

Overbey

Signature of Sponsor

AMEND Senate Bill No. 2397

House Bill No. 2401*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 66-27-415, is amended by deleting subsections (a) and (b) and substituting instead the following:

(a)

(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, which lien may be foreclosed by judicial action.

(2) Notwithstanding subdivision (a)(1), the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5; provided, that the association shall give notice of its action to the unit owner and to all lienholders of record prior to the first publication of notice as required under title 35, chapter 5.

(3) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:

(A) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or

(B) If to a lienholder, other interested party, or the nominee of record, at the address set forth in the instrument of record, or, if different,

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at such other address as the lienholder, the other interested party, or the nominee may have on file with the association.

(4) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 66-27-402(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(b)

(1) A lien under this section is prior to all other liens and encumbrances on a unit, except:

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

(B) A first or other contemporaneous mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and

(C) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Upon a foreclosure action initiated by a lien holder or the association under title 35, chapter 5, the association shall be entitled to a priority in the proceeds from the foreclosure sale to satisfy the lien under subsection (a) up to

the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to § 66-27-414, which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, but not exceeding one percent (1%) of the maximum principal indebtedness of a lien secured by the first mortgage or deed of trust; provided, that, notwithstanding this subsection (b) or any law to the contrary:

(A) Any foreclosure by the association of its lien for assessments shall be subject to any prior mortgage or deed of trust encumbering the property and shall not extinguish the lien of such mortgage or deed of trust;

(B) Upon any foreclosure by the holder of a mortgage or deed of trust, the sale and foreclosure will be subject to the association lien up to the payment priority amount set forth in this subdivision (b)(2); and

(C) Any right of foreclosure or priority of the association shall not be transferable and shall be extinguished if assigned or transferred to a third party.

(3) This subsection (b) does not affect the priority of mechanics or materialmen's liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

SECTION 2. Tennessee Code Annotated, Section 66-27-415, is amended by deleting subsection (d) and substituting the following:

(1) Recording of the declaration constitutes record notice of the lien. A lien for any delinquent assessment under this section up to the priority in payment provided in subdivision (b)(2) is perfected without recording. Any other delinquent amount above

the priority of payment provided in subdivision (b)(2) is perfected by recording it in the lien book in the register of deeds office in the county where the real property is located, and shall have priority over any subsequently filed liens.

(2) The lien shall not have the priority provided for in subdivision (b)(2)(A) over the mortgages and deeds of trust described in subdivision (b)(1)(B) if the owner of the unit or the holder of any mortgage or deed of trust on the unit has notified the association in writing of the holder's name and address and the identity of the unit upon which it holds a first mortgage or deed of trust, and the association has failed, within thirty (30) days of the date that six (6) months of assessments for common expenses due from the unit became delinquent, to give written notice of the delinquency to the holder of the first mortgage or deed of trust at the address provided by the party.

SECTION 3. This act shall take effect June 1, 2016, the public welfare requiring it, and shall apply to any foreclosure action initiated on or after that date.