

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 226

Representative Rogers

Cosponsors: Representatives Lepore-Hagan, Sheehy

A BILL

To amend sections 5311.18 and 5312.12 of the 1
Revised Code to provide that a portion of a 2
condominium or planned community assessment is 3
prior to other liens on condominium units and 4
planned community lots and to provide that a 5
condominium unit owners association lien is a 6
continuing lien. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5311.18 and 5312.12 of the 8
Revised Code be amended to read as follows: 9

Sec. 5311.18. (A) (1) Unless otherwise provided by the 10
declaration or the bylaws, the unit owners association has a 11
lien upon the estate or interest of the owner in any unit and 12
the appurtenant undivided interest in the common elements for 13
the payment of any of the following expenses that are chargeable 14
against the unit and that remain unpaid for ten days after any 15
portion has become due and payable: 16

(a) The portion of the common expenses chargeable against 17
the unit; 18

(b) Interest, administrative late fees, enforcement assessments, or any other assessment or charge provided for by this chapter, the declaration, or bylaws and collection costs, attorney's fees, ~~and~~ paralegal fees, and court costs the association incurs if authorized by the declaration, the bylaws, or the rules of the unit owners association and if chargeable against the unit.

(2) Unless otherwise provided by the declaration, the bylaws, or the rules of the unit owners association, the association shall credit payments made by a unit owner for the expenses described in divisions (A) (1) (a) and (b) of this section in the following order of priority:

(a) First, to interest owed to the association;

(b) Second, to administrative late fees owed to the association;

(c) Third, to collection costs, attorney's fees, and paralegal fees incurred by the association;

(d) Fourth, to the principal amounts the unit owner owes to the association for the common expenses or penalty assessments chargeable against the unit.

(3) The lien described in division (A) (1) of this section is effective on the date that a certificate of lien in the form described in division (A) (3) of this section is filed for record in the office of the recorder of the county or counties in which the condominium property is situated pursuant to an authorization given by the board of directors of the unit owners association. The certificate shall contain a description of the unit, the name of the record owner of the unit, and the amount of the unpaid portion of the common expenses and, subject to

subsequent adjustments, any unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees. The certificate shall be subscribed by the president or other designated representative of the association.

(4) The lien described in division (A)(1) of this section is a continuing lien and is subject to automatic subsequent adjustments that reflect any additional unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, paralegal fees, and court costs.

(5) The lien described in division (A)(1) of this section is valid for a period of five years from the date of filing, unless it is sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or unless it is discharged by the final judgment or order of a court in an action brought to discharge the lien as provided in division (C) of this section.

(B)(1) The lien described in division (A)(1) of this section is prior to any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record and may be foreclosed in the same manner as a mortgage on real property in an action brought ~~on behalf of by the unit owners association by the president or other chief officer of the association pursuant to authority given to that individual by the board of directors.~~

(2)(a) The lien described in division (A)(1) of this section, in the amount described in division (B)(2)(b) of this section, is prior to any lien or encumbrance previously arising or created except liens for real estate taxes and assessments of

political subdivisions. Following the security interest created 78
by division (B) (2) (a) of this section, the association's lien 79
returns to the priority outlined in division (B) (1) of this 80
section. 81

(b) The security interest created by division (B) (2) (a) of 82
this section shall be in an amount equal to the lesser of the 83
amount of the delinquency or six months of common expense 84
assessments based on the budget adopted by the association for 85
the year in which the foreclosure action against the unit is 86
commenced, plus the association's reasonable attorney's fees, 87
costs, and expenses related to the foreclosure. 88

(3) In a foreclosure action a unit owners association 89
commences pursuant to division (B) (1) of this section or a 90
foreclosure action the holder of a first mortgage or other lien 91
on a unit commences, the owner of the unit, as the defendant in 92
the action, shall be required to pay a reasonable rental for the 93
unit during the pendency of the action. The unit owners 94
association or the holder of the lien is entitled to the 95
appointment of a receiver to collect the rental. Each rental 96
payment a receiver collects during the pendency of the 97
foreclosure action shall be applied first to the payment of the 98
portion of the common expenses chargeable to the unit during the 99
foreclosure action. 100

~~(3)~~ (4) In a foreclosure action the holder of a lien on a 101
unit commences, the holder of that lien shall name the unit 102
owners association as a defendant in the action. 103

~~(4)~~ (5) Unless prohibited by the declaration or the 104
bylaws, following a foreclosure action a unit owners association 105
commences pursuant to division (B) (1) of this section or a 106
foreclosure action the holder of a lien on a unit commences, the 107

association or its agent duly authorized by action of the board 108
of directors, is entitled to become a purchaser at the 109
foreclosure sale. 110

~~(5)~~(6) A mortgage on a unit may contain a provision that 111
secures the mortgagee's advances for the payment of the portion 112
of the common expenses chargeable against the unit upon which 113
the mortgagee holds the mortgage. 114

~~(6)~~(7) In any foreclosure action, it is not a defense, 115
set off, counterclaim, or crossclaim that the unit owners 116
association has failed to provide the unit owner with any 117
service, goods, work, or material, or failed in any other duty. 118

(C) A unit owner who believes that the portion of the 119
common expenses chargeable to the unit, for which the unit 120
owners association files a certificate of lien pursuant to 121
division (A) of this section, has been improperly charged may 122
commence an action for the discharge of the lien in the court of 123
common pleas of the county in which all or a part of the 124
condominium property is situated. In the action, if it is 125
finally determined that the portion of the common expenses was 126
improperly charged to the unit owner or the unit, the court 127
shall enter an order that it determines to be just, which may 128
provide for a discharge of record of all or a portion of the 129
lien. 130

Sec. 5312.12. (A) The owners association has a lien upon 131
the estate or interest in any lot for the payment of any 132
assessment or charge levied in accordance with section 5312.11 133
of the Revised Code, as well as any related interest, 134
administrative late fees, enforcement assessments, collection 135
costs, attorney's fees, and paralegal fees, that are chargeable 136
against the lot and that remain unpaid ten days after any 137

portion has become due and payable. 138

(B) All of the following apply to a lien charged against a 139
property pursuant to this section: 140

(1) The lien is effective on the date that a certificate 141
of lien is filed for record in the office of the recorder of the 142
county or counties in which the lot is situated, pursuant to 143
authorization by the board of directors of the owners 144
association. The certificate shall contain a description of the 145
lot, the name of the record owner of the lot, and the amount of 146
the unpaid assessment or charge. It shall be subscribed to by 147
the president of the board or other designated representative of 148
the owners association. 149

(2) The lien is a continuing lien upon the lot against 150
which each assessment or charge is made, subject to automatic 151
subsequent adjustments reflecting any additional unpaid 152
interest, administrative late fees, enforcement assessments, or 153
any other assessment or charge provided for by this chapter, the 154
declaration, or bylaws and collection costs, attorney's fees, 155
paralegal fees, and court costs. 156

(3) The lien is valid for a period of five years from the 157
date of filing, unless it is sooner released or satisfied in the 158
same manner provided by law for the release and satisfaction of 159
mortgages on real property or unless it is discharged by the 160
final judgment or order of a court in an action brought to 161
discharge the lien as provided in this section. 162

(4) The lien is prior to any lien or encumbrance 163
subsequently arising or created, except liens for real estate 164
taxes and assessments of political subdivisions and liens of 165
first mortgages that have been filed for record prior to the 166

recording of the lien, and may be foreclosed in the same manner 167
as a mortgage on real property in an action brought by the 168
owners association. 169

(5) (a) In the amount described in division (B) (5) (b) of 170
this section, the lien is prior to any lien or encumbrance 171
previously arising or created except liens for real estate taxes 172
and assessments of political subdivisions. Following the 173
security interest created by division (B) (5) (a) of this section, 174
the association's lien returns to the priority outlined in 175
division (B) (4) of this section. 176

(b) The security interest created by division (B) (5) (a) of 177
this section shall be in an amount equal to the lesser of the 178
amount of the delinquency or six months of common expense 179
assessments based on the budget adopted by the owners 180
association for the year in which the foreclosure action against 181
the unit is commenced, plus the owners association's reasonable 182
attorney's fees, costs, and expenses related to the foreclosure. 183

(C) (1) In any foreclosure action that the holder of a lien 184
commences, the holder shall name the owners association as a 185
defendant in the action. The owners association or the holder of 186
the lien is entitled to the appointment of a receiver to collect 187
rental payments due on the property. Any rental payment a 188
receiver collects during the pendency of the foreclosure action 189
shall be applied first to the payment of the portion of the 190
common expenses chargeable to the lot during the foreclosure 191
action. 192

(2) Unless prohibited by the declaration or the bylaws, 193
following any foreclosure action, the owners association or an 194
agent the board authorizes is entitled to become a purchaser at 195
the foreclosure sale. 196

(3) A mortgage on a lot may contain a provision that 197
secures the mortgagee's advances for the payment of the portion 198
of the common expenses chargeable against the lot upon which the 199
mortgagee holds the mortgage. 200

(D) An owner may commence an action for the discharge of 201
the lien in the court of common pleas of the county in which all 202
or a part of the property is situated if the owner believes that 203
the liability for the unpaid assessment or charge for which the 204
owners association filed a certificate of lien was improperly 205
charged. In the action, if it is finally determined that the 206
unpaid amount of the assessment or charge was improperly charged 207
to the owner or the lot, the court shall enter an order that it 208
determines to be just, which may provide for a discharge of 209
record of all or a portion of the lien and an award of 210
attorney's fees to the owner. 211

Section 2. That existing sections 5311.18 and 5312.12 of 212
the Revised Code are hereby repealed. 213