

2022 Regular Session

HOUSE BILL NO. 57

BY REPRESENTATIVE HOLLIS

PRIVILEGES/LIENS: Provides relative to homeowners association privileges

1 AN ACT

2 To amend and reenact R.S. 9:1145 and 1147, relative to homeowners associations; to
3 provide relative to privileges; to provide for notice to certain owners; to provide for
4 time periods; to provide for procedures for cancellation of certain privileges; to
5 provide for attorney fees; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:1145 and 1147 are hereby amended and reenacted to read as
8 follows:

9 §1145. Association of owners; privilege; notice to owner; definition

10 A.(1) If an individual lot owner has failed to pay the charges, expenses, or
11 dues imposed upon his lot by the association of owners of lots in a residential or
12 commercial subdivision, the association shall deliver a written demand for past due
13 charges, expenses, or dues owed to the association to the owner by certified or
14 registered mail.

15 (2) The individual lot owner shall have forty-five days after delivery of the
16 written demand to deliver payment for the amount owed to the association. After the
17 forty-five days has run, the association may file a sworn detailed statement in
18 accordance with this Part.

19 B. Upon the filing of a sworn detailed statement in accordance with this Part,
20 an association of owners of lots in a residential or commercial subdivision shall have

1 a privilege upon the lot and improvements thereon of an owner in the subdivision
 2 who fails to pay charges, expenses or dues imposed upon such lot and improvements
 3 thereon in accordance with recorded restrictions, servitudes, or obligations affecting
 4 such subdivision. ~~An association of owners refers to a nonprofit corporation,
 5 partnership, association, or other legal entity whose members are owners of lots in
 6 the subdivision, and which maintains certain portions of the land or improvements
 7 in such subdivision for the use and benefit of the owners of lots in such subdivision.~~

8 The privilege shall secure unpaid charges, expenses or dues imposed by the
 9 association of owners, together with legal interest from the date due and reasonable
 10 attorney's attorney fees.

11 C. If judgment is rendered against an association who filed suit to enforce
 12 the privilege provided in Subsection B of this Section, the court may award the
 13 individual lot owner costs of court, reasonable attorney fees, and other related costs,
 14 as well as any other sanctions and relief requested pursuant to Code of Civil
 15 Procedure Article 863.

16 D. For the purposes of this Part, an association of owners refers to a
 17 nonprofit corporation, partnership, association, or other legal entity whose members
 18 are owners of lots in the subdivision, and which maintains certain portions of the
 19 land or improvements in such subdivision for the use and benefit of the owners of
 20 lots in such subdivision.

21 * * *
 22 §1147. Privilege; ~~five-year~~ ninety day period

23 A. A recorded sworn statement shall preserve the privilege against the lot or
 24 lots and improvements thereon for a period of ~~five years~~ ninety days after the date
 25 of recordation. The effect of recordation shall cease and the privilege preserved by
 26 this recordation shall preempt unless a suit to enforce the privilege is filed within
 27 ~~five years~~ ninety days after the date of its recordation and a notice of the filing of
 28 such suit is filed in the mortgage records of the parish in which the subdivision is
 29 located.

1 B.(1) If the privilege preserved by the filing of the recorded sworn statement
2 is extinguished, an owner or other interested person may require the association to
3 give a written request for cancellation in the manner provided by law directing the
4 recorder of mortgages to cancel the recorded sworn statement for the extinguished
5 privilege within ten days after a written request is received by the association who
6 filed the recorded sworn statement.

7 (2) If the association fails to deliver a written request for cancellation in
8 proper form to cancel the extinguished privilege as provided in this Section, the
9 association shall be liable for damages suffered by the owner or person requesting
10 the authorization, as well as reasonable attorney fees and costs.

11 (3) A person who has properly requested a written request for cancellation
12 shall have an action pursuant to R.S. 44:114 against the person required to deliver
13 the written request to obtain a judgment declaring the claim or privilege extinguished
14 and directing the recorder of mortgages to cancel the sworn statement if the
15 association required to give the written request fails or refuses to do so within the
16 time required by this Subsection. The judgment shall declare the privilege to be
17 extinguished and shall direct its cancellation, as well as grant the plaintiff damages
18 and reasonable attorney fees and costs.

19 (4) The recorder of mortgages shall cancel a sworn statement of the
20 extinguished privilege from his records upon the filing with him by any person of a
21 written request for cancellation in proper form or when he is ordered to do so by
22 judgment of the court.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 57 Original

2022 Regular Session

Hollis

Abstract: Provides for a 45-day notice period for individual lot owners prior to the filing of a homeowners association privilege and reduces the homeowners association privilege enforcement period to 90 days. Provides for the cancellation of extinguished privileges from the mortgage records.

Present law (R.S. 9:1141.9) provides that a homeowners association may establish a privilege on lots of delinquent owners for nonpayment of assessments.

Present law (R.S. 9:1145) provides that upon filing a sworn detailed statement, a homeowners association shall have a privilege upon an individual lot owner's lot and improvements thereon for unpaid charges, expenses, or dues imposed upon such lot and improvement, including legal interest from the date due and reasonable attorney fees.

Present law (R.S. 9:1146) provides that the sworn detailed statement be filed for registry in the mortgage records in the parish where the residential subdivision is located. The homeowners association shall, commensurate with the filing for registry of the privilege, also serve the sworn detailed statement to the delinquent owner via certified mail, registered mail, or personal delivery.

Present law (R.S. 9:1147) provides that a recorded sworn statement shall preserve the homeowners association privilege for a period of five years after the date of recordation. After five years, the privilege is preempted unless the homeowners association has filed a suit to enforce the privilege within five years after the date of its recordation.

Proposed law changes present law and requires that the homeowners association send a written demand for past due charges, expenses, or dues to the owner via certified or registered mail prior to filing the sworn detailed statement. The lot owner shall have 45 days after the delivery of the written demand to deliver payment owed to the homeowners association.

Proposed law provides that upon filing the sworn detailed statement, a homeowners association shall have 90 days to enforce their privilege. If the homeowners association files suit to enforce the privilege, the court may award the individual lot owner damages, including reasonable attorney fees and court costs, as well as sanctions under C.C.P. 863.

Present law (C.C.P. 863) provides for sanctions against an attorney that claims are warranted by existing law, supported by evidence or in fact, and that the pleading itself is not being presented for an improper purpose.

Proposed law provides that the lot owner or another interested person may require the homeowners association to give a written request for cancellation to the recorder of mortgages to cancel the sworn detailed statement. The written request for cancellation shall be delivered within 10 days after it is received by the association.

Present law (R.S. 44:114) provides that any interested person may bring an action against the recorder in his official capacity to compel the cancellation from the records of any instrument or document authorized to be canceled. The recorder is not liable personally or in his official capacity for the costs of any actions pursuant to this Section.

Proposed law provides that the association may be liable for damages and attorney fees for failure to submit a written request for extinguished claims.

(Amends R.S. 9:1145 and 1147)