

SENATE BILL No. 1145

April 1, 2004, Introduced by Senators SWITALSKI, BASHAM and LELAND and referred to the Committee on Local, Urban and State Affairs.

A bill to amend 1978 PA 59, entitled
"Condominium act,"
by amending section 108 (MCL 559.208), as amended by 2002 PA
283.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 108. (1) Sums assessed to a co-owner by the
2 association of co-owners that are unpaid together with interest
3 on such sums, collection and late charges, **and** advances made by
4 the association of co-owners for taxes or other liens to protect
5 its lien ~~—, attorney fees, and fines in accordance with the~~
6 ~~condominium documents,~~ constitute a lien upon the unit or units
7 in the project owned by the co-owner at the time of the
8 assessment before other liens except tax liens on the condominium
9 unit in favor of any state or federal taxing authority and sums
10 unpaid on a first mortgage of record, except that past due

1 assessments that are evidenced by a notice of lien recorded as
2 set forth in subsection (3) have priority over a first mortgage
3 recorded subsequent to the recording of the notice of lien. The
4 lien upon each condominium unit owned by the co-owner shall be in
5 the amount assessed against the condominium unit, plus a
6 proportionate share of the total of all other unpaid assessments
7 attributable to condominium units no longer owned by the co-owner
8 but which became due while the co-owner had title to the
9 condominium units. The lien may be foreclosed by an action or by
10 advertisement by the association of co-owners in the name of the
11 condominium project on behalf of the other co-owners.

12 (2) A foreclosure shall be in the same manner as a
13 foreclosure under the laws relating to foreclosure of real estate
14 mortgages by advertisement or judicial action except that to the
15 extent the condominium documents provide, the association of
16 co-owners is entitled to reasonable interest, expenses, costs,
17 and attorney fees for foreclosure by advertisement or judicial
18 action. The redemption period for a foreclosure is 6 months from
19 the date of sale unless the property is abandoned, in which event
20 the redemption period is 1 month from the date of sale.

21 (3) A foreclosure proceeding may not be commenced without
22 recordation and service of notice of lien in accordance with the
23 following:

24 (a) Notice of lien shall set forth all of the following:

25 (i) The legal description of the condominium unit or
26 condominium units to which the lien attaches.

27 (ii) The name of the co-owner of record.

1 (iii) The amounts due the association of co-owners at the
2 date of the notice, exclusive of interest, costs, attorney fees,
3 and future assessments.

4 (b) The notice of lien shall be in recordable form, executed
5 by an authorized representative of the association of co-owners
6 and may contain other information that the association of
7 co-owners considers appropriate.

8 (c) The notice of lien shall be recorded in the office of
9 register of deeds in the county in which the condominium project
10 is located and shall be served upon the delinquent co-owner by
11 first-class mail, postage prepaid, addressed to the last known
12 address of the co-owner at least 10 days in advance of
13 commencement of the foreclosure proceeding.

14 (4) The association of co-owners, acting on behalf of all
15 co-owners, unless prohibited by the master deed or bylaws, may
16 bid in at the foreclosure sale, and acquire, hold, lease,
17 mortgage, or convey the condominium unit.

18 (5) An action to recover money judgments for unpaid
19 assessments may be maintained without foreclosing or waiving the
20 lien.

21 (6) An action for money damages and foreclosure may be
22 combined in 1 action.

23 (7) A receiver may be appointed in an action for foreclosure
24 of the assessment lien and may be empowered to take possession of
25 the condominium unit, if not occupied by the co-owner, and to
26 lease the condominium unit and collect and apply the rental from
27 the condominium unit.

1 (8) The co-owner of a condominium unit subject to foreclosure
2 under this section, and any purchaser, grantee, successor, or
3 assignee of the co-owner's interest in the condominium unit, is
4 liable for assessments by the association of co-owners chargeable
5 to the condominium unit that become due before expiration of the
6 period of redemption together with interest, advances made by the
7 association of co-owners for taxes or other liens to protect its
8 lien, costs, and attorney fees incurred in their collection.

9 (9) The mortgagee of a first mortgage of record of a
10 condominium unit shall give notice to the association of
11 co-owners of the commencement of foreclosure of the first
12 mortgage by advertisement by serving a copy of the published
13 notice of foreclosure required by statute upon the association of
14 co-owners by certified mail, return receipt requested, addressed
15 to the resident agent of the association of co-owners at the
16 agent's address as shown on the records of the Michigan
17 corporation and securities bureau, or to the address the
18 association provides to the mortgagee, if any, in those cases
19 where the address is not registered, within 10 days after the
20 first publication of the notice. The mortgagee of a first
21 mortgage of record of a condominium unit shall give notice to the
22 association of co-owners of intent to commence foreclosure of the
23 first mortgage by judicial action by serving a notice setting
24 forth the names of the mortgagors, the mortgagee, and the
25 foreclosing assignee of a recorded assignment of the mortgage, if
26 any; the date of the mortgage and the date the mortgage was
27 recorded; the amount claimed to be due on the mortgage on the

1 date of the notice; and a description of the mortgaged premises
2 that substantially conforms with the description contained in the
3 mortgage upon the association of co-owners by certified mail,
4 return receipt requested, addressed to the resident agent of the
5 association of co-owners at the agent's address as shown on the
6 records of the Michigan corporation and securities bureau, or to
7 the address the association provides to the mortgagee, if any, in
8 those cases where the address is not registered, not less than 10
9 days before commencement of the judicial action. Failure of the
10 mortgagee to provide notice as required by this section shall
11 only provide the association with legal recourse and will not, in
12 any event, invalidate any foreclosure proceeding between a
13 mortgagee and mortgagor.

14 **(10) Beginning on the effective date of the amendatory act**
15 **that added this subsection, an association of co-owners shall not**
16 **possess a right to foreclosure except as provided in this**
17 **section.**

18 Enacting section 1. This amendatory act takes effect 1 year
19 after the date this amendatory act is enacted.