

Enrolled House Bill 3056

Sponsored by Representatives VIAL, HELM

CHAPTER

AN ACT

Relating to liens; creating new provisions; and amending ORS 94.709 and 100.450.

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

SECTION 1. ORS 94.709 is amended to read:

94.709. (1) Whenever a homeowners association levies any assessment against a lot, the association shall have a lien upon the individual lot for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts imposed under the declaration or bylaws or other recorded governing document. The lien is prior to a homestead exemption and all other liens or encumbrances upon the lot except:

- (a) Tax and assessment liens; and
- (b) A first mortgage or trust deed of record.

(2) Recording of the declaration constitutes record notice and perfection of the lien for assessments. No further recording of a claim of lien for assessments or notice of a claim of lien under this section is required to perfect the association's lien. The association shall record a notice of claim of lien for assessments under this section in the deed records of the county in which a lot is located before any suit to foreclose may proceed under subsection (4) of this section. The notice shall contain:

- (a) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;
- (b) The name of the owner of the lot, or reputed owner, if known;
- (c) The name of the association;
- (d) The description of the lot as provided in ORS 93.600; and
- (e) A statement that if the owner of the lot thereafter fails to pay any assessments when due, as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of assessments automatically continue to accumulate with interest without the necessity of further recording.

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

(4)(a) The proceedings to foreclose liens created by this section shall conform as nearly as possible to the proceedings to foreclose liens created by ORS 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the assessment is due. For the purpose of determining the date the assessment is due in those cases when subsequent unpaid assessments have accumulated under a notice recorded as provided in

subsection (2) of this section, the assessment and claim regarding each unpaid assessment shall be deemed to have been levied at the time the unpaid assessment became due.

(b) The lien may be enforced by the board of directors acting on behalf of the association.

[(c) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments.]

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

(6) This section does not prohibit an association from pursuing an action to recover sums for which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of the lien.

(7) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien for unpaid assessments. **A judgment entered on the action does not extinguish the lien. Payment of the judgment operates to satisfy the lien, or a portion of the lien, to the extent of the payment received.** *[However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made.]*

SECTION 2. ORS 100.450 is amended to read:

100.450. (1) Whenever an association of unit owners levies any assessment against a unit, the association of unit owners shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for any unpaid assessments. The lien includes interest, late charges, attorney fees, costs or other amounts levied under the declaration or bylaws. The lien is prior to a homestead exemption and all other liens or encumbrances upon the unit except:

(a) Tax and assessment liens; and

(b) A first mortgage or trust deed of record unless:

(A) The condominium consists of fewer than seven units, all of which are to be used for non-residential purposes;

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

(C) The holder of any mortgage or trust deed of record affecting the property when the declaration is recorded executes a separate subordination of the holder's interest to the declaration which is attached as an exhibit and which states that the holder understands that the declaration subordinates the holder's lien to the assessment lien of the association provided under subsection (1) of this section.

(2) Recording of the declaration constitutes record notice and perfection of the lien for assessments. No further recording of a claim of lien for assessments or notice of a claim of lien under this section is required to perfect the association's lien. The association shall record a notice of claim of lien for assessments under this section in the deed records of the county in which the unit is located before any suit to foreclose may proceed under subsection (4) of this section. The notice shall contain:

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

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

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

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

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

(4)(a) The proceedings to foreclose liens created by this section shall conform as nearly as possible to the proceedings to foreclose liens created by ORS 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not to exceed six years from the date the assessment is due. For the purpose of determining the date the assessment is due in those cases when subsequent unpaid assessments have accumulated under a notice recorded as provided in subsection (2) of this section, the assessment and claim regarding each unpaid assessment shall be deemed to have been levied at the time the unpaid assessment became due.

(b) The lien may be enforced by the board of directors acting on behalf of the association of unit owners.

(c) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments. **A judgment entered on the action does not extinguish the lien. Payment on the judgment operates to satisfy the lien, or a portion of the lien, to the extent of the payment received.**

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

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

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

(7) Notwithstanding the priority established for a lien for unpaid assessments and interest under subsection (1) of this section, the lien shall also be prior to the lien of a first mortgage or trust deed of record for the unit and the undivided interest in the common elements, if:

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

- (A) Name of borrower;
- (B) Recording date of trust deed or mortgage;
- (C) Recording information;
- (D) Name of condominium, unit owner and unit designation stated in the declaration or applicable supplemental declaration; and
- (E) Amount of unpaid assessment.

(b) The notice under paragraph (a) of this subsection shall set forth the following in 10-point type:

NOTICE: The lien of the association may become prior to that of the lender pursuant to ORS 100.450.

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

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

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

(f) A copy of the notice described in paragraph (a) of this subsection, together with an affidavit of notice by a person having knowledge of the facts, has been recorded in the manner prescribed in subsection (3) of this section. The affidavit shall recite the date and the person to whom the notice was given.

SECTION 3. The amendments to ORS 94.709 and 100.450 by sections 1 and 2 of this 2017 Act apply to assessments levied before, on or after the effective date of this 2017 Act.

Passed by House April 18, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 10, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State