



House of Representatives

General Assembly

File No. 728

January Session, 2013

Substitute House Bill No. 6662

House of Representatives, May 6, 2013

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2013*):

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

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

34 Sec. 2. Subsection (m) of section 47-258 of the general statutes is
35 repealed and the following is substituted in lieu thereof (*Effective*
36 *October 1, 2013*):

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

46 (2) Not less than sixty days prior to commencing an action to

47 foreclose a lien on a unit under this section, the association shall
 48 provide a written notice to the holders of all security interests
 49 described in subdivision (2) of subsection (b) of this section, which
 50 shall set forth the following: (A) The amount of unpaid common
 51 expense assessments owed to the association as of the date of the
 52 notice; (B) the amount of any attorney's fees and costs incurred by the
 53 association in the enforcement of its lien as of the date of the notice;
 54 and (C) a statement of the association's intention to foreclose its lien if
 55 the amounts described in subparagraphs (A) and (B) of this
 56 subdivision are not paid to the association within sixty days of the date
 57 on which the notice is mailed.

58 (3) When providing the written notice required by subdivision (2) of
 59 this subsection, the association may rely on the last-recorded security
 60 interest of record in delivering or mailing notice to the holder of that
 61 interest, unless the holder of the security interest is the plaintiff in an
 62 action pending in the Superior Court to enforce that security interest,
 63 in which case the association shall send the written notice to the
 64 attorney appearing on behalf of the holder of the security interest in
 65 such action.

66 (4) The failure of the association to provide the written notice
 67 required by subdivision (2) of this subsection prior to commencing an
 68 action to foreclose its lien shall not affect the priority of its lien for an
 69 amount equal to nine months common expense assessments, but the
 70 priority amount in such action shall not include any costs or attorney's
 71 fees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	47-258(b)
Sec. 2	October 1, 2013	47-258(m)

JUD *Joint Favorable Subst.*

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.

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.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 6662*****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 actions the mortgage holder brings to foreclose its mortgage on the unit as well as actions the association brings to foreclose its lien for unpaid common charges;
3. excludes from the priority 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 to provide mortgage holders with 60 days' notice before bringing an action to foreclose its lien; and
6. prohibits an association from recovering costs or attorneys' fees in that action if it fails to provide the required notice (see COMMENT).

The bill also provides 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).

EFFECTIVE DATE: October 1, 2013

NOTICE TO MORTGAGE HOLDERS

The bill requires an association under CIOA, at least 60 days before bringing an action to foreclose a lien on a unit for unpaid assessments, to provide written notice to the holders of previously recorded mortgages on the unit. The notice must:

1. indicate the amount of unpaid common expense assessments owed to the association as of the notice date;
2. indicate the amount of attorneys' fees and costs the association incurred in enforcing its lien, as of that date; and
3. include a statement of the association's intention to foreclose its lien if it is not paid these amounts within 60 days of mailing the notice.

If the mortgage holder has brought an action to foreclose its mortgage on the unit, the association must send the required notice to the attorney appearing in that action on the mortgage holder's behalf. Otherwise, the association must deliver or mail the notice to the holder of the last-recorded security interest of record.

If the association fails to provide this notice, it cannot recover costs or attorneys' fees. Otherwise, its nine-month priority lien is not affected.

COMMENT

Failure to Provide Notice

The bill provides that if an association fails to provide the required notice to mortgage holders before bringing an action to foreclose its lien for unpaid assessments, the priority amount does not include costs and attorneys' fees. But another provision of law, unchanged by the

bill, requires costs and attorneys' fees to be awarded to prevailing parties in lawsuits an association brings to enforce its lien (CGS § 47-258(g)).

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)