

LEGISLATIVE BILL 736

Approved by the Governor March 3, 2010

Introduced by Pirsch, 4.

FOR AN ACT relating to real property; to provide for liens for assessments and fines by homeowners' associations as prescribed; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. (1) A homeowners' association has a lien on a member's real estate for any assessment levied against real estate or fines imposed against its owner from the time the assessment or fine becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages or deeds of trust are recorded. The homeowners' association's lien may be foreclosed in like manner as a mortgage on real estate but the homeowners' association shall give reasonable notice of its action to all lienholders of real estate whose interest would be affected. Unless the homeowners' association declaration or agreement otherwise provides, fees, charges, late charges, fines, and interest charged are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be 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 real estate except (a) liens and encumbrances recorded before the recordation of the declaration or agreement, (b) a first mortgage or deed of trust on real estate 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 real estate. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

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

(4) 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.

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

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

(7) The homeowners' association, upon written request, shall furnish to a homeowners' association member a recordable statement setting forth the amount of unpaid assessments against his or her real estate. The statement must be furnished within ten business days after receipt of the request and is binding on the homeowners' association, the governing board, and every homeowners' association member.

(8) For purposes of this section:

(a) Declaration means any instruments, however denominated, that create the homeowners' association and any amendments to those instruments;

(b)(i) Homeowners' association means an association whose members consist of a private group of fee simple owners of residential real estate formed for the purpose of imposing and receiving payments, fees, or other charges for:

(A) The use, rental, operation, or maintenance of common elements available to all members and services provided to the member for the benefit of the member or his or her real estate;

(B) Late payments of assessments and, after notice and opportunity to be heard, the levying of fines for violations of homeowners' association declarations, agreements, bylaws, or rules and regulations; or

(C) The preparation and recordation of amendments to declarations, agreements, resale statements, or statements for unpaid assessments; and

(ii) Homeowners' association does not include a unit owners association organized under the Nebraska Condominium Act; and

(c) Real estate means the real estate of a homeowners' association member as such real estate is specifically described in the member's homeowners' association declaration or agreement.

Sec. 2. Since an emergency exists, this act takes effect when passed and approved according to law.