
HOUSE BILL 1482

State of Washington

67th Legislature

2021 Regular Session

By Representatives Walsh, Orwall, Lekanoff, Leavitt, Sutherland, Jacobsen, Dufault, and Pollet

Read first time 02/04/21. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to foreclosure protections for homeowners in
2 common interest communities; and amending RCW 64.90.485.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 64.90.485 and 2019 c 238 s 211 are each amended to
5 read as follows:

6 (1) The association has a statutory lien on each unit for any
7 unpaid assessment against the unit from the time such assessment is
8 due.

9 (2) A lien under this section has priority over all other liens
10 and encumbrances on a unit except:

11 (a) Liens and encumbrances recorded before the recordation of the
12 declaration and, in a cooperative, liens and encumbrances that the
13 association creates, assumes, or takes subject to;

14 (b) Except as otherwise provided in subsection (3) of this
15 section, a security interest on the unit recorded before the date on
16 which the unpaid assessment became due or, in a cooperative, a
17 security interest encumbering only the unit owner's interest and
18 perfected before the date on which the unpaid assessment became due;
19 and

20 (c) Liens for real estate taxes and other state or local
21 governmental assessments or charges against the unit or cooperative.

1 (3)(a) A lien under this section also has priority over the
2 security interests described in subsection (2)(b) of this section to
3 the extent of an amount equal to the following:

4 (i) The common expense assessments, excluding any amounts for
5 capital improvements, based on the periodic budget adopted by the
6 association pursuant to RCW 64.90.480(1), along with any specially
7 allocated assessments that are properly assessable against the unit
8 under such periodic budget, which would have become due in the
9 absence of acceleration during the six months immediately preceding
10 the institution of proceedings to foreclose either the association's
11 lien or a security interest described in subsection (2)(b) of this
12 section;

13 (ii) The association's actual costs and reasonable attorneys'
14 fees incurred in foreclosing its lien but incurred after the giving
15 of the notice described in (a)(iii) of this subsection; provided,
16 however, that the costs and reasonable attorneys' fees that will have
17 priority under this subsection (3)(a)(ii) shall not exceed two
18 thousand dollars or an amount equal to the amounts described in
19 (a)(i) of this subsection, whichever is less;

20 (iii) The amounts described in (a)(ii) of this subsection shall
21 be prior only to the security interest of the holder of a security
22 interest on the unit recorded before the date on which the unpaid
23 assessment became due and only if the association has given that
24 holder not less than sixty days' prior written notice that the owner
25 of the unit is in default in payment of an assessment. The notice
26 shall contain:

27 (A) Name of the borrower;

28 (B) Recording date of the trust deed or mortgage;

29 (C) Recording information;

30 (D) Name of condominium, unit owner, and unit designation stated
31 in the declaration or applicable supplemental declaration;

32 (E) Amount of unpaid assessment; and

33 (F) A statement that failure to, within sixty days of the written
34 notice, submit the association payment of six months of assessments
35 as described in (a)(i) of this subsection will result in the priority
36 of the amounts described in (a)(ii) of this subsection; and

37 (iv) Upon payment of the amounts described in (a)(i) and (ii) of
38 this subsection by the holder of a security interest, the
39 association's lien described in this subsection (3)(a) shall

1 thereafter be fully subordinated to the lien of such holder's
2 security interest on the unit.

3 (b) For the purposes of this subsection:

4 (i) "Institution of proceedings" means either:

5 (A) The date of recording of a notice of trustee's sale by a deed
6 of trust beneficiary;

7 (B) The date of commencement, pursuant to applicable court rules,
8 of an action for judicial foreclosure either by the association or by
9 the holder of a recorded security interest; or

10 (C) The date of recording of a notice of intention to forfeit in
11 a real estate contract forfeiture proceeding by the vendor under a
12 real estate contract.

13 (ii) "Capital improvements" does not include making, in the
14 ordinary course of management, repairs to common elements or
15 replacements of the common elements with substantially similar items,
16 subject to: (A) Availability of materials and products, (B)
17 prevailing law, or (C) sound engineering and construction standards
18 then prevailing.

19 (c) The adoption of a periodic budget that purports to allocate
20 to a unit any fines, late charges, interest, attorneys' fees and
21 costs incurred for services unrelated to the foreclosure of the
22 association's lien, other collection charges, or specially allocated
23 assessments assessed under RCW 64.90.480 (6) or (7) does not cause
24 any such items to be included in the priority amount affecting such
25 unit.

26 (4) Subsections (2) and (3) of this section do not affect the
27 priority of mechanics' or material suppliers' liens to the extent
28 that law of this state other than chapter 277, Laws of 2018 gives
29 priority to such liens, or the priority of liens for other
30 assessments made by the association.

31 (5) A lien under this section is not subject to chapter 6.13 RCW.

32 (6) If the association forecloses its lien under this section
33 nonjudicially pursuant to chapter 61.24 RCW, as provided under
34 subsection (13) of this section, the association is not entitled to
35 the lien priority provided for under subsection (3) of this section,
36 and is subject to the limitations on deficiency judgments as provided
37 in chapter 61.24 RCW.

38 (7) Unless the declaration provides otherwise, if two or more
39 associations have liens for assessments created at any time on the
40 same property, those liens have equal priority as to each other, and

1 any foreclosure of one such lien shall not affect the lien of the
2 other.

3 (8) Recording of the declaration constitutes record notice and
4 perfection of the statutory lien created under this section. Further
5 notice or recordation of any claim of lien for assessment under this
6 section is not required, but is not prohibited.

7 (9) A lien for unpaid assessments and the personal liability for
8 payment of those assessments are extinguished unless proceedings to
9 enforce the lien or collect the debt are instituted within six years
10 after the full amount of the assessments sought to be recovered
11 becomes due.

12 (10) This section does not prohibit actions against unit owners
13 to recover sums for which subsection (1) of this section creates a
14 lien or prohibit an association from taking a deed in lieu of
15 foreclosure.

16 (11) The association upon written request must furnish to a unit
17 owner or a mortgagee a statement signed by an officer or authorized
18 agent of the association setting forth the amount of unpaid
19 assessments or the priority amount against that unit, or both. The
20 statement must be furnished within fifteen days after receipt of the
21 request and is binding on the association, the board, and every unit
22 owner unless, and to the extent, known by the recipient to be false.
23 The liability of a recipient who reasonably relies upon the statement
24 must not exceed the amount set forth in any statement furnished
25 pursuant to this section or RCW 64.90.640(1)(b).

26 (12) In a cooperative, upon nonpayment of an assessment on a
27 unit, the unit owner may be evicted in the same manner as provided by
28 law in the case of an unlawful holdover by a commercial tenant, and
29 the lien may be foreclosed as provided under this section.

30 (13) The association's lien may be foreclosed in accordance with
31 (a) and (b) of this subsection.

32 (a) In a common interest community other than a cooperative, the
33 association's lien may be foreclosed judicially in accordance with
34 chapter 61.12 RCW, subject to any rights of redemption under chapter
35 6.23 RCW.

36 (b) The lien may be enforced nonjudicially in the manner set
37 forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of
38 trust if the declaration: Contains a grant of the common interest
39 community in trust to a trustee qualified under RCW 61.24.010 to
40 secure the obligations of the unit owners to the association for the

1 payment of assessments, contains a power of sale, provides in its
2 terms that the units are not used principally for agricultural
3 purposes, and provides that the power of sale is operative in the
4 case of a default in the obligation to pay assessments. The
5 association or its authorized representative may purchase the unit at
6 the foreclosure sale and acquire, hold, lease, mortgage, or convey
7 the unit. Upon an express waiver in the complaint of any right to a
8 deficiency judgment in a judicial foreclosure action, the period of
9 redemption is eight months.

10 (c) In a cooperative in which the unit owners' interests in the
11 units are real estate, the association's lien must be foreclosed in
12 like manner as a mortgage on real estate or by power of sale under
13 (b) of this subsection.

14 (d) In a cooperative in which the unit owners' interests in the
15 units are personal property, the association's lien must be
16 foreclosed in like manner as a security interest under chapter 62A.9A
17 RCW.

18 (14) If the unit owner's interest in a unit in a cooperative is
19 real estate, the following requirements apply:

20 (a) The association, upon nonpayment of assessments and
21 compliance with this subsection, may sell that unit at a public sale
22 or by private negotiation, and at any time and place. The association
23 must give to the unit owner and any lessee of the unit owner
24 reasonable notice in a record of the time, date, and place of any
25 public sale or, if a private sale is intended, of the intention of
26 entering into a contract to sell and of the time and date after which
27 a private conveyance may be made. Such notice must also be sent to
28 any other person that has a recorded interest in the unit that would
29 be cut off by the sale, but only if the recorded interest was on
30 record seven weeks before the date specified in the notice as the
31 date of any public sale or seven weeks before the date specified in
32 the notice as the date after which a private sale may be made. The
33 notices required under this subsection may be sent to any address
34 reasonable in the circumstances. A sale may not be held until five
35 weeks after the sending of the notice. The association may buy at any
36 public sale and, if the sale is conducted by a fiduciary or other
37 person not related to the association, at a private sale.

38 (b) Unless otherwise agreed to or as stated in this section, the
39 unit owner is liable for any deficiency in a foreclosure sale.

1 (c) The proceeds of a foreclosure sale must be applied in the
2 following order:

3 (i) The reasonable expenses of sale;

4 (ii) The reasonable expenses of securing possession before sale;
5 the reasonable expenses of holding, maintaining, and preparing the
6 unit for sale, including payment of taxes and other governmental
7 charges and premiums on insurance; and, to the extent provided for by
8 agreement between the association and the unit owner, reasonable
9 attorneys' fees, costs, and other legal expenses incurred by the
10 association;

11 (iii) Satisfaction of the association's lien;

12 (iv) Satisfaction in the order of priority of any subordinate
13 claim of record; and

14 (v) Remittance of any excess to the unit owner.

15 (d) A good-faith purchaser for value acquires the unit free of
16 the association's debt that gave rise to the lien under which the
17 foreclosure sale occurred and any subordinate interest, even though
18 the association or other person conducting the sale failed to comply
19 with this section. The person conducting the sale must execute a
20 conveyance to the purchaser sufficient to convey the unit and stating
21 that it is executed by the person after a foreclosure of the
22 association's lien by power of sale and that the person was empowered
23 to make the sale. Signature and title or authority of the person
24 signing the conveyance as grantor and a recital of the facts of
25 nonpayment of the assessment and of the giving of the notices
26 required under this subsection are sufficient proof of the facts
27 recited and of the authority to sign. Further proof of authority is
28 not required even though the association is named as grantee in the
29 conveyance.

30 (e) At any time before the association has conveyed a unit in a
31 cooperative or entered into a contract for its conveyance under the
32 power of sale, the unit owners or the holder of any subordinate
33 security interest may cure the unit owner's default and prevent sale
34 or other conveyance by tendering the performance due under the
35 security agreement, including any amounts due because of exercise of
36 a right to accelerate, plus the reasonable expenses of proceeding to
37 foreclosure incurred to the time of tender, including reasonable
38 attorneys' fees and costs of the creditor.

39 (15) In an action by an association to collect assessments or to
40 foreclose a lien on a unit under this section, the court may appoint

1 a receiver to collect all sums alleged to be due and owing to a unit
2 owner before commencement or during pendency of the action. The
3 receivership is governed under chapter 7.60 RCW. During pendency of
4 the action, the court may order the receiver to pay sums held by the
5 receiver to the association for any assessments against the unit. The
6 exercise of rights under this subsection by the association does not
7 affect the priority of preexisting liens on the unit.

8 (16) Except as provided in subsection (3) of this section, the
9 holder of a mortgage or other purchaser of a unit who obtains the
10 right of possession of the unit through foreclosure is not liable for
11 assessments or installments of assessments that became due prior to
12 such right of possession. Such unpaid assessments are deemed to be
13 common expenses collectible from all the unit owners, including such
14 mortgagee or other purchaser of the unit. Foreclosure of a mortgage
15 does not relieve the prior unit owner of personal liability for
16 assessments accruing against the unit prior to the date of such sale
17 as provided in this subsection.

18 (17) In addition to constituting a lien on the unit, each
19 assessment is the joint and several obligation of the unit owner of
20 the unit to which the same are assessed as of the time the assessment
21 is due. A unit owner may not exempt himself or herself from liability
22 for assessments. In a voluntary conveyance other than by foreclosure,
23 the grantee of a unit is jointly and severally liable with the
24 grantor for all unpaid assessments against the grantor up to the time
25 of the grantor's conveyance, without prejudice to the grantee's right
26 to recover from the grantor the amounts paid by the grantee. Suit to
27 recover a personal judgment for any delinquent assessment is
28 maintainable in any court of competent jurisdiction without
29 foreclosing or waiving the lien securing such sums.

30 (18) The association may from time to time establish reasonable
31 late charges and a rate of interest to be charged, not to exceed the
32 maximum rate calculated under RCW 19.52.020, on all subsequent
33 delinquent assessments or installments of assessments. If the
34 association does not establish such a rate, delinquent assessments
35 bear interest from the date of delinquency at the maximum rate
36 calculated under RCW 19.52.020 on the date on which the assessments
37 became delinquent.

38 (19) The association is entitled to recover any costs and
39 reasonable attorneys' fees incurred in connection with the collection
40 of delinquent assessments, whether or not such collection activities

1 result in a suit being commenced or prosecuted to judgment. The
2 prevailing party is also entitled to recover costs and reasonable
3 attorneys' fees in such suits, including any appeals, if it prevails
4 on appeal and in the enforcement of a judgment.

5 (20) To the extent not inconsistent with this section, the
6 declaration may provide for such additional remedies for collection
7 of assessments as may be permitted by law.

8 (21) An association may not commence an action to foreclose a
9 lien on a unit under this section unless:

10 (a) The unit owner, at the time the action is commenced, owes at
11 least a sum equal to (~~at least three months of common expense~~
12 ~~assessments~~) the greater of:

13 (i) Three months or more of common expense assessments, not
14 including fines, late charges, interest, attorneys' fees, or costs
15 incurred by the association in connection with the collection of a
16 delinquent owner's account; or

17 (ii) \$200 of common expense assessments, not including fines,
18 late charges, interest, attorneys' fees, or costs incurred by the
19 association in connection with the collection of a delinquent owner's
20 account;

21 (b) The unit owner fails to repay the amount owed under (a) of
22 this subsection within six months of the day that amount is accrued;
23 and

24 (~~(b)~~) (c) The board approves commencement of a foreclosure
25 action specifically against that unit.

26 (22) Every aspect of a collection, foreclosure, sale, or other
27 conveyance under this section, including the method, advertising,
28 time, date, place, and terms, must be commercially reasonable.

--- END ---