



# House of Representatives

**File No. 835**

General Assembly

January Session, 2013

**(Reprint of File No. 728)**

Substitute House Bill No. 6662  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
May 20, 2013

**AN ACT CONCERNING THE RECOUPMENT OF MONEYS OWED TO A  
UNIT OWNERS' ASSOCIATION DUE TO NONPAYMENT OF  
ASSESSMENTS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Subsection (b) of section 47-258 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective from*  
3 *passage and applicable to all actions pending on and actions filed on or after*  
4 *said date*):

5 (b) [A] Notwithstanding any provision in the declaration or bylaws  
6 to the contrary, a lien under this section is prior to all other liens and  
7 encumbrances on a unit except (1) liens and encumbrances recorded  
8 before the recordation of the declaration and, in a cooperative, liens  
9 and encumbrances which the association creates, assumes or takes  
10 subject to, (2) a first or second security interest on the unit recorded  
11 before the date on which the assessment sought to be enforced became  
12 delinquent, or, in a cooperative, a first or second security interest  
13 encumbering only the unit owner's interest and perfected before the  
14 date on which the assessment sought to be enforced became

15 delinquent, and (3) liens for real property taxes and other  
16 governmental assessments or charges against the unit or cooperative.  
17 [The] In all actions brought to foreclose a lien under this section or a  
18 security interest described in subdivision (2) of this subsection, the lien  
19 is also prior to all security interests described in subdivision (2) of this  
20 subsection to the extent of (A) an amount equal to the common  
21 expense assessments based on the periodic budget adopted by the  
22 association pursuant to subsection (a) of section 47-257 which would  
23 have become due in the absence of acceleration during the [six] nine  
24 months immediately preceding institution of an action to enforce  
25 either the association's lien or a security interest described in  
26 subdivision (2) of this subsection, excluding any late fees, interest or  
27 finances which may be assessed by the association during the nine-month  
28 period, and (B) the association's costs and reasonable attorney's fees in  
29 enforcing its lien. A lien for any assessment or fine specified in  
30 subsection (a) of this section shall have the priority provided for in this  
31 subsection in an amount not to exceed the amount specified in  
32 subparagraph (A) of this subsection. This subsection does not affect the  
33 priority of mechanics' or materialmen's liens or the priority of liens for  
34 other assessments made by the association.

35 Sec. 2. Subsection (m) of section 47-258 of the general statutes is  
36 repealed and the following is substituted in lieu thereof (*Effective*  
37 *October 1, 2013, and applicable to all actions filed on or after said date*):

38 (m) (1) An association may not commence an action to foreclose a  
39 lien on a unit under this section unless: [(1)] (A) The unit owner, at the  
40 time the action is commenced, owes a sum equal to at least two  
41 months of common expense assessments based on the periodic budget  
42 last adopted by the association pursuant to subsection (a) of section 47-  
43 257; [(2)] (B) the association has made a demand for payment in a  
44 record and has simultaneously provided a copy of such record to the  
45 holder of a security interest described in subdivision (2) of subsection  
46 (b) of this section; and [(3)] (C) the executive board has either voted to  
47 commence a foreclosure action specifically against that unit or has  
48 adopted a standard policy that provides for foreclosure against that

49 unit.

50 (2) Not less than sixty days prior to commencing an action to  
51 foreclose a lien on a unit under this section, the association shall  
52 provide a written notice by first class mail to the holders of all security  
53 interests described in subdivision (2) of subsection (b) of this section,  
54 which shall set forth the following: (A) The amount of unpaid common  
55 expense assessments owed to the association as of the date of the  
56 notice; (B) the amount of any attorney's fees and costs incurred by the  
57 association in the enforcement of its lien as of the date of the notice; (C)  
58 a statement of the association's intention to foreclose its lien if the  
59 amounts set forth in subparagraphs (A) and (B) of this subdivision are  
60 not paid to the association not later than sixty days after the date on  
61 which the notice is provided; (D) the association's contact information,  
62 including, but not limited to, (i) the name of the individual acting on  
63 behalf of the association with respect to the matter, and (ii) the  
64 association's mailing address, telephone number and electronic mail  
65 address, if any; and (E) instructions concerning the acceptable means  
66 of making payment on the amounts owing to the association as set  
67 forth in subparagraphs (A) and (B) of this subdivision. Any notice  
68 required to be given by the association under this subsection shall be  
69 effective when sent.

70 (3) When providing the written notice required by subdivision (2) of  
71 this subsection, the association may rely on the last-recorded security  
72 interest of record in identifying the name and mailing address of the  
73 holder of that interest, unless the holder of the security interest is the  
74 plaintiff in an action pending in the Superior Court to enforce that  
75 security interest, in which case the association shall provide the written  
76 notice to the attorney appearing on behalf of the holder of the security  
77 interest in such action.

78 (4) The failure of the association to provide the written notice  
79 required by subdivisions (2) and (3) of this subsection prior to  
80 commencing an action to foreclose its lien shall not affect the priority  
81 of its lien for an amount equal to nine months common expense

82 assessments, but the priority amount in such action shall not include  
83 any costs or attorney's fees.

84 Sec. 3. Subsection (a) of section 49-2 of the general statutes is  
85 repealed and the following is substituted in lieu thereof (*Effective*  
86 *October 1, 2013*):

87 (a) (1) Premiums of insurance, taxes and assessments paid by the  
88 mortgagee, (2) assessments levied by an association, as defined in  
89 section 47-202, and related attorney's fees and costs that are owed by a  
90 mortgagor and paid by a mortgagee, and (3) payments of interest or  
91 installments of principal due on any prior mortgage or lien by any  
92 subsequent mortgagee or lienor of any property to protect his interest  
93 therein, are a part of the debt due the mortgagee or lienor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to all actions pending on and actions filed on or after said date</i>	47-258(b)
Sec. 2	<i>October 1, 2013, and applicable to all actions filed on or after said date</i>	47-258(m)
Sec. 3	<i>October 1, 2013</i>	49-2(a)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

There is no fiscal impact associated with changes to common interest community association liens as common interest community associations are private entities.

House "A" strikes the language of the underlying bill. It replaces the bill with language that does not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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**OLR Bill Analysis****sHB 6662 (as amended by House "A")\******AN ACT CONCERNING THE RECOUPMENT OF MONEYS OWED TO A UNIT OWNERS' ASSOCIATION DUE TO NONPAYMENT OF ASSESSMENTS.*****SUMMARY:**

The Common Interest Ownership Act (CIOA) currently gives common interest community associations seeking to collect unpaid common charges a six-month priority lien over previously recorded security interests (e.g., mortgages). This bill makes several changes affecting this priority lien. It:

1. extends the period covered by the lien from six to nine months;
2. specifies that the lien applies in all actions the mortgage holder brings to foreclose its mortgage on the unit as well as all actions the association brings to foreclose its lien for unpaid common charges (presumably, this allows the association to invoke the priority lien more than once, if assessments continue to go unpaid – i.e., it is an “evergreen” priority lien);
3. excludes from the lien any late fees, interest, or fines that the association assesses against the unit’s owner during the nine-month period;
4. specifies that the lien only includes reasonable attorneys’ fees;
5. requires an association, before bringing an action to foreclose its lien, to provide mortgage holders with (a) 60 days’ notice setting forth specified information and (b) a copy of the demand for payment it must already send to the unit owner; and

6. provides that if the association fails to provide the required notice, its nine-month priority lien does not include costs or attorneys' fees.

The bill specifies that CIOA's provisions concerning the priority of association liens (in regard to all other liens and encumbrances, not just mortgages) apply despite contrary provisions in the association's declaration or bylaws (see BACKGROUND).

It also provides that association assessments under CIOA and related attorneys' fees and costs owed by a mortgagor (i.e., the borrower) and paid by a mortgagee, become part of the debt the mortgagor owes to the mortgagee or lienor.

\*House Amendment "A":

1. adds the provision on assessments and related fees and costs paid by mortgagees being included within the mortgage debt,
2. adds the requirement that the association send the demand for payment to mortgage holders before bringing an action to foreclose its lien,
3. adds to the required information the association must provide in its notice to mortgage holders,
4. changes the effective date, and
5. makes minor and technical changes.

EFFECTIVE DATE: The priority lien provisions are effective upon passage and apply to actions pending on or filed on or after that date, except the notice requirements are effective October 1, 2013 and apply to actions filed on or after that date; the mortgage debt provision is effective October 1, 2013.

**DEMAND FOR PAYMENT AND NOTICE TO MORTGAGE HOLDERS**

By law, before an association under CIOA can bring an action to

foreclose its lien on a unit for unpaid assessments, it must provide the unit owner with a demand for payment, among other requirements. The bill requires the association to simultaneously provide a copy of this demand to the holders of previously recorded mortgages on the unit.

It also requires associations under CIOA, at least 60 days before bringing an action to foreclose its lien, to provide written notice to such mortgage holders. The notice must be sent by first class mail, and must set forth:

1. the amount of unpaid common expense assessments owed to the association as of the notice date;
2. the amount of attorneys' fees and costs the association incurred in enforcing its lien, as of that date;
3. a statement of the association's intention to foreclose its lien if it is not paid these amounts within 60 days after providing the notice;
4. the association's contact information, including (a) the name of the individual acting on its behalf in the matter and (b) the association's mailing address, telephone number, and email address, if any; and
5. instructions for acceptable means of paying the amounts owed.

The bill specifies that the notice is effective when sent.

If the mortgage holder has brought an action to foreclose its mortgage on the unit, the association must provide the required notice to the attorney appearing in that action on the mortgage holder's behalf. Otherwise, the association can rely on the last-recorded security interest of record to determine the mortgage holder's name and mailing address for purposes of complying with the notice requirement.

If the association fails to provide the notice within the required time frame, the association's costs and attorneys' fees would not be included as part of the nine-month priority lien. Otherwise, the priority lien is not affected.

## **BACKGROUND**

### ***CIOA Liens***

CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after December 31, 1983. Some provisions of CIOA, including those concerning statutory liens for assessments, also apply to common interest communities formed before then.

Under CIOA, common interest community associations have a statutory lien on a unit for common charges and other assessments attributable to that unit (CGS § 47-258(a)).

This lien has priority over all other liens and encumbrances on a unit, except for (1) those recorded before the recording of the declaration; (2) liens for real estate taxes and other government assessments or charges; and (3) first or second mortgages recorded before the assessment became delinquent, except for an amount equal to common expense assessments that would have become due during the six months (extended to nine months by the bill) immediately preceding an action to enforce the association's lien or the mortgage (CGS § 47-258(b)).

### ***Related Bill***

HB 6477 (File 219), reported favorably by the Insurance and Real Estate Committee, extends from six to 12 months the priority of common expense assessments over previously recorded mortgages under CIOA.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/19/2013)