

By Mr. McIntyre of New Bedford, petition of Joseph B. McIntyre relative to the maintenance of condominiums. Housing and Urban Development.

The Commonwealth of Massachusetts

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

AN ACT TO ENSURE THE PROPER MAINTENANCE OF CONDOMINIUMS.

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

1 SECTION 1. Section 1 of chapter 183A of the General Laws,
2 as appearing in the 1990 Official Edition is hereby amended by
3 deleting the definition of "Common expenses" found therein and
4 inserting in its place the following definition:

5 "Common expenses," the expenditures made by, or financial
6 liabilities of, the organization of unit owners, including without
7 limitation the expenses of administration, operation, mainte-
8 nance, repair or replacement of the common areas and facilities,
9 allocations to reserves, and any other expenses declared common
10 expenses by this chapter.

1 SECTION 2. Section 1 of chapter 183A of the General Laws
2 is hereby further amended by inserting the following definition
3 of "Limited common areas and facilities" immediately after the
4 definition of "Condominium" and immediately before the
5 definition of "Master deed": —

6 " 'Limited common areas and facilities,' a portion of the
7 common areas and facilities allocated by the master deed for the
8 exclusive use of one or more but fewer than all of the units."

1 SECTION 3. Section 6 of chapter 183A of the General Laws
2 is hereby amended by deleting subsection (a) in its entirety and
3 inserting in place thereof:

4 (a)(i) Except for common expense assessments under
5 clauses (ii), (iii) and (iv) of this subsection (a), all common
6 expenses must be assessed against all units in accordance with
7 their respective percentages of undivided interest in the common
8 areas and facilities. Any past due common expense assessment or
9 installment thereof shall bear interest at the rate established by
10 the organization of unit owners not exceeding eighteen percent
11 (18%) per year. Common expense assessments must be made at
12 least annually, based on a budget adopted at least annually by
13 the organization of unit owners.

14 (ii) To the extent required by the master deed: (1) any
15 common expense associated with the administration, mainte-
16 nance, operation, repair, or replacement of a limited common area
17 and facility must be assessed against the units to which that limited
18 common area and facility is assigned, equally, or in any other
19 proportion that the master deed provides;

20 (2) any common expense or portion thereof benefiting fewer
21 than all of the units must be assessed exclusively against the units
22 benefited; and

23 (3) the costs of insurance must be assessed in proportion to
24 risk and the costs of utilities must be assessed in proportion to
25 usage.

26 (iii) Assessments to pay a judgment against the organization
27 of unit owners may be made only against the units in the
28 condominium at the time a judgment was entered, in proportion
29 to their common expense liabilities.

30 (iv) If any common expense is caused by a unit owner's failure
31 to abide by any by-law, restriction, rule or regulation, or by the
32 misconduct of any unit owner, or his family members, tenants or
33 invitees, the organization of unit owners may assess that expense
34 exclusively against his unit.

35 (v) If common expense liabilities are reallocated, common
36 expense assessments and any installment thereof not yet due shall
37 be recalculated in accordance with the reallocated common
38 expense liabilities.

39 (vi) Common profits shall be distributed among unit owners
40 in the same manner as common expenses are charged to the unit
41 owners.

1 SECTION 4. Section 6 of chapter 183A of the General Laws
2 is hereby further amended by deleting subsection (b) in its entirety
3 and inserting in place thereof:

4 (b) Each unit owner shall be personally liable for all sums
5 lawfully assessed against his unit pursuant to this chapter.

1 SECTION 5. Section 6 of chapter 183A of the General Laws
2 is hereby further amended by deleting the first paragraph of
3 subsection (c) and inserting in place thereof the following:

4 The organization of unit owners shall have a lien on a unit for
5 any common expense assessment levied against that unit or fine
6 imposed against its unit owner from the time the assessment or
7 fine becomes due and for all costs of collection and enforcement
8 (including but not limited to reasonable attorneys fees and court
9 costs) incurred by the organization of unit owners with respect
10 to that unit and its owners from the time such costs are incurred.
11 Fees, charges, late charges, fines, costs of collection and
12 enforcement and interest charged pursuant to this chapter are
13 enforceable as common expense assessments under this Section.

14 A lien under this section shall be enforced in the manner
15 provided in sections five and five A of chapter two hundred and
16 fifty-four. Such lien is prior to all other liens and encumbrances
17 on a unit except (i) liens and encumbrances recorded before the
18 recordation of the master deed, (ii) a first mortgage on the unit
19 recorded before the date on which the assessment sought to be
20 enforced became delinquent, and (iii) liens for real estate taxes
21 and other governmental assessments or charges against the unit.
22 This lien is also prior to the mortgages described in clause (ii)
23 above to the extent of the common expense assessments based
24 on the periodic budget adopted by the organization of unit owners
25 pursuant to subsection (a) above which would have become due
26 in the absence of acceleration during the six (6) months
27 immediately preceding institution of an action to enforce the lien
28 and to the extent of any costs and reasonable attorneys fees
29 included in any judgment or decree, as provided below. This
30 subsection does not affect the priority of mechanics' or
31 materialmen's liens, or the priority of liens or other assessments
32 made by the organization of unit owners. Recording of the master

33 deed constitutes record notice and perfection of this lien; no
34 further recordation of any claim of lien for assessments under this
35 section is required. A lien for unpaid assessments is extinguished
36 unless proceedings to enforce the lien are instituted within
37 three (3) years after the full amount of the assessments becomes
38 due. The lien under this section is not subject to the provisions
39 of Chapter 188 of the General Laws.

40 Neither this section nor anything contained in sections 5
41 and 5A of chapter 254 of the General Laws shall be deemed to
42 prohibit actions to recover sums for which this subsection creates
43 a lien or prohibit an organization of unit owners from taking a
44 deed in lieu of enforcement of the lien created by this section. A
45 judgment or decree issued in any action brought to recover sums
46 for which this subsection creates a lien or brought to enforce such
47 lien shall include costs and reasonable attorney's fees for the
48 prevailing party; and, if that party is the organization of unit
49 owners, such costs and reasonable attorney's fees shall be secured
50 by the lien created by this subsection, as provided above.

1 SECTION 6. Section 6 of chapter 183A of the General Laws
2 is hereby further amended by deleting subsection (d) in its entirety
3 and inserting in place thereof:

4 (d) The organization of unit owners, upon written request, shall
5 furnish to a unit owner a recordable statement setting forth the
6 amount of unpaid assessments against his unit. The statement
7 must be furnished within ten (10) business days after receipt of
8 the request and is binding on the unit owners' organization and
9 every unit owner. Any such statement issuing from an
10 unincorporated organization of unit owners shall indicate and
11 specify therein the book and page, or document numbered if
12 registered land, within that registry of the instrument from which
13 the signatory or signatories of the statement obtained their
14 authority to sign on behalf of the said unincorporated
15 organization. A statement from the organization of unit owners
16 setting forth the amount of unpaid common expenses and other
17 charges which have been assessed against a unit as of a date
18 certain, when recorded in the appropriate registry of deeds, or land
19 registration office as the case may be, shall operate to discharge
20 that unit from any lien for any other unpaid assessments against
21 such unit as of that date.

1 SECTION 7. Section 10 of chapter 183A of the General Laws
2 is hereby amended by adding the following numbered paragraph
3 to subsection (b) thereof, which numbered paragraph shall be
4 inserted immediately following the paragraph numbered (4):

5 (5) To impose charges for late payment of assessments and,
6 after notice and an opportunity to be heard, levy reasonable fines
7 for violations of the master deed, by-laws and rules and
8 regulations of the organization of unit owners.

1 SECTION 8. Section 5A of chapter 254 of the General Laws
2 is hereby amended by inserting the following sentence at the end
3 of the third paragraph thereof:

4 Notwithstanding the foregoing, the premises shall be deemed
5 to have been sold, and the deed thereunder shall convey the
6 premises, as otherwise provided above but free of said first
7 mortgages, to the extent that as of the date of such sale there are
8 unpaid common expense assessments and/or unpaid costs and
9 reasonable attorneys fees the lien for which is given priority over
10 said first mortgages in subsection (c) of section six of chapter one
11 hundred and eighty-three A.

