in [ORS 100.465](#) prior to the expiration of 90 days following the notice by the unit owners' association.
- (d) The unit owners' association has provided the lender, upon request, with copies of any liens filed on the unit, a statement of the assessments and interest remaining unpaid on the unit and other documents which the lender may reasonably request.
- (e) The borrower is in default under the terms of the mortgage or trust deed as to principal and interest.
- (f) A copy of the notice described in paragraph (a) of this subsection, together with an affidavit of notice by a person having knowledge of the facts, has been recorded in the manner prescribed in subsection (3) of this section. The affidavit shall recite the date and the person to whom the notice was given.

History

Formerly 94.195; [1995 c.31 § 13](#); [1997 c.816 § 10](#); [1999 c.59 § 18](#); [1999 c.677 § 71](#); [2001 c.104 § 31](#); [2003 c.569 § 36](#)

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LexisNexis® Oregon Annotated Statutes Title 10 Property Rights and Transactions Chapter 100- Condominiums Association of Unit Owners; Management of Property; Encumbrances; Conveyances

100.450 Association lien against individual unit; recording notice of claim; foreclosure; priority of lien.

(1) Whenever an association of unit owners levies any assessment against a unit, the association of unit owners shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts levied under the declaration or bylaws. The lien is prior to a homestead exemption and all other liens or encumbrances upon the unit except:

- (a) Tax and assessment liens; and
- (b) A first mortgage or trust deed of record unless:
 - (A) The condominium consists of fewer than seven units, all of which are to be used for nonresidential purposes;
 - (B) The declaration provides that the lien of any mortgage or trust deed of record affecting the property shall be subordinate to the lien of the association provided under subsection (1) of this section; and
 - (C) The holder of any mortgage or trust deed of record affecting the property when the declaration is recorded executes a separate subordination of the holder's interest to the declaration which is attached as an exhibit and which states that the holder understands that the declaration subordinates the holder's lien to the assessment lien of the association provided under subsection (1) of this section.

(2) Recording of the declaration constitutes record notice and perfection of the lien for assessments. No further recording of a claim of lien for assessments or notice of a claim of lien under this section is required to perfect the association's lien. The association shall record a notice of claim of lien for assessments under this section in the deed records of the county in which the unit is located before any suit to foreclose may proceed under subsection (4) of this section. The notice shall contain:

- (a) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;
- (b) The name of the owner of the unit, or reputed owner, if known;
- (c) The name of the condominium and the designation of the unit as stated in the declaration or applicable supplemental declaration; and
- (d) A statement that if the owner of the unit thereafter fails to pay any assessments when due, as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of assessments automatically continue to accumulate with interest without the necessity of further recording.

(3) The notice shall be verified by the oath of some person having knowledge of the facts and shall be recorded by the county recording officer. The record shall be indexed as other liens are required by law to be indexed.

(4)

(a) The proceedings to foreclose liens created by this section shall conform as nearly as possible to the proceedings to foreclose liens created by [ORS 87.010](#) except, notwithstanding [ORS 87.055](#), a lien may be continued in force for a period of time not to exceed six years from the date the assessment is due. For the purpose of determining the date the assessment is due in those cases when subsequent unpaid assessments have accumulated under a notice recorded as provided in subsection (2) of this section, the assessment and claim regarding each unpaid assessment shall be deemed to have been levied at the time the unpaid assessment became due.

(b) The lien may be enforced by the board of directors acting on behalf of the association of unit owners.

(c) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments.

(d) An action to foreclose a lien under this section or recover a money judgment for unpaid assessments may not be maintained unless the Condominium Information Report and the Annual Report described in [ORS 100.250](#) are designated current as provided in [ORS 100.255](#).

(5) Unless the declaration or bylaws provides otherwise, fees, late charges, fines and interest imposed pursuant to [ORS 100.405 \(4\)\(i\)](#), (k), (L) and (m) are enforceable as assessments under this section.

(6) With respect to condominium units also constituting timeshare property as defined by [ORS 94.803](#), liens created by this section shall be assessed to the timeshare owners in the timeshare property according to the method for determining each owner's liability for common expenses under the timeshare instrument and shall be enforced individually against each timeshare owner in the condominium unit.

(7) Notwithstanding the priority established for a lien for unpaid assessments and interest under subsection (1) of this section, the lien shall also be prior to the lien of a first mortgage or trust deed of record for the unit and the undivided interest in the common elements, if:

- (a) The association of unit owners for the condominium in which the unit is located has given the lender under the mortgage or trust deed 90 days prior written notice that the owner of the unit is in default in payment of an assessment. The notice shall contain:

CTADD2414

- (A) Name of borrower;
- (B) Recording date of trust deed or mortgage;
- (C) Recording information;
- (D) Name of condominium, unit owner and unit designation stated in the declaration or applicable supplemental declaration; and
- (E) Amount of unpaid assessment.

(b) The notice under paragraph (a) of this subsection shall set forth the following in 10-point type: _____

NOTICE: The lien of the association may become prior to that of the lender pursuant to [ORS 100.450](#). _____

- (c) The lender has not initiated judicial action to foreclose the mortgage or requested issuance of a trustee's notice of sale under the trust deed or accepted a deed in lieu of foreclosure in the circumstances described in [ORS 100.465](#) prior to the expiration of 90 days following the notice by the unit owners' association.
- (d) The unit owners' association has provided the lender, upon request, with copies of any liens filed on the unit, a statement of the assessments and interest remaining unpaid on the unit and other documents which the lender may reasonably request.
- (e) The borrower is in default under the terms of the mortgage or trust deed as to principal and interest.
- (f) A copy of the notice described in paragraph (a) of this subsection, together with an affidavit of notice by a person having knowledge of the facts, has been recorded in the manner prescribed in subsection (3) of this section. The affidavit shall recite the date and the person to whom the notice was given.

History

Formerly 94.195; [1995 c.31 § 13](#); [1997 c.816 § 10](#); [1999 c.59 § 18](#); [1999 c.677 § 71](#); [2001 c.104 § 31](#); [2003 c.569 § 36](#).

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