

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 613

Introduced by Pirsch, 4.

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 certain
- 3 lien provisions relating to homeowners' associations and
- 4 condominiums; and to repeal the original sections.
- 5 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 lien on a
4 member's real estate for any assessment levied against real estate ~~or~~
5 ~~finer imposed against its owner~~ from the time the assessment ~~or fine~~
6 becomes due and a notice containing the dollar amount of such lien is
7 recorded in the office where mortgages or deeds of trust are
8 recorded. The homeowners' association's lien may be foreclosed in
9 like manner as a mortgage on real estate but the homeowners'
10 association shall give reasonable notice of its action to all
11 lienholders of real estate whose interest would be affected. Unless
12 the homeowners' association declaration or agreement otherwise
13 provides, fees, charges, late charges, ~~finer,~~ and interest charged
14 are enforceable as assessments under this section. If an assessment
15 is payable in installments, the full amount of the assessment may be
16 a lien from the time the first installment thereof becomes due.

17 (2) A lien under this section is prior to all other liens
18 and encumbrances on real estate except (a) liens and encumbrances
19 recorded before the recordation of the declaration or agreement, (b)
20 a ~~first~~ mortgage or deed of trust on real estate recorded before the
21 ~~date on which the assessment sought to be enforced became delinquent,~~
22 notice required under subsection (1) of this section has been
23 recorded for a delinquent assessment for which enforcement is sought,
24 and (c) liens for real estate taxes and other governmental
25 assessments or charges against real estate. The lien under this

1 section is not subject to the homestead exemption pursuant to section
2 40-101.

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

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

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

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

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

24 (8) For purposes of this section:

25 (a) Declaration means any instruments, however

1 denominated, that create the homeowners' association and any
2 amendments to those instruments;

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

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

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

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

17 (ii) Homeowners' association does not include a co-owners
18 association organized under the Condominium Property Act or unit
19 owners association organized under the Nebraska Condominium Act; and

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

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

25 76-874 (a) The association has a lien on a unit for any

1 assessment levied against that unit ~~or fines imposed against its unit~~
2 ~~owner~~ from the time the assessment ~~or fine~~ becomes due and a notice
3 containing the dollar amount of such lien is recorded in the office
4 where mortgages are recorded. The association's lien may be
5 foreclosed in like manner as a mortgage on real estate but the
6 association shall give reasonable notice of its action to all
7 lienholders of the unit whose interest would be affected. Unless the
8 declaration otherwise provides, fees, charges, late charges, ~~fines,~~
9 and interest charged pursuant to subdivisions (a)(10), (a)(11), and
10 (a)(12) of section 76-860 are enforceable as assessments under this
11 section. If an assessment is payable in installments, the full amount
12 of the assessment may be a lien from the time the first installment
13 thereof becomes due.

14 (b) A lien under this section is prior to all other liens
15 and encumbrances on a unit except (i) liens and encumbrances recorded
16 before the recordation of the declaration, (ii) a ~~first~~ mortgage or
17 deed of trust on the unit recorded before the ~~date on which the~~
18 ~~assessment sought to be enforced became delinquent, notice required~~
19 under subsection (1) of this section has been recorded for a
20 delinquent assessment for which enforcement is sought, and (iii)
21 liens for real estate taxes and other governmental assessments or
22 charges against the unit. The lien under this section is not subject
23 to the homestead exemption pursuant to section 40-101.

24 (c) Unless the declaration otherwise provides, if two or
25 more associations have liens for assessments created at any time on

1 the same real estate, those liens have equal priority.

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

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

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

11 (g) The association upon written request shall furnish to
12 a unit owner a recordable statement setting forth the amount of
13 unpaid assessments against his or her unit. The statement must be
14 furnished within ten business days after receipt of the request and
15 is binding on the association, the executive board, and every unit
16 owner.

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