

## LEGISLATIVE BILL 442

Approved by the Governor May 7, 2013

Introduced by Schumacher, 22.

FOR AN ACT relating to real property; to amend sections 52-2001, 76-825, 76-842, 76-856, and 76-874, Reissue Revised Statutes of Nebraska; to change provisions relating to homeowners' associations and the Nebraska Condominium Act; and to repeal the original sections.

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

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

52-2001 (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, notice required under subsection (1) of this section has been recorded for a delinquent assessment for which enforcement is sought, 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) The homeowners' association declaration, agreements, bylaws, rules, or regulations may not provide that a lien on a member's real estate for any assessment levied against real estate relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on real estate recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice required under subsection (1) of this section.

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

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

(b) All payments made under this subsection and received on or after the effective date of this act shall be held in an interest-bearing checking account in a bank, savings bank, building and loan association,

or savings and loan association in this state under terms that place these payments beyond the claim of creditors of the homeowners' association. Upon request by an owner of restricted real estate, the homeowners' association shall disclose the name of the financial institution and the account number where the payments made under this subsection are being held. The homeowners' association may maintain a single escrow account to hold payments made under this subsection from all of the owners of restricted real estate. If a single escrow account is maintained, the homeowners' association shall maintain separate accounting records for each owner of restricted real estate.

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

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

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

(8) (11) 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 co-owners association organized under the Condominium Property Act or 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. Section 76-825, Reissue Revised Statutes of Nebraska, is amended to read:

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

Sec. 3. Section 76-842, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

Sec. 5. Section 76-874, Reissue Revised Statutes of Nebraska, is amended to read:

76-874 (a) The association has a lien on a unit for any assessment levied against that unit ~~or fines imposed against its unit 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 are recorded. The association's lien may be foreclosed in like manner as a mortgage on real estate but the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected. Unless the declaration otherwise provides, fees, charges, late charges, ~~fines~~, and interest charged pursuant to subdivisions (a)(10), (a)(11), and (a)(12) of section 76-860 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.

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

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

(d) 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.

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

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

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

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

(b) All payments made under this section and received on or after the effective date of this act shall be held in an interest-bearing checking account in a bank, savings bank, building and loan association, or savings and loan association in this state under terms that place these payments beyond the claim of creditors of the association. Upon request by a unit owner, an association shall disclose the name of the financial institution and the account number where the payments made under this section are being held.

An association may maintain a single escrow account to hold payments made under this section from all of the unit owners. If a single escrow account is maintained, the association shall maintain separate accounting records for each unit owner.

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

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

(e) Nothing in this section shall prohibit the association from establishing escrow deposit requirements in excess of the amounts authorized in this section pursuant to provisions in the association's declaration.

Sec. 7. Original sections 52-2001, 76-825, 76-842, 76-856, and 76-874, Reissue Revised Statutes of Nebraska, are repealed.