

# Homeowners' Association; Liens; Foreclosure

## 33-1242. Powers of unit owners' association; notice to unit owner of violation

- A. Subject to the provisions of the declaration, the association may:
1. Adopt and amend bylaws and rules.
  2. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners.
  3. Hire and discharge managing agents and other employees, agents and independent contractors.
  4. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium.
  5. Make contracts and incur liabilities.
  6. Regulate the use, maintenance, repair, replacement and modification of common elements.
  7. Cause additional improvements to be made as a part of the common elements.
  8. Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property, except that common elements may be conveyed or subjected to a security interest only pursuant to section 33-1252.
  9. Grant easements, leases, licenses and concessions through or over the common elements.
  10. Impose and receive any payments, fees or charges for the use, rental or operation of the common elements other than limited common elements described in section 33-1212, paragraphs 2 and 4 and for services provided to unit owners.
  11. Impose charges for late payment of **COMMON EXPENSE** assessments **AS DEFINED IN SECTION 33-1255** after the association has provided notice that the assessment is overdue or provided notice that the assessment is considered overdue after a certain date, **ALONG WITH ANY COST TO ADMINISTER THE DEBT FOR DELINQUENT COMMON EXPENSE ASSESSMENTS**.
  12. ~~and, a~~After notice and an opportunity to be heard, impose reasonable monetary penalties on unit owners for violations of the declaration, bylaws and rules of the association.
  13. ~~Impose reasonable charges for the preparation and recordation of amendments to the declaration. or statements of unpaid assessments.~~
  14. Provide for the indemnification of its officers and executive board of directors and maintain directors' and officers' liability insurance.
  15. Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly provides.
  16. Be a member of a master association or other entity owning, maintaining or governing in any respect any portion of the common elements or other property benefitting or related to the condominium or the unit owners in any respect.
  17. Exercise any other powers conferred by the declaration or bylaws.
  18. Exercise all other powers that may be exercised in this state by legal entities of the same type as the association.
  19. Exercise any other powers necessary and proper for the governance and operation of the association.
- B. A unit owner who receives a written notice that the condition of the property owned by the unit owner is in violation of a requirement of the condominium documents without regard to whether a monetary penalty is imposed by the notice may provide the association with a written response by sending the response within calendar days after the date of the notice. The response shall be sent to the address identified in the notice.
- C. Within ten business days after receipt of the response from the unit owner, the association shall respond to the unit owner with a written explanation regarding the notice that shall provide at least the following information unless previously provided in the notice of violation:
1. The provision of the condominium documents that has allegedly been violated.
  2. The date of the violation or the date the violation was observed.
  3. The first and last name of the person or persons who observed the violation.
  4. The process the unit owner must follow to contest the notice
- D. The association shall not proceed with any action to enforce the condominium documents, before or during the time prescribed by subsection C of this section regarding the exchange of information between the association and the unit owner. At any time before or after completion of the exchange of information pursuant to this section, the unit owner may petition for a hearing pursuant to section 32-2199.01 if the dispute is within the jurisdiction of the state real estate department as prescribed in section 32-2199.01.

33-1256. LienS for COMMON EXPENSE assessments AND OTHER CHARGES; priority; mechanics' and materialmen's liens; applicability

A. The association has a lien on a unit for any ANNUAL, SUPPLEMENTAL, OR SPECIAL COMMON EXPENSE assessment APPROPRIATELY levied against that unit from the time the assessment becomes due. The association's lien for COMMON EXPENSE assessments, INCLUDING ~~for~~ charges for late payment of those assessments, ANY INTEREST ON THOSE DELINQUENT ASSESSMENTS, AND ANY REASONABLE DIRECT COST TO THE ASSOCIATION TO MANAGE AND ADMINISTER THE COMMON EXPENSE ASSESSMENT DEBT, ~~for reasonable collection fees and for reasonable attorney fees and cost incurred with respect to those assessments~~ may be foreclosed in the same manner as a mortgage on real estate PURSUENT TO CHAPTER 6 ARTICLE 2 OF THIS TITLE. THE COMMON EXPENSE ASSESSMENT LIEN AS DESCRIBED ABOVE ~~but~~ may be foreclosed only if the owner IS ~~has been~~ delinquent in the payment of monies secured by the lien, ~~excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,500 one thousand two hundred dollars or more, AND SIX MONTHS HAS TRANSPIRED FROM THE DATE THE INITIAL ASSESSMENT WAS DELINQUENT., whichever occurs first. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 other than charges for late payment of assessments, are not enforceable as assessments under this section.~~ If an assessment is payable in installments, EACH INSTALLMENT IS A LIEN FROM THE TIME THAT INSTALLMENT IS DUE. ~~the full amount of the assessment is a lien from the time the first installment of the assessment becomes due.~~ ANY CIVIL ACTION TO FORECLOSE ON OR OTHERWISE DISPOSITION THE COMMON EXPENSE ASSESSMENT LIEN AS DESCRIBED ABOVE, MAY INCLUDE A REQUEST FOR THE AWARDING OF ANY REASONABLE ATTORNEY FEES AS PART OF THE JUDICIAL AWARD IN A COURT OF COMPETENT JURISDICTION.

B. NOTWITHSTANDING ANY PROVISION IN THE CONDOMINIUM DOCUMENTS, the association has a lien for ANY fees, charges, late charges, other than charges for late payment of assessments, monetary penalties ~~or interest charges~~ pursuant to section 33-1242, subsection A, paragraphs 10, 12~~1~~, and 123, OR OTHER COST AUTHORIZED IN THE DECLARATION after the entry of a judgment IN ACCORDANCE WITH CHAPTER 7 ARTICLE 5 OF THIS TITLE, in a civil suit for those fees, OR charges, ~~late charges, monetary penalties or interest~~ from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien PER THIS SUBSECTION for moneys other than for COMMON EXPENSE assessments ~~for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments~~ may not be foreclosed and is effective only on conveyance of any interest in the real property.

C. THE ASSOCIATION OR ANY AGENT OF THE ASSOCIATION MAY NOT REFUSE ANY PARTIAL PAYMENTS FROM THE UNIT OWNER FOR THE LIENS OR CHARGES DESCRIBED BY SUBSECTION A, OR B OF THIS SECTION.

DB. A lien for COMMON EXPENSE assessments, UNDER SUBSECTION A ~~for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section~~ is prior to all other liens, interests and encumbrances on a unit except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the unit recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

EC. Subsection CB of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens ~~for~~ PURSUENT TO SUB SECTION B. ~~other assessments made by the association.~~ The COMMON EXPENSE lien under this SUB section A is not subject to chapter 8 of this title.

FD. Unless the declaration otherwise provides, if two or more associations have liens for COMMON EXPENSE assessments created at any time on the same real estate, those liens have equal priority.

GE. Recording of the declaration constitutes record notice and perfection of the lien for COMMON EXPENSE assessments. ~~for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments.~~ Further recordation of any claim of lien for COMMON EXPENSE assessments under this SUB section A is not required.

HF. A lien for unpaid COMMON EXPENSE assessments is extinguished unless proceedings to enforce the lien are instituted within ~~three~~ SIX years after the full amount of the assessments becomes due.

IG. This section does not prohibit:

- 1 Actions to recover sums for which subsection A, OR B of this section creates a lien ~~or does not prohibit~~
- 2 An association from taking a deed in lieu of foreclosure.

JH. A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

KI. The association on written request shall furnish to a lienholder, escrow agent, unit owner or person designated by a unit owner a statement setting forth the amount of unpaid ~~assessments~~ COMMON EXPENSE ASSESSMENT LIEN AND LIEN ESTABLISHED UNDER SUBSECTION B OF THIS SECTION against the unit. The statement shall be furnished within ten days after receipt of the request and the statement is binding on the association, the board of directors and every unit owner if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection shall extinguish any liens OR CHARGES for any unpaid ~~assessment~~ MONIES then due.

LJ. Notwithstanding any provision in the condominium documents or in any contract between the association and a management company OR OTHER AGENT OF THE ASSOCIATION, unless the UNIT OWNER ~~member~~ directs otherwise, all payments received on a UNIT OWNER'S ~~member's~~ account shall be applied first to any unpaid COMMON EXPENSE assessments, ~~for~~ TO unpaid charges for late payment of OR INTEREST ON those assessments, ~~for~~ TO reasonable collection fees and ~~for~~ TO unpaid JUDICIALLY AWARDED attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties ~~or interest~~ and late charges on any of those amounts.

MK. This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.

33-1807. LienS for COMMON EXPENSE assessments AND OTHER CHARGES; priority; mechanics' and materialmen's liens

A. The association has a lien on a LOT ~~unit~~ for any ANNUAL, SUPPLEMENTAL, OR SPECIAL COMMON EXPENSE assessment APPROPRIATELY levied against that LOT ~~unit~~ from the time the assessment becomes due. The association's lien for COMMON EXPENSE assessments INCLUDING ~~for~~ charges for late payment of those assessments, ANY INTEREST ON THOSE DELINQUENT ASSESSMENTS, AND ANY REASONABLE DIRECT COST TO THE ASSOCIATION TO MANAGE AND ADMINISTER THE COMMON EXPENSE ASSESSMENT DEBT, ~~for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments~~ may be foreclosed in the same manner as a mortgage on real estate PURSUANT TO CHAPTER 6 ARTICLE 2 OF THIS TITLE. THE COMMON EXPENSE ASSESSMENT LIEN ~~but~~ may be foreclosed only if the MEMBER ~~owner~~ IS ~~has been~~ delinquent in the payment of monies secured by the lien, ~~excluding reasonable collection fees, reasonable attorney fees and charges for late payment of and costs incurred with respect to those assessments, for a period of one year or in the amount of \$1,500 one thousand two hundred dollars or more, AND SIX MONTHS HAS TRANSPIRED FROM THE DATE THE INITIAL ASSESSMENT WAS DELINQUENT, whichever occurs first. Fees, charges, late charges, monetary penalties and interest charged pursuant to section 33-1803 other than charges for late payment of assessments, are not enforceable as assessments under this section.~~ If an COMMON EXPENSE assessment is payable in installments, the INSTALLMENT AMOUNT IS A LIEN FROM THE TIME THE INSTALLMENT IS DUE. ~~full amount of the assessment is a lien from the time the first installment of the assessment becomes due.~~ ANY ACTION TO FORECLOSE ON OR OTHERWISE DISPOSITION THE COMMON EXPENSE ASSESSMENT LIEN AS DESCRIBED ABOVE, MAY INCLUDE A REQUEST FOR THE AWARDED OF ANY REASONABLE ATTORNEY FEES AS PART OF THE JUDICIAL AWARD IN A COURT OF COMPETENT JURISDICTION.

B. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, the association has a lien for ANY fees, charges, late charges, ~~other than charges for late payment of assessments~~, monetary penalties ~~or interest~~ charged pursuant to section 33-1803 OR OTHER COST AUTHORIZED IN THE DECLARATION after the entry of a judgment IN ACCORDANCE WITH CHAPTER 7 ARTICLE 5 OF THIS TITLE in a civil suit for those fees, OR charges, ~~late charges, monetary penalties or interest~~ from a court of competent jurisdiction and the recording of that judgment in the office of the county recorder as otherwise provided by law. The association's lien for monies DESCRIBED IN THIS SUBSECTION ~~other than for assessments, for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments~~ may not be foreclosed and is effective only on conveyance of any interest in the real property.

C. THE ASSOCIATION AND ANY AGENT OF THE ASSOCIATION MAY NOT REFUSE ANY PARTIAL PAYMENTS FROM THE MEMBER FOR THE LIENS OR CHARGES DESCRIBED BY SUBSECTION A OR B OF THIS SECTION.

DB. A lien for COMMON EXPENSE assessments, UNDER SUBSECTION A ~~for charges for late payment of those assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments under this section~~ is prior to all other liens, interest and encumbrances on a LOT ~~unit~~ except:

1. Liens and encumbrances recorded before the recordation of the declaration.
2. A recorded first mortgage on the unit, a seller's interest in a first contract for sale pursuant to chapter 6, article 3 of this title on the ~~LOT unit~~ recorded prior to the lien arising pursuant to subsection A of this section or a recorded first deed of trust on the unit.
3. Liens for real estate taxes and other governmental assessments or charges against the unit.

**EC.** Subsection **CB** of this section does not affect the priority of mechanics' or materialmen's liens or the priority of liens **PURSUANT TO SUBSECTION B OF THIS SECTION**. ~~for other assessments made by the association~~. The **COMMON EXPENSE** lien under ~~this~~ **SUBsection A** is not subject to chapter 8 of this title.

**FD.** Unless the declaration otherwise provides, if two or more associations have liens for **COMMON EXPENSE** assessments created at any time on the same real estate, those liens have equal priority.

**GE.** Recording of the declaration constitutes record notice and perfection of the lien for **COMMON EXPENSE** assessments, for charges for late payment of those assessments, **FOR INTEREST ON THOSE ASSESSMENTS**, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those assessments. Further recordation of any claim of lien for **COMMON EXPENSE** assessments under this section is not required.

**HF.** A lien for unpaid **COMMON EXPENSE** assessments is extinguished unless proceedings to enforce the lien are instituted within ~~three~~ **SIX** years after the full amount of the assessments becomes due.

**IG.** This section does not prohibit:

1. Actions to recover amounts for which subsection A **OR B** of this section creates a lien.
2. An association from taking a deed in lieu of foreclosure.

**JH.** A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party.

**KI.** The association on written request shall furnish to a lienholder, escrow agent, ~~MEMBER unit owner~~ or person designated by a ~~MEMBER unit owner~~ a statement setting forth the amount of unpaid ~~assessments~~ **COMMON EXPENSE ASSESSMENT LIEN AND ANY LIEN ESTABLISHED UNDER SECTION B OF THIS SECTION** against the ~~LOT. unit~~. The statement shall be furnished within ten days after receipt of the request and the statement is binding on the association, the board of directors and every ~~MEMBER unit owner~~ if the statement is requested by an escrow agency that is licensed pursuant to title 6, chapter 7. Failure to provide the statement to the escrow agent within the time provided for in this subsection shall extinguish any liens for any unpaid ~~assessment~~ **MONIES** then due.

**LJ.** Notwithstanding any provision in the community documents or in any contract between the association and a management company **OR OTHER AGENT OF THE ASSOCIATION**, unless the member directs otherwise, all payments received on a member's account shall be applied first to any unpaid assessments, ~~for~~ **TO** unpaid charges for late payment of **OR INTEREST ON** those assessments, ~~for~~ **TO** reasonable collection fees and ~~for~~ **TO** unpaid **JUDICIALLY AWARDED** attorney fees and costs incurred with respect to those assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties ~~or interest~~ and late charges on any of those amounts.

**MK.** This section does not apply to timeshare plans or associations that are subject to chapter 20 of this title.