

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 736

FINAL READING

Introduced by Pirsch, 4.

Read first time January 06, 2010

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to real property; to provide for liens for
- 2 assessments and fines by homeowners' associations as
- 3 prescribed; and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) A homeowners' association has a lien on a
2 member's real estate for any assessment levied against real estate
3 or fines imposed against its owner from the time the assessment or
4 fine becomes due and a notice containing the dollar amount of such
5 lien is recorded in the office where mortgages or deeds of trust
6 are recorded. The homeowners' association's lien may be foreclosed
7 in like manner as a mortgage on real estate but the homeowners'
8 association shall give reasonable notice of its action to all
9 lienholders of real estate whose interest would be affected. Unless
10 the homeowners' association declaration or agreement otherwise
11 provides, fees, charges, late charges, fines, and interest charged
12 are enforceable as assessments under this section. If an assessment
13 is payable in installments, the full amount of the assessment may
14 be a lien from the time the first installment thereof becomes due.

15 (2) A lien under this section is prior to all other liens
16 and encumbrances on real estate except (a) liens and encumbrances
17 recorded before the recordation of the declaration or agreement,
18 (b) a first mortgage or deed of trust on real estate recorded
19 before the date on which the assessment sought to be enforced
20 became delinquent, and (c) liens for real estate taxes and other
21 governmental assessments or charges against real estate. The lien
22 under this section is not subject to the homestead exemption
23 pursuant to section 40-101.

24 (3) Unless the declaration or agreement otherwise
25 provides, if two or more homeowners' associations have liens for

1 assessments created at any time on the same real estate, those
2 liens have equal priority.

3 (4) A lien for unpaid assessments is extinguished unless
4 proceedings to enforce the lien are instituted within three years
5 after the full amount of the assessments becomes due.

6 (5) This section does not prohibit actions to recover
7 sums for which subsection (1) of this section creates a lien or
8 prohibit a homeowners' association from taking a deed in lieu of
9 foreclosure.

10 (6) A judgment or decree in any action brought under this
11 section must include costs and reasonable attorney's fees for the
12 prevailing party.

13 (7) The homeowners' association, upon written request,
14 shall furnish to a homeowners' association member a recordable
15 statement setting forth the amount of unpaid assessments against
16 his or her real estate. The statement must be furnished within ten
17 business days after receipt of the request and is binding on the
18 homeowners' association, the governing board, and every homeowners'
19 association member.

20 (8) For purposes of this section:

21 (a) Declaration means any instruments, however
22 denominated, that create the homeowners' association and any
23 amendments to those instruments;

24 (b)(i) Homeowners' association means an association whose
25 members consist of a private group of fee simple owners of

1 residential real estate formed for the purpose of imposing and
2 receiving payments, fees, or other charges for:

3 (A) The use, rental, operation, or maintenance of common
4 elements available to all members and services provided to the
5 member for the benefit of the member or his or her real estate;

6 (B) Late payments of assessments and, after notice and
7 opportunity to be heard, the levying of fines for violations of
8 homeowners' association declarations, agreements, bylaws, or rules
9 and regulations; or

10 (C) The preparation and recordation of amendments to
11 declarations, agreements, resale statements, or statements for
12 unpaid assessments; and

13 (ii) Homeowners' association does not include a unit
14 owners association organized under the Nebraska Condominium Act;
15 and

16 (c) Real estate means the real estate of a homeowners'
17 association member as such real estate is specifically described in
18 the member's homeowners' association declaration or agreement.

19 Sec. 2. Since an emergency exists, this act takes effect
20 when passed and approved according to law.