

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 614

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 section 76-874, Reissue
2 Revised Statutes of Nebraska; to adopt the Homeowners'
3 Association Lien Act; to change and eliminate provisions
4 relating to homeowners' association condominium
5 association liens; to repeal the original section; to
6 outright repeal section 52-2001, Reissue Revised Statutes
7 of Nebraska; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 12 of this act shall be known
2 and may be cited as the Homeowners' Association Lien Act.

3 Sec. 2. The Homeowners' Association Lien Act creates and
4 provides for the attachment and enforceability of liens against real
5 estate in favor of a homeowners' association for homeowners'
6 association assessments as assessed against an owner's property and
7 not timely paid by the owner. Except as provided in the act, no
8 nonconsensual lien arises against real estate by reason of an owner's
9 failure to pay assessments assessed by a homeowners' association.

10 Sec. 3. As used in the Homeowners' Association Lien Act,
11 unless the context otherwise requires:

12 (1) Assessment means dues or assessments that a
13 homeowners' association fixes and assesses against restricted real
14 estate by authority granted to the homeowners' association under a
15 declaration. Assessment does not include any fines or penalties
16 imposed against an owner under a declaration;

17 (2) Declaration means any duly executed and recorded
18 instrument, however denominated, that provides authority to a
19 homeowners' association to fix and assess an assessment against
20 restricted real estate, and any recorded amendment to the instrument;

21 (3) Homeowners' association means a corporation or other
22 legally formed entity that is formed to serve as an association of
23 owners under a declaration, whose members consist of the owners of
24 residential real estate, and which is authorized to make assessments
25 for the operation or maintenance of common elements or the providing

1 of services for the benefit of members of such association.
2 Homeowners' association does not include a unit owners association
3 organized under the Condominium Property Act or the Nebraska
4 Condominium Act;

5 (4) Notice of assessment means a written notice of
6 assessment delivered to an owner of restricted real estate that
7 complies with the substantive content and notice requirements under a
8 declaration;

9 (5) Notice of lien liability means a written instrument
10 dated, signed, and acknowledged by a duly authorized officer of a
11 homeowners' association that contains, at a minimum, the following
12 information: (a) The name and address of the homeowners' association
13 making the assessment and claiming the lien; (b) the legal
14 description of the restricted real estate; (c) the name of the owner
15 of the restricted real estate; (d) the amount of the unpaid
16 assessment for which the notice of lien liability is being filed; and
17 (e) a statement of certification substantially as follows: The
18 officer of the association executing this notice of lien liability
19 hereby certifies that the association has complied with the
20 requirements of subsection (1) of section 4 of this act prior to
21 execution and recording of this notice of lien liability;

22 (6) Owner means the owner of any restricted real estate
23 but does not include a person having an interest in the restricted
24 real estate solely as security for an obligation;

25 (7) Recorded means filed with the register of deeds

1 office of the county in which the restricted real estate being
2 impacted is located; and

3 (8) Restricted real estate means residential real
4 property subject to a declaration.

5 Sec. 4. (1) A homeowners' association shall have a lien
6 on restricted real estate for an assessment upon the occurrence of
7 all of the following: (a) The association has delivered a notice of
8 assessment to the owner of the restricted real estate; (b) the owner
9 has failed to remit payment to the association, in whole or part, of
10 the assessment in the time period required by the declaration for
11 payment of assessments, but in no event less than thirty days after
12 delivery of the notice of assessment; and (c) a notice of lien
13 liability is recorded.

14 (2) The lien of the homeowners' association is not
15 subject to the homestead exemption pursuant to section 40-101.

16 (3) The amount of the lien shall be the amount of the
17 unpaid assessment as reflected in the notice of lien liability.

18 (4) A homeowners' association shall not file a notice of
19 lien liability for any assessment unless the notice of lien liability
20 is recorded within two years following the date of delivery of the
21 notice of assessment to the owner.

22 Sec. 5. A homeowners' association lien is prior to all
23 other liens and encumbrances on restricted real estate except (a)
24 mortgages, deeds of trust, liens, and encumbrances recorded prior to
25 the notice of lien liability and (b) liens for real estate taxes,

1 special assessments, and other governmental assessments or charges.

2 Sec. 6. (1) A lien for unpaid assessments is extinguished
3 unless judicial proceedings to enforce the lien are instituted within
4 two years after the date the notice of lien liability is recorded.

5 (2) If a judicial proceeding to enforce a homeowners'
6 association lien is instituted while a lien is effective under
7 subsection (1) of this section, the lien continues during the
8 pendency of the proceeding.

9 Sec. 7. (1) Any person having an interest in restricted
10 real estate may release the homeowners' association lien which may
11 have attached to it by: (a) Depositing in the office of the clerk of
12 the district court of the county in which the notice of lien
13 liability is recorded a sum of money in cash, certified check, or
14 other bank obligation in amounts sufficient to pay the total of the
15 amounts claimed in the notice of lien liability plus fifteen percent
16 of such total; and (b) recording, as provided in section 8 of this
17 act, a certificate of the clerk of the district court showing that
18 the deposit has been made.

19 (2) The clerk of the district court has an obligation to
20 accept the deposit and issue the certificate.

21 (3) Upon release of the restricted real estate from a
22 lien under this section, the lien claimant's rights are transferred
23 from the restricted real estate to the deposit and the lien claimant
24 may establish his or her claim under the Homeowners' Association Lien
25 Act and, upon determination of the claim, the court shall order the

1 clerk of the district court to pay the sums due.

2 Sec. 8. (1) A person who has deposited money with the
3 clerk of the district court in substitution of collateral as provided
4 in section 7 of this act may record a certificate of the clerk of the
5 district court showing the deposit.

6 (2) The certificate shall be signed by the clerk of the
7 district court and shall state the amount deposited.

8 (3) The certificate shall also state, on the basis of
9 information supplied by the person making the deposit: (a) A
10 description of the restricted real estate subject to the notice of
11 lien liability; (b) the name and address of the person in who's
12 behalf the deposit was made; and (c) the name of the claimants for
13 whom the deposit is made, the amount of their claims, and the record
14 location of their liens.

15 Sec. 9. (1) Liens provided for by the Homeowners'
16 Association Lien Act may be discharged by: (a) Having recorded a
17 signed statement of the homeowners' association that the lien is
18 released; (b) recording the original or a certified copy of a final
19 judgment or decree of a court of competent jurisdiction so providing;
20 or (c) recording, as provided, in section 8 of this act, a
21 certificate of the clerk of the district court showing the deposit of
22 substitute collateral.

23 (2) The homeowners' association of record by partial
24 release may reduce the amount of the lien claimed in the notice of
25 lien liability or limit the notice of lien liability to a portion of

1 the restricted real estate described in the notice of lien liability
2 by causing to be recorded an amendment to the notice of lien
3 liability showing the reduction in amount or limited portion of the
4 restricted real estate against which the lien is claimed.

5 (3) A statement under subdivision (1)(a) of this section
6 or a judgment under subdivision (1)(b) of this section shall refer by
7 record location to the notice of lien liability to which it applies.

8 Sec. 10. (1) Except as otherwise provided in this
9 section, the rules applicable to a civil action apply to a proceeding
10 to foreclose liens under the Homeowners' Association Lien Act.

11 (2) Any person who has recorded a lien or acquires an
12 interest in restricted real estate after the commencement of the
13 foreclosure proceeding may be made a defendant before judgment.

14 (3) The court shall determine the amount due or owing to
15 each claimant and direct foreclosure of homeowners' association liens
16 against the restricted real estate. Foreclosure may be by any method
17 available for foreclosure of mortgages on real estate, or otherwise,
18 as ordered by the court.

19 Sec. 11. If, in bad faith, a homeowners' association: (1)
20 Causes to be recorded a notice of lien liability; (2) overstates the
21 amount for which the homeowners' association is entitled to a lien;
22 or (3) refuses to execute a release of lien, a court may, in addition
23 to any other relief that it may deem appropriate under the
24 circumstances, declare the homeowners' association lien void and
25 award damages to the owner or other person injured thereby, which

1 damages may include the cost of correcting the record and reasonable
2 attorney's fees.

3 Sec. 12. A homeowners' association shall, upon written
4 request, furnish to a person with an interest in restricted real
5 estate a recordable statement certifying the amount of any unpaid
6 assessments against the restricted real estate. The statement shall
7 be furnished within ten business days after receipt of the request
8 and is binding on the homeowners' association. The homeowners'
9 association may charge a reasonable fee for providing such statement
10 not to exceed ten dollars.

11 Sec. 13. Section 76-874, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 ~~76-874 (a) The association has a lien on a unit for any~~
14 ~~assessment levied against that unit or fines imposed against its unit~~
15 ~~owner from the time the assessment or fine becomes due and a notice~~
16 ~~containing the dollar amount of such lien is recorded in the office~~
17 ~~where mortgages are recorded. The association's lien may be~~
18 ~~foreclosed in like manner as a mortgage on real estate but the~~
19 ~~association shall give reasonable notice of its action to all~~
20 ~~lienholders of the unit whose interest would be affected. Unless the~~
21 ~~declaration otherwise provides, fees, charges, late charges, fines,~~
22 ~~and interest charged pursuant to subdivisions (a)(10), (a)(11), and~~
23 ~~(a)(12) of section 76-860 are enforceable as assessments under this~~
24 ~~section. If an assessment is payable in installments, the full amount~~
25 ~~of the assessment may be a lien from the time the first installment~~

1 ~~thereof becomes due.~~

2 ~~(b) A lien under this section is prior to all other liens~~
3 ~~and encumbrances on a unit except (i) liens and encumbrances recorded~~
4 ~~before the recordation of the declaration, (ii) a first mortgage or~~
5 ~~deed of trust on the unit recorded before the date on which the~~
6 ~~assessment sought to be enforced became delinquent, and (iii) liens~~
7 ~~for real estate taxes and other governmental assessments or charges~~
8 ~~against the unit. The lien under this section is not subject to the~~
9 ~~homestead exemption pursuant to section 40-101.~~

10 ~~(c) Unless the declaration otherwise provides, if two or~~
11 ~~more associations have liens for assessments created at any time on~~
12 ~~the same real estate, those liens have equal priority.~~

13 ~~(d) A lien for unpaid assessments is extinguished unless~~
14 ~~proceedings to enforce the lien are instituted within three years~~
15 ~~after the full amount of the assessments becomes due.~~

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

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

22 ~~(g) The association upon written request shall furnish to~~
23 ~~a unit owner a recordable statement setting forth the amount of~~
24 ~~unpaid assessments against his or her unit. The statement must be~~
25 ~~furnished within ten business days after receipt of the request and~~

1 ~~is binding on the association, the executive board, and every unit~~
2 ~~owner.~~

3 (1) Except as provided in this section, no nonconsensual
4 lien shall rise against a unit by reason of a unit owner's failure to
5 pay assessments assessed by an association.

6 (2) For purposes of this section, unless the context
7 otherwise requires:

8 (a) Assessment means dues or assessments that an
9 association fixes and assesses against a unit by authority granted to
10 the association under a declaration. Assessment shall not include any
11 finances or penalties imposed against an owner under a declaration;

12 (b) Declaration means any duly executed and recorded
13 instrument, however denominated, that provides authority to an
14 association to fix and assess an assessment against a unit, and any
15 recorded amendment to the instrument;

16 (c) Notice of assessment means a written notice of
17 assessment delivered to an owner of a unit that complies with the
18 substantive content and notice requirements under a declaration;

19 (d) Notice of lien liability means a written instrument
20 dated, signed, and acknowledged by a duly authorized officer of an
21 association that contains, at a minimum, the following information:

22 (i) The name and address of the association making the assessment and
23 claiming the lien; (ii) the legal description of the unit; (iii) the
24 name of the owner of the unit; (iv) the amount of the unpaid
25 assessment for which the notice of lien liability is being filed; and

1 (v) a statement of certification substantially as follows: The
2 officer of the association executing this notice of lien liability
3 hereby certifies that the association has complied with the
4 requirements of subdivision (3)(a) of this section prior to execution
5 and recording of this notice of lien liability;

6 (e) Owner has the same meaning as unit owner in
7 subdivision (25) of section 76-827; and

8 (f) Recorded means filed with the register of deeds
9 office of the county in which the unit being impacted is located.

10 (3)(a) An association shall have a lien on a unit for an
11 assessment upon the occurrence of all of the following: (i) The
12 association has delivered a notice of assessment to the owner of the
13 unit; (ii) the owner has failed to remit payment to the association,
14 in whole or part, of the assessment in the time period required by
15 the declaration for payment of assessments, but in no event less than
16 thirty days after delivery of the notice of assessment; and (iii) a
17 notice of lien liability is recorded.

18 (b) The lien of the association is not subject to the
19 homestead exemption pursuant to section 40-101.

20 (c) The amount of the lien shall be the amount of the
21 unpaid assessment as reflected in the notice of lien liability.

22 (d) An association shall not file a notice of lien
23 liability for any assessment unless the notice of lien liability is
24 recorded within two years following the date of delivery of the
25 notice of assessment to the owner.

1 (4) An association lien is prior to all other liens and
2 encumbrances on a unit except (a) mortgages, deeds of trust, liens,
3 and encumbrances recorded prior to the notice of lien liability and
4 (b) liens for real estate taxes, special assessments, and other
5 governmental assessments or charges.

6 (5)(a) A lien for unpaid assessments is extinguished
7 unless judicial proceedings to enforce the lien are instituted within
8 two years after the date the notice of lien liability is recorded.

9 (b) If a judicial proceeding to enforce an association
10 lien is instituted while a lien is effective under subdivision (a) of
11 this subsection, the lien continues during the pendency of the
12 proceeding.

13 (6)(a) Any person having an interest in a unit may
14 release the association lien which may have attached to it by: (i)
15 Depositing in the office of the clerk of the district court of the
16 county in which the notice of lien liability is recorded a sum of
17 money in cash, certified check, or other bank obligation in amounts
18 sufficient to pay the total of the amounts claimed in the notice of
19 lien liability plus fifteen percent of such total; and (ii)
20 recording, as provided in subsection (7) of this section, a
21 certificate of the clerk of the district court showing that the
22 deposit has been made.

23 (b) The clerk of the district court has an obligation to
24 accept the deposit and issue the certificate.

25 (c) Upon release of the unit from a lien under this

1 subsection, the lien claimant's rights are transferred from the
2 restricted unit to the deposit and the lien claimant may establish
3 his or her claim under this section and, upon determination of the
4 claim, the court shall order the clerk of the district court to pay
5 the sums due.

6 (7)(a) A person who has deposited money with the clerk of
7 the district court in substitution of collateral as provided in
8 subsection (6) of this section may record a certificate of the clerk
9 of the district court showing the deposit.

10 (b) The certificate shall be signed by the clerk of the
11 district court and shall state the amount deposited.

12 (c) The certificate shall also state, on the basis of
13 information supplied by the person making the deposit: (i) A
14 description of the unit subject to the notice of lien liability; (ii)
15 the name and address of the person in who's behalf the deposit was
16 made; and (iii) the name of the claimants for whom the deposit is
17 made, the amount of their claims, and the record location of their
18 liens.

19 (8)(a) Liens provided for under this section may be
20 discharged by: (i) Having recorded a signed statement of the
21 association that the lien is released; (ii) recording the original or
22 a certified copy of a final judgment or decree of a court of
23 competent jurisdiction so providing; or (iii) recording, as provided
24 in subsection (7) of this section, a certificate of the clerk of the
25 district court showing the deposit of substitute collateral.

1 (b) The association of record by partial release may
2 reduce the amount of the lien claimed in the notice of lien liability
3 or limit the notice of lien liability to a portion of the unit
4 described in the notice of lien liability by causing to be recorded
5 an amendment to the notice of lien liability showing the reduction in
6 amount or limited portion of the unit against which the lien is
7 claimed.

8 (c) A statement under subdivision (a)(i) of this
9 subsection or a judgment under subdivision (a)(ii) of this subsection
10 shall refer by record location to the notice of lien liability to
11 which it applies.

12 (9)(a) Except as otherwise provided in this subsection,
13 the rules applicable to a civil action apply to a proceeding to
14 foreclose liens under this section.

15 (b) Any person who has recorded a lien or acquires an
16 interest in a unit after the commencement of the foreclosure
17 proceeding may be made a defendant before judgment.

18 (c) The court shall determine the amount due or owing to
19 each claimant and direct foreclosure of association liens against the
20 unit. Foreclosure may be by any method available for foreclosure of
21 mortgages on real estate, or otherwise, as ordered by the court.

22 (10) If, in bad faith, an association: (a) Causes to be
23 recorded a notice of lien liability; (b) overstates the amount for
24 which the association is entitled to a lien; or (c) refuses to
25 execute a release of lien, a court may, in addition to any other

1 relief that it may deem appropriate under the circumstances, declare
2 the association lien void and award damages to the owner or other
3 person injured thereby, which damages may include the cost of
4 correcting the record and reasonable attorney's fees.

5 (11) An association shall, upon written request, furnish
6 to a person with an interest in a unit a recordable statement
7 certifying the amount of any unpaid assessments against the unit. The
8 statement shall be furnished within ten business days after receipt
9 of the request and is binding on the association. The association may
10 charge a reasonable fee for providing such statement not to exceed
11 ten dollars.

12 Sec. 14. Original section 76-874, Reissue Revised
13 Statutes of Nebraska, is repealed.

14 Sec. 15. The following section is outright repealed:
15 Section 52-2001, Reissue Revised Statutes of Nebraska.

16 Sec. 16. Since an emergency exists, this act takes effect
17 when passed and approved according to law.