

Senate Bill 300

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions relating to enforcement of liens for association assessments in planned communities and condominiums.

A BILL FOR AN ACT

1
2 Relating to communities governed by declaration; creating new provisions; and amending ORS 94.709
3 and 100.450.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 94.709 is amended to read:

6 94.709. (1) Whenever a homeowners association levies any assessment against a lot **or against**
7 **an owner of a lot**, the association [*shall have*] **has** a lien upon the individual lot for any unpaid
8 assessments. The lien:

9 (a) Includes interest, late charges, attorney fees, costs or other amounts imposed under the
10 declaration or bylaws or other recorded governing document. [*The lien*]

11 (b) Is prior to a homestead exemption and all other liens or encumbrances upon the lot except:

12 [*(a)*] (A) Tax and assessment liens; and

13 [*(b)*] (B) **Subject to subsections (2) and (10) of this section**, a first mortgage, a **land sale**
14 **contract** or a trust deed of record.

15 (2) **Except with respect to assessments for fines, the lien of the association under this**
16 **section is prior to a first mortgage, a land sale contract or a trust deed of record with re-**
17 **spect to assessments that would have become due during the six months immediately pre-**
18 **ceding the date of:**

19 (a) **A sheriff's sale in an action for judicial foreclosure of a first mortgage;**

20 (b) **A trustee's sale in a nonjudicial foreclosure of a first trust deed; or**

21 (c) **Recording of a declaration of forfeiture under a contract for the conveyance or**
22 **transfer of an interest in real property under ORS 93.905 to 93.940.**

23 [(2)] (3) Recording of the declaration constitutes record notice and perfection of the lien for
24 assessments. [*No further*] Recording of a claim of lien for assessments or notice of a claim of lien
25 under this section is **not** required to perfect the association's lien.

26 (4) **Before the association may proceed with an action to foreclose a lien under this sec-**
27 **tion:**

28 (a) The association [*shall record a notice of claim of lien for assessments under this section in the*
29 *deed records of the county in which a lot is located before any suit to foreclose may proceed under*
30 *subsection (4) of this section.*] **must present for recordation in the deed records of the county**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **in which the lot is located a notice of claim of lien for assessments, verified by the oath of**
 2 **an individual having knowledge of the facts; and**

3 **(b) The county clerk must have recorded and indexed the notice as other liens are re-**
 4 **corded and indexed.**

5 (5) The notice *[shall]* **must** contain:

6 (a) A true statement of the amount due for the unpaid assessments after deducting all just
 7 credits and offsets;

8 (b) The name of the owner of the lot, or reputed owner, if known;

9 (c) The name of the association;

10 (d) The description of the lot as provided in ORS 93.600; and

11 (e) A statement that if the owner of the lot thereafter fails to pay any assessments when due,
 12 as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of
 13 assessments automatically *[continue]* **continues** to accumulate with interest without the necessity
 14 of further recording.

15 *[(3) The notice shall be verified by the oath of some person having knowledge of the facts and shall*
 16 *be recorded by the county recording officer. The record shall be indexed as other liens are required*
 17 *by law to be indexed.]*

18 *[(4)(a)]* (6) *[The proceedings]* **A proceeding** to foreclose liens created by this section *[shall]* **must**
 19 conform as nearly as possible to *[the proceedings]* **a proceeding** to foreclose liens created by ORS
 20 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not
 21 to exceed six years from the date the assessment is due. For the purpose of determining the date
 22 the assessment is due in those cases when subsequent unpaid assessments have accumulated under
 23 a notice recorded as provided in subsection *[(2)]* (3) of this section, the assessment and claim re-
 24 garding each unpaid assessment *[shall be]* **are** deemed to have been levied at the time the unpaid
 25 assessment became due.

26 *[(b)]* (7) The *[lien may be enforced by the]* board of directors acting on behalf of the association
 27 **may enforce a lien to collect unpaid assessments under this section by bringing an action to**
 28 **foreclose the lien, by bringing an action to recover a money judgment for unpaid assessments**
 29 **or by accepting a deed in lieu of foreclosure in satisfaction of the lien.**

30 *[(c)]* (8) An action to recover a money judgment for unpaid assessments:

31 (a) May be maintained without foreclosing or waiving the lien securing the claim for unpaid
 32 assessments.

33 (b) **Operates to satisfy the lien, or the portion thereof, for which recovery is made.**

34 *[(5)]* (9) Unless the declaration or bylaws provide otherwise, fees, late charges, fines and interest
 35 imposed pursuant to ORS 94.630 (1)(L), (n) and (o) are enforceable as assessments under this section.

36 *[(6) This section does not prohibit an association from pursuing an action to recover sums for*
 37 *which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satis-*
 38 *faction of the lien.]*

39 *[(7) An action to recover a money judgment for unpaid assessments may be maintained without*
 40 *foreclosing or waiving the lien for unpaid assessments. However, recovery on the action operates to*
 41 *satisfy the lien, or the portion thereof, for which recovery is made.]*

42 (10) **Notwithstanding the priority established for a lien for unpaid assessments and in-**
 43 **terest under subsection (1) of this section, the lien is also prior to the lien of a first mort-**
 44 **gage, a land sale contract or a trust deed of record for the unit and the undivided interest**
 45 **in the common elements, if:**

1 (a) The association has given the lender under the mortgage, the land sale contract or
 2 the trust deed 90 days prior written notice that the owner of the unit is in default in payment
 3 of an assessment. The notice must contain:

4 (A) Name of borrower;

5 (B) Recording date of the mortgage, the land sale contract or the trust deed;

6 (C) Recording information of the mortgage, the land sale contract or the trust deed;

7 (D) Name of the planned community, the lot owner and the lot designation stated in the
 8 declaration or applicable governing document; and

9 (E) Amount of unpaid assessment.

10 (b) The notice under paragraph (a) of this subsection sets forth the following in 10-point
 11 type:

12
 13
 14 **NOTICE: The lien of the association may become prior to that of the lender pursuant to**
 15 **ORS 94.709.**

16
 17
 18 (c) The lender has not:

19 (A) Initiated judicial action to foreclose the mortgage;

20 (B) Caused to be recorded either a trustee's notice of sale under the trust deed or a no-
 21 tice of default and election to sell; or

22 (C) Accepted a deed in lieu of foreclosure in the circumstances described in ORS 100.465
 23 prior to the expiration of 90 days following the notice by the association.

24 (d) The association has provided the lender, upon request, with copies of any liens filed
 25 on the unit, a statement of the assessments and interest remaining unpaid on the unit and
 26 other documents that the lender may reasonably request.

27 (e) The borrower is in default as to principal or interest under the terms of the mortgage
 28 or trust deed.

29 (f) A copy of the notice described in paragraph (a) of this subsection, together with an
 30 affidavit of notice by an individual having knowledge of the facts and reciting the date and
 31 the individual to whom the notice was given, has been recorded in the manner prescribed in
 32 subsection (4) of this section.

33 **SECTION 2.** ORS 100.450 is amended to read:

34 100.450. (1) Whenever an association of unit owners levies any assessment against a unit, the
 35 association of unit owners *[shall have]* **has** a lien upon the individual unit and the undivided interest
 36 in the common elements appertaining to *[such]* **the** unit for any unpaid assessments. The lien:

37 (a) Includes interest, late charges, attorney fees, costs or other amounts levied under the dec-
 38 laration or bylaws. *[The lien]*

39 (b) Is prior to a homestead exemption and all other liens or encumbrances upon the unit except:

40 *[(a)]* (A) Tax and assessment liens; and

41 *[(b)]* (B) **Subject to subsections (2) and (12) of this section,** a first mortgage, a land sale
 42 **contract** or a trust deed of record. *[unless:]*

43 *[(A) The condominium consists of fewer than seven units, all of which are to be used for nonresi-*
 44 *dential purposes;]*

45 *[(B) The declaration provides that the lien of any mortgage or trust deed of record affecting the*

1 *property shall be subordinate to the lien of the association provided under subsection (1) of this section;*
 2 *and]*

3 *[(C) The holder of any mortgage or trust deed of record affecting the property when the declaration*
 4 *is recorded executes a separate subordination of the holder's interest to the declaration which is at-*
 5 *tached as an exhibit and which states that the holder understands that the declaration subordinates the*
 6 *holder's lien to the assessment lien of the association provided under subsection (1) of this section.]*

7 **(2)(a) Subject to paragraph (b) of this subsection, except with respect to assessments for**
 8 **finances, the lien of the association under this section is prior to a first mortgage, a land sale**
 9 **contract or a trust deed of record with respect to assessments that would have become due**
 10 **during the six months immediately preceding the date of:**

11 **(A) A sheriff's sale in an action for judicial foreclosure of a first mortgage;**

12 **(B) A trustee's sale in a nonjudicial foreclosure of a first trust deed; or**

13 **(C) Recording of a declaration of forfeiture under a contract for the conveyance or**
 14 **transfer of an interest in real property under ORS 93.905 to 93.940.**

15 **(b) Paragraph (a) of this subsection does not apply if:**

16 **(A) The condominium consists of fewer than seven units, all of which are to be used for**
 17 **nonresidential purposes;**

18 **(B) The declaration provides that the lien of a mortgage, a land sale contract or a trust**
 19 **deed of record affecting the property is subordinate to the lien of the association under this**
 20 **section; and**

21 **(C) The holder of a mortgage, a land sale contract or a trust deed of record affecting the**
 22 **property when the declaration is recorded executes a separate subordination of the holder's**
 23 **interest to the declaration that is attached as an exhibit and that states that the holder**
 24 **understands that the declaration subordinates the holder's lien to the assessment lien of the**
 25 **association under this section.**

26 *[(2)]* **(3) Recording of the declaration constitutes record notice and perfection of the lien for**
 27 **assessments. [No further] Recording of a claim of lien for assessments or notice of a claim of lien**
 28 **under this section is not required to perfect the association's lien.**

29 **(4) Before the association may proceed with an action to foreclose a lien under this sec-**
 30 **tion:**

31 **(a) The association [shall record a notice of claim of lien for assessments under this section in the**
 32 **deed records of the county in which the unit is located before any suit to foreclose may proceed under**
 33 **subsection (4) of this section.] must present for recordation in the deed records of the county**
 34 **in which the unit is located a notice of claim of lien for assessments, verified by the oath**
 35 **of an individual having knowledge of the facts; and**

36 **(b) The county clerk must have recorded and indexed the notice as other liens are re-**
 37 **corded and indexed.**

38 **(5) The notice [shall] must contain:**

39 **(a) A true statement of the amount due for the unpaid assessments after deducting all just**
 40 **credits and offsets;**

41 **(b) The name of the owner of the unit, or reputed owner, if known;**

42 **(c) The name of the condominium and the designation of the unit as stated in the declaration**
 43 **or applicable supplemental declaration; and**

44 **(d) A statement that if the owner of the unit thereafter fails to pay any assessments when due,**
 45 **as long as the original or any subsequent unpaid assessment remains unpaid, the unpaid amount of**

1 assessments automatically [*continue*] **continues** to accumulate with interest without the necessity
2 of further recording.

3 [(3) *The notice shall be verified by the oath of some person having knowledge of the facts and shall*
4 *be recorded by the county recording officer. The record shall be indexed as other liens are required*
5 *by law to be indexed.*]

6 [(4)(a)] (6) [*The proceedings*] **A proceeding** to foreclose liens created by this section [*shall*] **must**
7 conform as nearly as possible to [*the proceedings*] **a proceeding** to foreclose liens created by ORS
8 87.010 except, notwithstanding ORS 87.055, a lien may be continued in force for a period of time not
9 to exceed six years from the date the assessment is due. For the purpose of determining the date
10 the assessment is due in those cases when subsequent unpaid assessments have accumulated under
11 a notice recorded as provided in subsection [(2)] (4) of this section, the assessment and claim re-
12 garding each unpaid assessment [*shall be*] **are** deemed to have been levied at the time the unpaid
13 assessment became due.

14 [(b)] (7) The [*lien may be enforced by the*] board of directors acting on behalf of the association
15 of unit owners **may enforce a lien for unpaid assessments under this section by bringing an**
16 **action to foreclose the lien, by bringing an action to recover a money judgment for unpaid**
17 **assessments or by accepting a deed in lieu of foreclosure in satisfaction of the lien.**

18 [(c)] (8) An action to recover a money judgment for unpaid assessments:

19 (a) May be maintained without foreclosing or waiving the lien securing the claim for unpaid
20 assessments.

21 (b) **Operates to satisfy the lien, or the portion thereof, for which recovery is made.**

22 [(d)] (9) An action to foreclose a lien under this section or recover a money judgment for unpaid
23 assessments may not be maintained unless the Condominium Information Report and the Annual
24 Report described in ORS 100.250 are designated current as provided in ORS 100.255.

25 [(5)] (10) Unless the declaration or bylaws [*provides*] **provide** otherwise, fees, late charges, fines
26 and interest imposed pursuant to ORS 100.405 (4)(j), (k), (L) and (m) are enforceable as assessments
27 under this section.

28 [(6)] (11) With respect to condominium units also constituting timeshare property as defined by
29 ORS 94.803, liens created by this section shall be assessed to the timeshare owners in the timeshare
30 property according to the method for determining each owner's liability for common expenses under
31 the timeshare instrument and shall be enforced individually against each timeshare owner in the
32 condominium unit.

33 [(7)] (12) Notwithstanding the priority established for a lien for unpaid assessments and interest
34 under subsection (1) of this section, the lien [*shall also be*] **is also** prior to the lien of a first mort-
35 gage, **a land sale contract** or **a** trust deed of record for the unit and the undivided interest in the
36 common elements, if:

37 (a) The association [*of unit owners for the condominium in which the unit is located*] has given
38 the lender under the mortgage, **the land sale contract** or **the** trust deed 90 days prior written no-
39 tice that the owner of the unit is in default in payment of an assessment. The notice [*shall*] **must**
40 contain:

41 (A) Name of borrower;

42 (B) Recording date of **the mortgage, the land sale contract or the** trust deed [*or mortgage*];

43 (C) Recording information **of the mortgage, the land sale contract or the trust deed**;

44 (D) Name of **the** condominium, **the** unit owner and **the** unit designation stated in the declaration
45 or applicable supplemental declaration; and

1 (E) Amount of unpaid assessment.

2 (b) The notice under paragraph (a) of this subsection [*shall set*] **sets** forth the following in
3 10-point type:

4 _____
5
6 NOTICE: The lien of the association may become prior to that of the lender pursuant to ORS
7 100.450.
8 _____

9
10 (c) The lender has not:

11 (A) Initiated judicial action to foreclose the mortgage; [*or requested issuance of*]

12 (B) **Caused to be recorded** a trustee’s notice of sale under the trust deed or **a notice of de-**
13 **fault and election to sell; or**

14 (C) Accepted a deed in lieu of foreclosure in the circumstances described in ORS 100.465 prior
15 to the expiration of 90 days following the notice by the [*unit owners’*] association.

16 (d) The [*unit owners’*] association has provided the lender, upon request, with copies of any liens
17 filed on the unit, a statement of the assessments and interest remaining unpaid on the unit and other
18 documents [*which*] **that** the lender may reasonably request.

19 (e) The borrower is in default **as to principal or interest** under the terms of the mortgage or
20 trust deed[*as to principal and interest*].

21 (f) A copy of the notice described in paragraph (a) of this subsection, together with an affidavit
22 of notice by [*a person*] **an individual** having knowledge of the facts **and reciting the date and the**
23 **individual to whom the notice was given**, has been recorded in the manner prescribed in sub-
24 section [(3)] (4) of this section. [*The affidavit shall recite the date and the person to whom the notice*
25 *was given.*]

26 **SECTION 3. The amendments to ORS 94.709 and 100.450 by sections 1 and 2 of this 2011**
27 **Act apply to assessments levied on or after the effective date of this 2011 Act.**
28 _____