

Association Liens & Foreclosure

Consistency:

1) Revises the time for extinguishing a common expense lien from 3 years to 6 years if no action is taken to enforce the lien to be consistent with the statute of limitation defined in section 12-548. *Premature extinguishing of a common expense assessment lien may help the delinquent homeowner but it will hurt the rest of the community that has to cover that lost income to the association, by increased assessments. This revision makes this statute consistent with the statute of limitation for collection of debt via contract section 12-548.*

Clarity:

1) Clarifies the distinction and handling of:

(a) Statutory common expense assessment liens including late fees and any interest.

Reasonable collection cost and Attorney fees would and should not be part of the lien but can be part of a judicial judgement to enforce that lien, or in a separate judgement lien. Where the reasonableness of those collection cost and attorney fees can appropriately be determined by an impartial judge.

(b) Judgement liens for all other fees, penalties and charges applied by an association except common expense assessments, which is not foreclosable. *Many if not most declarations attempt to blur or eliminate those distinctions as currently provided in statute. The current statutes themselves describe both types of liens in one subsection further compounding that confusion. The obligation of every homeowner is to pay their assessment unconditionally, and the common expense assessment lien should only contain the actual delinquent assessments and any late fees and interest reflected in that obligation. The reasonableness of collection cost and attorney fees can only be determined by a judge and cannot and should not be part of the lien until awarded as such by a judge. Consistent with the requirement of Title 12 chapter 3 article 4. Current statutes allow any collection cost and attorney fees to be part of the assessment lien that is foreclosable without being determined reasonable by a judge, so that homes can be foreclosed on, without any past due assessments based on attorney fees and collection cost alone. THIS CONTRADICTION WITHIN THE STATUTES MUST BE CORRECTED.*

2) Modifies the foreclosure threshold for common expense liens from a past tense delinquency period of one year or \$1200 whichever occurs first to a simple current delinquent assessment of \$1200 and greater and 6 months from the date the initial assessment was delinquent. *The past tense annual requirement and dollar value allows for foreclosure without any current past due assessment and fails to recognize any payments that have been made to reduce the delinquent assessment amount. This dollar value represents an attempt to balance the needs of the various communities to pay their expenses, and to protect them from malicious refusal to pay assessments. For homeowners, paying the assessment is UNCONDITIONAL and not optional but unexpected hardships do occur, and as long as they can maintain that assessment debt principle late fees and interest below \$1,200 with partial payments they can avoid foreclosure on their homes. Since special assessment could be many multiples of the total normal annual assessment of the association, it is reasonable to apply a time contingent to the monetary threshold or 6 months, to allow the homeowner to pay down the large debt applied by that special assessment.*

3) Clarifies the language on foreclosure proceeding for common expense liens from “in the same manner as a mortgage” only, to also including the actual statutes for the processing of mortgage

foreclosures. And that judgement liens for non-common expense charges will be processed in accordance with Chapter 7 article 4 of this title.

4) Clarifies that if assessments are due in installments that only the amount due is a lien and not the full annual assessment. *While the full amount of a mortgage is a lien as soon as the loan is issued, there is no corresponding money outlay by the association to apply this principle to assessments. Whatever installment is due is the appropriate basis for the lien for assessments. The association established the installment plan not the homeowner. The association has no right to apply a lien on a home for money that is not yet owed.*

Accountability:

1) Mandates that the association or any agent of the association must accept partial payments on any of the liens and charges specified in this section, and apply those payments as specified, and if they fail to accept partial payments then the lien or charges are extinguished. *While this is clearly the intent of current law it is not the practice of most collection agencies or attorneys. This is a fundamental aspect of the Fair Debt collection practices act.*