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2017 Edition

Foreclosure of Condominium Liens in Connecticut

A Guide to Resources in the Law Library

Table of Contents

Introduction	3
Section 1: Right to Assess Fees.....	5
Section 2: Foreclosure of Liens	12
Table 1: Association’s Failure to Perform Duties as Defense to Nonpayment of Fees and Fines.....	31

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- [Prejudgment Proceedings in Connecticut Mortgage Foreclosures](#) (Including Mediation, CT EMAP, Redemption, Reinstatement, Deed in Lieu, Short Sales, Application for Protection, Defenses, Disclosure of Defense, Standing to Foreclose, Bankruptcy)
- [Postjudgment Proceedings in Connecticut Mortgage Foreclosures](#) (Including Deficiency Judgment, Motion to Open Judgment, Appeals, Execution of Ejectment, Tenant Issues)
- [Mechanic's Liens in Connecticut](#) (Section 7. Foreclosure of Mechanic's Lien)
- [Collection of Delinquent Property Taxes in Connecticut](#) (Section 1. Foreclosure of Tax Liens)

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Introduction

A Guide to Resources in the Law Library

- **"Condominium developments are of relatively recent origin and provide a unique** type of shelter that affords some of the benefits of property ownership without the corresponding burdens. [Gentry v. Norwalk](#), 196 Conn. 596, 603, 494 A.2d 1206 (1985). The statutory scheme in Connecticut governing condominium developments is the Common Interest Ownership Act (act). See generally General Statutes § 47-200 et seq. **The act** 'is a comprehensive legislative scheme regulating all forms of common interest ownership that is largely modeled on the Uniform **Common Interest Ownership Act.**' . . . **The act addresses** 'the creation, organization and management of common interest communities and contemplates the voluntary participation of the owners. It entails the drafting and filing of a declaration describing the location and configuration of the real property, development rights, and restrictions on its use, occupancy and alienation; General Statutes §§ 47-220, 47-224; the enactment of bylaws; General Statutes § 47-248 . . . the establishment of a unit owners' association [to manage the condominium community]; General Statutes § 47-243; and an executive board to act on . . . behalf [of the association]. General Statutes § 47-245.' [Wilcox v. Willard Shopping Center Associates](#), 208 Conn. 318, 326-27, 544 A.2d 1207 (1988)." [Weldy v. Northbrook Condominium Assn., Inc.](#), 279 Conn. 728, 734-735, 904 A.2d 188, 192-193 (2006).
- **"Powers and duties of unit owners' association.** (a) Except as provided in subsection (b) of this section, and subject to the provisions of the declaration, the association, even if unincorporated:...
(10) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subdivisions (2) and (4) of section 47-221, and for services provided to unit owners;
(11) May impose charges or interest or both for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association;
(12) May impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 47-270 or **statements of unpaid assessments.**" Conn. Gen. Stats. § [47-244](#) (2015).
- **"The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner."** Conn. Gen. Stats. § [47-258\(a\)](#) (2015).
- **"The association's lien may be foreclosed in like manner as a mortgage on real property."** Conn. Gen. Stats. § [47-258\(j\)](#) (2015).
- **". . . §§ 47-257 and 47-258 manifest the legislature's intention that a duly constituted condominium association has an enforceable lien to assist its collection of common charges. The court reasoned that the legislature provided condominium associations with the ability to impose such a lien in order to protect the condominium's common financial interest in timely collection of anticipated revenues for the benefit of the community as a whole."** [Coach Run Condominium, Inc. v. Furniss](#), 136 Conn. App. 698, 705, 47 A3d 413 (2012).

- “The act, which is largely modeled after the Uniform Common Interest Ownership Act, was created in order to provide unit owners and their associations with consumer protection rights, as well as to afford developers, lenders and title insurers with flexibility and certainty in establishing common interest communities. Conn. Joint Standing Committee Hearings, Judiciary, Pt. 6, 1983 Sess., pp. 1821-24, remarks of William Breetz; see also [Willow Springs Condominium Assn., Inc. v. Seventh BRT Development Corp.](#), 245 Conn. 1, 30, 717 A.2d 77 (1998). Section 47-258, which is a part of the act, establishes a lien with a split priority. Additionally, it authorizes and describes appropriate foreclosure mechanisms. In derogation of the common-law rule that first in time is first in right, § 47-258(b) establishes a priority for common charges and a superpriority for “the common expense assessments ... which would have become due in the absence of acceleration during the six [now nine] months immediately preceding institution of an action to enforce ... the association's lien....” [Hudson House Condominium Assn., Inc. v. Brooks](#), 223 Conn. 610, 614, 611 A.2d 862 (1992), quoting General Statutes § 47-258(b). The split priority establishes a superpriority for up to six [now nine] months of common charges and attorney’s fees and costs prior to first and second mortgages and taxes, and establishes a recording lien for the remainder of the common charges that is prior to many other liens. Thus, the statute provides an owners’ association with a speedy mechanism by which it can secure up to six [now nine] months of unpaid common charges, as well as attorney’s fees and costs incurred in such a pursuit. The creation of a lien with such a superpriority protects consumers, because unit owners depend on their association for vital maintenance services.” [Linden Condominium Assn. v. McKenna](#), 247 Conn. 575, 584-585, 726 A2d 502, 507. *Bracketed information added.*
- **“In an action to foreclose a lien for unpaid common expenses, the legal rights and liabilities of condominium owners are guided by the Common Interest Ownership Act. See General Statutes § 47-200 et seq. Therefore, actions to foreclose statutory liens for common expenses unpaid by condominium owners are distinguishable from other homeowners in default on their mortgages and are more limited as a matter of law.”** [Mallview Condominium Association, Inc. v. Mulla](#), Superior Court, Judicial District of Waterbury at Waterbury, CV146023911S (Oct. 23, 2014).

Section 1: Right to Assess Fees

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to a condominium association's right to assess fees based on Connecticut General Statutes § [47-244](#) and § [47-257](#).

CURRENCY:

- January 1, 2017

DEFINITIONS:

- **"Assessment' means the sums** attributable to a unit and due the association pursuant to section 47-257." Conn. Gen. Stats. § [47-202\(3\)](#) (2015).
- **"Powers and duties of unit owners' association.** (a) Except as provided in subsection (b) of this section, and subject to the provisions of the declaration, the association, even if unincorporated:
 - (10) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subdivisions (2) and (4) of section 47-221, and for services provided to unit owners;
 - (11) May impose charges or interest or both for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, rules and regulations of the association;
 - (12) May impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section 47-270 or statements of **unpaid assessments.**" Conn. Gen. Stats. § [47-244](#) (2015).
- **"Assessments for common expenses.** . . . (a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After an assessment has been made by the association, assessments shall be made at least annually, based on a budget adopted at least annually by the association.

. . . . all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsections (a) and (b) of section 47-226." Conn. Gen. Stats. § [47-257\(a & b\)](#) (2015).
- **Special assessments:** "Except as provided in subdivision (2) of this subsection, the executive board, at any time, may propose a special assessment." Conn. Gen. Stats. § [47-261e\(b\)](#) (2015). (Amended – See [2016 Supplement](#)).
- **Interest on any past due assessment:** "The association may charge interest on any past due assessment or portion thereof at the rate established by the association, not

exceeding eighteen per cent per year." Conn. Gen. Stats. § [47-257\(b\)](#) (2015).

- **Common expense associated with the maintenance, repair or replacement of a limited common element:** "To the extent required by the declaration: (1) Any common expense associated with the maintenance, repair or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides; (2) any common expense or portion thereof benefiting fewer than all of the units or their owners may be assessed exclusively against the units benefited; and (3) the costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage." Conn. Gen. Stats. § [47-257\(c\)](#) (2015).
- **Waiver of use:** "No unit owner may exempt himself from liability for payment of the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit against which the assessments are made." Conn. Gen. Stats. § [47-257\(g\)](#) (2015).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Conn. Gen. Stat. (2015)

[Chapter 825](#). Condominium Act

§ 47-77. Assessment of Common Expenses. Liens and Foreclosures. ". . . **although the lien provision of the Condominium Act, Connecticut General Statute § 47-77, has not been repealed, it has been superseded and its lien provisions rendered nugatory by Connecticut General Statute § 47-258.**" [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 6th edition, Denis R. Caron and Geoffrey K. Milne, volume 1, p. 754.

[Chapter 828](#). Common Interest Ownership Act

§ 47-202. Definitions.

§ 47-216. **Applicability to preexisting common interest communities.** "...sections... 47-257, 47-258... **apply to all common interest communities created in this state before January 1, 1984; but those sections apply only with respect to events and circumstances occurring after January 1, 1984, and do not invalidate existing provisions of the declaration, bylaws or surveys or plans of those common interest communities.**"

§ 47-226. Allocation of interests.

§ 47-236. Amendment of declaration or bylaws.

§ 47-244. Powers and duties **of unit owners' association.**

§ 47-257. Assessments for common expenses.

Assessments due to wilful misconduct, failure to

comply with standards or gross negligence.
§ 47-261e. Adoption of budgets. Special assessments.
Loan agreements. (Amended – See [2016 Supplement](#)).

§ 47-278. Cause of action to enforce chapter, declaration or bylaws. Attorney's fees and costs. Alternative dispute resolution. Hearings before executive board.

LEGISLATIVE:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- [Condominium Fines And Assessments](#) - 2012-R-0196 - James Orlando, Associate Analyst. *You asked if the law (1) limits the late fees or fines that common interest communities may charge unit owners or (2) otherwise restricts how common interest communities can address an owner's failure to pay assessments.*

FORMS:

- Matthew N. Perlstein and Edward S. Hill, [Connecticut Common Interest Ownership Manual 2d](#), LawFirst Publishing, 2013.
 - II. Declaration
 - Article I. Definitions
 - Section 1.6 – Common Expense Assessment
 - Section 1.7 – Common Expenses
 - Section 1.30 – Special Assessment
 - Article XVII. Assessment and Collection of Common Expenses
 - Section 17.1 – Apportionment of Common Expenses
 - Section 17.2 – Common Expenses Attributable to Fewer than All Units
 - Section 17.4 – Budget Adoption, Rejection, and Approval
 - Section 17.5 – Special Assessments Adoption, Rejection, and Approval
 - Section 17.6 – Certificate of Payment of Common Expense Assessments
 - Section 17.7 – Payment of Common Expense Assessments
 - Section 17.8 – Acceleration of Common Expense Assessments
 - Section 17.9 – Commencement of Common Expense Assessments
 - Section 17.10 – No Waiver of Liability for Common Expenses
 - Section 17.11 – Personal Liability of Unit Owners
- Patrick Rohan, [Condominium Law and Practice](#), Lexis, 2015. Volume 1, Part 3
 - § 43.04 Powers and Duties of Association's Board of Directors Determined by Condominium Documents and

Statutes

- [6] Board Has Authority to Collect Assessments
 - [d] Forms for Collecting Condominium Association Assessments
 - [i] Sample Ten-Day Collection Letter
 - [ii] Sample Thirty-Day Collection Letter
 - [iii] Sample Insufficient Funds Letter
 - [iv] Sample Claim for Unpaid Assessments
 - [v] Sample Notice of Contest of Lien by Owner
 - [vi] Sample Satisfaction of Lien for Unpaid Assessments

Chapter 45 The Administration of Condominium Associations

§ 45.17 Forms

- [1] Sample Declaration Provisions
 - [a] Provisions Regarding Assessments for Common Expenses and Creation of Lien
 - [b] Provisions Regarding the Determination and Collection of Assessments
 - [c] Provisions Regarding Operating Expenses
 - [d] Provision Exempting Mortgagees From Assessment Liability at Foreclosure
 - [2] Sample Forms for Use in the Collection Process
 - [a] Law Firm Statement Regarding Collection Services with Sample Referral Form
 - [b] Association Enforcement Procedures for the Collection of Assessments
 - [c] Affidavit for Title Company at Transfer as to Special Assessments and Payment for work in Progress
 - [3] Sample Forms Used in Initiating Collection
 - [a] Form Letter Demanding Payment
 - [b] Form Letter Demanding Payment and Enclosing Lien
 - [c] Form Letter Regarding Liability on a Bad Check
 - [d] Form Letter Regarding Application of Partial Payment
 - [e] Claim of Lien
 - [f] Notice of Contest of Lien
 - [g] Release of Lien
 - [h] Excerpts from Federal Trade Commission Informal Staff Opinion – **“whether . . . “debt” in Fair Debt Collection Practices Act includes assessments and other charges collected on behalf of homeowners associations”**
- 7 [American Jurisprudence Pleading and Practice Forms, Condominiums and Cooperative Apartments](#) (2016).
 - Rights of Owners Among Themselves
 - B. Assessments
 - § 26 Introductory comments
 - § 31 Complaint, petition, or declaration – By owner of condominium unit – Against management body of

condominium project – For declaratory relief -
 Legality of assessment made by managing body of
 condominium project
 § 32 Answer – Defense – Assessment not made in
 conformity with declaration of restrictions of
 association
 § 34 Money judgment – To recover assessment made
 against owner of condominium unit or stockholder-
 tenant of cooperative apartment
 §35 Declaratory judgment and injunctive relief –
 Action involving assessment by condominium or
 cooperative apartment

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Coach Run Condominium, Inc. v. Furniss](#), 136 Conn. App. 698, 705, 47 A3d 413 (2012). “. . . §§ 47-257 and 47-258 manifest the legislature’s intention that a duly constituted condominium association has an enforceable lien to assist its collection of common charges. The court reasoned that the legislature provided condominium associations with the ability to impose such a lien in order to protect the condominium’s common financial interest in timely collection of anticipated revenues for the benefit of the **community as a whole.**”

WEST KEY NUMBERS:

- *Common Interest Communities* 72 – 75
 Unit Owners’ Association
 72. Dues, assessments, fines, and other fees
 73. --- In general
 74. --- Power and duty to assess or levy; validity
 75. --- Collection, payment, and abatement

ENCYCLOPEDIAS:

- 15B [Am Jur 2d](#) *Condominiums and Cooperative Apartments* (2016)
 - D. Operation – Control of Condominium
 - 2. Common Elements
 - b. Common Profits and Expenses
 - § 31 Generally
 - § 32 Assessment of common expenses
 - § 33 Assessment of common expenses –
 Assessment against future or unbuilt units
- 31 [CJS](#) *Estates* (2016)
 Condominiums
 - F. Common Elements
 - § 268 Assessments for common expenses
 - § 269 Assessments for common expenses –
 Payment of assessments
- Timothy E. Travers, J.D., *Expenses for which condominium association may assess unit owners*, 77 [ALR3d](#) 1290 (1977)

**TEXTS &
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Matthew N. Perlstein and Edward S. Hill, [Connecticut Common Interest Ownership Manual 2d](#), LawFirst Publishing, 2013.
 - II. Declaration
 - Article I. Definitions
 - Section 1.6 – Common Expense Assessment
 - Section 1.7 – Common Expenses
 - Section 1.30 – Special Assessment
 - Article XVII. Assessment and Collection of Common Expenses
 - Section 17.1 – Apportionment of Common Expenses
 - Section 17.2 – Common Expenses Attributable to Fewer than All Units
 - Section 17.4 – Budget Adoption, Rejection, and Approval
 - Section 17.5 – Special Assessments Adoption, Rejection, and Approval
 - Section 17.6 – Certificate of Payment of Common Expense Assessments
 - Section 17.7 – Payment of Common Expense Assessments
 - Section 17.8 – Acceleration of Common Expense Assessments
 - Section 17.9 – Commencement of Common Expense Assessments
 - Section 17.10 – No Waiver of Liability for Common Expenses
 - Section 17.11 – Personal Liability of Unit Owners

- Patrick J. Rohan and Melvin A. Reskin, [Condominium Law and Practice](#), LexisNexis, 2015.
 - Volume 1, Part 3
 - § 43.04 Powers and Duties of Association’s Board of Directors Determined by Condominium Documents and Statutes**
 - [6] Board Has Authority to Collect Assessments
 - [a] Assessments Fund Condominium Operations
 - [b] Board May Foreclose Liens for Unpaid Assessments
 - [c] Board Must Establish Collection Procedures
 - Chapter 45 The Administration of Condominium Associations
 - § 45.04 Assessment of Common Expenses
 - [1] General Considerations in Establishing the Collection Process
 - [2] Implementing the Association’s Collection Process**
 - [3] Late Fees and Interest
 - § 45.05 Authority to Levy Assessments
 - [1] Authorization by Statute
 - [2] Authorization by Governing Documents
 - [3] Multi-Tiered Assessments

- § 45.06 Assessments
 - [1] "Common Expenses" Defined
 - [a] General
 - [b] Proper "Common Expenses"
 - [2] Types of Assessments
 - [a] Annual Assessments
 - [b] Special Assessments
 - [3] Liability for Payment
- § 45.07 Procedural Requirements for Assessment
 - [1] Annual Assessment Procedure
 - [2] Special Assessments Procedure
 - [3] Interest Charges
 - [4] Late Fees
- § 45.08 Self-Help Collection Methods

- Gary A. Poliakoff, [The Law of Condominium Operations](#), West.
 - Chapter 5. Assessments
 - I. Assessments as Affirmative Covenants
 - A. Generally
 - § 5: 14. Unpaid Assessments
 - B. Responsibility for Payment of Assessments
 - § 5: 15. Statutory Requirement to Pay Assessment
 - § 5: 16. Unit Purchaser as Unit Owner
 - § 5: 16.50. First mortgagee as unit owner following foreclosure or deed in lieu of foreclosure (2016 supplement only)
 - § 5: 17. Developer as Unit Owner
 - § 5: 18. Liability of Grantee and Grantor
 - § 5:19. Association's Failure to Perform**
 - § 5: 20. Waiver of Use and Enjoyment of Common Areas
 - § 5: 21. Abandonment of Unit
 - § 5: 22. Disagreement About Use of Funds.
 - C. Nonpayment of Assessment Creates Lien
 - § 5: 23. Statutory Authority for Lien
 - § 5: 24. Calculation of Lien Amount
 - § 5: 25. Effective Date of Lien
 - § 5: 26. Elements Required for Claim of Lien
 - § 5: 27. Expiration of Lien
 - § 5: 28. Effect of Partial Payment
 - § 5: 29. Subsequently Accruing Assessments
 - § 5: 30. Satisfaction of Lien Upon Payment
 - § 5:31. Unit Owner's Ability to Contest Lien**
- [American Law Institute, Restatement of the Law Third, Property: Servitudes](#), 3d edition, volume 2.
 - Chapter 6. Common-Interest Communities
 - § 6.5. Power to Raise Funds: Assessments, Fees, and Borrowing

Section 2: Foreclosure of Liens

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources **relating to a condominium association's** right to foreclose condominium liens pursuant to Conn. Gen. Stat. § [47-258](#).

DEFINITIONS:

- "The association has a statutory lien on a unit for any assessment attributable to that unit or fines imposed against its unit owner." Conn. Gen. Stat. § [47-258\(a\)](#) (2015).
- **Fees, fines, costs:** "Unless the declaration otherwise provides, reasonable attorneys' fees and costs, other fees, charges, late charges, fines and interest charged pursuant to subdivisions (10), (11) and (12) of subsection (a) of section 47-244 and any other sums due to the association under the declaration, this chapter, or as a result of an administrative, arbitration, mediation or judicial decision, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due." Conn. Gen. Stat. § [47-258\(a\)](#) (2015).
- **Superpriority lien:** "Notwithstanding any provision in the declaration or bylaws to the contrary, a lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration . . . (2) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent . . . and (3) liens for real property taxes and other governmental assessments or charges against the unit or cooperative. In all actions brought to foreclose a lien under this section or a security interest described in subdivision (2) of this subsection, the lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of (A) an amount equal to the common expense assessments based on the periodic budget adopted by the association pursuant to subsection (a) of section 47-257 which would have become due in the absence of acceleration during the **nine months immediately preceding institution of an action to enforce either the association's lien or a security interest** described in subdivision (2) of this subsection, excluding any late fees, interest or fines which may be assessed by the association during the nine-month period, and (B) the association's costs and reasonable attorney's fees in enforcing its lien. A lien for any assessment or fine specified in subsection (a) of this section shall have the priority provided for in this subsection in an amount not to

exceed the amount specified in subparagraph (A) of this subsection. This subsection does not affect the priority of **mechanics' or materialmen's liens or the priority of liens for other assessments made by the association.**" Conn. Gen. Stat. § [47-258\(b\)](#) (2015). Emphasis added.

- **Multiple association liens:** "Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority." Conn. Gen. Stat. § [47-258\(c\)](#) (2015).
- **Recordation:** "Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required." Conn. Gen. Stat. § [47-258\(d\)](#) (2015).
- **Extinguished lien:** "A lien for unpaid assessments is extinguished unless **proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due**; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the **association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.**" Conn. Gen. Stat. § [47-258\(e\)](#) (2015). Emphasis added.
- "This section does not prohibit actions against unit owners to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure." Conn. Gen. Stat. § [47-258\(f\)](#) (2015).
- **Costs and attorney's fee in court action:** "A judgment or decree in any action brought under this section shall **include costs and reasonable attorney's fees for the prevailing party.**" Conn. Gen. Stat. § [47-258\(g\)](#) (2015).
- "The association on request made in a record shall furnish to a unit owner a statement in recordable form setting forth the amount of unpaid assessments against the unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board and every unit owner." Conn. Gen. Stat. § [47-258\(h\)](#) (2015).
- "The association's lien may be foreclosed in like manner as a mortgage on real property." Conn. Gen. Stat. § [47-258\(j\)](#) (2015).
- **When To Foreclose:** "An association may not commence an action to foreclose a lien on a unit under this section

unless: (A) The unit owner, at the time the action is commenced, owes a sum **equal to at least two months of common expense assessments** based on the periodic budget last adopted by the association pursuant to subsection (a) of section 47-257; (B) the association has made a demand for payment in a record and has simultaneously provided a copy of such record to the holder of a security interest described in subdivision (2) of subsection (b) of this section; and (C) the executive board has either voted to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit." Conn. Gen. Stat. § [47-258\(m\)\(1\)](#) (2015). Emphasis added.

- **Notice Requirement:** "Not less than sixty days prior to commencing an action to foreclose a lien on a unit under this section, the association shall provide a written notice by first class mail to the holders of all security interests described in subdivision (2) of subsection (b) of this section, which shall set forth the following: (A) The amount of unpaid common expense assessments owed to the association as of the date of the notice; (B) the amount of **any attorney's fees and costs incurred by the association** in the enforcement of its lien as of the date of the notice; (C) **a statement of the association's intention** to foreclose its lien if the amounts set forth in subparagraphs (A) and (B) of this subdivision are not paid to the association not later than sixty days after the date on which the notice is provided; (D) **the association's contact information**, including, but not limited to, (i) the name of the individual acting on behalf of the association with respect to the **matter, and (ii) the association's mailing address, telephone number and electronic mail address, if any;** and (E) instructions concerning the acceptable means of making payment on the amounts owing to the association as set forth in subparagraphs (A) and (B) of this subdivision. Any notice required to be given by the association under this subsection shall be effective when sent." Conn. Gen. Stat. § [47-258\(m\)\(2\)](#) (2015).
- **Identifying the name and mailing address of the holder of interest:** "When providing the written notice required by subdivision (2) of this subsection, the association may rely on the last-recorded security interest of record in identifying the name and mailing address of the holder of that interest, unless the holder of the security interest is the plaintiff in an action pending in the Superior Court to enforce that security interest, in which case the association shall provide the written notice to the attorney appearing on behalf of the holder of the security interest in such action." Conn. Gen. Stat. § [47-258\(a\)\(3\)](#) (2015).

- **Failure of the association to provide the written notice:** "The failure of the association to provide the written notice required by subdivisions (2) and (3) of this subsection prior to commencing an action to foreclose its lien shall not affect the priority of its lien for an amount equal to nine months common expense assessments, but the priority amount in such action shall not include any **costs or attorney's fees.**" Conn. Gen. Stat. § [47-258\(a\)\(4\)](#) (2015).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

Conn. Gen. Stat. (2015)

[Chapter 825](#). Condominium Act

§ 47-77. Assessment of Common Expenses. Liens and **Foreclosures.** ". . . although the lien provision of the Condominium Act, Connecticut General Statute § 47-77, has not been repealed, it has been superseded and its lien provisions rendered nugatory by Connecticut General Statute § 47-258." [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 6th edition, Denis R. Caron and Geoffrey K. Milne, volume 1, p. 754

[Chapter 828](#). Common Interest Ownership Act

§ 47-202. Definitions.

§ 47-216. **Applicability to preexisting common interest communities.** "...sections... 47-257, 47-258... apply to all common interest communities created in this state before January 1, 1984; but those sections apply only with respect to events and circumstances occurring after January 1, 1984, and do not invalidate existing provisions of the declaration, bylaws or surveys or plans of those common interest communities."

§ 47-236. Amendment of declaration or bylaws.

§ 47-257. Assessments for common expenses. Assessments due to wilful misconduct, failure to comply with standards or gross negligence.

§ 47-258. Lien for assessments and other sums due association. Enforcements.

§ 47-278. Cause of action to enforce chapter, declaration or **bylaws. Attorney's fees and costs. Alternative dispute resolution.** Hearings before executive board.

LEGISLATIVE:

- [Connecticut's Priority Lien for Common Interest Communities](#) – 2013-R-0184 – Michael Csere, Legislative Fellow. *You asked how the recent Superior Court decision (Lake Ridge Condominium Association, Inc. v. Vega, 2012 WL 6634905 (Conn. Super.)) affects Connecticut's priority lien for common interest communities (CGS §§ 47-200 et seq.). You asked whether this decision could have an adverse effect on common fees used to support*

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

condominium budgets.

- [Condominium Common Charges During Foreclosure](#) – 2013-R-0178 – James Orlando, Associate Analyst. *You asked about the payment of common charges for a condominium unit that is going through foreclosure.*
- [Condominium Fines And Assessments](#) – 2012-R-0196 – James Orlando, Associate Analyst. *You asked if the law (1) limits the late fees or fines that common interest communities may charge unit owners or (2) otherwise restricts how common interest communities can address an owner's failure to pay assessments.*

COURT RULES:

Amendments to the Practice Book (Court Rules) are published in the Connecticut Law Journal and posted [online](#).

Connecticut Practice Book (2017)

§ [10-69](#). Foreclosure Complaint; Pleading Encumbrances

ETHICS OPINION

- Connecticut Bar Association, Informal Opinion 94-34 (November 1, 1994)
"A Connecticut law firm that represents condominium associations in the collection of overdue common charges from unit owners has requested our opinion concerning the **most appropriate method for dealing with these funds.**"

FORMS:

- Denis R. Caron & Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), (6th ed., 2016) - CD only.
 - II. Unofficial forms
 - 6-029. Complaint for Foreclosure of Condominium Association Lien
- Matthew N. Perlstein and Edward S. Hill, [Connecticut Common Interest Ownership Manual 2d](#), LawFirst Publishing, 2013.
 - Article XVII. Assessment and Collection of Common Expenses
 - Section 17.3 – Liens and Lien Foreclosures
- Gary A. Poliakoff, [The Law of Condominium Operations](#), West.
 - Chapter 16. Forms
 - IV. Collecting Assessments
 - § 16:43. Notice of Delinquent Assessments
 - § 16:52. Lis Pendens
 - § 16:53. Complaint to Foreclose Claim of Lien
 - § 16:54. Notice to Association Regarding Superior Liens
 - § 16:55. Motion for Default Judgment to Collect Assessments

§ 16:56. Order for Default Judgment
§ 16:57. Motion for Summary Judgment to Collect Assessments
§ 16:58. Order for Summary Judgment
§ 16:59. Notice of Foreclosure Sale
§ 16:60. Letter Informing Association of Final Judgment

- Patrick J. Rohan and Melvin A. Reskin, [Condominium Law and Practice](#), LexisNexis, 2015.
Volume 1, Part 3
Chapter 45 The Administration of Condominium Associations
§ 45.17 Forms
[4] Litigation to Foreclose the Lien and For a Foreclosure Judgment
[a] Sample Complaint
[b] Related Documents
[i] Summons
[ii] Lis Pendens
[iii] Follow-up Alert
[c] Motion For Entry of Clerk’s Default (With Order)
[d] Plaintiff’s Motion for Summary Judgment
[e] Supporting Affidavits
[i] Non-Military Affidavit
[ii] Affidavit of Indebtedness
[iii] Affidavit for Attorneys’ Fees
[iv] Affidavit of Costs
[v] Supporting Affidavit of Attorneys’ Fees
[vi] Affidavit in Support of Summary Judgment
[f] Final Judgment of Foreclosure
[g] Forms for Clerk’s Sale
[i] Notice of Judicial Sale
[ii] Certificate of Sale
[iii] Writ of Possession
[iv] Certificate of Disbursements
[v] Certificate of Title
[h] Stipulation and Joint Motion for Court Approval of Settlement Agreement and Agreed Order
- 7 [American Jurisprudence Pleading and Practice Forms, Condominiums and Cooperative Apartments](#) (2016).
Rights of Owners Among Themselves
B. Assessments
§ 27 Complaint, petition, or declaration – By association – For declaratory relief and maintenance assessments due from owner of condominium – **Violation of condominium’s covenants, conditions, and restrictions**
§ 28 Complaint, petition, or declaration – By

cooperative association – Against tenant-stockholder or unit owner – Failure to pay monthly charges for maintenance and upkeep
 § 29 Complaint, petition, or declaration – By condominium association or cooperative apartment – To foreclose assessment lien
 § 30 Complaint, petition, or declaration – By managing body of condominium – To recover money judgment for failure to pay assessment levied against condominium unit
 § 33 Temporary restraining order and order to show cause – Enjoining and restraining conduct of sale of condominium unit pending disposition of complaint
 §36 Judgment – Foreclosure of assessment lien on condominium unit

CASES:

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Connecticut Supreme Court

- [Neighborhood Association v. Limberger](#), 321 Conn 29, 48-49, 136 A3d 592 (2016). **“The statutory language indicates that the legislature intended the three conditions necessary for commencing an action to foreclose a common charges lien to be jurisdictional prerequisites. General Statutes (Rev. to 2011) § 47-258 (m) provides that ‘[a]n association may not commence an action to foreclose a lien on a unit owner under this section unless’ it satisfies certain prescribed conditions. (Emphasis added.) The legislature could have phrased the requirement that a board adopt a policy or vote to commence proceedings as a limitation on a court’s ability to grant relief. Cf. General Statutes § 45a-100 (k) (‘the court shall not grant relief under this section if’). Instead, it phrased the requirement as a condition precedent to the commencement of the action itself. Thus, the adoption of a **standard foreclosure policy is ‘a condition precedent to any right of action. Until [a vote is taken or a procedure is adopted] no such right exists.’ Forbes v. Suffield, supra, 81 Conn. 275.”****

- [Hudson House Condominium Association, Inc. v. Brooks](#), 223 Conn. 610, 614-615, 611 A.2d 862 (1992). **“In addition to creating the lien and authorizing its foreclosure, § 47-258, contrary to the tenet that the priority of liens is governed by the common law rule that first in time is first in right. . . carves out an exception and grants a priority to the lien for common expense assessments. The priority, however, is temporally limited by § 47-258 (b) to the amount ‘of the common expense assessments . . . which would have become due in the absence of acceleration during the six [now nine] months immediately preceding institution of an action to enforce . . . the association’s lien’**
 Despite this unequivocal language, HHCA argues that

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because it could, in theory, initiate a foreclosure on delinquent common expense assessments every six [now nine] months, it could thereby obtain a priority status for all delinquent assessments. HHCA contends that, instead of engaging in this cumbersome and wasteful procedure, § 47-258 (b) should be interpreted to give priority status to all common expense assessments accruing during the pendency of a given action.

In support of its claim, HHCA relies upon the portion of § 47-258 (b) that states: 'The lien is also prior to all security interests described in subdivision (2) of this subsection to the extent of the common expense **assessments** . . . which would have become due in the absence of acceleration during the six [now nine] months immediately preceding institution of an action to enforce either [HHCA's] lien or a security interest described in subdivision (2) of this subsection.' . . . HHCA claims that because **the statute uses the word 'assessments'** and not 'assessment,' the legislature intended to give priority to more than six [now nine] months of common expense assessments. We disagree." **Bracketed information added.**

- [Linden Condominium Assn. v. McKenna](#), 247 Conn. 575, 585-586, 726 A2d 502, 507-508 (1999). ". . . § 47-258 (f) allows an association to sue a unit owner based on the owner's personal liability, in addition to the association's statutory right to foreclose on **its lien. The final phrase, 'in lieu of foreclosure,' merely modifies 'taking a deed,' thereby leaving intact the express statement that there is no bar to such a course of action. Furthermore, the defendant's argument that subsections (f) and (j), read together, limit an association's choices to either an action on the debt or a foreclosure action, is without merit. Section 47-258 (j) provides that 'the [condominium] association's lien may be foreclosed in like manner as a mortgage on real property,' and merely relates to the procedures to be used in common charges lien foreclosures. There is no language in either subsection that indicates that the plaintiff must choose one action or the other."**
- [Linden Condominium Assn. v. McKenna](#), 247 Conn. 575, 590, 726 A2d 502, 510 (1999). ". . . **we conclude that the plaintiff was not able to bring a deficiency judgment claim in the former action pursuant to § 49-14 because the first mortgagee redeemed by paying the plaintiff's statutory superpriority."**

Connecticut Appellate Court

- [Congress Street Condominium Association, Inc. v. Anderson](#), 156 Conn. App. 117, 123, 112 A.3d 196, 200 (2015). "Although the plaintiff appears to characterize

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the holding of a hearing as being a mere formality, we conclude that providing the defendant an opportunity to be heard was expressly required by our statutes and the plaintiff's condominium documents **before** the plaintiff could impose fines against him. See General Statutes § 47-244(a)(11)."

- [Highgate Condominium Association, Inc. v. Miller](#), 129 Conn. App. 429, 434, 21 A3d 853, 856 (2011). **"In this appeal, the plaintiff, in reliance on § 49-15(a), claims that, because title to the subject property had become absolute in the plaintiff, the court did not have the authority to grant the defendant's motion to open the judgment of strict foreclosure in the absence of a specific finding that it lacked personal jurisdiction over the defendant. We agree."**
- [Oronoque Shores Condominium Association No. 1, Inc. v. Smulley](#), 114 Conn. App. 233, 237-238, 968 A.2d 996, 998-999 (2009). **"The defendant first claims that the snow assessment was not a valid lien because it did not conform with General Statutes §§ 47-76(b) and 47-257(b), as well as the Oronoque Shores Condominium No. 1, Inc., bylaws, § 11(a), and, accordingly, could not have been foreclosed. Specifically, the defendant claims that (a) the original snow assessment was invalid because it was improperly apportioned, (2) the correctly reapportioned assessment was invalid because the association's board did not vote on it and (3) the corrected reapportioned snow assessment was not pleaded or litigated at trial. We disagree."**
- [Stamford Landing Condominium Association Inc. v. Lerman](#), 109 Conn. App. 261, 268-269, 951 A2d 642 (2008), cert. denied at 289 Conn. 938, 958 A.2d 1246. **"The defendant next claims that the court improperly deemed valid the plaintiff's rule prohibiting tenants from housing dogs at the village. In particular, she contends that because the rule comprises a restriction on use that is not contained in the declaration, § 47-244(c)(1) bars its enforcement. We do not agree."**
- [Stamford Landing Condominium Association Inc. v. Lerman](#), 109 Conn. App. 261, 270-271, 951 A2d 642 (2008), cert. denied at 289 Conn. 938, 958 A.2d 1246. **"The defendant's final claim is that the court, in calculating the plaintiff's damages, improperly considered two matters not alleged in the complaint, namely, debt accrued after the action was commenced and a garage assessment mentioned in the plaintiff's posttrial affidavit. According to the defendant, because the complaint does not allege a continuing failure to pay common charges, the court should not have awarded damages for charges beyond the commencement of the action. The defendant also claims surprise at the garage assessment. We affirm the court's judgment as to all of the**

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charges except the garage assessment. As to that alleged debt, we agree with the defendant and reverse the **judgment.**”

- [Twenty-Four Merrill Street Condominium Association, Inc. v. Murray](#), 96 Conn. App. 616, 617 & 619-620, 902 A.2d 24 (2006). “The defendant claims that . . . the present action is barred under the doctrine of res judicata ” p. 617

“Accordingly, the salient inquiry is whether the present matter involves the same claim that was litigated in the prior action. We conclude that it does not.

It is true that, in both actions, the plaintiff sought to foreclose on a statutory lien pursuant to § 47-258. That commonality, however, does not render the actions one and the same. Rather, as the court found, the prior action concerned a statutory lien for common charges, whereas the present action involved a statutory lien for fines and repair costs. The defendant does not dispute that factual finding. Instead, he insists that because the plaintiff's action is predicated on § 47-258, **it necessarily** ‘should have been **included in the prior action.**’ The defendant has provided no authority for the proposition that a condominium association with two statutory liens against a condominium owner is compelled to litigate those distinct claims in the same proceeding under the doctrine of res judicata.” pp. 619-620

- [Twenty-Four Merrill Street Condominium Association, Inc. v. Murray](#), 96 Conn. App. 616, 622-623, 902 A.2d 24, 28-29 (2006). “**Significantly, this is not a case in which the** defendant never received notice of the plaintiff's decision. He merely received late notice. The defendant posits that this irregularity requires an invalidation of the statutory lien and reversal of the judgment of the trial court. We do not agree. The concept of notice concerns notions of fundamental fairness, affording parties the opportunity to be apprised when their interests are implicated in a given matter. . . Notice is not a rigid concept. Section 2 of the Restatement (**Second**) of Judgments, entitled ‘**Adequate Notice,**’ states in relevant part that ‘[a]n action may proceed without notice to a person interested therein when . . . (c) [t]he person is afforded an adequate subsequent **opportunity to protect his interest.**’ 1 Restatement (Second), Judgments § 2(4)(c), p. 34 (1982). It further **explains that** ‘[t]he modern approach to notice-giving attaches primary importance to actual notice and treats technical compliance with notice procedures as a secondary consideration. . . . To invalidate the notice simply because it is irregular is to protect no worthwhile interest of the party who has raised the objection. He has had his due. An objection to the notice on his part serves only to induce

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concern for punctilious adherence to formality....' *Id.*, at § 3, comment (b), pp. 50-51."

- [South End Plaza Association, Inc. v. Johnson](#), 62 Conn. App. 462, 464, 467-468, 469, 767 A.2d 1267, 1269, 1271 (2001), petition for cert. denied at 256 Conn. 922, 774 A.2d 138 (2001). **"In defense of the foreclosure action, the defendants claimed that the notice requirements for meetings of the unit owners to consider ratification of the budgets in 1997 and 1998 as mandated by § 47-245(c) were not met, and, therefore, the budgets adopted at those meetings were void, and the assessments based on them were unenforceable. The plaintiff argued that regardless of the defective notice of the budget meetings in question, the saving provision of § 47-245(c) permitted it to continue to enforce previously ratified assessments."** p. 464

"There is a clear intention in the act that a unit owners' association should not operate without a budget or without the collection of common assessments in the event that the association has failed to ratify a budget. Comment 2 to § 3-103 of the Uniform Common Interest Ownership Act provides that the provisions of paragraph (c), which contains the same language as General Statutes § 47-245(c), 'permit the unit owners to disapprove any proposed budget, but a rejection of the budget does not result in cessation of assessments until a budget is approved.'" pp. 467-468

"Inadequate notice of the 1997 and 1998 meetings did not cause prejudice to the defendants." p. 469

Connecticut Superior (Trial) Court

- [Beechwood Square Condominium Association v. Velez](#), Superior Court, Judicial District of Fairfield at Bridgeport, CV13-6034581-S (January 30, 2015). **"The statutory lien is automatic and does not depend on a recorded notice or even a demand letter sent to a unit owner for its validity. . . . Pursuant to Connecticut General Statutes § 47-270, the seller of a condominium unit must provide a resale certificate to the purchaser so that the purchaser is provided with disclosure of information relevant to a planned purchase of a unit. That information would include information concerning any overdue common charges on a unit. That procedure was not followed here. The statute ensures that prospective purchasers have information about the condominium complex before they buy a unit. Additionally, by requiring the seller to order the resale certificate, the association is provided an opportunity to inform the prospective buyer as to restrictions on the unit and any unpaid common charges which need to be addressed at closing. . . . Proceeding with the purchase without addressing the common charge arrearage resulted in the defendant's purchase of the unit without clear title.**

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The statutory lien of the plaintiff continues as a lien even **after a change of ownership.**"

- Sunrise Common Condominium Association, Inc. v. Bello, Superior Court, Judicial District of Fairfield at Bridgeport, CV-12-6028307 (March 21, 2014) (57 CLR 746). "In considering the language of § 47-258(b), and its relationship to other statutes, particularly but not limited to § 47-257 and § 47-258(a), the statute creates a split, or dual, lien. The statute plainly provides a condominium association with a superpriority lien for nine months of unpaid common expense assessments, commonly referred to as common charges. The plaintiff has a non-superpriority lien for the remainder of the charges. Such an interpretation does not result in the application of the statute being absurd or unworkable, and is consistent with our Supreme Court's noted purpose of the statute to protect the unit owners dependence on the condominium association to care for and maintain the common areas. Also, it allows for the harmonious interpretation of statutes.

In view of the foregoing, the court concludes that the plaintiff's lien is not entitled to superpriority over the defendant's first mortgage. It is undisputed that the plaintiff's lien is for water-related damages to a unit within the association, and not for monthly common charges. Therefore, the defendant is entitled to a judgment as a matter of law, and the court grants the defendant's motion **for summary judgment.**"

- Hemlock Hill Camp Resort Cooperative Association, Inc. v. Hughes, Superior Court, Judicial District of Litchfield at Litchfield, LLI-CV-126006976-S (May 31, 2013). "This court concludes that, just as a mortgagee must allege that it gave notice of acceleration of debt if the terms of the lending instrument require such notice, a condominium association must also allege that it complied with the requirements of General Statutes § 47-258(m) before bringing its **foreclosure action.**"
- Hemlock Hill Camp Resort Cooperative Assn. v. Hemlock Hill Campground, LLC, Superior Court, Judicial District of Litchfield at Litchfield, LLI-CV-12-6006974-S (September 26, 2013) (56 CLR 883). "USB relied on the plaintiff's responses to discovery requests in order to assert 1) that the plaintiff's executive board did not vote to commence the **foreclosure action, relying instead on a 'standard collection policy;** 2) that there is a question of fact as to whether the special manager had the authority to adopt a standard collection policy; and 3) that demand letters are required before a foreclosure action can be commenced, but all demand letters produced by the plaintiff predated the adoption of the collection policy and, further, those letters

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did not comply with either the collection policy or applicable statutory requirements. . . . An affidavit filed by the special manager claims that he made demands for the payment of outstanding common charges. He acknowledges that those demands pre-dated the adoption of a collection policy, but notes that General Statutes § 47-258(m)(2) does not require that the demand post-date the adoption of a collection policy. **It merely requires that 'the association has [prior to commencing an action to foreclose a lien] made a demand for payment in a record . . .'** The service manager states that he made both written and verbal demands for payment of common charges. There is prima facie evidence in the record before the court, and it is evidence that would be admissible at trial, that the plaintiff has met the requirements of General Statutes § 47-258(m)(2).

The last requirement is that 'the executive board has either voted to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit.' General Statutes § 47-258(m)(3). The plaintiff relies, in part, on an order of this court appointing him to serve as special manager. **The order specifically provides that the special manager 'is empowered to take *all actions* he/she may deem necessary and advisable for the proper operation of the Cooperative *including, but not limited to*, the following . . . (b) To collect and receive all association fees, issues, income and profits and all outstanding accounts relating to or arising out of the operation of the Cooperative.'** (Emphasis added.) Order 3, October 7, 2011. This order gave the special manager sweeping powers, authorizing him to, *inter alia*, adopt a standard policy that provides for foreclosure against a unit that has failed to pay common charges after a demand that such charges be paid. Therefore, the special manager was ordered to carry out the function of an executive board making him, **de facto and de jure, the cooperative's executive board."**

- Chatsworth Village Homeowners Association, Inc. v. Burke, Superior Court, Judicial District of Hartford at Hartford, HHD CV-12-6030093-S (Oct. 22, 2013). "The first issue is whether General Statutes §47-258 allows a unit owners' association to use its superpriority lien more than once. The statute was amended, effective on passage (June 24, 2013), and was made applicable to all actions pending on and actions filed on or after said date. . . . [T]he language allows a superpriority lien to be asserted in multiple actions, not just the first foreclosure action. There is no language, either express or implied, limiting the lien to one use in one foreclosure action."
- Cedarwood Hill Estate Condominium Association v. Danise, Superior Court, Judicial District of Waterbury at Waterbury, CV13-6018246-S (November 8, 2013). ". . . **special**

assessments are included in the nine-month priority lien.”

**WEST KEY
NUMBERS:**

- *Common Interest Communities* 76 – 78
Unit Owners’ Association
 - 76. --- Lien
 - (1). In general
 - (2). Perfection and priority
 - 77. --- Lien foreclosure; other remedies and proceedings for nonpayment
 - 78. --- Funds and distributions

ENCYCLOPEDIAS:

- 15B [Am Jur 2d](#) *Condominiums and Cooperative Apartments* (2016)
 - D. Operation and Control of Condominiums
 - 2. Common Elements
 - b. Common Profits and Expenses
 - § 34 Enforcement and collection of assessments
 - § 35 Liens
- 31 [CJS](#) *Estates* (2016)
Condominiums
 - F. Common Elements
 - § 270 Assessments for common expenses – Lien for unpaid assessments

**TEXTS &
TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Robin Cheryl Miller, *Cause of Action to Enforce Condominium Assessment*, 20 [COA](#) 827 (1989).
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney’s Manual of Practice and Procedure](#), 6th ed., 2016.
 - Chapter 13: Condominium Association Liens
 - 13-1. Liens’ Special Status**
 - 13-1:1. The Statutory Scheme
 - 13-1:2. Bylaw Notice Requirements Not Conclusive
 - 13-1:3. Authority to Regulate Pets
 - 13-1:4. Issues re Composition of Association’s Board**
 - 13-1:5. Proving the Association’s Debt**
 - 13-1:5.1. Elements of Debt Refined by CIOA Amendments
 - 13-1:6. Priority
 - 13-1:6a. Public Act 13-156 Creates New Priorities and New Notice Requirements
 - 13-1:6a1. New Notice Requirements for Mortgagees
 - 13-1:7. *Pendent Lite* Order of Common Charge Payment Disallowed
 - 13-1:8. Handling Dual Priorities
 - 13-1:9. New Statutory Prerequisites for Lien Foreclosure

13-1: 10. Other New Statutory Provisions re
Resale Certificate

13-2. The Statutorily Subordinated Mortgage

13-3. Duration of Lien

13-4. Receivership

13-5. **Purchaser's Liability for Unpaid Common
Charges**

13-6. **Attorneys' Fees**

13-7. Fiduciary Duties of Association Officers

13-8. **Association "Deficiency" Judgments**

13-9. Judgment Liens against the Association

13-10. Federal Tax Liens **Prime Associations' Lien**

- Matthew N. Perlstein and Edward S. Hill, [Connecticut Common Interest Ownership Manual 2d](#), LawFirst Publishing, 2013.
 - Article XVII. Assessment and Collection of Common Expenses
 - Section 17.3 – Liens and Lien Foreclosures
- Jeanine M. Dumont, [Pleadings and Pretrial Practice: A Deskbook for Connecticut Litigators](#), 1998 edition
 - VI. Answers, Special Defenses, Counterclaims, Setoffs and Other Pleadings
 - 2. Special Defenses
 - f. Special Defenses in Foreclosures
 - (iv) Condominium Foreclosures, p. 84
- [A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut](#), Christian R. Hoheb, editor (2012)
 - Chapter 10. Title Issues in Foreclosure Practice
 - § 10-8. Common Interest Community Liens
- John Rao et al., [Foreclosures and Mortgage Servicing Including Loan Modifications](#), National Consumer Law Center (5th ed., 2014)
 - Chapter 15. Condominium and Homeowner Association Liens and Foreclosures
 - § 15.1. An Overview of the Process
 - § 15.2. **The Condominium Association's Power to Foreclose**
 - § 15.3. The Method of Foreclosure
 - § 15.4. **The Unit Owner's Ability to Contest the Lien or Foreclosure Sale**
 - § 15.5. After the Foreclosure Sale
 - § 15.6. Obligations of Tenants Where Owner is Delinquent in Payments
- Patrick J. Rohan and Melvin A. Reskin, [Condominium Law and Practice](#), LexisNexis, 2015.
 - Volume 1, part 3
 - Chapter 45 The Administration of Condominium

Associations.

§ 45.09 Lien for Assessments

[1] **Source of Associations' Right to a Lien**

[2] Filing Requirement

[a] In General

[b] Information Required

[c] Amount Secured by Lien

[d] Notice Requirements

[4] Judicial Foreclosure of Liens

[a] In General

[b] Source of Right to Judicial Foreclosure

[c] Procedural Requirements

[i] Prior Notice to Unit Owner

[ii] Appropriate Forum

[iii] Necessary Parties

[iv] Collection of Rents and Appointment of Receiver

[v] Priority of First Mortgage

[vi] Limitations on Priority of Mortgagee

[d] The Judgment

[i] In General

[ii] Cost of Collection

[iii] **Attorneys' Fees**

[e] Foreclosure Sale

[i] In General

[ii] **Owner's Right to Redeem**

[iii] **Association's Right to Bid at Foreclosure Sale**

[iv] Distribution of Proceeds from Foreclosure to Collect Unpaid Assessments

[v] Recovery of a Deficiency After a Foreclosure Sale

[4A] Strict Foreclosure

[5] Assessment Liens, Disparagement and Defamation

[6] Cognovits or Confessions of Judgment

§ 45.10 Action for Breach of Covenant to Pay

[1] Availability of Remedy

[2] Comparison with Foreclosure Action

[a] Forum

[b] The Judgment

[c] **Attorneys' Fees and Costs**

[d] Collectibility of Judgment

[e] Existence of Preexisting Foreclosure Action

§ 45.11 Unit Owner's Defenses

[1] In General

[2] Substantive Defenses

[a] Lack of Authority to Make Assessment

[b] **Subject of Assessment not a "Common Expense"**

[c] Failure to Maintain Common Areas

[d] Mismanagement by Association

[e] Nonuse of Unit or Facilities

- [f] Agreement with Developer
- [g] Assessment Due from Prior Unit Owner
- [h] Uncertainty as to the Amount Owed by the Unit Owner
- [i] Suing the Wrong Party
- [j] Violation of an Unfair and Deceptive Practices Act
- [3] Procedural Defenses
 - [a] Failure to Obtain Unit Owner Approval
 - [b] Violation of Notice and Meeting Requirements
 - [c] Written Statement Binding Association
 - [d] Homestead Defense
 - [e] Statute of Limitations
- [4] Association Refusal to Accept Partial Payments
- § 45.12 Developer's Liability**
- § 45.13 Lienholders' Priorities**
 - [1] Priority of Lenders
 - [a] In General
 - [b] Super Priority Period for an **Association's** Assessment Lien
 - [c] Liability for a Prior Owner's Assessments**
 - [2] Priorities of Other Lienholders
 - [a] State as Lienholder
 - [b] Competing Lienholders
 - [c] Procedural Requirements for Priority Status
 - [d] Federal Tax Liens
 - [3] Mechanic's Liens**
- § 45.14 Bankruptcy Considerations in the Collection of Assessments
 - [1] Overview
 - [a] Bankruptcy Types
 - [i] Distinctions, Purposes and Uses
 - [A] Chapter 7
 - [B] Chapter 11
 - [C] Chapter 13
 - [ii] General Claims Priority Concepts and Bankruptcy Distributions
 - [iii] Evaluation and Preservation of Claim
 - [b] Automatic Stay
 - [i] Its Effect and Scope
 - [ii] Stay Relief
 - [iii] Abandonment of Property by Trustee
 - [c] Duties and Obligations of Trustee
 - [i] Role of Trustee
 - [ii] General Duties of Trustee
 - [2] Bankruptcy of the Individual Unit Owner
 - [a] Discharge of Residential Association Fees
 - [b] Assessments May Qualify as an Administrative Expense
 - [c] Chapter 11 and Home Mortgages
 - [d] Chapter 13 and Home Mortgages
 - [e] Claiming the Unit as an Exempt Asset
 - [f] Stripping Condominium Assessment Liens in

- Chapter 7 Cases
 - [g] Association Funding of Special Assessments
- [3] Bankruptcy Monitoring
 - [a] Obtaining the Petition and Schedules
 - [b] Monitoring and Reviewing the Reorganization Case
 - [i] Chapter 13
 - [ii] Chapter 11
- [4] Significance of Discharge
- [5] Condominium Association as Administrative Creditor
- [6] Bankruptcy of a Unit Owners Association
- § 45.15 Fair Debt Collection Practices Act
 - [1] Overview
 - [2] Attorneys Not Exempt
 - [3] Past Due Assessments as "Consumer Debt"**
 - [4] Exemption
 - [5] Communications with the Debtor
 - [a] In General
 - [b] Special Notice Requirements
 - [c] Limitations on Communications
 - [d] Safe Harbor Letters
 - [6] Harassment or Abuse
 - [7] False or Misleading Representations
 - [8] Unfair Practices
 - [9] Communications with Third Parties
 - [10] Penalties for Violation
 - [11] State Collection Practices Acts
- § 45.16 Rights of Unit Owners
 - [1] In General
 - [2] Open Public Meetings
 - [3] Notice of Rules and Regulations
 - [4] Inspection of Books and Records
 - [5] Notice of Alleged Violation
 - [6] Due Process Rights; Alternate Dispute Mechanism
 - [7] Right to Record and Videotape Meetings
 - [8] Right of Contract Purchaser
 - [9] Right to Have Fees Applied to All Unit Owners
 - [10] Uniform Common Interest Owners Bill of Rights Act
 - [11] Unit Owners Have No Right to Harass Board Members or Disrupt Meetings

- Gary A. Poliakoff, [The Law of Condominium Operations](#), West.
 - Chapter 2. Rights and Liabilities of Directors
 - § 2:32. Liens and Foreclosures
 - Chapter 5. Assessments
 - I. Assessments as Affirmative Covenants
 - C. Nonpayment of Assessment Creates Lien
 - D. Foreclosure of Assessment Lien
 - § 5:32. Statutory Authority

- § 5: 33. Methods of Foreclosure
- § 5: 34. Association Ability to Foreclose
- § 5: 35. Standing
- § 5: 36. Notice Requirement
- § 5: 37. Association Purchase at Sale
- § 5: 38. Third-Party Purchase at Sale
- § 5: 39. Third-Party Liability for Assessments
- § 5:40. Foreclosed Unit Owner's Liability for Rent**
While in Possession

II. Mechanics of Enforcing Assessments

A. Judgment Liens

B. Lien Foreclosures

- § 5: 44. Manner of Foreclosure
- § 5: 45. Mortgage Foreclosure Compared
- § 5: 46. Foreclosure by Deed of Trust
- § 5: 47. Foreclosure in Same Manner as Liens for Improvement of Real Estate
- § 5: 48. Forcible Entry and Detainer
- § 5: 49. Foreclosed Interest – Generally
- § 5: 50. – Unit
- § 5: 51. – Appurtenances
- § 5: 52. – Common Elements
- § 5: 53. – Condominium as Whole
- § 5: 54. Priority of Claims to Foreclosure Proceeds
– Generally
- § 5: 55. – Mortgagee
- § 5: 56. – Tax Liens
- § 5: 57. – Association Lien for Assessments
- § 5: 58. – Homestead
- § 5: 59. – Other Judicial Liens
- § 5: 60. – **Mechanic's and Material Liens**
- § 5: 61. – Foreclosure by Sale
- § 5: 62. – Liability for Deficiency
- § 5: 63. – Claims for Surplus
- § 5: 64. – Rights of Redemption

- Richard R. Powell, [Powell on Real Property](#), volume 8, LexisNexis (2015).
Chapter 54A The Operation of Common Interest Communities – Condominiums, Cooperatives, Homeowner Association Developments and Time-Shares
§ 54A.08 Foreclosure Considerations
[1] State "Super Lien" Priority May Protect Associations
[2] The Association's Lien Must Be Perfected
[3] How Do Communities Cope with Cash Flow Concerns Raised by Large Scale Foreclosures?

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- Peter P. Hargitai, *Gotcha! Associations Corner Mortgagees for Past Due Assessments*, 29 The Practical Real Estate Lawyer 19-23 (January 2013).

Table 1: Association’s Failure to Perform Duties as Defense to Nonpayment of Fees and Fines

Association’s Failure to Perform Duties as Defense to Nonpayment of Fees and Fines	
<p>TREATISES:</p> <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>You can click on the links provided to see which law libraries own the title you are interested in, or visit our catalog directly to search for more treatises.</p> </div>	<ul style="list-style-type: none"> • Patrick J. Rohan and Melvin A. Reskin, Condominium Law and Practice, LexisNexis, 2015. <p style="margin-left: 40px;">Volume 1, Part 3</p> <p style="margin-left: 80px;">Chapter 45 The Administration of Condominium Associations.</p> <p style="margin-left: 80px;">§ 45.11 Unit Owner’s Defenses</p> <p style="margin-left: 120px;">[2] Substantive Defenses</p> <p style="margin-left: 160px;">[c] Failure to Maintain Common Areas</p> • Gary A. Poliakoff, The Law of Condominium Operations, West. <p style="margin-left: 40px;">I. Assessments as Affirmative Covenants</p> <p style="margin-left: 80px;">B. Responsibility for Payment of Assessments</p> <p style="margin-left: 80px;">§ 5:19. Association’s Failure to Perform</p>
<p><u>Beechmont Condominium Association, Inc. v. Cecunjanin</u>, Superior Court Judicial District of Fairfield at Fairfield, CV136034426S (March 24, 2016).</p>	<p>“The Appellate Court pointed out in <i>Coach Run Condo</i> at footnote 7 ‘As the [trial] court noted, its ruling did not leave the defendant without a remedy because any condominium unit owner may file an independent action to recover damages for negligence or other misconduct on the part of the condominium association.’ There may also be a remedy on appeal or through the legislature, but the existing precedent binding on this court supports the rejection of the special defenses and the granting of summary judgment for the plaintiff.”</p> <p>“The defendant in <i>Coach Run Condo</i>, Deborah Furniss, had argued, as the defendant herein now argues, that the statutory language upon which the court relied does not support its ruling. The Court rejoined: ‘She does not, however, identify any provision of the General Statutes or in the documentation adopted by the plaintiff condominium association that either expressly, or by implication, confers upon her the right to raise such defenses to the plaintiff’s collection of common charges.’”</p> <p>“For the foregoing reasons, the Plaintiff’s Motion for Summary Judgment is granted as to liability only, and the Defendant’s Objection to Plaintiff’s Motion for Summary Judgment is overruled.”</p>

<p>Mallview Condominium Association, Inc. v. Mulla, Superior Court, Judicial District of Waterbury at Waterbury, CV146023911S (Oct. 23, 2014).</p>	<ul style="list-style-type: none"> • “. . . [I]n this more limited action to foreclose a condominium lien, there is no question that these claims of negligence, and resulting set-off, should be stricken and brought in actions independent from the foreclosure.” • “The defendant also asserts a special defense and a counterclaim based upon the habitability of the condominium, asserting health related damages and seeking injunctive relief. The factual basis of this claim is that the plaintiff failed to maintain and repair common areas of the condominium, resulting in damages. Although the court finds this question more compelling in the extreme case of constructive eviction, no such facts are alleged in the present case. Moreover, a very similar argument was rejected in the Coach Run case . . . where the defendant asserted that the failure of the plaintiff to properly maintain common areas rendered the condominium unsalable. While noting that the common law doctrine of constructive eviction might otherwise apply and provide a defense to an action for nonpayment of rent, ‘the defendant’s rights and obligations are now governed comprehensively by the [Common Interest Ownership A]ct and not by the common law.’ Coach Run Condominium, Inc. v. Furniss, supra, 136 Conn.App. 706.”
<p>Coach Run Condominium, Inc. v. Furniss, 136 Conn. App. 698, 47 A3d 413 (2012).</p>	<ul style="list-style-type: none"> • “The principal issue in this case is whether a condominium association has the right to enforce a statutory lien for unpaid common charges provided for by the Common Interest Ownership Act (act), General Statutes § 47-200 et seq., even if the association has substantially failed to perform its maintenance obligations to the defaulting condominium owner.” p. 699 • “Almost all of the judges of the Superior Court who have addressed this issue have held that special defenses and counterclaims will not lie in an action brought by a condominium association to foreclose a lien based upon a unit owner’s failure to pay common charges. See Congress Street Condominium Assn., Inc. v. Anderson, 132 Conn. App. 536, 541-43 and 542 n.9, 33 A.3d 274 (2011) (citing cases). Ruling in accord with this majority, the trial court in the present case held that §§ 47-257 and 47-258 manifest the legislature’s intention that a duly constituted condominium association has an enforceable lien to assist its collection of common charges. The court reasoned that the legislature provided condominium associations with the ability to impose such a lien in order to protect the condominium’s common financial interest in timely collection of anticipated revenues for the benefit of the community as a whole. That protection would be jeopardized if any condominium unit owner could withhold payment pending the resolution of individual complaints or disagreements regarding the nature and extent of services rendered by the condominium. We agree.” p. 705

	<ul style="list-style-type: none"> • "We acknowledge that, if the defendant had been a common-law tenant, rather than the owner of a condominium unit, she might have been able to invoke the doctrine of constructive eviction. Under that common-law doctrine, a tenant's failure to pay rent may be excused 'where a landlord, while not actually depriving the tenant of possession of any part of the premises leased, has done or suffered some act by which the premises are rendered untenable, and has thereby caused a failure of consideration for the tenant's promise to pay rent.' (Internal quotation marks omitted.) Conference Center Ltd. v. TRC, 189 Conn. 212, 220, 455 A.2d 857 (1983). Without so labeling her claim, the defendant has in fact alleged that: (1) her condominium unit became untenable as the result of malfeasance or nonfeasance by the plaintiff; (2) she vacated the premises because of the unsatisfactory condition of the premises; and (3) she had given the plaintiff a reasonable opportunity to correct the problem before she vacated the premises. These are the central constituent elements of a claim of constructive eviction. . . . <p>"The crucial fact remains, nonetheless, that the defendant's rights and obligations are now governed comprehensively by the act and not by the common law. Those rights include the right of the defendant, as a member of a condominium association, to participate in the management of her condominium . . . a right that a tenant does not have. Although General Statutes § 47-207 provides that supplemental general principles of law are applicable in interpreting the provisions of the act, we are not persuaded that these supplemental principles include the common law doctrine of constructive eviction." p. 705-706</p>
<p>Twin Oaks Condominium Association v. Jones, 132 Conn. App. 8, 11-12, 30 A.3d 7 (2011), petition for cert. denied at 305 Conn. 901, 43 A.3d 663 (2012).</p>	<ul style="list-style-type: none"> • ". . . the defendant filed a seven count counterclaim, asserting breach of contract, violation of the Common Interest Ownership Act, General Statutes § 47-200 et seq., violation of the Connecticut Unfair Trade Practices Act, General Statutes § 42-110a et seq., statutory theft, breach of the implied covenant of good faith and fair dealing, conversion and negligence. . . . On January 22, 2010, the court rendered judgment in favor of the defendant on his negligence counterclaim only. . . . The court found that the plaintiff breached its duty by failing to hold annual meetings, failing to provide notice and a hearing before initiating foreclosure proceedings against the defendant, denying him a right to appeal, and failing to maintain the heating system and roof."

<p>Congress Street Condominium Association, Inc. v. Anderson, 132 Conn. App. 536, 543-544, 33 A.3d 274, 278-279 (2011).</p> <p>Special Defenses – unpaid fines v. unpaid common charges</p>	<ul style="list-style-type: none"> • “Thus, although, as noted, trial courts consistently have precluded the pleading of special defenses and counterclaims in actions to foreclose statutory liens based on the nonpayment of common charges in order to safeguard the economic welfare of the condominium community, this reasoning is not necessarily applicable to the nonpayment of fines. Because fines are an unpredictable source of income for the condominium association and, therefore, not a fixed component of the association's budget, there is no reason to conclude that their payment or nonpayment directly impacts the condominium community's economic welfare. For this reason, the type of expedited proceedings embraced by our trial courts in actions to foreclosure statutory liens based on the nonpayment of common charges is unnecessary in actions for the nonpayment of fines. <p>“We conclude, therefore, that due to the inherent differences in the application and function of fines and common charges, they should not be treated interchangeably in a foreclosure action. Rather, the permissible special defenses and counterclaims in an action to foreclose a statutory lien based on the imposition of fines by a condominium association should be determined in light of traditional mortgage foreclosure standards, which permit the assertion of certain special defenses, including that of equitable estoppel. . . . In an action by a condominium association to foreclose a lien based on the nonpayment of fines, the defendant unit owner, therefore, should not be required to file a separate action to assert a special defense relating to the validity of the imposition of fines.”</p> <p>See also: Congress Street Condominium Association, Inc. v. Anderson, 156 Conn. App. 117, 123, 112 A.3d 196, 200 (2015). “The defendant claims that the court improperly determined that the fines ‘were validly assessed’ against him because the evidence showed that the plaintiff failed to comply with the requirement of a hearing prior to the imposition of fines. We agree.”</p>
<p>Watch Hill Condominium, Inc. v. Van Eck, Superior Court, Judicial District of New Haven at New Haven, CV-93-0344796 (17 CLR 198) (June 14, 1996).</p>	<ul style="list-style-type: none"> • “In the first and second special defenses, the defendants allege a failure of consideration or a waiver of the right to collect condominium fees because the plaintiff has acted inequitably in appropriating such fees to uses not authorized by the bylaws or pertinent statutes. The allegations of the third special defense are that the plaintiff lacks the corporate capacity to collect fees because of a failure to comply with the bylaws and/or statutes governing the following: election of the board of directors, annual meetings of unit owners, application of annual fees to common elements or limited common elements, providing budget summaries to unit owners, ratification of budgets and repayment or crediting of

surplus association funds to unit owners. . . .

In *Anchorage Condominium v. Smith*, 1 CSCR 841 (1986), a suit for common charges, the court, on the authority of § 47-78(a), granted a motion to strike defenses of unit owners that alleged a failure by the condominium to make repairs in their unit and in external areas of the complex. Similarly, in *Wilton Crest Condominium v. Stern*, 9 Conn. L. Rptr. 539, 8 CSCR 925 (1993), a foreclosure of lien action, the court granted a motion to strike special defenses and a counterclaim wherein unit owners accused the plaintiff and its directors of failures to provide services, breaches of fiduciary duties owed to unit owners, breaches of covenants contained in the rules and regulations and a violation of CUTPA. In both cases, the reasoning is the same. Pursuant to § 47-78(a), unit owners are plainly liable for common charges. Where the language of a statute is plain and unambiguous, there is no place for construction and the statute should be applied as its words direct. [*Stitzer v. Rinaldi's Restaurant*](#), 211 Conn. 116, 118 (1989); [*Warner v. LeslieElliott Constructors, Inc.*](#), 194 Conn. 129, 134 (1984). . . .

In the court's view, *Anchorage, supra* and *Wilton Crest, supra*, not only provide proper interpretations of Connecticut substantive and procedural law but, also, accord with the weight of authority. [*Trustees of Prince Condo Trust v. Prosser*](#), 592 N.E.2d 1301, 1302 (Mass. 1992) (there is no right to a setoff against lawfully imposed condominium charges); [*Newport West Condominium Assn' v. Veniar*](#), 350 N.W.2d 818, 822 (Mich.App. 1984) (the Condominium Act does not provide a co-owner with the self-help remedy of withholding part or all of his assessed fees); [*Rivers Edge Condo. Ass'n. v. Rere, Inc.*](#), 568 A.2d 261, 263 (Pa.Super 1990) (nothing in Pennsylvania's Uniform Condominium Act supports nonpayment of assessments on a claim of failure to provide maintenance services); [*Abbey Park Homeowners Ass'n. v. Bowen*](#), 508 So.2d 554, 555 (Fla.App. 4 Dist. 1987) (when suit is to collect unpaid assessments, the affirmative defense of failure to maintain the common elements is inadequate as a matter of law). What this means, of course, is that with one exception the defendants' claims of fiscal or managerial mismanagement by the manager or the board of directors must await another day and be pursued either in their pending action or in a new suit brought for those purposes.

The exception involves the legality of the actions of the board of directors in establishing the common charges, interest, late fees and special assessments that the defendants have refused to pay."

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