
SENATE BILL 6735

State of Washington

61st Legislature

2010 Regular Session

By Senator Tom

Read first time 01/25/10. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to condominium association liens; and amending RCW
2 64.34.364.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 64.34.364 and 1990 c 166 s 6 are each amended to read
5 as follows:

6 (1) The association has a lien on a unit for any unpaid assessments
7 levied against a unit from the time the assessment is due.

8 (2) A lien under this section shall be prior to all other liens and
9 encumbrances on a unit except: (a) Liens and encumbrances recorded
10 before the recording of the declaration; (b) a mortgage on the unit
11 recorded before the date on which the earliest unpaid assessment sought
12 to be enforced became delinquent; and (c) liens for real property taxes
13 and other governmental assessments or charges against the unit. A lien
14 under this section is not subject to the provisions of chapter 6.13
15 RCW.

16 (3) Except as provided in subsections (4) and (5) of this section,
17 the lien shall also be prior to the mortgages described in subsection
18 (2)(b) of this section to the extent of regular or special assessments
19 for common expenses, excluding any amounts for capital improvements,

1 based on the periodic or revised budget adopted by the association
2 pursuant to RCW 64.34.360(1) which would have become due during the
3 (~~six~~) twelve months immediately preceding the date of (~~a sheriff's~~
4 ~~sale in an~~) recording of any lis pendens in any action for judicial
5 foreclosure by either the association or a mortgagee, the date of a
6 trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date
7 of recording of the declaration of forfeiture in a proceeding by the
8 vendor under a real estate contract. The twelve-month priority
9 exception to mortgages described in subsection (2)(b) of this section
10 includes any assessments made against a unit for any period of time
11 during which the mortgagee is in default of its obligation to the
12 association, the association has notified the mortgagee of the default,
13 and the mortgagee has failed to enforce its rights to foreclose on its
14 mortgage.

15 (4) The priority of the association's lien against units encumbered
16 by a mortgage held by an eligible mortgagee or by a mortgagee which has
17 given the association a written request for a notice of delinquent
18 assessments shall be reduced by up to (~~three~~) six months if and to
19 the extent that the lien priority under subsection (3) of this section
20 includes delinquencies which relate to a period after such holder
21 becomes an eligible mortgagee or has given such notice and before the
22 association gives the holder a written notice of the delinquency. This
23 subsection does not affect the priority of mechanics' or materialmen's
24 liens, or the priority of liens for other assessments made by the
25 association.

26 (5) If the association forecloses its lien under this section
27 nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection
28 (9) of this section, the association shall not be entitled to the lien
29 priority provided for under subsection (3) of this section.

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

33 (7) Recording of the declaration constitutes record notice and
34 perfection of the lien for assessments. While no further recording of
35 any claim of lien for assessment under this section shall be required
36 to perfect the association's lien, the association may record a notice
37 of claim of lien for assessments under this section in the real

1 property records of any county in which the condominium is located.
2 Such recording shall not constitute the written notice of delinquency
3 to a mortgagee referred to in subsection (2) of this section.

4 (8) A lien for unpaid assessments and the personal liability for
5 payment of assessments is extinguished unless proceedings to enforce
6 the lien or collect the debt are instituted within three years after
7 the amount of the assessments sought to be recovered becomes due.

8 (9) The lien arising under this section may be enforced judicially
9 by the association or its authorized representative in the manner set
10 forth in chapter 61.12 RCW. The lien arising under this section may be
11 enforced nonjudicially in the manner set forth in chapter 61.24 RCW for
12 nonjudicial foreclosure of deeds of trust if the declaration (a)
13 contains a grant of the condominium in trust to a trustee qualified
14 under RCW 61.24.010 to secure the obligations of the unit owners to the
15 association for the payment of assessments, (b) contains a power of
16 sale, (c) provides in its terms that the units are not used principally
17 for agricultural or farming purposes, and (d) provides that the power
18 of sale is operative in the case of a default in the obligation to pay
19 assessments. The association or its authorized representative shall
20 have the power, unless prohibited by the declaration, to purchase the
21 unit at the foreclosure sale and to acquire, hold, lease, mortgage, or
22 convey the same. Upon an express waiver in the complaint of any right
23 to a deficiency judgment in a judicial foreclosure action, the period
24 of redemption shall be eight months. Nothing in this section shall
25 prohibit an association from taking a deed in lieu of foreclosure.

26 (10) From the time of commencement of an action by the association
27 to foreclose a lien for nonpayment of delinquent assessments against a
28 unit that is not occupied by the owner thereof, the association shall
29 be entitled to the appointment of a receiver to collect from the lessee
30 thereof the rent for the unit as and when due. If the rental is not
31 paid, the receiver may obtain possession of the unit, refurbish it for
32 rental up to a reasonable standard for rental units in this type of
33 condominium, rent the unit or permit its rental to others, and apply
34 the rents first to the cost of the receivership and attorneys' fees
35 thereof, then to the cost of refurbishing the unit, then to applicable
36 charges, then to costs, fees, and charges of the foreclosure action,
37 and then to the payment of the delinquent assessments. Only a receiver
38 may take possession and collect rents under this subsection, and a

1 receiver shall not be appointed less than ninety days after the
2 delinquency. The exercise by the association of the foregoing rights
3 shall not affect the priority of preexisting liens on the unit.

4 (11) Except as provided in subsection (3) of this section, the
5 holder of a mortgage or other purchaser of a unit who obtains the right
6 of possession of the unit through foreclosure shall not be liable for
7 assessments or installments thereof that became due prior to such right
8 of possession. Such unpaid assessments shall be deemed to be common
9 expenses collectible from all the unit owners, including such mortgagee
10 or other purchaser of the unit. Foreclosure of a mortgage does not
11 relieve the prior owner of personal liability for assessments accruing
12 against the unit prior to the date of such sale as provided in this
13 subsection.

14 (12) In addition to constituting a lien on the unit, each
15 assessment shall be the joint and several obligation of the owner or
16 owners of the unit to which the same are assessed as of the time the
17 assessment is due. In a voluntary conveyance, the grantee of a unit
18 shall be jointly and severally liable with the grantor for all unpaid
19 assessments against the grantor up to the time of the grantor's
20 conveyance, without prejudice to the grantee's right to recover from
21 the grantor the amounts paid by the grantee therefor. Suit to recover
22 a personal judgment for any delinquent assessment shall be maintainable
23 in any court of competent jurisdiction without foreclosing or waiving
24 the lien securing such sums.

25 (13) The association may from time to time establish reasonable
26 late charges and a rate of interest to be charged on all subsequent
27 delinquent assessments or installments thereof. In the absence of
28 another established nonusurious rate, delinquent assessments shall bear
29 interest from the date of delinquency at the maximum rate permitted
30 under RCW 19.52.020 on the date on which the assessments became
31 delinquent.

32 (14) The association shall be entitled to recover any costs and
33 reasonable attorneys' fees incurred in connection with the collection
34 of delinquent assessments, whether or not such collection activities
35 result in suit being commenced or prosecuted to judgment. In addition,
36 the association shall be entitled to recover costs and reasonable
37 attorneys' fees if it prevails on appeal and in the enforcement of a
38 judgment.

1 (15) The association upon written request shall furnish to a unit
2 owner or a mortgagee a statement signed by an officer or authorized
3 agent of the association setting forth the amount of unpaid assessments
4 against that unit. The statement shall be furnished within fifteen
5 days after receipt of the request and is binding on the association,
6 the board of directors, and every unit owner, unless and to the extent
7 known by the recipient to be false.

8 (16) To the extent not inconsistent with this section, the
9 declaration may provide for such additional remedies for collection of
10 assessments as may be permitted by law.

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