

[First Reprint]

ASSEMBLY, No. 5002

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

Sponsored by:

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District 33 (Hudson)

Assemblyman RALPH R. CAPUTO

District 28 (Essex)

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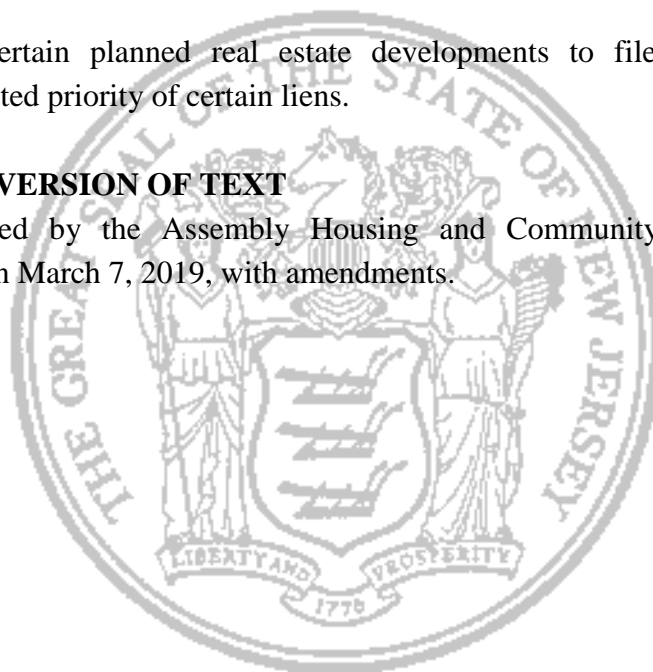
District 8 (Atlantic, Burlington and Camden)

SYNOPSIS

Permits certain planned real estate developments to file certain liens; concerns limited priority of certain liens.

CURRENT VERSION OF TEXT

As reported by the Assembly Housing and Community Development Committee on March 7, 2019, with amendments.



(Sponsorship Updated As Of: 3/26/2019)

A5002 [1R] CHAPARRO, CAPUTO

2

1 AN ACT concerning liens filed for unpaid assessments in ¹certain¹
2 common interest communities, amending P.L.1969, c.257 ^{1,1} and
3 supplementing P.L.1993, c.30 ¹[(C.45:22A-43)] (C.45:22A-43
4 et seq.)¹.

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. Section 21 of P.L.1969, c.257 (C.46:8B-21) is amended to
10 read as follows:

11 21. a. The association shall have a lien on each unit for any
12 unpaid assessment duly made by the association for a share of
13 common expenses or otherwise, including any other moneys duly
14 owed the association, upon proper notice to the appropriate unit
15 owner, together with interest thereon and ¹[, if authorized by the
16 master deed or bylaws,] any¹ late fees, fines ¹, expenses,¹ and
17 reasonable attorney's fees ¹imposed or incurred in the collection of
18 the unpaid assessment¹; provided however that an association shall
19 not record a lien in which the unpaid assessment consists solely of
20 late fees. Such lien shall be effective from and after the time of
21 recording in the public records of the county in which the unit is
22 located of a claim of lien stating the description of the unit, the
23 name of the record owner, the amount due and the date when due.
24 Such claim of lien shall include only sums which are due and
25 payable when the claim of lien is recorded and shall be signed and
26 verified by an officer or agent of the association. Upon full
27 payment of all sums secured by the lien, the party making payment
28 shall be entitled to a recordable satisfaction of lien. Except as set
29 forth in subsection b. of this section, all such liens shall be
30 subordinate to any lien for past due and unpaid property taxes, the
31 lien of any mortgage to which the unit is subject and to any other
32 lien recorded prior to the time of recording of the claim of lien.

33 b. A lien recorded pursuant to subsection a. of this section shall
34 have a limited priority over prior recorded mortgages and other
35 liens, except for municipal liens or liens for federal taxes, to the
36 extent provided in this subsection. This priority shall be limited as
37 follows:

38 (1) To a lien which is the result of customary condominium
39 assessments as defined herein, the amount of which shall not exceed
40 the aggregate customary condominium assessment against the unit
41 owner for the [six-month] ¹[nine-month] six-month¹ period prior
42 to the recording of the lien. ¹This limited priority shall be
43 cumulatively renewed on an annual basis as necessary.¹

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHO committee amendments adopted March 7, 2019.

1 (2) With respect to a particular mortgage, to a lien recorded
2 prior to: (a) the receipt by the association of a summons and
3 complaint in an action to foreclose a mortgage on that unit; or (b)
4 the filing with the proper county recording office of a lis pendens
5 giving notice of an action to foreclose a mortgage on that unit.

6 (3) In the case of more than one association lien being filed,
7 either because an association files more than one lien or multiple
8 associations have filed liens, the total amount of the liens granted
9 priority shall not be greater than the assessment for the ~~【six-month】~~
10 ~~【nine-month】~~ six-month¹ period specified in paragraph (1) of this
11 subsection. Priority among multiple filings shall be determined by
12 their date of recording with the earlier recorded liens having first
13 use of the priority given herein.

14 (4) ~~【The】~~ Except for the cumulative annual renewal of the
15 limited priority provided in paragraph (1) of this subsection, the¹
16 priority granted to a lien pursuant to this subsection shall expire on
17 the first day of the 60th month following the date of recording of an
18 association's lien.

19 (5) A lien of an association shall not be granted priority over a
20 prior recorded mortgage or mortgages under this subsection if a
21 prior recorded lien of the association for unpaid assessments ¹, not
22 including the cumulative annual renewal of the limited priority
23 provided in paragraph (1) of this subsection,¹ has obtained priority
24 over the same recorded mortgage or mortgages as provided in this
25 subsection, for a period of 60 months from the date of recording of
26 the lien granted priority.

27 (6) When recording a lien which may be granted priority
28 pursuant to this act, an association shall notify, in writing, any
29 holder of a first mortgage lien on the property of the filing of the
30 association lien. An association which exercises a good faith effort
31 but is unable to ascertain the identity of a holder of a prior recorded
32 mortgage on the property will be deemed to be in substantial
33 compliance with this paragraph.

34 For the purpose of this section, a "customary condominium
35 assessment" shall mean an assessment for periodic payments, due
36 the association for regular and usual operating and common area
37 expenses pursuant to the association's annual budget and shall not
38 include amounts for reserves for contingencies, nor shall it include
39 any late charges, penalties, interest or any fees or costs for the
40 collection or enforcement of the assessment or any lien arising from
41 the assessment. The periodic payments due must be due monthly,
42 or no less frequently than quarter-yearly, as may be acceptable to
43 the Federal National Mortgage Association so as not to disqualify
44 an otherwise superior mortgage on the condominium from purchase
45 by the Federal National Mortgage Association as a first mortgage.

46 c. Upon any voluntary conveyance of a unit, the grantor and
47 grantee of such unit shall be jointly and severally liable for all

1 unpaid assessments pertaining to such unit duly made by the
2 association or accrued up to the date of such conveyance without
3 prejudice to the right of the grantee to recover from the grantor any
4 amounts paid by the grantee, but the grantee shall be exclusively
5 liable for those accruing while he is the unit owner.

6 d. Any unit owner or any purchaser of a unit prior to
7 completion of a voluntary sale may require from the association a
8 certificate showing the amount of unpaid assessments pertaining to
9 such unit and the association shall provide such certificate within 10
10 days after request therefor. The holder of a mortgage or other lien
11 on any unit may request a similar certificate with respect to such
12 unit. Any person other than the unit owner at the time of issuance
13 of any such certificate who relies upon such certificate shall be
14 entitled to rely thereon and his liability shall be limited to the
15 amounts set forth in such certificate.

16 e. If a mortgagee of a first mortgage of record or other
17 purchaser of a unit obtains title to such unit as a result of
18 foreclosure of the first mortgage, such acquirer of title, his
19 successors and assigns shall not be liable for the share of common
20 expenses or other assessments by the association pertaining to such
21 unit or chargeable to the former unit owner which became due prior
22 to acquisition of title as a result of the foreclosure. Any remaining
23 unpaid share of common expenses and other assessments, except
24 assessments derived from late fees or fines, shall be deemed to be
25 common expenses collectible from all of the remaining unit owners
26 including such acquirer, his successors and assigns.

27 f. Liens for unpaid assessments may be foreclosed by suit
28 brought in the name of the association in the same manner as a
29 foreclosure of a mortgage on real property. The association shall
30 have the power, unless prohibited by the master deed or bylaws to
31 bid on the unit at foreclosure sale, and to acquire, hold, lease,
32 mortgage and convey the same. Suit to recover a money judgment
33 for unpaid assessments may be maintained without waiving the lien
34 securing the same. Nothing herein shall alter the status or priority
35 of municipal liens under R.S.54:5-1 et seq.

36 (cf: P.L.1997, c.190, s.2)

37

38 2. (New section) a. ¹【The】 An¹ association shall have a lien
39 on each unit for any unpaid assessment duly made by the
40 association for a share of common expenses or otherwise, including
41 any other moneys duly owed the association, upon proper notice to
42 the appropriate unit owner, together with interest thereon and ¹【, if
43 authorized by the master deed or bylaws,】 any¹ late fees, fines ¹ ,
44 expenses,¹ and reasonable attorney's fees ¹ imposed or incurred in
45 the collection of the unpaid assesment¹; provided ¹ ,¹ however ¹ ,
46 that an association shall not record a lien in which the unpaid
47 assessment consists solely of late fees. ¹【Such】 The¹ lien shall be

1 effective from and after the time of recording in the public records
2 of the county in which the unit is located of a claim of lien stating
3 the description of the unit, the name of the record owner, the
4 amount due ^{1,1} and the date when due. ¹~~Such~~ The¹ claim of lien
5 shall include only sums which are due and payable when the claim
6 of lien is recorded and shall be signed and verified by an officer or
7 agent of the association. Upon full payment of all sums secured by
8 the lien, the party making payment shall be entitled to a recordable
9 satisfaction of lien. Except as set forth in subsection b. of this
10 section, ¹~~all such~~ these¹ liens shall be subordinate to any lien for
11 past due and unpaid property taxes, the lien of any mortgage to
12 which the unit is subject ^{1,1} and to any other lien recorded prior to
13 the time of recording of the claim of lien.

14 b. A lien recorded pursuant to subsection a. of this section shall
15 have a limited priority over prior recorded mortgages and other
16 liens, except for municipal liens or liens for federal taxes, to the
17 extent provided in this subsection. This priority shall be limited as
18 follows:

19 (1) To a lien which is the result of customary assessments as
20 defined herein, the amount of which shall not exceed the aggregate
21 customary assessment against the unit owner for the ¹~~nine-month~~
22 six-month¹ period prior to the recording of the lien. ¹This limited
23 priority shall be cumulatively renewed on an annual basis as
24 necessary.¹

25 (2) With respect to a particular mortgage, to a lien recorded
26 prior to: (a) the receipt by the association of a summons and
27 complaint in an action to foreclose a mortgage on that unit; or (b)
28 the filing with the proper county recording office of a lis pendens
29 giving notice of an action to foreclose a mortgage on that unit.

30 (3) In the case of more than one association lien being filed,
31 either because an association files more than one lien or multiple
32 associations have filed liens, the total amount of the liens granted
33 priority shall not be greater than the assessment for the ¹~~nine-~~
34 ~~month~~ six-month¹ period specified in paragraph (1) of this
35 subsection. Priority among multiple filings shall be determined by
36 their date of recording with the earlier recorded liens having first
37 use of the priority given herein.

38 (4) ¹~~The~~ Except for the cumulative annual renewal of the
39 limited priority provided in paragraph (1) of this subsection, the¹
40 priority granted to a lien pursuant to this subsection shall expire on
41 the first day of the 60th month following the date of recording of an
42 association's lien.

43 (5) A lien of an association shall not be granted priority over a
44 prior recorded mortgage or mortgages under this subsection if a
45 prior recorded lien of the association for unpaid assessments ¹, not
46 including the cumulative annual renewal of the limited priority
47 provided in paragraph (1) of this subsection,¹ has obtained priority

1 over the same recorded mortgage or mortgages as provided in this
2 subsection, for a period of 60 months from the date of recording of
3 the lien granted priority.

4 (6) When recording a lien which may be granted priority
5 pursuant to this **1[act] section¹**, an association shall notify, in
6 writing, any holder of a first mortgage lien on the property of the
7 filing of the association lien. An association which exercises a
8 good faith effort but is unable to ascertain the identity of a holder of
9 a prior recorded mortgage on the property will be deemed to be in
10 substantial compliance with this paragraph.

11 For the purpose of this section, an "assessment" **1[shall mean]**
12 **means¹** an assessment for periodic payments, due **1to¹** the
13 association for regular and usual operating and common area
14 expenses pursuant to the association's annual budget and shall not
15 include amounts for reserves for contingencies, nor shall it include
16 any late charges, penalties, interest **1,1** or any fees or costs for the
17 collection or enforcement of the assessment or any lien arising from
18 the assessment. The periodic payments due **1[must] shall¹** be due
19 monthly, or no less frequently than quarter-yearly, as may be
20 acceptable to the Federal National Mortgage Association so as not
21 to disqualify an otherwise superior mortgage on the property from
22 purchase by the Federal National Mortgage Association as a first
23 mortgage.

24 c. Upon any voluntary conveyance of a unit, the grantor and
25 grantee of **1[such] the¹** unit shall be jointly and severally liable for
26 all unpaid assessments pertaining to **1[such] the¹** unit duly made by
27 the association or accrued up to the date of **1[such] the¹**
28 conveyance without prejudice to the right of the grantee to recover
29 from the grantor any amounts paid by the grantee, but the grantee
30 shall be exclusively liable for those accruing while **1[he is]¹** the
31 unit owner.

32 d. Any unit owner or any purchaser of a unit prior to
33 completion of a voluntary sale may require from the association a
34 certificate showing the amount of unpaid assessments pertaining to
35 **1[such] the¹** unit and the association shall provide **1[such] the¹**
36 certificate within 10 days after request therefor. The holder of a
37 mortgage or other lien on any unit may request a similar certificate
38 with respect to **1[such] the¹** unit. Any person other than the unit
39 owner at the time of issuance of any **1[such]¹** certificate who relies
40 upon **1[such] the¹** certificate shall be entitled to rely thereon and
41 **1[his] the person's¹** liability shall be limited to the amounts set
42 forth in **1[such] the¹** certificate.

43 e. If a mortgagee of a first mortgage of record or other
44 purchaser of a unit obtains title to **1[such] the¹** unit as a result of
45 foreclosure of the first mortgage, **1[such] the¹** acquirer of title,
46 **1[his] their¹** successors and assigns shall not be liable for the share

1 of common expenses or other assessments by the association
2 pertaining to ¹~~such~~ the¹ unit or chargeable to the former unit
3 owner which became due prior to acquisition of title as a result of
4 the foreclosure. Any remaining unpaid share of common expenses
5 and other assessments, except assessments derived from late fees or
6 fines, shall be deemed to be common expenses collectible from all
7 of the remaining unit owners including ¹~~such~~ the¹ acquirer,
8 ¹~~his~~ their¹ successors and assigns.

9 f. Liens for unpaid assessments may be foreclosed by suit
10 brought in the name of the association in the same manner as a
11 foreclosure of a mortgage on real property. The association shall
12 have the power, unless prohibited by the master deed or bylaws to
13 bid on the unit at foreclosure sale, and to acquire, hold, lease,
14 mortgage and convey the same. Suit to recover a money judgment
15 for unpaid assessments may be maintained without waiving the lien
16 securing the same. Nothing herein shall alter the status or priority
17 of municipal liens under R.S.54:5-1 et seq.

18 ¹g. The provisions of this section shall not apply to
19 cooperatives. The provisions of this section shall not diminish the
20 priority of a cooperative's issuer's lien or security interest in the
21 shares of stock and lease appurtenant thereto which is perfected
22 when a shareholder's ownership interest in the cooperative first
23 comes into existence.

24 For purposes of this section, "cooperative" means any system of
25 land ownership and possession in which the fee title to the land and
26 structure is owned by a corporation or other legal entity in which
27 the shareholders or other co-owners each also have a long term
28 proprietary lease or other long term arrangement of exclusive
29 possession for a specific unit of occupancy space located within the
30 same structure.¹

31

32 3. This act shall take effect immediately.