

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 442**

Introduced by Schumacher, 22.

Read first time January 22, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to real property; to amend sections 52-2001,  
2 76-825, 76-842, 76-856, and 76-874, Reissue Revised  
3 Statutes of Nebraska; to change provisions relating to  
4 homeowners' associations and the Nebraska Condominium  
5 Act; and to repeal the original sections.  
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 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) The homeowners' association declaration, agreements,  
25 bylaws, rules, or regulations may not provide that a lien on a

1 member's real estate for any assessment levied against real estate  
2 relates back to the date of filing of the declaration or that such  
3 lien takes priority over any mortgage or deed of trust on real estate  
4 recorded subsequent to the filing of the declaration and prior to the  
5 recording by the association of the notice required under subsection  
6 (1) of this section.

7 (9) In the event of a conflict between the provisions of  
8 the declaration and the bylaws, rules, or regulations or any other  
9 agreement of the homeowners' association, the declaration prevails  
10 except to the extent the declaration is inconsistent with this  
11 section.

12 (10)(a) The homeowners' association may require a person  
13 who purchases restricted real estate on or after the effective date  
14 of this act to make payments into an escrow account established by  
15 the homeowners' association until the balance in the escrow account  
16 for that restricted real estate is in an amount not to exceed six  
17 months of assessments.

18 (b) All payments made under this subsection and received  
19 on or after the effective date of this act shall be held in an  
20 interest-bearing checking account in a bank, savings bank, building  
21 and loan association, or savings and loan association in this state  
22 under terms that place these payments beyond the claim of creditors  
23 of the homeowners' association. Upon request by an owner of  
24 restricted real estate, the homeowners' association shall disclose  
25 the name of the financial institution and the account number where

1 the payments made under this subsection are being held. The  
2 homeowners' association may maintain a single escrow account to hold  
3 payments made under this subsection from all of the owners of  
4 restricted real estate. If a single escrow account is maintained, the  
5 homeowners' association shall maintain separate accounting records  
6 for each owner of restricted real estate.

7 (c) The payments made under this subsection may be used  
8 by the homeowners' association to satisfy any assessments  
9 attributable to an owner of restricted real estate for which  
10 assessment payments are delinquent. To the extent that the escrow  
11 deposit or any part thereof is applied to offset any unpaid  
12 assessments of an owner of restricted real estate, the homeowners'  
13 association may require such owner to replenish the escrow deposit.

14 (d) The homeowners' association shall return the payments  
15 made under this subsection, together with any interest earned on such  
16 payments, to the owner of restricted real estate when the owner sells  
17 the restricted real estate and has fully paid all assessments.

18 (e) Nothing in this subsection shall prohibit the  
19 homeowners' association from establishing escrow deposit requirements  
20 in excess of the amounts authorized herein pursuant to provisions in  
21 the homeowners' association's declaration.

22 ~~(8)-(11)~~ For purposes of this section:

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

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

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

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

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

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

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

21 Sec. 2. Section 76-825, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 76-825 Sections 76-825 to 76-894 and section 6 of this  
24 act shall be known and may be cited as the Nebraska Condominium Act.

25 Sec. 3. Section 76-842, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2                   76-842 (a) The declaration for a condominium must  
3 contain:

4                   (1) the name of the condominium, which must include the  
5 word condominium or be followed by the words a condominium, and the  
6 name of the association;

7                   (2) the name of every county in which any part of the  
8 condominium is situated;

9                   (3) a legally sufficient description of the real estate  
10 included in the condominium;

11                   (4) a statement of the anticipated number of units which  
12 the declarant reserves the right to create, subject to an amendment  
13 of the declaration to add more units pursuant to sections 76-825 to  
14 76-894;

15                   (5) a description of the boundaries of each unit created  
16 by the declaration, including the unit's identifying number;

17                   (6) a description of any limited common elements, other  
18 than those specified in subdivision (b)(8) of section 76-846;

19                   (7) a general description of any development rights and  
20 other special declarant rights defined in subsection (23) of section  
21 76-827 reserved by the declarant;

22                   (8) an allocation to each unit of the allocated interests  
23 in the manner described in section 76-844;

24                   (9) any restrictions on use, occupancy, and alienation of  
25 the units; and

1                   (10) all matters required by sections 76-843 to 76-846,  
2   76-852, and 76-853, and subsection (d) of section 76-861.

3                   (b) ~~The~~ Except as otherwise provided in section 76-856,  
4 the declaration may contain any other matters the declarant deems  
5 appropriate.

6                   Sec. 4. Section 76-856, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8                   76-856 The declaration may require that all or a  
9 specified number or percentage of the mortgagees or beneficiaries of  
10 deeds of trust encumbering the units approve specified actions of the  
11 unit owners or the association as a condition to the effectiveness of  
12 those actions, but no requirement for approval may operate to (i)  
13 deny or delegate control over the general administrative affairs of  
14 the association by the unit owners or the executive board, or (ii)  
15 prevent the association or the executive board from commencing,  
16 intervening in, or settling any litigation or proceeding, or  
17 receiving and distributing any insurance proceeds except pursuant to  
18 section 76-871. The declaration may not provide that a lien on a  
19 member's unit for any assessment levied against unit relates back to  
20 the date of filing of the declaration or that such lien takes  
21 priority over any mortgage or deed of trust on the unit recorded  
22 subsequent to the filing of the declaration and prior to the  
23 recording by the association of the notice required under subsection  
24 (a) of section 76-874.

25                   Sec. 5. Section 76-874, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           76-874 (a) The association has a lien on a unit for any  
3 assessment levied against that unit ~~or fines imposed against its unit~~  
4 ~~owner~~ from the time the assessment ~~or fine~~ becomes due and a notice  
5 containing the dollar amount of such lien is recorded in the office  
6 where mortgages are recorded. The association's lien may be  
7 foreclosed in like manner as a mortgage on real estate but the  
8 association shall give reasonable notice of its action to all  
9 lienholders of the unit whose interest would be affected. Unless the  
10 declaration otherwise provides, fees, charges, late charges, ~~finer~~,  
11 and interest charged pursuant to subdivisions (a)(10), (a)(11), and  
12 (a)(12) of section 76-860 are enforceable as assessments under this  
13 section. If an assessment is payable in installments, the full amount  
14 of the assessment may be a lien from the time the first installment  
15 thereof becomes due.

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

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

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

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

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

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

19          Sec. 6. (1) The association may require a person who  
20 purchases a unit on or after the effective date of this act to make  
21 payments into an escrow account established by the association until  
22 the balance in the escrow account for that unit is in an amount not  
23 to exceed six months of assessments.

24          (2) All payments made under this section and received on  
25 or after the effective date of this act shall be held in an interest-

1 bearing checking account in a bank, savings bank, building and loan  
2 association, or savings and loan association in this state under  
3 terms that place these payments beyond the claim of creditors of the  
4 association. Upon request by a unit owner, an association shall  
5 disclose the name of the financial institution and the account number  
6 where the payments made under this section are being held. An  
7 association may maintain a single escrow account to hold payments  
8 made under this section from all of the unit owners. If a single  
9 escrow account is maintained, the association shall maintain separate  
10 accounting records for each unit owner.

11 (3) The payments made under this section may be used by  
12 the association to satisfy any assessments attributable to a unit  
13 owner for which assessment payments are delinquent. To the extent  
14 that the escrow deposit or any part thereof is applied to offset any  
15 unpaid assessments of a unit owner, the association may require such  
16 owner to replenish the escrow deposit.

17 (4) The association shall return the payments made under  
18 this section, together with any interest earned on such payments, to  
19 the unit owner when the owner sells the unit and has fully paid all  
20 assessments.

21 (5) Nothing in this section shall prohibit the  
22 association from establishing escrow deposit requirements in excess  
23 of the amounts authorized herein pursuant to provisions in the  
24 association's declaration.

25 Sec. 7. Original sections 52-2001, 76-825, 76-842,

1 76-856, and 76-874, Reissue Revised Statutes of Nebraska, are  
2 repealed.