

HOUSE BILL 2401

By Travis

AN ACT to amend Tennessee Code Annotated, Title 66,
Chapter 27, relative to liens.

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

SECTION 1. Tennessee Code Annotated, Section 66-27-415, is amended by deleting subsections (a) and (b) and by substituting the following:

(a)

(1) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due, which lien may be foreclosed by judicial action.

(2) Notwithstanding subdivision (a)(1), the declaration may provide that the association's lien may be foreclosed in like manner as a deed of trust with power of sale under title 35, chapter 5; provided, that the association shall give notice of its action prior to the first publication of notice as required under title 35, chapter 5 to the:

(A) Unit owner;

(B) All lienholders;

(C) Other interested parties; or

(D) The nominee of record of any person or entity listed in subdivisions (a)(2)(A)-(C).

(3) Notice shall be deemed sufficient if sent by United States mail, postage prepaid:

(A) If to the unit owner, at the unit, or, if different, the last address for the unit owner on file with the association; or

(B) If to a lienholder, other interested party, or the nominee of record, at the address set forth in the instrument of record, or, if different, at such other address as the lienholder or other interested party or the nominee may have on file with the association.

(4) Notice shall be deemed received three (3) days after deposit in the United States mail, postage prepaid. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 66-27-402(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.

(b)

(1) A lien under this section is prior to all other liens and encumbrances on a unit, except:

(A) Liens and encumbrances recorded before the recordation of the declaration;

(B) A mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and

(C) Liens for real estate taxes and other governmental assessments or charges against the unit.

(2) Upon a foreclosure action initiated by a lien holder or the association under title 35, chapter 5, the association shall be entitled to proceeds from the foreclosure sale to satisfy the lien under subsection (a) up to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to § 66-27-414, which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, but not exceeding one percent (1%) of

the maximum principal indebtedness of a lien secured by the first mortgage or deed of trust; provided, that, notwithstanding this subsection (b) or any law to the contrary:

(A) Any foreclosure by the association of its lien for assessments shall be subject to any mortgage or deed of trust encumbering the property and shall not extinguish the lien of such mortgage or deed of trust;

(B) Upon any foreclosure by the holder of a mortgage or deed of trust, the sale and foreclosure will be subject to the association lien up to the payment priority amount set forth in this subdivision (b)(2); and

(C) Any right of foreclosure or priority of the association shall not be transferable and shall be extinguished if assigned or transferred to a third party.

(3) This subsection (b) does not affect the priority of mechanics or materialmens liens. The lien under this section is not subject to the statutory or other right of redemption, homestead, or any other exemption, unless specifically reserved in the declaration.

SECTION 2. Tennessee Code Annotated, Section 66-27-415, is amended by deleting subsection (d) and by substituting the following:

(d) Recording of the declaration constitutes record notice of the lien. Any lien for any assessment under this section is perfected by recording it in the lien book in the register of deeds office in the county where the real property is located.

SECTION 3. This act shall take effect on June 1, 2016, the public welfare requiring it, and shall apply to any foreclosure action initiated on or after that date.