

ASSOCIATION FORECLOSURE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions in Title 57, Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community Association Act, relating to a lien for an assessment.

Highlighted Provisions:

This bill:

- ▶ provides that a lien for an assessment has priority over a first or second security interest secured by a mortgage or a deed of trust to the extent of an amount equal to the assessments that would have become due during the nine months immediately preceding commencement of a foreclosure proceeding; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-44, as last amended by Laws of Utah 2013, Chapter 95

57-8a-301, as last amended by Laws of Utah 2013, Chapter 95

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section 57-8-44 is amended to read:

29 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
30 **collection.**

31 (1) (a) Except as provided in Section 57-8-13.1, an association of unit owners has a
32 lien on a unit for:

33 (i) an assessment;

34 (ii) except as provided in the declaration, fees, charges, and costs associated with
35 collecting an unpaid assessment, including:

36 (A) court costs and reasonable attorney fees;

37 (B) late charges;

38 (C) interest; and

39 (D) any other amount that the association of unit owners is entitled to recover under the
40 declaration, this chapter, or an administrative or judicial decision; and

41 (iii) a fine that the association of unit owners imposes against the owner of the unit.

42 (b) The recording of a declaration constitutes record notice and perfection of a lien
43 described in Subsection (1)(a).

44 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
45 is for the full amount of the assessment from the time the first installment is due, unless the
46 association of unit owners otherwise provides in a notice of assessment.

47 (3) An unpaid assessment or fine accrues interest at the rate provided:

48 (a) in Subsection 15-1-1(2); or

49 (b) in the governing documents, if the governing documents provide for a different
50 interest rate.

51 (4) ~~(A)~~ Except as provided in Subsection (5), a lien under this section has priority over
52 each other lien and encumbrance on a unit except:

53 (a) a lien or encumbrance recorded before the declaration is recorded;

54 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
55 that is recorded before a recorded notice of lien by or on behalf of the association of unit
56 owners; or

57 (c) a lien for real estate taxes or other governmental assessments or charges against the
58 unit.

59 (5) (a) Subject to Subsection (5)(b), a lien for an assessment under Subsection (1)(a)(i)
 60 has priority over a security interest described in Subsection (4)(b) to the extent of an amount
 61 equal to the assessments that came due, or would have become due in the absence of any
 62 acceleration, during the nine months immediately preceding the day on which a person makes
 63 the first notice or filing required to initiate a judicial or nonjudicial foreclosure.

64 (b) If federal law, including rules or regulations adopted by the Federal Home Loan
 65 Mortgage Corporation or the Federal National Mortgage Association, requires a period of
 66 priority that is shorter than the nine-month period described in Subsection (5)(a), the period of
 67 priority described in Subsection (5)(a) is limited to the greatest amount allowed by federal law.

68 (c) The amount of a lien described in Subsection (5)(a):

69 (i) may not include any late fees, interest, costs, or attorney fees; and

70 (ii) is calculated based on the association of unit owner's current adopted budget as of
 71 the day on which a person makes the first notice or filing required to initiate a judicial or
 72 nonjudicial foreclosure.

73 ~~[(5)]~~ (6) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
 74 Exemptions Act.

75 ~~[(6)]~~ (7) Unless the declaration provides otherwise, if two or more associations of unit
 76 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
 77 when the liens are created.

78 Section 2. Section **57-8a-301** is amended to read:

79 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

80 (1) (a) Except as provided in Section **57-8a-105**, an association has a lien on a lot for:

81 (i) an assessment;

82 (ii) except as provided in the declaration, fees, charges, and costs associated with
 83 collecting an unpaid assessment, including:

84 (A) court costs and reasonable attorney fees;

85 (B) late charges;

86 (C) interest; and

87 (D) any other amount that the association is entitled to recover under the declaration,
 88 this chapter, or an administrative or judicial decision; and

89 (iii) a fine that the association imposes against the owner of the lot.

90 (b) The recording of a declaration constitutes record notice and perfection of a lien
91 described in Subsection (1)(a).

92 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
93 is for the full amount of the assessment from the time the first installment is due, unless the
94 association otherwise provides in a notice of assessment.

95 (3) An unpaid assessment or fine accrues interest at the rate provided:

96 (a) in Subsection 15-1-1(2); or

97 (b) in the declaration, if the declaration provides for a different interest rate.

98 (4) ~~[A]~~ Except as provided in Subsection (5), a lien under this section has priority over
99 each other lien and encumbrance on a lot except:

100 (a) a lien or encumbrance recorded before the declaration is recorded;

101 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
102 is recorded before a recorded notice of lien by or on behalf of the association; or

103 (c) a lien for real estate taxes or other governmental assessments or charges against the
104 lot.

105 (5) (a) Subject to Subsection (5)(b), a lien for an assessment under Subsection (1)(a)(i)
106 has priority over a security interest described in Subsection (4)(b) to the extent of an amount
107 equal to the assessments that came due, or would have become due in the absence of any
108 acceleration, during the nine months immediately preceding the day on which a person makes
109 the first notice or filing required to initiate a judicial or nonjudicial foreclosure.

110 (b) If federal law, including rules or regulations adopted by the Federal Home Loan
111 Mortgage Corporation or the Federal National Mortgage Association, requires a period of
112 priority that is shorter than the nine-month period described in Subsection (5)(a), the period of
113 priority described in Subsection (5)(a) is limited to the greatest amount allowed by federal law.

114 (c) The amount of a lien described in Subsection (5)(a):

115 (i) may not include any late fees, interest, costs, or attorney fees; and

116 (ii) is calculated based on the association's current budget, adopted in accordance with
117 Section 57-8a-215, as of the day on which a person makes the first notice or filing required to
118 initiate a judicial or nonjudicial foreclosure.

119 ~~[(5)]~~ (6) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
120 Exemptions Act.

121 [(6)] (7) Unless the declaration provides otherwise, if two or more associations have
122 liens for assessments on the same lot, the liens have equal priority, regardless of when the liens
123 are created.

Legislative Review Note
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Office of Legislative Research and General Counsel