

## National Matrix of Association "Super-priority" Lien Legislation

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The laws of twenty-three (23) jurisdictions contain provisions that afford a so-called "super-priority" to the liens available to condominium associations and/or community associations, making such liens superior to the liens of mortgage loans and other types of liens, to some varying extent.

A bit of background is in order. First generation condominium statutes, like the Horizontal Property Regimes Acts that are still present in many states, expressly subordinated the association's lien to the liens of all mortgages, real estate taxes and other governmental assessments or charges against the unit.

The association's "super-priority" lien rights originated in the Uniform Condominium Act [UCA], adopted by the Commissioners on Uniform State Laws in 1980, the Uniform Common Interest Ownership Act [UCIOA] and the Uniform Planned Community Act [UPCA] which were both adopted by the Commissioners in 1982. The common thread of these statutes, appearing in Section 3-116 in each case, was to provide the association's lien with a limited priority over the lien of a mortgage on the unit, securing 6 months' worth of common expense assessments that came due immediately preceding institution of an action to enforce the association's lien.

The Official Comments to these Uniform Acts describe the purpose for providing the association's lien a priority over the liens of mortgages:

**(T)he 6 months' priority for the assessment lien strikes an equitable balance** between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of mortgage lenders. As a practical matter, mortgage lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. [Emphasis supplied].

It should be noted that the period of time selected, i.e. 6 months, was entirely arbitrary and unrelated to anything other than the perceived need to provide CIC associations with some relief in foreclosure situations. Whether the Reference Point for this 6 month period should be the time of the institution of an action by the association to foreclose its lien or the date of the completion of the sale is debatable. In the State of Washington's version of the UCA, a foreclosure of the interest of the unit owner by either a lender or the association has acted as the Reference Point. Several other states have now followed this approach, in whole or in part. Other jurisdictions make the Reference Point either the commencement of a foreclosure action, or the recording of a memorandum of the association's lien rights.

In 2008, the Commissioners revised UCIOA's version of Section 3-116 so that the association's super-priority lien secured not only common expense assessments accruing during the 6 month period, but also secured "reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien." The Official Comment to Section 3-116 was concurrently revised to read:

(S)ubsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; **see** C.G.S. Section 47-258(b). The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state.

In 2014, the Commissioners again revised UCIOA's version of Section 3-116 to confirm, among other things, that the association's lien is a true first priority lien rather than a mere first right to proceeds resulting from a foreclosure sale, and to further confirm that the association's lien is "evergreen", securing the association's priority amount "for each budget year of the association." The Official Comment to Section 3-116 was concurrently revised substantially, as attached hereto.

All eight (8) states that have adopted versions of UCIOA have included language in their enabling legislation giving the association's lien a priority over mortgages, to one degree or another.<sup>1</sup> Six (6) states that adopted versions of the UCA have included super-priority lien provisions in their statutes.<sup>2</sup> Two (2) states retain "first generation" condominium statutes based generally on the "Horizontal Property Regimes Act" first adopted by the State of Hawaii in 1961, but have more recently updated those statutes to include the super-priority lien.<sup>3</sup> Finally, seven (7) jurisdictions have robust "stand-alone" statutes that afford some degree of priority to an association's lien over those of other lienholders.<sup>4</sup> Pennsylvania, which adopted the UCA, is the also the first and only state to adopt the Uniform Planned Community Act; both Pennsylvania statutes include the super-priority lien.

Considerable variability exists within the legislation of the several states that confer super-priority status upon association liens. This article addresses the commonalities among and differences between the several statutory schemes present in such states. Various characteristics of the laws of each of these several states are analyzed:

- a. Type of Statute
- b. Duration of Priority Period
- c. Assessments Secured
- d. Whether Associations' Attorneys' Fees & Costs in Enforcement are Secured
- e. Types of Mortgage Liens Trumped by the Super-priority Lien
- f. Reference Point for Super-priority Period
- g. Whether Notice to Lenders from Association is Required Prior to the Institution of Foreclosure Proceedings
- h. Statute of Limitations on Association Foreclosure Rights
- i. Other

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<sup>1</sup> UCIOA states with priority include: Alaska, Colorado, Connecticut, Delaware, Minnesota, Nevada, Vermont and West Virginia.

<sup>2</sup> UCA states with priority include: Alabama, Missouri, Pennsylvania, Rhode Island, Tennessee and Washington. Several other states that adopted the UCA in the 1980's omitted the super-priority provisions from their statutes.

<sup>3</sup> HPRA states with priority include: Hawaii and Massachusetts.

<sup>4</sup> Other jurisdictions with priority include: District of Columbia, Florida, Illinois, Maryland, New Hampshire, New Jersey and Oregon.

As will be observed from the materials that follow, the modern trend evident in this sort of legislation is that an association's assessments against a delinquent unit that derive from the association's "periodic budget" and that accrue during a period of several months before or after some specified "reference point" will enjoy a priority over the lien of one or more types of mortgage loans to some specified extent. The most modern of these statutes, fueled by changes in the language of UCIOA itself, include the association's attorneys' fees and foreclosure costs in the assessment amounts secured by the super-priority lien.<sup>5</sup> Some statutes measure the super-priority period either from the date of the initiation of foreclosure proceedings, or from the date of the foreclosure sale by either the lender or the association.<sup>6</sup>

Other states have approached the issue of the association's needs still differently. Oregon, in particular, does not limit the association's lien at all, let alone to six months' worth of assessment liability. The Massachusetts statute includes the typical 6 month priority period, but also includes provisions under which the association and the lender may agree that the association will refrain from foreclosing its lien for so long as the lender continues to make common expense payments on behalf of its borrower. Florida's lien priority for assessments exists for a period of 12 months, but the statute provides an alternative valuation to the lien, i.e. one percent of the mortgage debt, in some cases.

This remains a work in progress. The reader is invited to correct errors or omissions that may, through inadvertence, appear in this manuscript.

A summary of the several state laws that are the focus of this article commences immediately below:

### ***UCIOA Itself – from 2014 Version***

UCIOA's super-priority lien [Section 3-116(c)] has these characteristics:

- a. **Statute Type:** UCIOA
- b. **Duration:** 6 months
- c. **Assessments Secured:** Both the common expense assessments based on periodic budget that would have become due in the absence of acceleration, and attorneys' fees and costs of foreclosure are secured.
- d. **Attorneys' Fees:** Yes
- e. **Mortgages Trumped:** A first security interest.
- f. **Reference Point:** Institution of an action to enforce the [association's] lien
- g. **Notice to Lender Required:** To unit owner and any tenant prior to foreclosure.
- a. **Statute of Limitations:** 3 years.
- b. **Other:** Provides that the association's lien is a true first priority lien rather than a mere first right to proceeds resulting from a foreclosure sale, and confirms that the

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<sup>5</sup> State statutes and/or regulations that clearly include attorney's fees within the priority lien include: Colorado, Connecticut, Massachusetts, Nevada, New Hampshire and Rhode Island. UCIOA also includes this provision.

<sup>6</sup> States that measure priority from the date of a foreclosure sale include: Colorado, Connecticut, Florida and Hawaii, Maryland, Minnesota, Oregon, Rhode Island and Washington.

association's lien is "evergreen", securing the association's priority amount "for each budget year of the association."

## ***UCIOA States***

Eight states (Alaska, Colorado, Connecticut, Delaware, Minnesota, Nevada, Vermont and West Virginia) have adopted versions of the *Uniform Common Interest Ownership Act* (UCIOA). Associations of CIC's in such states derive their super-priority status through the inclusion of material originating in UCIOA Section 3-116 in their states' enabling legislation. A discussion of key attributes of these statutes, which appear in alphabetical order, now follows:

### **ALASKA**

The super-priority lien of this state [AS 34.08.470] has these characteristics:

- c. **Statute Type:** UCIOA
- d. **Duration:** 6 months.
- e. **Assessments Secured:** common expense assessments based on periodic budget that would have become due in the absence of acceleration
- f. **Attorneys' Fees:** No.
- g. **Mortgages Trumped:** First mortgages only.
- h. **Reference Point:** Institution of an action to enforce the [association's] lien
- i. **Notice to Lender Required:** No.
- j. **Statute of Limitations:** 3 years.
- k. **Other:** Basic UCIOA

### **COLORADO**

The super-priority lien of this state [CRS 38-33.3-316] has these characteristics:

- a. **Statute Type:** UCIOA
- b. **Duration:** 6 months
- c. **Assessments Secured:** Common expense assessments based on periodic budget that would have become due in the absence of acceleration, and may include late charges, attorney fees, fines, and interest [case law from 2005]
- d. **Attorneys' Fees:** Yes.
- e. **Mortgages Trumped:** First priority security interests
- f. **Reference Point:** Institution, by either the association or any party holding a lien senior to any part of the association's lien, of an action or a nonjudicial foreclosure either to enforce or to extinguish the [association's] lien.
- g. **Notice to Lender Required:** Yes, upon request.
- h. **Statute of Limitations:** 6 years.
- i. **Other:**

### **CONNECTICUT**

The super-priority lien of this state [Chapter 828 C.R.S. Sec. 47-258] has these characteristics:

- a. **Statute Type:** UCIOA
- b. **Duration:** 9 months
- c. **Assessments Secured:** common expense assessments based on periodic budget that would have become due in the absence of acceleration
- d. **Attorneys' Fees:** Yes.

- e. **Mortgages Trumped:** First and second mortgage holders
- f. **Reference Point:** Institution of an action to enforce either the association's lien or a mortgage
- g. **Notice to Lender Required:** Yes.
- h. **Statute of Limitations:** 3 years, expressly tolled for bankruptcy.
- i. **Other:** Connecticut's CIOA, passed by the Connecticut legislature on June 3, 1983, became the first state law in the United States to unify and modernize the law of common interest communities. By statutory construction in two lower court cases, attorneys' fees and court costs are recoverable as part of the priority claim irrespective of who commences the foreclosure process.<sup>7</sup> Modified June, 2013, to require notice to lenders, to extend priority period to 9 months and to clarify the "evergreen" nature of the priority, i.e. a rolling priority period and not a one-time phenomenon.

#### **DELAWARE:**

The super-priority lien of this state [§ 81-316] has these characteristics:

- a. **Statute Type:** UCIOA – pre 2008.
- b. **Duration:** 6 months
- c. **Assessments Secured:** the aggregate customary common expense assessment against such unit for 6 months as determined by the periodic budget
- d. **Attorneys' Fees:** No
- e. **Mortgages Trumped:** A first or second security interest
- f. **Reference Point:** Unclear.
- g. **Notice to Lender Required:** Yes
- h. **Statute of Limitations:** 3 years to foreclose, but lien doesn't expire until 5 years after recordation.
- i. **Other:** Recordation of both a general notice of the association's lien rights, and a notice of lien, with delinquency particulars, at least 30 days prior to a sheriff's sale of the unit.

#### **MINNESOTA**

The super-priority lien of this state [Chapter 515B.3-116] has these characteristics:

- a. **Statute Type:** UCIOA
- b. **Duration:** 6 months preceding end of the owner's period of redemption.
- c. **Assessments Secured:** common expenses based upon association's then current annual budget
- d. **Attorneys' Fees:** Apparently only if lender pays association during redemption period
- e. **Mortgages Trumped:** All
- f. **Reference Point:** Foreclosure of the interest of the unit owner.
- g. **Notice to Lender Required:** No.

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<sup>7</sup> Query, with respect to both Connecticut and Delaware, whether is there any case law addressing the practical effect of the association's "super-priority" over both first and second mortgages, in effect trifurcating the association's lien? [i.e., is the association entitled to a payment from two lenders of the 6-month common assessment amount?]. The typical approach is to fully subordinate second position mortgages to the association's lien.

- h. **Statute of Limitations:** 3 years
- i. **Other:** Lien survives the lender's foreclosure sale to extent of priority period.

## NEVADA

The super-priority lien of this state [NRS 16.3116] has these characteristics:

- a. **Statute Type:** UCIOA
- b. **Duration:** 9 months
- c. **Assessments Secured:** Assessments for common expenses based on periodic budget which would have become due in the absence of acceleration
- d. **Attorneys' Fees:** Yes, but in limited dollar amounts specified in the statute.
- e. **Mortgages Trumped:** Recorded security interests.
- f. **Reference Point:** The date on which a notice of default and election to sell is recorded by the association.
- a. **Notice to Lender Required:** Yes, to each holder of a recorded security interest
- b. **Statute of Limitations:** 3 years
- c. **Other:** The statute was SIGNIFICANTLY modified in May of 2015.

## VERMONT

The super-priority lien of this state [27A V.S.A. § 3-116] has these characteristics:

- a. **Statute Type:** UCIOA
- b. **Duration:** Six months
- c. **Assessments Secured:** Common expense assessments based on the periodic budget which would have become due in the absence of acceleration...
- d. **Attorneys' Fees:** No.
- e. **Mortgages Trumped:** First mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent
- f. **Reference Point:** Institution of an action to enforce the [association's] lien
- g. **Notice to Lender Required:** On request to owner, and to lender in assn action for foreclosure.
- h. **Statute of Limitations:** 3 years.
- i. **Other:** Basic UCIOA

## WEST VIRGINIA

The super-priority lien of this state has these characteristics:

- a. **Statute Type:** UCIOA
- b. **Duration:** Six months
- c. **Assessments Secured:** Common expense assessments based on the periodic budget which would have become due in the absence of acceleration...
- d. **Attorneys' Fees:** No.
- e. **Mortgages Trumped:** First mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent
- f. **Reference Point:** Institution of an action to enforce the [association's] lien
- g. **Notice to Lender Required:** No.
- h. **Statute of Limitations:** 3 years.
- i. **Other:** In order to perfect and preserve the lien, the association must give notice to the unit owner and record a notice of lien in the land records.

## *UCA States*

Six states (Alabama, Missouri, Pennsylvania, Rhode Island, Tennessee and Washington), confer super-priority to the liens of condominium associations, based on UCA Section 3-116. A discussion of key attributes of these statutes, in alphabetical order, now follows:

### **ALABAMA**

The super-priority lien of this state [Chapter 35-8A-316] has these characteristics:

- h. **Statute Type:** UCA
- i. **Duration:** 6 months
- j. **Assessments Secured:** Common expense assessments based on periodic budget which would have become due in the absence of acceleration
- k. **Attorneys' Fees:** No.
- l. **Mortgages Trumped:** A first security interest
- m. **Reference Point:** Institution of an action to enforce the lien
- n. **Notice to Lender Required:** Yes, to the unit owner and all lienholders of record.
- o. **Statute of Limitations:** 3 years.
- p. **Other:** Mostly basic UCA

### **MISSOURI**

The super-priority lien of this state [Section 448.3-116.3] has these characteristics:

- q. **Statute Type:** UCA
- r. **Duration:** 6 months
- s. **Assessments Secured:** Common expense assessments based on periodic budget which would have become due in the absence of acceleration.
- t. **Attorneys' Fees:** No.
- u. **Mortgages Trumped:** Any mortgage or deed of trust on a unit recorded subsequent to August 28, 2014 and before the date on which the assessment sought to be enforced became due
- v. **Reference Point:** the date of filing a petition to enforce the association's lien or the date of sale by the holder of a mortgage or deed of trust
- w. **Notice to Lender Required:** Only on request.
- x. **Statute of Limitations:** 3 years.
- y. **Other:** Mostly basic UCA

### **PENNSYLVANIA**

The super-priority lien of this state [68 Pa.C.S. § 3315] has these characteristics:

- a. **Statute Type:** UCA
- b. **Duration:** 6 months
- c. **Assessments Secured:** assessments for common expenses [under budget] that come due during period
- d. **Attorneys' Fees:** No.
- e. **Mortgages Trumped:** First mortgages
- f. **Reference Point:** Institution of action to enforce assn. lien by judicial sale
- g. **Notice to Lender Required:** None.
- h. **Statute of Limitations:** 3 years.

- i. **Other:** The priority is expressed as a "divestiture" of such portion of six months of unpaid common charges that are paid out of the proceeds of the foreclosure sale. Unpaid bifurcated portion of association lien is prior to all other liens upon foreclosure sale by lender, to the extent of available proceeds.

## **RHODE ISLAND**

The super-priority lien of this state [Chapter 34-36.1-3.16] has these characteristics:

- a. **Statute Type:** UCA
- b. **Duration:** Six months
- c. **Assessments Secured:** does not include any amounts attributable to special assessments, late charges, fines, penalties, and interest.
- d. **Attorneys' Fees:** Yes – fees and costs limited to \$7,500.
- e. **Mortgages Trumped:** First mortgages
- f. **Reference Point:** Foreclosure of the interest of the unit owner by a lender
- g. **Notice to Lender Required:** Yes. Failure to send notice removes attorney's fees from super-priority lien.
- h. **Statute of Limitations:** 6 years.
- i. **Other:** Statute modified, 2008 UCIOA-style, to include attorneys' fees and collection costs in super-priority amount,

## **TENNESSEE**

The super-priority lien of this jurisdiction [T.C. 66-27-415] has these characteristics:

- a. **Statute Type:** UCA
- b. **Duration:** 6 months
- c. **Assessments Secured:** Common expense assessments based on periodic budget adopted that would have become due in the absence of acceleration
- d. **Attorneys' Fees:** No.
- e. **Mortgages Trumped:** First mortgages
- f. **Reference Point:** Institution of an action to enforce the [association's] lien
- g. **Notice to Lender Required:** Yes.
- h. **Statute of Limitations:** 6 years
- i. **Other:** Super-priority status is lost if notice to lender is not provided.

## **WASHINGTON**

The super-priority lien of this state [RCW 64.34.364(3)] has these characteristics:

- a. **Statute Type:** UCA variant
- b. **Duration:** Six months
- c. **Assessments Secured:** Assessments for common expenses, excluding amounts for capital improvements, under periodic budget which would have become due
- d. **Attorneys' Fees:** No.
- e. **Mortgages Trumped:** Any mortgage recorded prior to date of delinquency
- f. **Reference Point:** Foreclosure of the interest of the unit owner by a lender or the association.
- g. **Notice to Lender Required:** Unique requirement – notice by lender limits super-priority period to 3 months; prior notice from assn to lender maintains 6 month period
- h. **Statute of Limitations:** 3 years



- i. **Other:** If the association forecloses its lien non-judicially, it loses its super-priority lien rights.

### *Uniform Planned Community States*

#### **PENNSYLVANIA**

This super-priority lien for HOA's [68 Pa.C.S. § 5315] has these characteristics:

- a. **Statute Type:** UPCA [same provisions as PA's UCA]
- b. **Duration:** 6 months
- c. **Assessments Secured:** assessments for common expenses [under budget] that come due during period
- d. **Attorneys' Fees:** No.
- e. **Mortgages Trumped:** First mortgages
- f. **Reference Point:** Institution of action to enforce association lien by judicial sale
- g. **Notice to Lender Required:** None.
- h. **Statute of Limitations:** 3 years.
- i. **Other:** The priority is expressed as a "divestiture" of such portion of six months of unpaid common charges that are paid out of the proceeds of the foreclosure sale. Unpaid bifurcated portion of association lien is prior to all other liens upon foreclosure sale by lender, to the extent of available proceeds.

### *HPRA States Modified to Include Super-priority*

#### **HAWAII**

The super-priority lien of this state [§514B-146] has these characteristics:

- a. **Statute Type:** HPRA – much modified
- b. **Duration:** 6 months preceding foreclosure by lender
- c. **Assessments Secured:** Regular and special assessment items within the period.
- d. **Attorneys' Fees:** No
- e. **Mortgages Trumped:** First mortgages
- f. **Reference Point:** Foreclosure by mortgage lender.
- g. **Notice to Lender Required:** Only on demand.
- h. **Statute of Limitations:** Unclear.
- i. **Other:** Is collectible from the lender's purchaser at or after a foreclosure by the lender. The foreclosing lender itself is not liable for super-priority amounts.

#### **MASSACHUSETTS**

The super-priority lien of this state [Chapter 183A, Section 6(c)] has these characteristics:

- a. **Statute Type:** HPRA – much modified
- b. **Duration:** 6 months prior, and nearly all future assessments
- c. **Assessments Secured:** common expense assessments based on budget which would have become due in the absence of acceleration, but not special assessments for capital improvements, late charges, fines, penalties, and interest.
- d. **Attorneys' Fees:** Yes
- e. **Mortgages Trumped:** First mortgages
- f. **Reference Point:** Institution of an action to enforce the lien
- g. **Notice to Lender Required:** Yes, to eligible mortgagees.

- h. **Statute of Limitations:** Unclear.
- i. **Other:** Interesting provision: The association takes no action to enforce its priority liens if the first mortgagee agrees in writing that a priority lien exists and promptly pays: (1) 6 months' worth of regularly recurring budgeted common expenses preceding the notice of delinquency; (2) costs and reasonable attorney's fees incurred by the organization at the time of lender's agreement; (3) all future common expenses, and special assessments other than special assessments for capital improvements accruing from the date of the agreement notice until the mortgagee's mortgage is foreclosed or otherwise no longer encumbers the unit. The failure of the condominium association to send to the first mortgagee either type of notice of delinquency as set forth above, does not defeat the super-lien priority, but will preclude inclusion of attorneys' fees or costs incurred in the action to enforce the lien.

### *Stand Alone Statute States*

Six remaining super-lien states (Florida, Illinois, Maryland, New Hampshire, New Jersey and Oregon) and the District of Columbia have adopted what may be referred to as "stand alone" statutes. These allow varying types of priority for unpaid condominium and/or community association common-expense assessments, as described below:

#### **DISTRICT OF COLUMBIA**

The super-priority lien of this jurisdiction [Section 42-1903.13] has these characteristics:

- j. **Statute Type:** Second-generation condo [pre-UCA], modified with UCA language
- k. **Duration:** 6 months
- l. **Assessments Secured:** common expense assessments based on periodic budget which would have become due in the absence of acceleration.
- m. **Attorneys' Fees:** No.
- n. **Mortgages Trumped:** First mortgages
- o. **Reference Point:** Institution of action to enforce the association's lien.
- p. **Notice to Lender Required:** No.
- q. **Statute of Limitations:** 3 years
- r. **Other:** Amended to include basic UCA language. Recent case confirms that the association's lien is a true priority lien, rather than a mere priority right to proceeds resulting from a foreclosure sale.

#### **FLORIDA**

The super-priority lien of this state [718.116] has these characteristics:

- a. **Statute Type:** Stand-alone Condominium
- b. **Duration:** 12 months
- c. **Assessments Secured:** The lesser of: (a) "unpaid common expenses and regular periodic assessments"; or, (b) one percent of the original mortgage debt.
- d. **Attorneys' Fees:** Unclear – fees and costs are secured by lien.
- e. **Mortgages Trumped:** First mortgages
- f. **Reference Point:** "the acquisition of title" by the lender
- g. **Notice to Lender Required:** No. Recordation of lien is required.

- h. **Statute of Limitations:** 1 year from recordation of lien.
- i. **Other:** The one-percent limitation does not apply unless the first mortgagee joins the association as a defendant in its foreclosure action.

## ILLINOIS

The super-priority lien of this state [765 ILCS 605/9) (from Ch. 30, par. 309] has these characteristics:

- a. **Statute Type:** Stand-alone Condominium
- b. **Duration:** 6 months
- c. **Assessments Secured:** common expense assessments which would have become due in the absence of acceleration.
- d. **Attorneys' Fees:** No.
- e. **Mortgages Trumped:** First mortgages.
- f. **Reference Point:** institution of an action to enforce the collection of assessments
- g. **Notice to Lender Required:** No
- h. **Statute of Limitations:** ?.
- i. **Other:** Similar to Hawaii's approach. The purchaser at a judicial foreclosure sale, other than a mortgagee, who takes possession of a condominium unit pursuant to a court order, or a purchaser who acquires title from a mortgagee, has the duty to pay the priority amount. Interestingly, a lender that makes required payments to the Association following its acquisition of a unit by foreclosure appears to be exonerated from paying the priority amount.

## MARYLAND

The super-priority lien of this state [Ann Code Md, § 11-110(2),(3)] has these characteristics:

- a. **Statute Type:** Stand-alone Condominium
- b. **Duration:** 4 months
- c. **Assessments Secured:** "unpaid regular assessments for common expenses...[up to a] maximum of \$1,200.00"
- d. **Attorneys' Fees:** Yes.
- e. **Mortgages Trumped:** First mortgages recorded on or after October 1, 2011
- f. **Reference Point:** foreclosure of a mortgage or deed of trust
- g. **Notice to Lender Required:** Yes, upon request, along with filing of lien
- h. **Statute of Limitations:** ?.
- i. **Other:** The Maryland Contract Lien Act was amended in 2013 to permit condo and homeowners associations to foreclose on liens which include reasonable costs and attorney's fees "directly related to the filing of the lien and not exceeding the amount of the lien". The limitation to a maximum of \$1,200 appears intact.

## NEW HAMPSHIRE

The super-priority lien of this state [RSA, Section 356-B:46] has these characteristics:

- a. **Statute Type:** Stand-alone Condominium
- b. **Duration:** 6 months
- c. **Assessments Secured:** "regular monthly common assessments unpaid with respect to a residential condominium unit..."
- d. **Attorneys' Fees:** Yes, and collection costs.

- e. **Mortgages Trumped:** First institutional mortgages recorded on or after January 1, 2011
- f. **Reference Point:** Association's recordation of memorandum of lien.
- g. **Notice to Lender Required:** Yes
- h. **Statute of Limitations:** Six years
- i. **Other:** Association can rely on land records to determine address of lender for purposes of notice, unless lender has contacted association to provide different information.

## NEW JERSEY

The super-priority lien of this state [N.J.S.A. 46:8B-21] has these characteristics:

- j. **Statute Type:** Stand-alone Condominium
- a. **Duration:** 6 months
- b. **Assessments Secured:** Assessments for operations, excluding amounts for reserves for contingencies, late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment/
- c. **Attorneys' Fees:** No.
- d. **Mortgages Trumped:** All mortgages
- e. **Reference Point:** Institution of action to enforce association's lien
- f. **Notice to Lender Required:** Yes, along with filing of lien
- g. **Statute of Limitations:** 5 years – see below
- h. **Other:** The super lien is ineffective if recorded after the association receives a summons and complaint in an action to foreclose a mortgage on the defaulting unit or a *lis pendens* giving notice of the pendency of an action is filed prior to the recording of the association lien. The super lien is effective only once in each five-year period over the same mortgage.

## OREGON

The super-priority lien of this state [ORS 100.450(7)] has these characteristics:

- a. **Statute Type:** Stand-alone Condominium
- b. **Duration:** Unlimited if all conditions are met.
- c. **Assessments Secured:** interest, late charges, attorney fees, costs or other amounts levied under the declaration or bylaws
- d. **Attorneys' Fees:** Yes.
- e. **Mortgages Trumped:** First mortgages.
- f. **Reference Point:** Recordation of Lien and Notice by association to lender.
- g. **Notice to Lender Required:** Yes.
- h. **Statute of Limitations:** 6 years.
- i. **Other:** Interesting approach: Super-priority must be claimed by association in notice to lender. The condominium association must record a notice of lien and may thereafter claim a super lien as against any prior mortgage in the amount of all unpaid condominium common charges (no six-month limit) if all of the following conditions are met: The association gives the lender 90 days written notice of the unit owner's default. The notice contains a statutory warning that the claimed lien may become prior to that of the lender pursuant to Oregon law. The lender has not initiated a foreclosure action or accepted a deed-in-lieu of foreclosure prior to the expiration of 90 days following receipt of the association's notice under (1) above. The association

has complied with the lender's request, if any, for specified documentation of the lien. The unit owner (borrower) is in default under the terms of the mortgage as to principal and interest. A copy of the notice in (1) above has been verified, filed and recorded on the land records. A deed in lieu of lender's foreclosure appears to wipe out the association's lien.