

1 H.522

2 Introduced by Representatives Macaig of Williston and McCullough of

3 Williston

4 Referred to Committee on

5 Date:

6 Subject: Property; common interest communities

7 Statement of purpose: This bill proposes to provide statutory indemnification  
8 for volunteer directors and officers of common interest communities; to clarify  
9 and strengthen the power of common interest community associations to  
10 enforce requirements against unit owners and tenants of units; to give priority  
11 to liens for sums due to associations; and to require the creation of a state  
12 registry of common interest communities and units.

13 An act relating to regulating common interest communities

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. 27A V.S.A. § 3-103(h) is added to read:

16 (h) Except in cases of willful or reckless misconduct, a volunteer member  
17 or officer of an executive board shall be immune from civil liability to any  
18 person for any action taken or failure to act on behalf of the association in good  
19 faith, with the degree of care and loyalty required of a trustee.

1 Sec. 2. 27A V.S.A. § 1-204(a)(2) is amended to read:

2 (2) Unless excepted under section 1-203 of this title, the following  
3 sections apply to a common interest community created in this state before  
4 January 1, 1999: sections 1-206; 2-102, 2-117(h) and (i), 2-124, 3-102(a)(18)  
5 and (d)–(f), 3-103, 3-108, 3-110, and 3-124. The sections described in this  
6 subdivision apply only to events and circumstances occurring after  
7 December 31, ~~2010~~ 2011 and do not invalidate existing provisions of the  
8 declarations, bylaws, plats, or plans of those common interest communities.

9 Sec. 3. 27A V.S.A. § 3-116 is amended to read:

10 § 3-116. LIEN FOR SUMS DUE ASSOCIATION; ENFORCEMENT

11 (a) The association has a statutory lien on a unit for any assessment  
12 attributable to that unit or fines imposed against its unit owner or lessee of the  
13 unit owner. Unless the declaration otherwise provides, reasonable attorney's  
14 fees and costs, other fees, charges, late charges, fines, and interest charged  
15 pursuant to subdivisions 3-102(a)(10), (11), and (12) of this title, and any other  
16 sums due to the association under the declaration, this title, or as a result of an  
17 administrative, arbitration, mediation, or judicial decision, are enforceable in  
18 the same manner as unpaid assessments under this section. If an assessment is  
19 payable in installments, the full amount of the assessment is a lien from the  
20 time the first installment becomes due.

1 (b) A lien under this section is prior to all other liens and encumbrances on  
2 a unit except:

3 (1) liens and encumbrances recorded before the recordation of the  
4 declaration; and

5 (2) ~~except as otherwise provided in subsection (c) of this section, a first~~  
6 ~~mortgage or deed of trust on the unit recorded before the date on which the~~  
7 ~~assessment to be enforced became delinquent; and~~

8 (3) liens for real estate taxes and other governmental assessments or  
9 charges against the unit.

10 (c) ~~A lien under this section is also prior to all security interests described~~  
11 ~~in subdivision (b)(2) of this section to the extent of the common expense~~  
12 ~~assessments based on the periodic budget adopted by the association pursuant~~  
13 ~~to subsection 3-115(a) of this title which would have become due in the~~  
14 ~~absence of acceleration during the six months immediately preceding~~  
15 ~~institution of an action to enforce the lien.~~ Subsections (b) and (c) of this  
16 section do not affect the priority of mechanics' or materialmen's liens, or the  
17 priority of liens for other assessments made by the association. A lien under  
18 this section is not subject to the provisions of chapter 3 of Title 27.

19 (d) Unless the declaration otherwise provides, if two or more associations  
20 have liens for assessments created at any time on the same property, those liens  
21 have equal priority.

1           (e) Recording the declaration constitutes record notice and perfection of the  
2           lien. No further recording of any claim or lien for assessment under this section  
3           is required.

4           (f) A lien for unpaid assessments is extinguished unless proceedings to  
5           enforce the lien are instituted within three years after the full amount of the  
6           assessment becomes due.

7           (g) This section does not prohibit an action against unit owners to recover  
8           sums for which subsection (a) of this section creates a lien or an association  
9           from taking a deed in lieu of foreclosure.

10          (h) A judgment or decree in any action brought under this section shall  
11          include an award of costs and reasonable attorney fees to the prevailing party.

12          (i) The association, upon request made in a record, shall furnish to a unit  
13          owner a statement of the amount of unpaid assessments against that unit. If the  
14          unit owner's interest is real estate, the statement shall be recordable. The  
15          statement shall be provided within 10 business days after receipt of the request  
16          and is binding on the association, the executive board and every unit owner.

17          (j) The association's lien may be foreclosed pursuant to 12 V.S.A. § 4531a  
18          and subsection (o) of this section. The association shall give the notice  
19          required by statute, or if there is no such requirement, reasonable notice of its  
20          action to all lienholders of the unit whose interest would be affected.

1           (k) A unit owner is not exempt from liability for payment of common  
2 expenses by a waiver of the use or enjoyment of any of the common elements  
3 or by abandonment of the unit.

4           (l) In an action by an association to collect assessments or to foreclose a  
5 lien on a unit under this section, the court may appoint a receiver to collect all  
6 sums alleged to be due and owing to a unit owner before commencement or  
7 during pendency of the action. The court may order the receiver to pay any  
8 sums held by the receiver to the association during pendency of the action to  
9 the extent of the association's common expense assessments based on a  
10 periodic budget adopted by the association pursuant to section 3-115 of this  
11 title.

12           (m) ~~An association may not commence an action to foreclose a lien on a~~  
13 ~~unit under this section unless:~~

14           ~~(1) the unit owner, at the time the action is commenced, owes a sum~~  
15 ~~equal to at least three months of common expense assessments based on the~~  
16 ~~periodic budget last adopted by the association pursuant to subsection 3-115(a)~~  
17 ~~of this title and the unit owner has failed to accept or comply with a payment~~  
18 ~~plan offered by the association; and~~

19           ~~(2) the executive board votes to commence a foreclosure action~~  
20 ~~specifically against that unit. [Repealed.]~~

1 (n) Unless the parties otherwise agree, the association shall apply any sums  
2 paid by unit owners that are delinquent in paying assessments in the following  
3 order:

4 (1) unpaid assessments;

5 (2) late charges;

6 (3) reasonable attorney's fees and costs and other reasonable collection  
7 charges; and

8 (4) all other unpaid fees, charges, fines, penalties, interest, and late  
9 charges.

10 (o) ~~Notwithstanding subsection (a) of this section, unless sums due the~~  
11 ~~association include an unpaid assessment, a foreclosure action may not be~~  
12 ~~commenced against the unit unless the association has a judgment against the~~  
13 ~~unit owner for the sums due the association and has perfected a judgment lien~~  
14 ~~against the unit. [Repealed.]~~

15 (p) Every aspect of a foreclosure, sale, or other disposition under this  
16 section, including the method, advertising, time, date, place, and terms, must  
17 be commercially reasonable.

#### 18 Sec. 4. STATEWIDE REGISTRY OF COMMON INTEREST

##### 19 COMMUNITIES

20 (a) The department of economic, housing and community development  
21 shall create and maintain a web-based database of common interest

1 communities subject to Title 27A of the Vermont Statutes Annotated. The  
2 database shall include for each community the name of the community, the  
3 mailing address of the executive board, the mailing address of each unit, the  
4 name and address of each unit owner, and the name of the present legal  
5 occupant of each unit if other than the owner.

6 (b) On or before January 31 of each year, each unit owner shall submit to  
7 the executive board of the community in which his or her unit is located the  
8 full legal name and physical and mailing address of the owner of the unit and  
9 of any legal occupant of the unit other than the owner.

10 (c) On or before March 31 of each year, the executive board of a common  
11 interest community subject to Title 27A of the Vermont Statutes Annotated  
12 shall cause the information required in subsection (a) of this section to be  
13 submitted to the department of economic, housing and community  
14 development.

15 Sec. 5. EFFECTIVE DATE

16 (a) This section and Sec. 4 shall take effect on passage;

17 (b) Secs. 1, 2, and 3 shall take effect on passage and shall apply  
18 retroactively to January 1, 2012.