

SENATE BILL No. 233

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-28-14.

Synopsis: Homeowners association liens. Establishes procedures for creating, recording, foreclosing, and releasing a lien on real estate filed by a homeowners association for nonpayment of common expenses assessed against the real estate.

Effective: July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Judiciary.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 233



A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-28-14 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2007]:
- 4 **Chapter 14. Homeowners Association Liens**
- 5 **Sec. 1. As used in this chapter, "common expenses" means:**
- 6 **(1) all sums lawfully assessed against a subdivision by a**
- 7 **homeowners association;**
- 8 **(2) expenses of:**
- 9 **(A) administration;**
- 10 **(B) maintenance;**
- 11 **(C) repair; or**
- 12 **(D) replacement;**
- 13 **of subdivision common areas and facilities;**
- 14 **(3) expenses agreed upon as common expenses by a**
- 15 **homeowners association; and**
- 16 **(4) expenses declared common expenses by the bylaws or**
- 17 **another written instrument of a homeowners association.**



1 **Sec. 2. As used in this chapter, "homeowners association"**
2 **means all the owners of real estate in a subdivision acting as an**
3 **entity in accordance with any:**

- 4 (1) bylaws;
 - 5 (2) covenants; or
 - 6 (3) other written instruments;
- 7 **of the homeowners association.**

8 **Sec. 3. As used in this chapter, "real estate" means a right, a**
9 **title, or an interest in real property.**

10 **Sec. 4. As used in this chapter, "subdivision" means the division**
11 **of a parcel of land into lots, parcels, tracts, units, or interests in the**
12 **manner defined and prescribed by a subdivision control ordinance**
13 **adopted by a legislative body under IC 36-7-4.**

14 **Sec. 5. (a) All sums assessed by a homeowners association but**
15 **unpaid for the share of the common expenses chargeable to an**
16 **owner of real estate in a subdivision constitute a homeowners**
17 **association lien on the real estate effective as provided in section 6**
18 **of this chapter.**

19 **(b) The priority of a homeowners association lien is established**
20 **on the date the notice of the lien is recorded under section 6 of this**
21 **chapter.**

22 **(c) The following liens have priority over a recorded**
23 **homeowners association lien:**

- 24 (1) A valid mechanic's lien that is recorded after a
- 25 homeowners association lien is recorded under this chapter if
- 26 the priority of the mechanic's lien relates back to a date
- 27 before the homeowners association lien was recorded.
- 28 (2) Prior recorded liens that secure revolving credit and
- 29 future advances of construction loans.
- 30 (3) Purchase money mortgages.
- 31 (4) Unpaid taxes and assessments in favor of a governmental
- 32 entity.

33 **Sec. 6. (a) A homeowners association lien under this chapter**
34 **attaches to real estate upon the recording of a notice of lien by the**
35 **homeowners association in the office of the recorder of the county**
36 **in which the real estate is located.**

37 **(b) A homeowners association lien under this chapter attaches**
38 **on the date of the recording of the notice of the lien under**
39 **subsection (a) and does not relate back to:**

- 40 (1) a date specified in the bylaws, the covenants, or another
- 41 written instrument of the homeowners association; or
- 42 (2) the date the common expenses were assessed.

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1 **Sec. 7. (a) Except as provided in subsection (b), in a voluntary**
2 **conveyance, the grantee of real estate is jointly and severally liable**
3 **with the grantor for all unpaid assessments against the grantor for**
4 **the grantor's share of the common expenses incurred before the**
5 **grant or conveyance, without prejudice to the grantee's right to**
6 **recover from the grantor the amounts of common expenses paid by**
7 **the grantee.**

8 **(b) The grantee:**
9 **(1) is entitled to a statement from the manager, board of**
10 **directors, or other governing authority of the homeowners**
11 **association that sets forth the amount of the unpaid**
12 **assessments against the grantor; and**
13 **(2) is not liable for, and the real estate conveyed is not subject**
14 **to a homeowners association lien for, any unpaid assessments**
15 **against the grantor in excess of the amount set forth in the**
16 **statement.**

17 **(c) If the mortgagee of a first mortgage of record or other**
18 **purchaser of real estate obtains title to the real estate as a result of**
19 **foreclosure of the first mortgage, the acquirer of title or the**
20 **acquirer's successors and assigns are not liable for the share of the**
21 **common expenses or assessments by the homeowners association**
22 **chargeable to the real estate that became due before the acquisition**
23 **of title to real estate by the acquirer. The unpaid share of common**
24 **expenses or assessments is considered to be common expenses**
25 **collectible from all of the owners of real estate in the subdivision,**
26 **including the acquirer or the acquirer's successors and assigns.**

27 **Sec. 8. (a) A person may enforce a homeowners association lien**
28 **by filing a complaint in the circuit or superior court of the county**
29 **where the real estate that is the subject of the lien is located. The**
30 **complaint must be filed not later than one (1) year after the date**
31 **the statement and notice of intention to hold a lien was recorded**
32 **under section 6 of this chapter.**

33 **(b) If a lien is not enforced within the time set forth in**
34 **subsection (a), the lien is void.**

35 **(c) If a lien is foreclosed under this chapter, the court rendering**
36 **judgment shall order a sale to be made of the real estate subject to**
37 **the lien. The officers making the sale shall sell the real estate**
38 **without any relief from valuation or appraisal laws.**

39 **Sec. 9. (a) A homeowners association lien under this chapter is**
40 **void if both of the following occur:**

41 **(1) The owner of the real estate subject to the homeowners**
42 **association lien or any person or corporation having an**

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1 interest in the real estate, including a mortgagee or a
 2 lienholder, provides written notice to the owner or holder of
 3 the lien to file an action to foreclose the lien.
 4 (2) The owner or holder of the lien fails to file an action to
 5 foreclose the lien in the county where the real estate is located
 6 within thirty (30) days after the date the owner or holder of
 7 the lien received the notice described in subdivision (1).
 8 However, this section does not prevent the claim from being
 9 collected as other claims are collected by law.
 10 (b) A person who gives notice under subsection (a)(1) by
 11 registered or certified mail to the owner or holder of the
 12 homeowners association lien at the address given in the recorded
 13 statement may file an affidavit of service of the notice to file an
 14 action to foreclose the lien with the recorder of the county in which
 15 the real estate is located. The affidavit must state the following:
 16 (1) The facts of the notice.
 17 (2) That more than thirty (30) days have passed since the
 18 notice was received by the owner or holder of the lien.
 19 (3) That an action for foreclosure of the lien is not pending.
 20 (4) That an unsatisfied judgment has not been rendered on the
 21 lien.
 22 (c) The recorder shall:
 23 (1) record the affidavit of service in the miscellaneous record
 24 book of the recorder's office; and
 25 (2) certify on the face of the record any homeowners
 26 association lien that is fully released.
 27 When the recorder records the affidavit and certifies the record
 28 under this subsection, the real estate described in the homeowners
 29 association lien is released from the lien.

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