

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 571

Introduced by Price, 3.

Read first time January 19, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to liens; to amend sections 52-2001 and 76-874,
2 Reissue Revised Statutes of Nebraska; to change
3 provisions relating to homeowners' association and
4 condominium association liens; to repeal the original
5 sections; and to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 52-2001, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 52-2001 (1) A homeowners' association has a statutory
4 lien on a member's real estate for any assessment levied ~~against~~
5 attributable to real estate or fines imposed against its owner. from
6 ~~the time the assessment or fine becomes due and a notice containing~~
7 ~~the dollar amount of such lien is recorded in the office where~~
8 ~~mortgages or deeds of trust are recorded. The homeowners'~~
9 ~~association's lien may be foreclosed in like manner as a mortgage on~~
10 ~~real estate but the homeowners' association shall give reasonable~~
11 ~~notice of its action to all lienholders of real estate whose interest~~
12 ~~would be affected. Unless the homeowners' association declaration or~~
13 ~~agreement otherwise provides, reasonable attorney's fees and costs,~~
14 other fees, charges, late charges, fines, and interest charged in an
15 amount not to exceed eighteen percent, and any other sums due to the
16 association under the declaration or agreement, this section, or as a
17 result of an administrative, arbitration, mediation, or judicial
18 decision are enforceable in the same manner as unpaid assessments
19 under this section. If an assessment is payable in installments, the
20 lien is for the full amount of the assessment ~~may be a lien from the~~
21 time the first installment thereof becomes due.

22 (2) A lien under this section is prior to all other liens
23 and encumbrances on real estate except:

24 (a) ~~liens~~ Liens and encumbrances recorded before the
25 recordation of the declaration or agreement; 7

1 (b) Except as otherwise provided in subsection (3) of
2 this section, a first mortgage or deed of trust security interest on
3 real estate recorded before the date on which the assessment sought
4 to be enforced became delinquent; , and

5 (c) ~~liens~~ Liens for real estate taxes and other
6 governmental assessments or charges against real estate. ~~The lien~~
7 ~~under this section is not subject to the homestead exemption pursuant~~
8 ~~to section 40-101.~~

9 (3) A lien under this section is also prior to security
10 interests described in subsection (2)(b) of this section to the
11 extent of both the common expense assessment based on the periodic
12 budget adopted by the association which would become due in the
13 absence of acceleration during the twelve months immediately
14 preceding institution of an action to enforce the lien and reasonable
15 attorney's fees and costs incurred by the association in enforcing
16 the association's lien. This subsection and subsection (2) of this
17 section do not affect the priority of construction liens or the
18 priority of liens for other assessments made by the association. A
19 lien under this section is not subject to the homestead exemption
20 pursuant to section 40-101.

21 ~~(3)-(4)~~ (4) Unless the declaration or agreement otherwise
22 provides, if two or more homeowners' associations have liens for
23 assessments created at any time on the same real estate, those liens
24 have equal priority.

25 ~~(4)-(5)~~ (5) A lien for unpaid assessments is extinguished

1 unless proceedings to enforce the lien are instituted within three
2 years after the full amount of the assessments becomes due.

3 ~~(5)-(6)~~ This section does not prohibit actions against
4 real estate owners to recover sums for which subsection (1) of this
5 section creates a lien or prohibit a homeowners' association from
6 taking a deed in lieu of foreclosure.

7 ~~(6)-(7)~~ A judgment or decree in any action brought under
8 this section, including an action identified in subsection (6) of
9 this section, must include costs and reasonable attorney's fees for
10 the prevailing party.

11 ~~(7)-(8)~~ The homeowners' association, upon written
12 request, shall furnish to a homeowners' association member a
13 recordable statement setting forth the amount of unpaid assessments
14 against his or her real estate. The statement must be furnished
15 within ten business days after receipt of the request and is binding
16 on the homeowners' association, the governing board, and every
17 homeowners' association member.

18 (9) The homeowners' association's lien may be foreclosed
19 in like manner as a mortgage on real estate, but the homeowners'
20 association shall give reasonable notice of its action to all
21 lienholders of the real estate whose interest would be affected.

22 (10) The statutory lien recognized by this section does
23 not impair any other existing liens possessed by a homeowners'
24 association pursuant to contract, other statutes, or the common law.
25 Any other existing liens shall be deemed to have attached for

1 purposes of priority according to the terms of the contract, statute,
2 or common law provisions giving rise to the lien, without regard to
3 when the underlying assessment became due or delinquent and with due
4 regard to any subordination agreement entered into between the
5 declarant or homeowners' association and the association member.

6 (11) In an action by a homeowners' association to collect
7 assessments or to foreclose a lien for unpaid assessments on real
8 estate under this section, the court may appoint a receiver to
9 collect all sums alleged to be due and owing by an association member
10 before commencement or during pendency of the action. The
11 receivership is governed by sections 25-1081 to 25-1092. The court
12 may order the receiver to pay any sums held by the receiver to the
13 association during pendency of the action to the extent of the
14 association's common expense assessments based on a periodic budget
15 adopted by the association.

16 (12) A homeowners' association may not commence an action
17 to foreclose a lien on real estate under this section unless:

18 (a) The association member, at the time the action is
19 commenced, owes a sum equal to at least three months of common
20 expense assessments based on the periodic budget last adopted by the
21 association and the member has failed to accept or comply with a
22 payment plan offered by the association; and

23 (b) The governing board votes to commence a foreclosure
24 action specifically against that real estate.

25 (13) Unless the parties otherwise agree, the homeowners'

1 association shall apply any sums paid by association members that are
2 delinquent in paying assessments in the following order:

3 (a) Unpaid assessments;

4 (b) Late charges;

5 (c) Reasonable attorney's fees and costs and other
6 reasonable collection charges; and

7 (d) All other unpaid fees, charges, fines, penalties,
8 interest, and late charges.

9 (14) If the only sums due with respect to real estate are
10 fines and related sums imposed against the real estate, a foreclosure
11 action may not be commenced against the real estate unless the
12 association has a judgment against the association member for the
13 fines and related sums and has perfected a judgment lien against the
14 real estate.

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

18 ~~(8)-(16)~~ For purposes of this section:

19 (a) Declaration means any instruments, however
20 denominated, that create the area over which a homeowners'
21 association exercises control and any amendments to those
22 instruments;

23 (b)(i) Homeowners' association means an association whose
24 members consist of a private group of fee simple owners of
25 residential real estate formed for the purpose of imposing and

1 receiving payments, fees, or other charges for:

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

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

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

12 (ii) Homeowners' association does not include a unit
13 owners association organized under the Nebraska Condominium Act or an
14 association of co-owners organized under the Condominium Property
15 Act; and

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

19 Sec. 2. Section 76-874, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 76-874 (a) The association has a statutory lien on a unit
22 for any assessment ~~levied against~~ attributable to that unit or fines
23 imposed against its unit owner, ~~from the time the assessment or fine~~
24 ~~becomes due and a notice containing the dollar amount of such lien is~~
25 ~~recorded in the office where mortgages are recorded. The~~

1 ~~association's lien may be foreclosed in like manner as a mortgage on~~
2 ~~real estate but the association shall give reasonable notice of its~~
3 ~~action to all lienholders of the unit whose interest would be~~
4 ~~affected.~~ Unless the declaration otherwise provides, attorney's fees
5 and costs, other fees, charges, late charges, fines, and interest
6 charged pursuant to subdivisions (a)(10), (a)(11), and (a)(12) of
7 section 76-860, and any other sums due to the association under the
8 declaration or agreement, this section, or as a result of an
9 administrative, arbitration, mediation, or judicial decision are
10 enforceable in the same manner as unpaid assessments under this
11 section. If an assessment is payable in installments, the lien is for
12 the full amount of the assessment ~~may be a lien~~ from the time the
13 first installment thereof becomes due.

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

16 (i) ~~liens~~ Liens and encumbrances recorded before the
17 recordation of the declaration; ~~and~~

18 (ii) Except as otherwise provided in subsection (c) of
19 this section, a first mortgage or deed of trust security interest on
20 the unit recorded before the date on which the assessment sought to
21 be enforced became delinquent; ~~and~~

22 (iii) ~~liens~~ Liens for real estate taxes and other
23 governmental assessments or charges against the unit. ~~The lien under~~
24 ~~this section is not subject to the homestead exemption pursuant to~~
25 ~~section 40-101.~~

1 (c) A lien under this section is also prior to security
2 interests described in subsection (b)(ii) of this section to the
3 extent of both the common expense assessment based on the periodic
4 budget adopted by the association which would become due in the
5 absence of acceleration during the twelve months immediately
6 preceding institution of an action to enforce the lien and reasonable
7 attorney's fees and costs incurred by the association in enforcing
8 the association's lien. This subsection and subsection (b) of this
9 section do not affect the priority of construction liens or the
10 priority of liens for other assessments made by the association. A
11 lien under this section is not subject to the homestead exemption
12 pursuant to section 40-101.

13 ~~(e)-(d)~~ Unless the declaration otherwise provides, if two
14 or more associations have liens for assessments created at any time
15 on the same real estate, those liens have equal priority.

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

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

23 ~~(f)-(g)~~ A judgment or decree in any action brought under
24 this section, including an action identified in subsection (f) of
25 this section, must include costs and reasonable attorney's fees for

1 the prevailing party.

2 ~~(g)~~ (h) The association upon written request shall
3 furnish to a unit owner a recordable statement setting forth the
4 amount of unpaid assessments against his or her unit. The statement
5 must be furnished within ten business days after receipt of the
6 request and is binding on the association, the executive board, and
7 every unit owner.

8 (i) The association's lien may be foreclosed in like
9 manner as a mortgage on real estate, but the association shall give
10 reasonable notice of its action to all lienholders of the unit whose
11 interest would be affected.

12 (j) In an action by an association to collect assessments
13 or to foreclose a lien for unpaid assessments on a unit under this
14 section, the court may appoint a receiver to collect all sums alleged
15 to be due and owing to a unit owner before commencement or during
16 pendency of the action. The receivership is governed by sections
17 25-1081 to 25-1092. The court may order the receiver to pay any sums
18 held by the receiver to the association during pendency of the action
19 to the extent of the association's common expense assessments based
20 on a periodic budget adopted by the association pursuant to section
21 76-873.

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

24 (i) The unit owner, at the time the action is commenced,
25 owes a sum equal to at least three months of common expense

1 assessments based on the periodic budget last adopted by the
2 association pursuant to section 76-873(a) and the unit owner has
3 failed to accept or comply with a payment plan offered by the
4 association; and

5 (ii) The executive board votes to commence a foreclosure
6 action specifically against that unit.

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

10 (i) Unpaid assessments;

11 (ii) Late charges;

12 (iii) Reasonable attorney's fees and costs and other
13 reasonable collection charges; and

14 (iv) All other unpaid fees, charges, fines, penalties,
15 interest, and late charges.

16 (m) If the only sums due with respect to a unit are fines
17 and related sums imposed against the unit, a foreclosure action may
18 not be commenced against the unit unless the association has a
19 judgment against the unit owner for the fines and related sums and
20 has perfected a judgment lien against the unit.

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

24 Sec. 3. Original sections 52-2001 and 76-874, Reissue
25 Revised Statutes of Nebraska, are repealed.

1 Sec. 4. Since an emergency exists, this act takes effect
2 when passed and approved according to law.