

**H. B. 2515**

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(By Delegates Talbott, Hunt and Shaver)  
[Introduced January 17, 2011; referred to the  
Committee on the Judiciary then Finance.]

10 A BILL to amend and reenact §36B-3-116 of the Code of West  
11 Virginia, 1931, as amended, relating to liens for assessments  
12 on common interest community real property; and providing that  
13 these assessments take priority over sheriffs' liens for  
14 delinquent taxes.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §36B-3-116 of the Code of West Virginia, 1931, as  
17 amended, be amended and reenacted to read as follows:

18 **ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.**

19 **§36B-3-116. Lien for assessments.**

20 (a) The association has a lien on a unit for any assessment  
21 levied against that unit or fines imposed against its unit owner  
22 from the time the assessment or fine becomes due. Unless the  
23 declaration otherwise provides, fees, charges, late charges, fines

1 and interest charged pursuant to section 3- 102(a)(10), (11) and  
2 (12) are enforceable as assessments under this section. If an  
3 assessment is payable in installments, the full amount of the  
4 assessment is a lien from the time the first installment thereof  
5 becomes due.

6 (b) A lien under this section is prior to all other liens and  
7 encumbrances on a unit except (i) liens and encumbrances recorded  
8 before the recordation of the declaration and, in a cooperative,  
9 liens and encumbrances which the association creates, assumes, or  
10 takes subject to, (ii) a first security interest on the unit  
11 recorded before the date on which the assessment sought to be  
12 enforced became delinquent, or, in a cooperative, the first  
13 security interest encumbering only the unit owner's interest and  
14 perfected before the date on which the assessment sought to be  
15 enforced became delinquent, and (iii) liens for real estate taxes  
16 and other governmental assessments or charges against the unit or  
17 cooperative: Provided, That a sheriff's lien for delinquent real  
18 estate is not prior to common expense assessments against a unit.

19 The lien is also prior to all security interests described in  
20 clause (ii) above to the extent of the common expense assessments  
21 based on the periodic budget adopted by the association pursuant to  
22 section 3-115(a) which would have become due in the absence of  
23 acceleration during the six months immediately preceding  
24 institution of an action to enforce the lien. This subsection  
25 does not affect the priority of mechanics' or materialmen's liens,

1 or the priority of liens for other assessments made by the  
2 association. (The lien under this section is not subject to the  
3 provisions of (insert appropriate reference to state homestead,  
4 dower and curtesy, or other exemptions).)

5 (c) Unless the declaration otherwise provides, if two or more  
6 associations have liens for assessments created at any time on the  
7 same property, those liens have equal priority.

8 (d) A lien for unpaid assessments is extinguished unless  
9 proceedings to enforce the lien are instituted within three years  
10 after the full amount of the assessments becomes due.

11 (e) This section does not prohibit actions to recover sums for  
12 which subsection (a) creates a lien or prohibit an association from  
13 taking a deed in lieu of foreclosure.

14 (f) A judgment or decree in any action brought under this  
15 section must include costs and reasonable attorney's fees for the  
16 prevailing party.

17 (g) The association upon written request shall furnish to a  
18 unit owner a statement setting forth the amount of unpaid  
19 assessments against the unit. If the unit owner's interest is real  
20 estate, the statement must be in recordable form. The statement  
21 must be furnished within ten business days after receipt of the  
22 request and is binding on the association, the executive board, and  
23 every unit owner.

24 (h) For the purpose of perfecting and preserving its lien, the  
25 association shall give notice to the unit owner in the manner set

1 forth in section one (~~§56-2-1~~), article two, chapter fifty-six of  
2 this code, or by registered or certified mail, return receipt  
3 requested, and in a form reasonably calculated to inform the owner  
4 of his or her liability for payment of the assessment. The lien  
5 shall be discharged as to subsequent purchasers for value without  
6 notice unless the association shall cause to be recorded a notice  
7 of the lien in the office of the clerk of the county commission of  
8 any county wherein any part of the condominium is located. The  
9 notice shall contain:

- 10 (1) A legally sufficient description of the unit;
- 11 (2) The name or names of the owners of the unit;
- 12 (3) The amount of unpaid assessments due together with the  
13 date when each fell due; and
- 14 (4) The date of recordation.

15 The clerk of the county commission in whose office the notice  
16 is recorded shall index the notice in the appropriate deed books  
17 and lien books in the name of the unit owners and of the  
18 association. The cost of recordation shall be assessed against any  
19 unit owner found to be delinquent in a subsequent proceeding to  
20 enforce the lien.

21 Upon payment of the assessment, the association shall execute  
22 a written release of the lien in the manner set forth in section  
23 one (~~§38-12-1~~), article twelve, chapter thirty-eight of this code.  
24 This release shall be recorded, at the expense of the association,  
25 in the office of the clerk of the county commission wherein the

1 notice of the lien was filed.

2 (i) At any time before the association has disposed of a unit  
3 in a cooperative or entered into a contract for its disposition  
4 under the power of sale, the unit owners or the holder of any  
5 subordinate security interest may cure the unit owner's default and  
6 prevent sale or other disposition by tendering the performance due  
7 under the security agreement, including any amounts due because of  
8 exercise of a right to accelerate, plus the reasonable expenses of  
9 proceeding to foreclosure incurred to the time of tender, including  
10 reasonable attorney's fees of the creditor.

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NOTE: The purpose of this bill is to provide that liens for assessments on common interest community real property take priority over sheriffs' liens for delinquent taxes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.