



Ohio Legislative Service Commission

Bill Analysis

Carla Napolitano

H.B. 226

131st General Assembly
(As Introduced)

Reps. Rogers, Lepore-Hagan, Sheehy

BILL SUMMARY

- Expands the lien that a condominium unit owners association has on the owner's interest in a unit and appurtenant undivided interest in the common elements to include (1) assessments or charges under the Condominium Property Law, the declaration, or bylaws and (2) authorized court costs.
- Provides that the condominium unit owners association's lien on the owner's interest in the unit and common elements for common expenses, interest, and certain fees, assessments, and costs is a continuing lien, subject to automatic adjustments for any additional unpaid interest, fees, assessments, and costs.
- Provides that, subject to a cap, this continuing lien has priority over liens and encumbrances that previously arose or were created, except liens for real estate taxes and political subdivision assessments.
- Expands the continuing lien that a planned community owners association has on the interest in any lot to include any unpaid assessment or charge provided for by the Planned Community Law, the declaration, or bylaws.
- Provides that, subject to a cap, a planned community owners association's lien on the interest in any lot for the payment of individual lot assessments, interest, and certain fees, assessments, and costs has priority over liens and encumbrances that previously arose or were created, except liens for real estate taxes and political subdivision assessments.

CONTENT AND OPERATION

Condominium Property Law

Unit owners association's lien

The bill provides that generally, the unit owners association has a lien upon an owner's interest in any unit and the appurtenant undivided interest in the common elements for the payment of the following expenses chargeable against the unit and unpaid for ten days after any portion becomes due and payable: (1) any assessment or charge provided for by the Condominium Property Law, the declaration, or bylaws and (2) any court costs the association incurs if authorized by the declaration, bylaws, or rules of the association and if chargeable against the unit. Under current law, the association's lien is for the portion of the common expenses chargeable against the unit and for interest, administrative late fees, enforcement assessments and collection costs, attorney's fees, and paralegal fees incurred if authorized by the declaration, the bylaws, or the rules of the association and if chargeable against the unit.¹

The bill provides that the unit owners association's lien described above 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.²

Priority of unit owners association lien

The bill adds that the association's lien under current law as modified by the bill, subject to a cap on the amount, is prior to any lien or encumbrance that previously arose or was created except liens for real estate taxes and assessments of political subdivisions. The cap is the lesser of the amount of the delinquency or six months of common expense assessments based on the association's budget for the year in which the foreclosure action against the unit is commenced, plus the association's reasonable attorney's fees, costs, and expenses related to the foreclosure. Following the security interest created by this provision (that is, the lien up to the amount of the cap), the association's lien returns to the priority outlined in current law as modified by the bill. This priority is to any lien or encumbrance that subsequently arises or is created except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been recorded and may be foreclosed in the same manner as a mortgage on real property in an action brought by the association, instead of an action

¹ R.C. 5311.18(A)(1).

² R.C. 5311.18(A)(4).



under current law brought on behalf of the association by its president or other chief officer pursuant to the authority given by the board of directors.³ In other words, for example, the association's lien, up to the cap, comes before first-mortgage liens and other previously established liens, while any amount above the cap comes after first-mortgage liens.

Planned Community Law

Owners association lien

The bill provides that the owners association lien under current law described below is a continuing lien upon the lot against which each assessment or charge is made, subject to automatic subsequent adjustments that reflect any assessment or charge provided for by the Planned Community Law, the declaration, or bylaws, in addition to any additional unpaid interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, paralegal fees, and court costs under current law.⁴ The owners association lien under current law not changed by the bill is upon the interest in any lot for the payment of any individual lot assessments and any related interest, administrative late fees, enforcement assessments, collection costs, attorney's fees, and paralegal fees that are chargeable against the lot and remain unpaid ten days after any portion has become due and payable.⁵

Priority of owners association lien

The bill adds that the association's lien, subject to a cap on the amount, is prior to any lien or encumbrance that previously arose or was created except liens for real estate taxes and assessments of political subdivisions. The cap is the lesser of the amount of the delinquency or six months of common expense assessments based on the association's budget for the year in which the foreclosure action against the unit is commenced, plus the association's reasonable attorney's fees, costs, and expenses related to the foreclosure. Following the security interest created by this provision (that is, the lien up to the amount of the cap), the association's lien returns to the priority outlined in current law.⁶ This priority in current law is to any lien or encumbrance that subsequently arises or is created except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been recorded prior to the

³ R.C. 5311.18(B).

⁴ R.C. 5312.12(B)(2).

⁵ R.C. 5312.12(A).

⁶ R.C. 5312.12(B)(5).



recording of the lien, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the association.⁷

HISTORY

ACTION	DATE
Introduced	05-21-15

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⁷ R.C. 5312.12(B)(4).

