

[First Reprint]
ASSEMBLY, No. 5002
STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

Sponsored by:

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SYNOPSIS

Permits certain planned real estate developments to file certain liens; concerns limited priority of certain liens.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Community Development Committee on March 7, 2019, with amendments.

AN ACT concerning liens filed for unpaid assessments in ¹certain¹ common interest communities, amending P.L.1969, c.257 ^{1,1} and supplementing P.L.1993, c.30 ¹[(C.45:22A-43)] (C.45:22A-43 et seq.)¹.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 21 of P.L.1969, c.257 (C.46:8B-21) is amended to read as follows:

21. a. The association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon and ¹[, if authorized by the master deed or bylaws,] ¹any¹ late fees, fines ¹, expenses,¹ and reasonable attorney's fees ¹imposed or incurred in the collection of the unpaid assessment¹; provided however that an association shall not record a lien in which the unpaid assessment consists solely of late fees. Such lien shall be effective from and after the time of recording in the public records of the county in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recordable satisfaction

of lien. Except as set forth in subsection b. of this section, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject and to any other lien recorded prior to the time of recording of the claim of lien.

b. A lien recorded pursuant to subsection a. of this section shall have a limited priority over prior recorded mortgages and other liens, except for municipal liens or liens for federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

(1) To a lien which is the result of customary condominium assessments as defined herein, the amount of which shall not exceed the aggregate customary condominium assessment against the unit owner for the ~~【six-month】~~ ~~【nine-month】~~ six-month¹ period prior to the recording of the lien. ¹This limited priority shall be cumulatively renewed on an annual basis as necessary.¹

(2) With respect to a particular mortgage, to a lien recorded prior to: (a) the receipt by the association of a summons and complaint in an action to foreclose a mortgage on that unit; or (b) the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit.

(3) In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority shall not be greater than the assessment for the ~~【six-month】~~ ~~【nine-month】~~ six-month¹ period specified in paragraph (1) of this subsection. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority given herein.

(4) ¹~~【The】~~ Except for the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection, the¹ priority granted to a lien pursuant to this subsection shall expire on the first day of the 60th month following the date of recording of an association's lien.

(5) A lien of an association shall not be granted priority over a prior recorded mortgage or mortgages under this subsection if a prior recorded lien of the association for unpaid assessments ¹, not including the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection,¹ has obtained priority over the same recorded mortgage or mortgages as provided in this subsection, for a period of 60 months from the date of recording of the lien granted priority.

(6) When recording a lien which may be granted priority pursuant to this act, an association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the association lien. An association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

For the purpose of this section, a "customary condominium assessment" shall mean an assessment for periodic payments, due the association for regular and usual operating and common area

expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due must be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the condominium from purchase by the Federal National Mortgage Association as a first mortgage.

c. Upon any voluntary conveyance of a unit, the grantor and grantee of such unit shall be jointly and severally liable for all unpaid assessments pertaining to such unit duly made by the association or accrued up to the date of such conveyance without prejudice to the right of the grantee to recover from the grantor any amounts paid by the grantee, but the grantee shall be exclusively liable for those accruing while he is the unit owner.

d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to such unit and the association shall provide such certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to such unit. Any person other than the unit owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate.

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to such unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner which became due prior to acquisition of title as a result of the foreclosure. Any remaining unpaid share of common expenses and other assessments, except assessments derived from late fees or fines, shall be deemed to be common expenses collectible from all of the remaining unit owners including such acquirer, his successors and assigns.

f. Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property. The association shall have the power, unless prohibited by the master deed or bylaws to bid on the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Nothing herein shall alter the status or priority of municipal liens under R.S.54:5-1 et seq.

(cf: P.L.1997, c.190, s.2)

2. (New section) a. ¹**【The】** An¹ association shall have a lien on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner,

together with interest thereon and ¹ ~~if authorized by the master deed or bylaws,~~ any¹ late fees, fines ¹, expenses,¹ and reasonable attorney's fees ¹ imposed or incurred in the collection of the unpaid assesment¹; provided ¹, ¹ however ¹, ¹ that an association shall not record a lien in which the unpaid assessment consists solely of late fees. ¹ ~~Such~~ The¹ lien shall be effective from and after the time of recording in the public records of the county in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due ¹, ¹ and the date when due. ¹ ~~Such~~ The¹ claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recordable satisfaction of lien. Except as set forth in subsection b. of this section, ¹ ~~all such~~ these¹ liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject ¹, ¹ and to any other lien recorded prior to the time of recording of the claim of lien.

b. A lien recorded pursuant to subsection a. of this section shall have a limited priority over prior recorded mortgages and other liens, except for municipal liens or liens for federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

(1) To a lien which is the result of customary assessments as defined herein, the amount of which shall not exceed the aggregate customary assessment against the unit owner for the ¹ ~~nine-month~~ six-month¹ period prior to the recording of the lien. ¹ This limited priority shall be cumulatively renewed on an annual basis as necessary.¹

(2) With respect to a particular mortgage, to a lien recorded prior to: (a) the receipt by the association of a summons and complaint in an action to foreclose a mortgage on that unit; or (b) the filing with the proper county recording office of a lis pendens giving notice of an action to foreclose a mortgage on that unit.

(3) In the case of more than one association lien being filed, either because an association files more than one lien or multiple associations have filed liens, the total amount of the liens granted priority shall not be greater than the assessment for the ¹ ~~nine-month~~ six-month¹ period specified in paragraph (1) of this subsection. Priority among multiple filings shall be determined by their date of recording with the earlier recorded liens having first use of the priority given herein.

(4) ¹ ~~The~~ Except for the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection, the¹ priority granted to a lien pursuant to this subsection shall expire on the first day of the 60th month following the date of recording of an association's lien.

(5) A lien of an association shall not be granted priority over a prior recorded mortgage or mortgages under this subsection if a prior recorded lien of the association for unpaid assessments ¹, not including the cumulative annual renewal of the limited priority provided in paragraph (1) of this subsection. ¹ has obtained priority over the same recorded mortgage or mortgages as provided in this subsection, for a period of 60 months from the date of recording of the lien granted priority.

(6) When recording a lien which may be granted priority pursuant to this ¹**[act]** section¹, an association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the association lien. An association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

For the purpose of this section, an "assessment" ¹**[shall mean]** means¹ an assessment for periodic payments, due ¹to¹ the association for regular and usual operating and common area expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest ¹, ¹ or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment. The periodic payments due ¹**[must]** shall¹ be due monthly, or no less frequently than quarter-yearly, as may be acceptable to the Federal National Mortgage Association so as not to disqualify an otherwise superior mortgage on the property from purchase by the Federal National Mortgage Association as a first mortgage.

c. Upon any voluntary conveyance of a unit, the grantor and grantee of ¹**[such]** the¹ unit shall be jointly and severally liable for all unpaid assessments pertaining to ¹**[such]** the¹ unit duly made by the association or accrued up to the date of ¹**[such]** the¹ conveyance without prejudice to the right of the grantee to recover from the grantor any amounts paid by the grantee, but the grantee shall be exclusively liable for those accruing while ¹**[he is]**¹ the unit owner.

d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to ¹**[such]** the¹ unit and the association shall provide ¹**[such]** the¹ certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to ¹**[such]** the¹ unit. Any person other than the unit owner at the time of issuance of any ¹**[such]**¹ certificate who relies upon ¹**[such]** the¹ certificate shall be entitled to rely thereon and ¹**[his]** the person's¹ liability shall be limited to the amounts set forth in ¹**[such]** the¹ certificate.

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to ¹**[such]** the¹ unit as a result of foreclosure of the first mortgage, ¹**[such]** the¹ acquirer of title, ¹**[his]** their¹ successors and assigns shall not be liable for the share of common expenses or other assessments by the association pertaining to ¹**[such]** the¹ unit or chargeable to the former unit owner which became due prior to acquisition of title as a result of the foreclosure. Any remaining unpaid share of common expenses and other assessments, except assessments derived from late fees or fines, shall be deemed to be common expenses collectible from all of the remaining unit owners including ¹**[such]** the¹ acquirer, ¹**[his]** their¹ successors and assigns.

f. Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property. The association shall have the power, unless prohibited by the master deed or bylaws to bid on the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Nothing herein shall alter the status or priority of municipal liens under R.S.54:5-1 et seq.

¹g. The provisions of this section shall not apply to cooperatives. The provisions of this section shall not diminish the priority of a cooperative's issuer's lien or security interest in the shares of stock and lease appurtenant thereto which is perfected when a shareholder's ownership interest in the cooperative first comes into existence.

For purposes of this section, "cooperative" means any system of land ownership and possession in which the fee title to the land and structure is owned by a corporation or other legal entity in which the shareholders or other co-owners each also have a long term proprietary lease or other long term arrangement of exclusive possession for a specific unit of occupancy space located within the same structure.¹

3. This act shall take effect immediately.