

33-1256. Lien for assessments; priority; mechanics' and materialmen's liens; notice; applicability

A. The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. The association's lien 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 be foreclosed in the same manner as a mortgage on real estate but may be foreclosed only if the owner 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 \$1,200 or more, whichever occurs first, ~~as determined on the date the action is filed~~. 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, the full amount of the assessment is a lien from the time the first installment of the assessment becomes due. The association has a lien for fees, charges, late charges, other than charges for late payment of assessments, monetary penalties or interest charged pursuant to section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a judgment in a civil suit for those fees, 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 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.

B. A lien 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 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.

C. Subsection B of this section 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 chapter 8 of this title.

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

E. Recording of the declaration constitutes record notice and perfection of the lien 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. Further recordation of any claim of lien for assessments under this section is not required.

F. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the assessments becomes due.

G. This section does not prohibit:

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

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

I. 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 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 extinguishes any lien for any unpaid assessment then due.

J. Notwithstanding any provision in the condominium documents or in any contract between the association and a management company **OR ANY OTHER AGENT OF THE ASSOCIATION**, unless the unit owner directs otherwise, all payments received on a unit owner's account shall be applied first to any unpaid assessments, unpaid charges for late payment of those assessments, unpaid reasonable collection fees and unpaid 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.

K. For a delinquent account for unpaid assessments or for charges related to unpaid assessments, the association shall provide the following written notice to the unit owner's **ADDRESS OF RECORD** ~~at the unit owner's address as provided to the association~~ at least thirty days before **ASSIGNING THE UNIT OWNERS' DELINQUENT ACCOUNT** **authorizing TO** an attorney, or a collection agency that is not acting as the association's managing agent, to begin collection activity on behalf of the association:

Your account is delinquent. If you do not bring your account current or make arrangements that are approved by the association to bring your account current within thirty days after the date of this notice, your account ~~will~~ **MAY** be turned over for further collection proceedings. Such collection proceedings could include bringing a foreclosure action against your property.

The notice shall be in boldfaced type or all capital letters and shall **PROVIDE THE MEMBER WITH** ~~include the~~ contact information for **WHOM TO CONTACT** ~~the person that the unit owner may contact~~ to discuss payment. **IF THE MEMBER'S ADDRESS OF RECORD IS WITHIN THE UNITED STATES THE** ~~The~~ notice shall be sent by certified mail, return receipt requested, **OTHERWISE THE NOTICE MAY BE SENT BY REGULAR MAIL**, and may be included within other correspondence sent to the unit owner regarding the unit owner's delinquent account. **THE NOTICE PROVISION OF THIS SUBSECTION DOES NOT PRECLUDE THE ASSOCIATION FROM ASSERTING ITS LEAN RIGHTS IN ANY ACTION FILED AGAINST THE ASSOCIATION OR IN BANKRUPTCY FILING BY THE HOMEOWNER OR SUPERIOR LIEN FORECLOSURE BY THE FIRST MORTGAGEE.**

L. ~~Beginning January 1, 2020, except for condominiums that have fewer than fifty units and that do not contract with a third party to perform management services on behalf of the association, the association shall MAY provide a statement of account in lieu of a periodic payment book to the unit owner with the same frequency that assessments are provided for in the declaration. The statement of account shall include the current account balance due and the immediately preceding ledger history. If the association offers the statement of account by electronic means, a unit owner may opt to receive the statement electronically.~~ **WITHOUT REGARD TO THE BILLING METHOD OR SCHEDULE ADOPTED BY THE ASSOCIATION, IF A UNIT OWNER'S COMMON EXPENSE ASSESSMENT ACCOUNT FOR ANY BILLING PERIOD HAS A BALANCE DUE THAT IS GREATER THAN THE REGULAR PERIODIC COMMON EXPENSE ASSESSMENT, THE ASSOCIATION SHALL NOTIFY THE UNIT OWNER OF THE FULL AMOUNT DUE AT LEAST TEN BUSINESS DAYS BEFORE THE NEXT COMMON EXPENSE ASSESSMENT DUE DATE. THE ASSOCIATION SHALL PROVIDE THE NOTICE OF FULL AMOUNT DUE, TO THE ADDRESS OF RECORD FOR THE UNIT OWNER, AND SHALL INCLUDE THE NAME AND TELEPHONE NUMBER OF A PERSON WHO IS AUTHORIZED TO PROVIDE FURTHER INFORMATION ABOUT THE AMOUNT DUE AND TO RECEIVE INFORMATION ABOUT DISPUTED AMOUNTS. A UNIT OWNER MAY OPT TO RECEIVE ANY NOTICE OF ACCOUNT BALANCE DUE ELECTRONICALLY UPON WRITTEN AUTHORIZATION TO THE ASSOCIATION. IF THE ASSOCIATION DOES NOT ROUTINELY PROVIDE CURRENT ACCOUNT BALANCE INFORMATION TO ALL UNIT OWNERS FOR EACH BILLING PERIOD, THE ASSOCIATION OR ITS MANAGING AGENT MAY ADD THE DIRECT COST FOR PROVIDING THIS NOTICE TO A UNIT OWNER'S COMMON EXPENSE ASSESSMENT ACCOUNT.** The association may stop providing any further **NOTICE OF FULL AMOUNT DUE** ~~statements of accounts~~ to a unit owner if collection activity begins by an attorney, or a collection agency that is not acting as the association's managing agent, regarding that unit owner's unpaid account. After collection activity begins, a unit owner may request statements of account by written request to the attorney or collection agency. Any request by a unit owner for a statement of account after collection activity begins by an attorney or a collection agency that is not acting as the association's managing agent must be fulfilled by the attorney or the collection agency responsible for the collection. The statement of account provided by the attorney or collection agency responsible for the collection shall include all amounts claimed to be owing to resolve the delinquency through the date set forth in the statement, including attorney fees and

costs **AS REDUCED TO JUDGEMENT IF APPLICABLE**, ~~regardless of whether such amounts have been reduced to judgment.~~

M. An agent for the association may collect on behalf of the association directly from a unit owner the assessments and other amounts owed by cash or check, by mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, by credit, charge or debit card or by other electronic means. For any form of payment other than for cash or for mailed or hand-delivered bank drafts, checks, cashier's checks or money orders, the agent may charge a convenience fee to the unit owner that is approximately the amount charged to the agent by a third-party service provider.

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