



February 23, 2007

SENATE BILL No. 233

DIGEST OF SB 233 (Updated February 21, 2007 4:07 pm - DI 106)

Citations Affected: IC 32-28.

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.

Zakas, Bray, Lanane, Steele, Broden

January 8, 2007, read first time and referred to Committee on Judiciary.
February 22, 2007, amended, reported favorably — Do Pass.

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SB 233—LS 6963/DI 69+



February 23, 2007

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.

SB 233—LS 6963/DI 69+



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) A notice of lien may not be recorded under subsection (a)**
23 **unless the notice of lien:**

- 24 (1) contains:
 - 25 (A) the name and address of the homeowners association;
 - 26 (B) the address and legal description of the property that
 - 27 is subject to the lien;
 - 28 (C) the name of the owner of the property that is subject to
 - 29 the lien; and
 - 30 (D) the amount of the lien; and
- 31 (2) is:
 - 32 (A) signed by an officer of the homeowners association;
 - 33 and
 - 34 (B) acknowledged as in the case of deeds.

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

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

- 42 (1) a date specified in the bylaws, the covenants, or another

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written instrument of the homeowners association; or
 (2) the date the common expenses were assessed.

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

(b) The grantee:

(1) is entitled to a statement from the manager, board of directors, or other governing authority of the homeowners association that sets forth the amount of the unpaid assessments against the grantor; and

(2) is not liable for, and the real estate conveyed is not subject to a homeowners association lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement.

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

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

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

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

Sec. 9. (a) A homeowners association lien under this chapter is

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void if both of the following occur:

(1) The owner of the real estate subject to the homeowners association lien or any person or corporation having an interest in the real estate, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.

(2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the real estate is located within thirty (30) days after the date the owner or holder of the lien received the notice described in subdivision (1).

However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the owner or holder of the homeowners association lien at the address given in the recorded statement may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the real estate is located. The affidavit must state the following:

(1) The facts of the notice.

(2) That more than thirty (30) days have passed since the notice was received by the owner or holder of the lien.

(3) That an action for foreclosure of the lien is not pending.

(4) That an unsatisfied judgment has not been rendered on the lien.

(c) The recorder shall record the affidavit of service in the miscellaneous record book of the recorder's office. When the recorder records the affidavit under this subsection, the real estate described in the homeowners association lien is released from the lien.

(d) An affidavit recorded under subsection (c) must cross reference the lien.

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SENATE MOTION

Madam President: I move that Senator Bray be added as second author and Senators Lanane, Steele and Broden be added as coauthors of Senate Bill 233.

ZAKAS

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 233, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 22, delete "The following liens have priority over a recorded" and insert "A notice of lien may not be recorded under subsection (a) unless the notice of lien:

(1) contains:

- (A) the name and address of the homeowners association;
- (B) the address and legal description of the property that is subject to the lien;
- (C) the name of the owner of the property that is subject to the lien; and
- (D) the amount of the lien; and

(2) is:

- (A) signed by an officer of the homeowners association; and
- (B) acknowledged as in the case of deeds."

Page 2, delete lines 23 through 32.

Page 3, line 27, delete "person" and insert "homeowners association".

Page 4, line 22, delete ":".

Page 4, line 23, delete "(1)".

Page 4, line 24, delete "; and" and insert ".".

Page 4, delete lines 25 and 26.

Page 4, run in lines 22 through 27.

Page 4, line 27, delete "and certifies the record".

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Page 4, after line 29, begin a new paragraph and insert:

"(d) An affidavit recorded under subsection (c) must cross reference the lien."

and when so amended that said bill do pass.

(Reference is to SB 233 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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