

## 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

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

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### The Commonwealth of Massachusetts

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

#### AN ACT RELATIVE TO THE FINANCIAL MANAGEMENT OF CONDOMINIUMS.

*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.