

SB0153S01 compared with SB0153

~~{deleted text}~~ shows text that was in SB0153 but was deleted in SB0153S01.

inserted text shows text that was not in SB0153 but was inserted into SB0153S01.

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Senator Stephen H. Urquhart proposes the following substitute bill:

ASSOCIATION FORECLOSURE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

This bill ~~{amends}~~enacts provisions ~~{in Title 57, Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community Association Act, relating to a lien for an assessment}~~related to the foreclosure of a trust deed secured by real property that is part of a condominium association or a homeowners association.

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}~~defines terms; and

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- ▶ requires the beneficiary of a trust deed that is secured by real property that is subject to an association of unit owners under Title 57, Chapter 8, Condominium Ownership Act, or an association under Title 57, Chapter 8a, Community Association Act, to pay the unit's share of certain common costs to the association beginning 120 days after the trustee records a notice of default.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

~~{AMENDS}~~ ENACTS:

~~{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}~~ 57-1-36.5, Utah Code Annotated 1953

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

Section 1. Section ~~{57-8-44}~~ 57-1-36.5 is ~~{amended}~~ enacted to read:

~~{57-8-44. Lien in favor of association of unit owners for assessments and costs of collection.~~

~~———— (1) (a) Except as provided in Section 57-8-13.1,}~~ 57-1-36.5. Payment of certain costs to condominium or community association after notice of default.

(1) As used in this Section:

(a) "Association" means:

(i) an association of unit owners ~~{has a lien on a unit for:~~

~~———— (i) an assessment;~~

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

~~———— (A) court costs and reasonable attorney fees;~~

~~———— (B) late charges;~~

~~———— (C) interest; and~~

~~———— (D) any other amount that}~~ , as defined in Section 57-8-3; or

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(ii) an association, as defined in Section 57-8a-102.

(b) "Unit" means:

(i) a lot, as defined in Section 57-8a-102; or

(ii) a unit, as defined in Section 57-8-3.

(2) (a) In accordance with this section, the beneficiary of a trust deed that is secured by a unit that is part of an association shall pay to the association of unit owners is entitled to

recover under the declaration, this chapter, or an administrative or judicial decision; and

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

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

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

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

—— (a) in Subsection 15-1-1(2); or

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

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

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

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

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

—— (5) (a) Subject to Subsection (5)(b), a lien for an assessment under Subsection (1)(a)(i) has priority over a security interest; **the amount of the unit's share of the costs** described in Subsection (4)(~~b~~)**a** to the extent of an amount equal to the assessments that came due, or would have become due in the absence of any acceleration, during the nine months immediately preceding **from 120 days after** the day on which ~~a person makes~~ the ~~first~~ notice or filing required to initiate a judicial or nonjudicial foreclosure.

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~~_____ (b) If federal law, including rules or regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, requires a period of priority that is shorter than the nine-month period, trustee records a notice of default until the day on which:~~

~~(i) the unit is sold at a trustee's sale; or~~

~~(ii) the notice of default is cancelled.~~

~~(b) The beneficiary shall pay the amount described in Subsection (5)(a), the period of priority, (2)(a) to the association within 10 days after the day on which:~~

~~(i) the unit is sold at a trustee's sale; or~~

~~(ii) the notice of default is cancelled.~~

~~(3) (a) Within three days after the day on which a trustee records a notice of default under Section 57-1-24 against a unit that is part of an association, the trustee shall deliver to the association, at the association's address on file with the Department of Commerce:~~

~~(i) in accordance with Subsection (3)(b), written notice that a notice of default was recorded on the unit; and~~

~~(ii) a copy of the notice of default.~~

~~(b) A written notice under Subsection (3)(a)(i) shall state:~~

~~(i) the name and address of the trustee;~~

~~(ii) the name and address of the beneficiary; and~~

~~(iii) the date on which the notice of default was recorded.~~

~~(4) Within 30 days after the day on which an association receives the notice described in Subsection (5)(a) is limited to the greatest amount allowed by federal law.~~

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

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

~~_____ (ii) is calculated based on (3), the association of unit owner's current adopted budget as of the day on which a person makes the first notice or filing required to initiate a judicial or nonjudicial foreclosure.~~

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

~~_____ [(6)] (7) Unless the declaration provides otherwise, if two or more associations of unit owners have liens for assessments on the same unit, the liens have equal priority, regardless of~~

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~~when the liens are created:~~

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

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

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

~~(i) an assessment;~~

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

~~(A) court costs and reasonable attorney fees;~~

~~(B) late charges;~~

~~(C) interest; and~~

~~(D) any other amount that} shall deliver to the beneficiary a document that includes:~~

~~(a) the amount of the unit's monthly share of:~~

~~(i) landscaping maintenance in the common areas;~~

~~(ii) water; and~~

~~(iii) insurance; and~~

~~(b) the method by which the beneficiary shall make the payment required under~~

~~Subsection (2) to the association} is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and~~

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

~~{ (b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a):~~

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

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

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

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

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

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

~~(b) a first or second security interest on the lot secured by a mortgage or trust deed that~~

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is recorded before a recorded notice of lien by or on behalf of the association; or

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

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

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

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

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

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

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

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

Legislative Review Note

~~—— as of 11-12-13 10:48 AM~~

~~—— Office of Legislative Research and General Counsel}~~