

The origins of the "Super Lien"

In 1991, Property Management of Andover sponsored the first attempt at creating the "Super Lien" legislation on Beacon Hill in Boston. The bill that would prioritize condominium and legal fees ahead of the mortgage holder's lien was well-received by the committee but ended there as the legislative year ended.

The following year, a bill was reintroduced which included "Super Lien" provisions, along with many other amendments to the existing condominium statute in the Commonwealth of Massachusetts. (Chapter 183A, the Condominium Act)

The bill received widespread support and passed on the last day of the legislative year.

Twenty-one years later, millions of dollars have been collected on this priority lien basis ahead on mortgage holders and thousands of condominium communities have been saved from financial disaster as a result of Property Management of Andover's introduction of the "Super Lien" legislation.

We are proud of this lifetime achievement.

HOUSE No. 5339

By Mr. Coon of Andover (by request), petition of James Toscano relative to the financial management of condominiums. Housing and Urban Development.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT RELATIVE TO THE FINANCIAL MANAGEMENT OF CONDOMINTUMS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 6 of chapter 183A of the General Laws,
2 as appearing in the 1988 Official Edition, is hereby amended by
3 striking out paragraph (b) and inserting in place thereof the
4 following paragraph: —

5 (b) The unit owner shall be personally liable for all sums
6 lawfully assessed for his share of the common expenses, interest
7 thereon, late fees, all fines lawfully assessed by the Organization
8 of Unit Owners for violations of the provisions of the Master
9 Deed, By-Laws and Rules and Regulations and all costs and
10 expenses incurred by the Organization of Unit Owners in
11 collecting said sums, including all reasonable attorneys' fees
12 (regardless of whether the recovery of the same are provided for
13 in the condominium's documents).

1 SECTION 2. Said section 6 of said chapter 183A is hereby
2 further amended by striking out paragraph (c) and inserting in
3 place thereof the following paragraph: —

4 (c) The unit owner's share of the common expenses, interest
5 thereon, late fees, all fines lawfully assessed by the Organization
6 of Unit Owners for violations of the provisions of the Master
7 Deed, By-Laws and Rules and Regulations and all costs and
8 expenses incurred by the Organization of Unit Owners in
9 collecting said sums, including all reasonable attorneys' fees
10 (regardless of whether the recovery of the same are provided for

11 in the condominium's documents) hereinafter collectively called
 12 the "Common Expense Indebtedness" shall constitute a lien
 13 hereinafter called the "Common Expense Indebtedness Lien"
 14 upon his unit and shall be enforced in the manner provided in
 15 section Six (e) of this Chapter. The Common Expense
 16 Indebtedness Lien shall have priority over all other liens, except
 17 (1) municipal liens, and (2) First Permanent Mortgages of
 18 record; except that the Common Expense Indebtedness Lien shall
 19 have priority over First Permanent Mortgages (including so-
 20 called "blanket" mortgages which secure indebtedness on more
 21 than one unit in the same condominium) to the extent of that
 22 portion of the Common Expense Indebtedness which became due
 23 within six (6) months next prior to the commencement of an action
 24 to enforce the Common Expense Indebtedness Lien pursuant to
 25 said Subsection (e) of Section 6 of this Chapter One Hundred
 26 Eighty-Three A.

27 A "First Permanent Mortgage" shall mean a first power-of-sale
 28 mortgage deed which encumbers the condominium unit with
 29 respect to which the Common Expense Indebtedness is owed, but
 30 shall specifically exclude a so-called construction mortgage, or
 31 any mortgage granted by a borrower which was the developer or
 32 converter of the condominium project or building in which such
 33 unit is located. In the case of a so-called "blanket" mortgage which
 34 encumbers more than one unit or property, for purposes of this
 35 Subsection (c), such blanket mortgage shall be conclusively
 36 deemed to secure the payment to the lender of a sum equal to
 37 the total debt secured by the blanket mortgage divided by a
 38 number which is the equivalent of the unit's proportionate share
 39 of the fair market value of all properties covered by said blanket
 40 mortgage as of the date of the recordation of said mortgage in
 41 the Registry of Deeds or Land Registry District in which the unit
 42 is located.

1 SECTION 3. Said section 6 of said chapter 183A is hereby
 2 further amended by adding the following paragraph: —

3 (e) The lien referred to in subsection (c) hereof shall be
 4 enforced by a civil action brought in the Superior Court for the
 5 county where such land lies or in the District Court in the judicial
 6 district where such land lies. The plaintiff shall bring its action

7 in its own behalf and in behalf of all other persons in interest who
 8 shall become parties. An attested copy of the complaint, which
 9 shall contain a brief description of the property, sufficient to
 10 identify it, and a statement of the amount due, shall be filed and
 11 recorded in the Registry of Deeds for the County where such land
 12 lies. All other parties in interest may appear and have their rights
 13 determined in such action, and at any time before entry of final
 14 judgment, upon the suggestion of any party in interest that any
 15 other person is or may be interested in the action, or of its own
 16 motion, the court may summon such person to appear in such
 17 cause on or before a date certain or be forever barred from any
 18 rights thereunder. The court may, in its discretion, provide for
 19 notice to absent parties in interest. The terms "party in interest"
 20 and "person in interest", as used herein, shall include mortgagees
 21 and attaching creditors.

22 When the amount of a lien under this Section six has been
 23 established by a court, the court shall enter an order authorizing
 24 the sale of the real estate at public auction to satisfy such lien.
 25 The lienor may do all acts authorized by such order, but no sale
 26 pursuant to such order shall be effectual unless, previous to such
 27 sale, notice thereof has been published once in each of three
 28 successive weeks, the first publication date to appear not later than
 29 twenty-one days before the date of such sale, in a newspaper
 30 published in the town where the land lies, or, if no newspaper is
 31 published in such town, in a newspaper published in the county
 32 where the land lies, and this provision shall be implied in every
 33 court order for sale hereunder in which it is not expressly set forth.
 34 A newspaper which by its title page purports to be printed or
 35 published in said town, city or county and having a circulation
 36 therein, shall be sufficient for the purpose. Such form shall be
 37 printed in substantially the following form:

38 SALE OF REAL ESTATE
 39 UNDER GLM 183A:6

40 By virtue of a Judgment and Order of the _____ Court
 41 (docket no. _____ in favor of _____ against _____
 42 establishing a lien pursuant to GLM 183A:6 on the real estate
 43 known as Unit _____ of the _____ Condominium for the

44 purpose of satisfying such lien, the real estate will be sold at Public
 45 Auction at _____ o'clock _____ .M. on the _____ day
 46 of _____ A.D. 19 ____ at _____. The premises to be sold
 47 are more particularly described as follows:

48 Description: (Describe premises exactly as in the deed,
 49 including all references to title, restrictions, encumbrances, etc.)

50 Terms of sale: (State amount, if any, to be paid in cash by the
 51 purchaser at the time and place of the sale, and the time or times
 52 for payment of the balance of the whole as the case may be.)

53 Other terms to be announced at the sale.

54 (Signed) _____

55 _____
 56 Lien Holder

57 _____ 19

1 Such notice of sale in the above form, published in accordance
 2 with the provisions of this section, herewith together with such
 3 other or further notice, if any, required by the court, shall be
 4 deemed a sufficient notice of the sale and the premises shall be
 5 deemed to have been sold, and the deed thereunder shall convey
 6 the premises, subject to, and with the benefit of, all restrictions,
 7 easements, improvements, outstanding tax titles, municipal or
 8 other public taxes, assessments, such mortgages which, by
 9 operation of subsection c hereof have priority over this lien,
 10 whether or not reference to such restrictions, easements,
 11 improvements, encumbrances or mortgages is made in the deed;
 12 but no person at such sale shall be bound to complete the purchase
 13 if there are encumbrances other than those included in the notice
 14 of sale, which are not stated at the sale and included in the
 15 auctioneer's contract with the purchaser. The person or entity
 16 selling, or their attorney, may cause a copy of the notice and an
 17 affidavit, stating that the requirements of the court order and of
 18 this section have been complied with, to be recorded in the
 19 Registry of Deeds or land registration office for the county or
 20 district where the land lies, with a note of reference thereto on
 21 the margin of the record of the complaint previously recorded,

22 and such affidavit or a certified copy of the record thereof shall
 23 be admitted as evidence that the sale was duly executed.

1 SECTION 4. The first paragraph of section 1 of chapter 188
 2 of the General Laws, as appearing in the 1988 Official Edition,
 3 is hereby amended by adding the following clauses: —

4 (6) If said home is a unit in a condominium, for "Condominium
 5 Expense Indebtedness" as defined in Chapter 183A Section 6 (c)
 6 with respect to said home;

7 (7) If said home is an apartment in a cooperative, for rent, or
 8 any sum levied in the nature of rent by the cooperative housing
 9 corporation.

1 SECTION 5. Section 5 of chapter 254 of the General Laws,
 2 as appearing in the 1988 Official Edition, is hereby amended by
 3 striking out, in lines 3 and 4, the words "under section six of
 4 chapter one hundred and eighty-three A".

1 SECTION 6. Said chapter 254 is hereby further amended by
 2 striking out section 5A.