

Senate Bill 811

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions relating to enforcement of liens for association assessments in planned communities and condominiums.

A BILL FOR AN ACT

1 Relating to communities governed by declaration; amending ORS 94.709 and 100.450.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1.** ORS 94.709 is amended to read:

4 94.709. (1) Whenever a homeowners association levies any assessment against a lot, the associ-
5 ation [*shall have*] **has** a lien upon the individual lot for any unpaid assessments. The lien:

6 (a) Includes interest, late charges, attorney fees, costs or other amounts imposed under the
7 declaration or bylaws or other recorded governing document. [*The lien*]

8 (b) Is prior to a homestead exemption and all other liens or encumbrances upon the lot except:

9 [(a)] (A) Tax and assessment liens; and

10 [(b)] (B) A first mortgage or trust deed of record.

11 (2) Recording of the declaration constitutes record notice and perfection of the lien for assess-
12 ments. [*No further*] Recording of a claim of lien for assessments or notice of a claim of lien under
13 this section is **not** required to perfect the association's lien.

14 (3) **Before the association may proceed with an action to foreclose a lien under this sec-**
15 **tion:**

16 (a) The association shall [*record*] **present for recordation** a notice of claim of lien for assess-
17 ments [*under this section*], **verified by the oath of an individual having knowledge of the facts,**
18 in the deed records of the county in which a lot is located [*before any suit to foreclose may proceed*
19 *under subsection (4) of this section.*]; **and**

20 (b) **The county clerk shall record and index the notice as other liens are recorded and**
21 **indexed.**

22 (4) The notice shall contain:

23 (a) A true statement of the amount due for the unpaid assessments after deducting all just
24 credits and offsets;

25 (b) The name of the owner of the lot, or reputed owner, if known;

26 (c) The name of the association;

27 (d) The description of the lot as provided in ORS 93.600; and

28 (e) A statement that if the owner of the lot thereafter fails to pay any assessments when due,
29 as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of
30 assessments automatically [*continue*] **continues** to accumulate with interest without the necessity
31

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 of further recording.

2 [(3) *The notice shall be verified by the oath of some person having knowledge of the facts and shall*
 3 *be recorded by the county recording officer. The record shall be indexed as other liens are required*
 4 *by law to be indexed.*]

5 [(4)(a)] (5) [*The proceedings*] **A proceeding** to foreclose liens created by this section [*shall*] **must**
 6 conform as nearly as possible to [*the proceedings*] **a proceeding** to foreclose liens created by ORS
 7 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not
 8 to exceed six years from the date the assessment is due. For the purpose of determining the date
 9 the assessment is due in those cases when subsequent unpaid assessments have accumulated under
 10 a notice recorded as provided in subsection [(2)] (3) of this section, the assessment and claim re-
 11 garding each unpaid assessment [*shall be*] **are** deemed to have been levied at the time the unpaid
 12 assessment became due.

13 [(b)] (6) The [*lien may be enforced by the*] board of directors acting on behalf of the association
 14 **may enforce a lien under this section by bringing an action to foreclose the lien, by bringing**
 15 **an action to recover a money judgment for unpaid assessments or by accepting a deed in lieu**
 16 **of foreclosure in satisfaction of the lien.**

17 [(c)] (7) An action to recover a money judgment for unpaid assessments:

18 (a) May be maintained without foreclosing or waiving the lien securing the claim for unpaid
 19 assessments.

20 (b) **Operates to satisfy the lien, or the portion thereof, for which recovery is made.**

21 [(5)] (8) Unless the declaration or bylaws provide otherwise, fees, late charges, fines and interest
 22 imposed pursuant to ORS 94.630 (1)(L), (n) and (o) are enforceable as assessments under this section.

23 [(6) *This section does not prohibit an association from pursuing an action to recover sums for*
 24 *which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satis-*
 25 *faction of the lien.*]

26 [(7) *An action to recover a money judgment for unpaid assessments may be maintained without*
 27 *foreclosing or waiving the lien for unpaid assessments. However, Recovery on the action operates to*
 28 *satisfy the lien, or the portion thereof, for which recovery is made.*]

29 **SECTION 2.** ORS 100.450 is amended to read:

30 100.450. (1) Whenever an association of unit owners levies any assessment against a unit, the
 31 association of unit owners [*shall have*] **has** a lien upon the individual unit and the undivided interest
 32 in the common elements appertaining to [*such*] **the** unit for any unpaid assessments. The lien:

33 (a) Includes interest, late charges, attorney fees, costs or other amounts levied under the dec-
 34 laration or bylaws. [*The lien*]

35 (b) Is prior to a homestead exemption and all other liens or encumbrances upon the unit except:

36 [(a)] (A) Tax and assessment liens; and

37 [(b)] (B) **Subject to subsections (2) and (12) of this section,** a first mortgage or trust deed
 38 of record. [*unless:*]

39 [(A) *The condominium consists of fewer than seven units, all of which are to be used for nonresi-*
 40 *dential purposes;*]

41 [(B) *The declaration provides that the lien of any mortgage or trust deed of record affecting the*
 42 *property shall be subordinate to the lien of the association provided under subsection (1) of this section;*
 43 *and*]

44 [(C) *The holder of any mortgage or trust deed of record affecting the property when the declaration*
 45 *is recorded executes a separate subordination of the holder's interest to the declaration which is at-*

1 *tached as an exhibit and which states that the holder understands that the declaration subordinates the*
 2 *holder's lien to the assessment lien of the association provided under subsection (1) of this section.]*

3 **(2)(a) Except as provided in paragraph (b) of this subsection, the lien of the association**
 4 **under this section is prior to a first mortgage or trust deed of record with respect to as-**
 5 **essments for common expenses, but not for assessments for capital improvements, based**
 6 **on the periodic budget adopted by the association that:**

7 **(A) Would have become due, in the absence of acceleration, during the six months im-**
 8 **mediately preceding institution of an action to foreclose the lien; or**

9 **(B) Would have become due during the six months immediately preceding the date of:**

10 **(i) A sheriff's sale in an action for judicial foreclosure by the association or a mortgagee;**

11 **(ii) A trustee's sale in a nonjudicial foreclosure by a mortgagee; or**

12 **(iii) Recording of the declaration of forfeiture in a proceeding by the vendor under a real**
 13 **estate contract.**

14 **(b) Paragraph (a) of this subsection does not apply if:**

15 **(A) The condominium consists of fewer than seven units, all of which are to be used for**
 16 **nonresidential purposes;**

17 **(B) The declaration provides that the lien of a mortgage or trust deed of record affecting**
 18 **the property is subordinate to the lien of the association under this section; and**

19 **(C) The holder of a mortgage or trust deed of record affecting the property when the**
 20 **declaration is recorded executes a separate subordination of the holder's interest to the**
 21 **declaration that is attached as an exhibit and that states that the holder understands that**
 22 **the declaration subordinates the holder's lien to the assessment lien of the association under**
 23 **this section.**

24 *[(2)]* **(3) Recording of the declaration constitutes record notice and perfection of the lien for**
 25 **assessments. [No further] Recording of a claim of lien for assessments or notice of a claim of lien**
 26 **under this section is not required to perfect the association's lien.**

27 **(4) Before the association may proceed with an action to foreclose a lien under this sec-**
 28 **tion:**

29 **(a) The association shall [record] present for recordation a notice of claim of lien for assess-**
 30 **ments [under this section], verified by the oath of an individual having knowledge of the facts,**
 31 **in the deed records of the county in which the unit is located [before any suit to foreclose may pro-**
 32 **ceed under subsection (4) of this section.]; and**

33 **(b) The county clerk shall record and index the notice as other liens are recorded and**
 34 **indexed.**

35 **(5) The notice shall contain:**

36 **(a) A true statement of the amount due for the unpaid assessments after deducting all just**
 37 **credits and offsets;**

38 **(b) The name of the owner of the unit, or reputed owner, if known;**

39 **(c) The name of the condominium and the designation of the unit as stated in the declaration**
 40 **or applicable supplemental declaration; and**

41 **(d) A statement that if the owner of the unit thereafter fails to pay any assessments when due,**
 42 **as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of**
 43 **assessments automatically [continue] continues to accumulate with interest without the necessity**
 44 **of further recording.**

45 *[(3) The notice shall be verified by the oath of some person having knowledge of the facts and shall*

1 *be recorded by the county recording officer. The record shall be indexed as other liens are required*
 2 *by law to be indexed.]*

3 [(4)(a)] **(6)** [*The proceedings*] **A proceeding** to foreclose liens created by this section [*shall*] **must**
 4 conform as nearly as possible to [*the proceedings*] **a proceeding** to foreclose liens created by ORS
 5 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not
 6 to exceed six years from the date the assessment is due. For the purpose of determining the date
 7 the assessment is due in those cases when subsequent unpaid assessments have accumulated under
 8 a notice recorded as provided in subsection [(2)] **(4)** of this section, the assessment and claim re-
 9 garding each unpaid assessment [*shall be*] **is** deemed to have been levied at the time the unpaid as-
 10 sessment became due.

11 [(b)] **(7)** The [*lien may be enforced by the*] board of directors acting on behalf of the association
 12 of unit owners **may enforce a lien under this section by bringing an action to foreclose the lien**
 13 **or an action to recover a money judgment for unpaid assessments.**

14 [(c)] **(8)** An action to recover a money judgment for unpaid assessments:

15 **(a)** May be maintained without foreclosing or waiving the lien securing the claim for unpaid
 16 assessments.

17 **(b) Operates to satisfy the lien, or the portion thereof, for which recovery is made.**

18 [(d)] **(9)** An action to foreclose a lien under this section or recover a money judgment for unpaid
 19 assessments may not be maintained unless the Condominium Information Report and the Annual
 20 Report described in ORS 100.250 are designated current as provided in ORS 100.255.

21 [(5)] **(10)** Unless the declaration or bylaws [*provides*] **provide** otherwise, fees, late charges, fines
 22 and interest imposed pursuant to ORS 100.405 (4)(j), (k), (L) and (m) are enforceable as assessments
 23 under this section.

24 [(6)] **(11)** With respect to condominium units also constituting timeshare property as defined by
 25 ORS 94.803, liens created by this section shall be assessed to the timeshare owners in the timeshare
 26 property according to the method for determining each owner's liability for common expenses under
 27 the timeshare instrument and shall be enforced individually against each timeshare owner in the
 28 condominium unit.

29 [(7)] **(12)** Notwithstanding the priority established for a lien for unpaid assessments and interest
 30 under subsection (1) of this section, the lien [*shall also be*] **is also** prior to the lien of a first mort-
 31 gage or trust deed of record for the unit and the undivided interest in the common elements, if:

32 **(a)** The association of unit owners for the condominium in which the unit is located has given
 33 the lender under the mortgage or trust deed 90 days prior written notice that the owner of the unit
 34 is in default in payment of an assessment. The notice [*shall*] **must** contain:

35 **(A)** Name of borrower;

36 **(B)** Recording date of trust deed or mortgage;

37 **(C)** Recording information;

38 **(D)** Name of condominium, unit owner and unit designation stated in the declaration or appli-
 39 cable supplemental declaration; and

40 **(E)** Amount of unpaid assessment.

41 **(b)** The notice under paragraph (a) of this subsection [*shall set*] **sets** forth the following in
 42 10-point type:

45 **NOTICE:** The lien of the association may become prior to that of the lender pursuant to ORS

1 100.450.

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4 (c) The lender has not initiated judicial action to foreclose the mortgage or requested issuance
5 of a trustee's notice of sale under the trust deed or accepted a deed in lieu of foreclosure in the
6 circumstances described in ORS 100.465 prior to the expiration of 90 days following the notice by
7 the [unit owners'] association.

8 (d) The [unit owners'] association has provided the lender, upon request, with copies of any liens
9 filed on the unit, a statement of the assessments and interest remaining unpaid on the unit and other
10 documents which the lender may reasonably request.

11 (e) The borrower is in default under the terms of the mortgage or trust deed as to principal and
12 interest.

13 (f) A copy of the notice described in paragraph (a) of this subsection, together with an affidavit
14 of notice by [a person] **an individual** having knowledge of the facts **and reciting the date and the**
15 **individual to whom the notice was given**, has been recorded in the manner prescribed in sub-
16 section [(3)] (4) of this section. [*The affidavit shall recite the date and the person to whom the notice*
17 *was given.*]

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