WEST VIRGINIA CODE: §36B-3-116

§36B-3-116. Lien for assessments.

(a) 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. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to section 3- 102(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 thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. (The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions).)

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

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

(e) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

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

(g) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive

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board, and every unit owner.

(h) For the purpose of perfecting and preserving its lien, the association shall give notice to the unit owner in the manner set forth in section one (§56-2-1), article two, chapter fifty-six of this code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the association shall cause to be recorded a notice of the lien in the office of the clerk of the county commission of any county wherein any part of the condominium is located. The notice shall contain:

(1) A legally sufficient description of the unit;

(2) The name or names of the owners of the unit;

(3) The amount of unpaid assessments due together with the date when each fell due; and

(4) The date of recordation.

The clerk of the county commission in whose office the notice is recorded shall index the notice in the appropriate deed books and lien books in the name of the unit owners and of the association. The cost of recordation shall be assessed against any unit owner found to be delinquent in a subsequent proceeding to enforce the lien.

Upon payment of the assessment, the association shall execute a written release of the lien in the manner set forth in section one (§38-12-1), article twelve, chapter thirty-eight of this code. This release shall be recorded, at the expense of the association, in the office of the clerk of the county commission wherein the notice of the lien was filed.

(i) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

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