

HB 157 – AS INTRODUCED

2015 SESSION

15-0501
05/10

HOUSE BILL **157**

AN ACT relative to enforcement of condominium liens for assessments.

SPONSORS: Rep. Infantine, Hills 13

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill permits a unit owner’s association to enforce an outstanding lien for assessments by bringing an action to foreclose on the property. The bill also provides that attempts to waive liability for common expenses of the association shall be unenforceable.

Explanation: Matter added to current law appears in **bold italics**.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to enforcement of condominium liens for assessments.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Subparagraph; Condominium Act; Enforcement of Lien for Assessment. Amend RSA
2 356-B:46, I by inserting after subparagraph (e) the following new subparagraph:

3 (f) The unit owners' association may enforce the lien established in subparagraph (c) by
4 filing an action in the circuit court or superior court serving the city or town where the property is
5 located. At least 30 days prior to filing suit, the condominium association shall send notice to the
6 unit owner and first mortgagee of record, of its intent to file suit to enforce its priority lien. The unit
7 owners' association shall name as parties to the lawsuit the unit owner or owners and all lienholders
8 of record as they appear as of the date of the filing of the complaint. Lienholders shall be named as
9 parties-in-interest to the suit. When the amount of a lien under this section has been established by
10 a court, the court shall enter an order authorizing the sale of the real estate to satisfy the lien. The
11 reasonable legal fees and costs incurred in enforcing the lien, inclusive of the legal fees, costs, and
12 expenses associated with conducting the foreclosure sale, shall be part of the priority lien. The
13 association also shall be entitled to the condominium fees assessed after the issuance of the
14 judgment, as part of the priority lien.

15 (1)(A) Although the foreclosure notices required by subparagraphs (2) and (3) may be
16 sent within the year following the issuance of a judgment, the actual foreclosure auction shall not
17 occur until a date that is one year or more after the date of the judgment authorizing the sale, except
18 in the case of an abandoned unit. In the case of an abandoned unit, the actual foreclosure auction
19 shall occur on a date that is 6 months or more after the date of the judgment authorizing the sale. In
20 seeking the judgment authorizing the sale, the unit owners' association may seek to have the court
21 make a finding that a unit is abandoned.

22 (B) When entering a judgment authorizing a sale, the court shall make a finding
23 that a unit is abandoned if it appears to the court that the unit possesses 2 or more of the following
24 characteristics:

- 25 (i) The unit is unoccupied;
- 26 (ii) One or more utilities for the unit have had service terminated or
27 suspended;
- 28 (iii) The unit has been surrendered in a bankruptcy proceeding;
- 29 (iv) The unit owner has made a written declaration of abandonment;
- 30 (v) The unit owner has made a written declaration of an intent to fail or
31 refuse to remit payment of future mortgage or condominium assessment obligations;

HB 157 – AS INTRODUCED
- Page 2 -

1 (vi) The unit owner has made a written declaration of the unit owner’s intent
2 for the unit to be foreclosed upon;

3 (vii) The unit has suffered a casualty loss and the unit owner has failed to
4 either begin remediation or contact the association within 7 days of the incident;

5 (viii) The unit owners’ association does not have current contact information
6 for the unit owner and a tenant of the unit owner is residing in the unit but is unable to provide the
7 association with current contact information for the unit owner;

8 (ix) Any unit owner appearing on the deed to the unit are deceased and there
9 has been no probate filed for the estate after one year or more following the date of the most recent
10 death.

11 (2) Notice of the foreclosure sale shall be sent to the unit owner and all lienholders of
12 record by regular and certified mail both 60 days and 30 days prior to the sale date. The notice shall
13 state the owner’s name, the unit address, and the time and location of the sale.

14 (3) Notice of the sale shall also be published in a newspaper published in or
15 circulated in, the city or town where the unit is located, for 3 consecutive weeks prior to the date of
16 the foreclosure sale. The first publication shall occur at least 21 days prior to the sale date.

17 (4) The transfer of real estate through the public auction shall transfer the subject
18 property free and clear of junior encumbrances, including all mortgages.

19 2 New Paragraph; Condominium Act; Lien for Assessment; Waiver of Liability Prohibited.
20 Amend RSA 356-B:46 by inserting after paragraph X the following new paragraph:

21 XI. A unit owner may not exempt himself or herself from liability for contribution toward the
22 common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by
23 abandonment of the unit or otherwise. A unit owner shall not be entitled to an offset, deduction, or
24 waiver of common expenses or other charges levied or lawfully assessed by the unit owners’
25 association. All condominium fees assessed by the unit owners’ association shall be deemed lawful
26 unless declared invalid by a prior judicial determination.

27 3 Effective Date. This act shall take effect January 1, 2016.