

SECOND REGULAR SESSION

[CORRECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1218

97TH GENERAL ASSEMBLY

5055H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 448.3-116, RSMo, and to enact in lieu thereof one new section relating to liens for assessments on condominiums.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 448.3-116, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 448.3-116, to read as follows:

448.3-116. 1. 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. The association's lien may be foreclosed in like manner as a mortgage on real estate or a power of sale pursuant to chapter 443. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to subdivisions (10), (11), and (12) of subsection 1 of section 448.3-102 are enforceable as assessments pursuant to this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

2. A lien pursuant to this section is prior to all other liens and encumbrances on a unit except:

(1) Liens and encumbrances recorded before the recordation of the declaration;

(2) [A] **Any mortgage or deed of trust securing a purchase money loan for the unit recorded prior to August 28, 2014;**

(3) **Any mortgage [and] or deed of trust [for the purchase of] on a unit recorded before the date on which the assessment sought to be enforced became [delinquent] due except that a lien under this section has limited priority over the mortgage or deed of trust for common expense assessments in an amount not to exceed six months of the delinquent common**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **expense assessments based on the periodic budget adopted by the association under**
19 **subsection 1 of section 448.3-115 which would have become due in the absence of**
20 **acceleration during the six months immediately preceding the date of filing of a petition**
21 **to enforce the association's lien or the date of sale by the holder of a mortgage or deed of**
22 **trust;**

23 ~~[(3)]~~ **(4)** Liens for real estate taxes and other governmental assessments or charges
24 against the unit;

25 ~~[(4) Except for delinquent assessments or fines, up to a maximum of six months'~~
26 ~~assessments or fines, which are due prior to any subsequent refinancing of a unit or for any~~
27 ~~subsequent second mortgage interest.]~~ **(5) If the association forecloses its lien under this**
28 **section in a non-judicial manner under chapter 443, the association shall not be entitled to**
29 **the limited lien priority for common expense assessments provided under subdivision (3)**
30 **of subsection 2 of this section;**

31 **(6)** This subsection does not affect the priority of mechanics' or materialmen's liens, or
32 the priority of liens for other assessments made by the association. The lien pursuant to this
33 section is not subject to the provisions of section 513.475.

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

36 4. Recording of the declaration constitutes record notice and perfection of the lien. No
37 further recordation of any claim of lien for assessment pursuant to this section is required.

38 5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
39 are instituted within three years after the full amount of the assessments becomes due.

40 6. This section shall not prohibit actions to recover sums for which subsection 1 of this
41 section creates a lien, or prohibit an association from taking a deed in lieu of foreclosure.

42 7. **The association shall be entitled to recover any costs and reasonable attorneys'**
43 **fees incurred in connection with the collection of delinquent assessments.** A judgment or
44 decree in any action brought pursuant to this section shall include costs and reasonable attorney's
45 fees for the prevailing party. **Attorneys' fees and costs shall not be included in the**
46 **association's lien under subdivision (3) of subsection 2 of this section.**

47 8. The association shall furnish to a unit owner **or any holder of a mortgage or deed**
48 **of trust**, upon written request, a recordable statement setting forth the amount of unpaid
49 assessments against the unit owner's unit. The statement shall be furnished within ten business
50 days after receipt of the request and is binding on the association, the executive board, and every
51 unit owner **unless it is known by the recipient to be false.**

52 9. **If a unit is occupied by a tenant and the record owner is delinquent in payment**
53 **of assessments in excess of sixty days, the association may demand payment of subsequent**

54 rental payments until the record owner is no longer delinquent, the association releases the
55 tenant, or the tenant is no longer in possession of the unit. The demand to the tenant shall
56 be in writing, with a copy to the record owner, sent via first-class United States mail,
57 postage pre-paid, or hand delivery. A tenant is immune from any claim by the record
58 owner related to the rent timely paid to the association after the association has made
59 written demand. If the tenant fails to make payment to the association, the association may
60 issue notice and evict under chapter 534. The tenant does not, by virtue of payment, have
61 any rights of a record owner to vote in an election or examine the books and records of the
62 association.

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