

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1409

Introduced by Bostar, 29.

Read first time January 17, 2024

Committee:

- 1 A BILL FOR AN ACT relating to real property; to amend section 76-856,
- 2 Reissue Revised Statutes of Nebraska; to change provisions relating
- 3 to the Nebraska Condominium Act; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-856, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 76-856 (a) The declaration may require that all or a specified
4 number or percentage of the mortgagees or beneficiaries of deeds of trust
5 encumbering the units approve specified actions of the unit owners or the
6 association as a condition to the effectiveness of those actions, but
7 such a requirement shall be enforceable only as to matters involving the
8 subdivision of any unit and the creation of any timeshare or as to
9 proposed amendments to the declaration that adversely affect the priority
10 of the mortgagee's rights to foreclose its lien and no requirement for
11 approval may operate to (i) deny or delegate control over the general
12 administrative affairs of the association by the unit owners or the
13 executive board, or (ii) prevent the association or the executive board
14 from commencing, intervening in, or settling any litigation or
15 proceeding, or receiving and distributing any insurance proceeds except
16 pursuant to section 76-871. The declaration may not provide that a lien
17 on a member's unit for any assessment levied against the unit relates
18 back to the date of filing of the declaration or that such lien takes
19 priority over any mortgage or deed of trust on the unit recorded
20 subsequent to the filing of the declaration and prior to the recording by
21 the association of the notice required under subsection (a) of section
22 76-874.

23 (b) In securing consent from a mortgagee or beneficiary of a deed of
24 trust for a proposed amendment to a declaration, the association shall be
25 entitled to rely upon public records to identify the holders of
26 outstanding mortgages. The association may use the address provided in
27 the original recorded mortgage document, unless there is a different
28 address for the holder of the mortgage in a recorded assignment or
29 modification of the mortgage, which recorded assignment or modification
30 shall reference the official records book and page on which the original
31 mortgage was recorded. Once the association has identified the recorded

1 mortgages of record, the association shall, in writing, request of each
2 unit owner whose unit is encumbered by a mortgage of record any
3 information the owner has in the owner's possession regarding the name
4 and address of the person to whom mortgage payments are currently being
5 made. Notice shall be sent to such person if the address provided in the
6 original recorded mortgage document is different from the name and
7 address of the mortgagee or assignee of the mortgage as shown by the
8 public record. The association shall be deemed to have complied with this
9 requirement by making the written request of the unit owners required
10 under this paragraph. Any notices required to be sent to the mortgagees
11 under this subsection shall be sent to all available addresses provided
12 to the association.

13 (c) If any mortgagee or beneficiary of a deed of trust encumbering a
14 unit has been requested by certified mail, return receipt requested, to
15 consent to a proposed amendment to a declaration, and such mortgagee or
16 beneficiary of a deed of trust fails to consent or object to such request
17 in writing delivered to the requestor by certified mail within sixty days
18 after the date such request has been sent to the mortgagee or
19 beneficiary, such failure to respond shall be deemed consent to the
20 amendment.

21 (d) Any amendment adopted without the required consent of a
22 mortgagee shall be voidable only by a mortgagee who was entitled to
23 notice and an opportunity to consent. An action to void an amendment
24 shall be subject to the statute of limitations beginning five years after
25 the adoption of an amendment to a declaration. This provision shall apply
26 to all mortgages, regardless of the date of recordation of the mortgage.

27 Sec. 2. Original section 76-856, Reissue Revised Statutes of
28 Nebraska, is repealed.