Bill as Introduced

HB 1261 - AS INTRODUCED

2012 SESSION

12-2117
05/10

HOUSE BILL *1261*

AN ACT relative to recovery of delinquent condominium fees.

SPONSORS: Rep. Ohm, Hills 26; Rep. Seidel, Hills 20; Rep. LeBrun, Hills 26; Rep. Griffin, Rock 4; Rep. Almy, Graf 11; Rep. Butynski, Ches 4; Rep. Hamm, Merr 4; Rep Cooney, Graf 7; Rep. B. Palmer, Hills 26; Sen. Luther, Dist 12; Sen. Lambert, Dist 13

COMMITTEE: Judiciary

ANALYSIS

This bill permits a condominium unit owners' association to file multiple liens for unpaid condominium fees. The bill also removes the grandfathering provision for mortgages executed prior to January 1, 2011.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1261 – AS INTRODUCED

12-2117
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to recovery of delinquent condominium fees.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Condominium Act; Lien for Assessments. RSA 356-B:46, I(d) is repealed and reenacted to read as follows:

(d) Nothing in this section shall preclude the unit owners' association from filing more than one lien under subparagraph (c); nor shall the priority lien rights established under subparagraph (c) be limited by the mortgage execution date.

2 Effective Date. This act shall take effect January 1, 2013.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1261 Date Feb. 2, 2012

Committee Judiciary

Please Print All Information

Name	Address	Phone	Representing	Pro	Con
Barry Palmer	123 Shore Dr Nashua		self	✓	
Sen. Jim Luther			Dist. #12	✓	

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 1261

BILL TITLE: relative to recovery of delinquent condominium fees.

DATE: February 2, 2012

LOB ROOM: 206

Time Public Hearing Called to Order: 9:05 am
Time Public Hearing Recessed: 9:40 am
Time Public Hearing Reconvened: 4:40 pm
Time Public Hearing Adjourned: 4:55 pm

(please circle if present)

Committee Members: Reps. Rowe, Sorg, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Wall, Potter, Weber and Watrous.

Bill Sponsors: Rep. Ohm, Hills 26; Rep. Seidel, Hills 20; Rep. LeBrun, Hills 26; Rep. Griffin, Rock 4; Rep. Almy, Graf 11; Rep. Butynski, Ches 4; Rep. Hamm, Merr 4; Rep Cooney, Graf 7; Rep. B. Palmer, Hills 26; Sen. Luther, Dist 12; Sen. Lambert, Dist 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Ohm, sponsor
Read from written testimony. This bill fills the gap between the loopholes created when a vacant property is foreclosed on. The mortgage company is stuck paying for the upkeep of the property or the property will deteriorate. The mortgage company tries to get the neighbors to pick-up the costs. This happens to condo owners all the time. This bill enforces the provisions of an existing contract. See Appendix F.

David Collins, New Hampshire Credit Union League - opposes
Issue was dealt with in 2010; date January 1, 2011 liens that condo were placing are okay; other associations have been doing it for years. Constitution prohibits retro active law.

Rep. Susan Almy – opposes
Ran a 22-unit condominium. Received very little help; no clear law. Dripline out is all that is covered. Functions will stop. Affecting the whole building which could affect others selling their units. Costs too much to put liens on property.

Rep. Will Infantine – opposes
Concept is good. Mortgage would foreclose six months. Law states mortgage company was responsible for fee first six months. Priority liens were approved. It's working okay. Existing law has only been in action 18 months; needs more time to see if it's working. Banks are being held to pay fees from the start.

Christiana Thornton, President, New Hampshire Bankers Association - opposes
Read from written testimony.

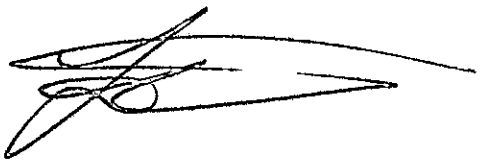
Rep. John Hunt – opposes
This issue has been in front of the Commerce Committee several times. Killed = retroactive. Cannot go back on a contract, can only go forward. If you own a condo, you risk fellow neighbors pulling out and you pick up the tab. Concerned for resale, Freddy and Fanny will pick up lien of six months; makes it easier.

***Ben Frost,** New Hampshire Housing Association - opposes
There is a potential of unconstitutionality of retroactive.....

Pink card for Michael Kleist – not present.

Written testimony submitted by:
Rep. Don LeBrun and Cal Davison, Cardiff Management, Inc.

Respectfully submitted,



Lenette M. Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HOUSE BILL 1261

BILL TITLE: relative to recovery of delinquent condominium fees.

DATE: ~~{Type HEARING DATE here}~~ 2-2-2012

LOB ROOM: 208 Time Public Hearing Called to Order: {Time} 9:05

Time Adjourned: {Time} 9:40
4:40
4:55

(please circle if present)

Committee Members: Reps. Rowe, Sorg, Souza, Hagan, Silva, Hopper, Andolina, Giuda, LaCasse, McClarren, Murphy, Palmer, Peterson, Walz, Potter, Weber and Watrous

Bill Sponsors: Rep. Ohm, Hills 26; Rep. Seidel, Hills 20; Rep. LeBrun, Hills 26; Rep. Griffin, Rock 4; Rep. Almy, Graf 11; Rep. Butynski, Ches 4; Rep. Hamm, Merr 4; Rep Cooney, Graf 7; Rep. B. Palmer, Hills 26; Sen. Luther, Dist 12; Sen. Lambert, Dist 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

*Rep. Ohm - read written testimony. This bill fills the gap between the loopholes created when a vacant property is foreclosed on, the mortgage co. is stuck paying for the upkeep of property or the property will deteriorate. The mortgage co. tries to get the neighbors to pick up the costs. This happens to condo owners all the time. This bill enforces the provisions of an existing contract, see app. F.

Respectfully submitted,

Lenette M. Peterson, Clerk

David Collins - (O) issue was dealt 2010, date 1/1/11 liens that condo were placing are okay, other assoc. have been doing it for years. Const. prohibits retroactive law
NH Credit Union League

Rep. Amy-(S) ran a 22 unit condo. Receive very little help, no clear law. Dripline out is all that is covered. Functions will stop, affecting the whole building, which could affect others selling their units. Costs too much to put liens on property.

Rep. Infantine (O) concept is good. Mortgage would foreclose 6 mos. law states mortgage co. was responsible for fee first 6 mos. Priority liens were okayed. Is working okay. Existing law has only been in action 18 mos., needs more time to see if its working. Banks are being held to pay fees from the start.

*Christiana Thornton-(O) read from written testimony
Bankers Assoc.

Rep. Hunt-(O) has been in front of commerce committee several times. Killed = retroactive, can not go back on a contract, can only go forward. If you own a condo, you risk fellow neighbors pulling out and you pick up the tab. Concerned for resale, Fanny + Freddy will pick up lien of 6 mos, makes it easier.

*Ben Frost-(O) potential of unconst. of retroactive
NH Housing

Sub-Committee Actions

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 1261

BILL TITLE: relative to recovery of delinquent condominium fees.

DATE: September 6, 2012

Subcommittee Members: Reps. Cebrowski, Peterson, Palmer, and Weber

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Palmer

Seconded by Rep. Peterson

Vote: 3-0

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. John Cebrowski
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE WORK SESSION ON HB 1261

BILL TITLE: relative to recovery of delinquent condominium fees.

DATE: September 6, 2012

Subcommittee Members: Reps. Cebrowski, Peterson, Palmer, and Weber

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Palmer

Seconded by Rep. Peterson

Vote: 3-0

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Rep John Cebrowski

Testimony

Testimony of Rep. Bill Ohm on HB 1261

Mr. Chairman, members of the committee.

The mortgage banking industry is key part of our economy. They range from small community banks, to regional commercial banks, to national institutions, to specialized mortgage lenders. We depend on them, and we're grateful to them, for they enable affordable housing to responsible homeowners.

But as with any large population, some homeowners may turn out to be less than responsible. And, when that happens, some financial institutions might take advantage of a loophole that causes innocent bystanders to pay the carrying costs of loans that have gone bad.

All this bill does is close that loophole.

Let me illustrate the problem:

Consider a subdivision of single family homes. You may live in one. Property is bought and sold, neighbors come and go.

One day you see a neighbor down the street packing up and leaving. Nobody moves in. A month or so later, you get a knock on the door. It's the mortgage company that financed the now-vacant property. Hmmm, wonder what they want?

They tell you that this neighbor has failed to make their mortgage payments and skipped town. And now they, the mortgage company, are stuck paying the carrying costs of this property. They have to pay fire insurance, they have to pay lawnmowing and snowplowing, they have to pay maintenance of the building and grounds, they have to pay roof repairs, they have to pay heat so the pipes don't freeze. Because if they don't pay these expenses, the property can deteriorate, and they might lose even more money until they can sell it.

But now comes the kicker: This mortgage company wants you and your neighbors to pay these carrying costs!

Whoo, you say. Are you nuts? I had no say on who bought or financed this property. In fact, I've never met either one of you. You have a lot of nerve asking me, some innocent third party, to subsidize the carrying costs of a loan I had nothing to do with!

Mr. Chairman, I think most of us in this room would react the same way to this knock on the door.

Unfortunately, for condo owners, this knock on the door is all too real and all too common. Condo owners experience exactly this situation:

- A condo owner vacates the property
- Mortgage payments stop
- Condo payments stop
- BUT => Services cannot be isolated and eliminated for a single unit buried in multi-family housing.
- The condo association pays the fire insurance, the lawnmowing and snowplowing, the maintenance of the building and grounds, the roof repairs, the heat so the pipes don't freeze.
- The condo association pays the mortgage company's carrying cost.

How is this situation resolved?

The condo association chases the delinquent owner for back condo payments. If they can't be recovered, a lien is slapped on the property.

What can the mortgage company do? Hold a foreclosure auction, take title to the property and shake off the condo liens, with the exception of a single six month priority lien for mortgages made after January 2011.

Is this fair? Should innocent third parties, the condo owners, bear the carrying costs of a loan gone bad? A loan they had nothing to do with? Bear the expenses that the mortgage company would pay if the property was a single family home?

HB 1261 remedies this problem. It allows for multiple six-month priority liens, and allows them to apply to all mortgages, not just those made after January 2011.

Arguments against HB 1261, and the response

This is not constitutional

A conversation with the Attorney General's office indicates there is nothing in the NH Constitution that prohibits recovery of delinquent condo fees

This changes an existing contract, and is therefore unconstitutional

This bill *enforces the provisions* of an existing contract, it does not change the contract. Refer to Appendix F, Condominium Rider. The contract language clearly states:

"Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the Condominium Project.

What if the mortgage company pays the condo fees?

Appendix F goes on to state:

"If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph shall become additional debt of Borrower secured by the Security Instrument"

What does all that mean?

The mortgage company knows that the borrower has to pay the condo fees. They have the option to pay those fees themselves and add it to the mortgage. If they pay the condo fees, it's equivalent to a priority lien. It's now part of the mortgage, ahead of all other liens except tax liens.

The mortgage becomes illiquid under these terms

The Federal Home Loan Bank of Boston, which provides liquidity (loans against mortgage collateral) replies that the multiple priority loan provision in HB 1261 is irrelevant. That's because "They will not accept loans that are more than 45 days past due". Replacement collateral is required at that time. Under HB 1261, priority liens can't be made until 180 days past due.

FHA, Freddy Mac, Fanny Mae, etc will only take mortgages with single six month priority liens

Nevada allows a 9 month priority lien that meets FHA criteria. Research indicates another state allows 12 months.

A simple solution, for mortgage companies that want to offload a condo mortgage, is to guarantee to pay the condo fees and add that amount to the first mortgage, per provisions of Appendix F. No priority lien.

This goes back to the basic fairness question. Pay the carrying costs of a delinquent condo, just as they must pay the carrying cost of a delinquent single family home. Then there is no problem.

We're not going to lend to condo's

This is an old argument, unsupported by reality. The mortgage industry is diverse and highly fragmented. There is no collusion. The 2010 changes had no material effect.

We will require stricter terms on condo loans

And why is that? Are you saying that without a subsidy from innocent third parties, you won't treat condo loans similar to single family loans?

Appendix F

CONDOMINIUM RIDER

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this _____ day of _____, 20__, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed ("Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Note ("Note") to _____ ("Lender") of the same date and covering the Property described in the Security Instrument and located at:

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

[Name of Condominium Project]

("Condominium Project"). If the owners association or other entity which acts for the Condominium Project ("Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners' Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring all property subject to the condominium documents, including all improvements now existing or hereafter erected on the Property, and such policy is satisfactory to Lender and provides insurance coverage in the amounts, for the periods, and against the hazards lender requires, including fire and other hazards included within the term "extended coverage," and loss by flood, to the extent required by the Secretary, then: (i) Lender waives the provision in the Security Instrument for the monthly payment to Lender of one-twelfth of the yearly premium installments for hazard insurance on the Property, and (ii) Borrower's obligation under the Security Instrument to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Borrower shall give Lender prompt notice of any lapse in required hazard insurance coverage and of any loss occurring from a hazard. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the condominium unit or to the common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by this Security Instrument, with any excess paid to the entity legally entitled thereto.

Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the Condominium Project.

If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this Condominium Rider.

_____ (SEAL)
Borrower

_____ (SEAL)
Borrower

[ADD ANY NECESSARY ACKNOWLEDGEMENT PROVISIONS.]

New Hampshire Housing
Bringing You Home

Dean J.Christon
Executive Director
e-mail: dchriston@nhhfa.org

February 2, 2012

Robert Rowe, Chairman
Judiciary Committee, New Hampshire House of Representatives
Legislative Office Building, Room 208
Concord, NH 03301

Subject: HB 1261, relative to recovery of delinquent condominium fees

Dear Chairman Rowe:

I am writing to express New Hampshire Housing's concerns about HB 1261, which would allow multiple recorded liens for delinquent condominium association fees to take priority over a recorded mortgage interest in condominium properties.

We believe that enactment of HB 1261 could have a chilling effect on mortgage lending in New Hampshire for condominium properties. This impact would come at a time when such lending is already more difficult because of broader economic issues, and it would further exacerbate the difficulty faced by condominium unit owners attempting to sell their properties. If such owners were already financially distressed and unable to pay their association dues, it seems that this would serve to compound the problems faced by condominium associations unable to collect fees from owners who are unable to sell their properties because of a lack of qualified buyers.

In our view, the compromise that was reached on this issue in 2010 with the enactment of HB 1340 (Chapter 142, Laws of 2010) provided a fair balance between the interests of condominium associations and those of the mortgage lending community in New Hampshire. That balance should be maintained, and we respectfully request that your committee recommend HB 1261 "inexpedient to legislate."

Thank you for the opportunity to provide testimony to your committee. The staff of New Hampshire Housing will be happy to provide any additional information that your committee may require.

Sincerely,

Dean J. Christon
Executive Director

#5

HB 1261, An Act relative to recovery of delinquent condominium fees.

Testimony of Christiana Thornton, President
New Hampshire Bankers Association
(In Opposition)

Before the House Judiciary Committee
February 2, 2012

Chairman Rowe and members of the House Judiciary Committee, my name is Christiana Thornton. I am President of the New Hampshire Bankers Association, a statewide, not-for-profit trade association representing the FDIC-insured banking industry in our state. Today I come before you in opposition to HB 1261.

HB 1261 proposes to grant multiple priority liens ahead of first mortgages to condominium associations for six month's worth of past due monthly condo fees. This legislation addresses a scenario where a condo unit owner has failed to pay his or her common expenses. When the liens are placed on the property, the liability of the unpaid condominium expenses are transferred to the mortgage holder.

It is very important to revisit recent history, as the New Hampshire General Court passed legislation relative to this particular issue in 2010. At that time, condo unit owners sought the ability to place a six month priority lien on condominium units for delinquent condominium fees. The NHBA opposed the legislation and contended that granting priority liens for various interest groups like condominium associations was a slippery slope, which threatened to undermine the mortgage lending process. Ultimately the bill passed; as amended, it granted condo associations a single six month priority lien over first mortgages. The law became effective January 1, 2011.

While the NHBA opposed the 2010 legislation, we eventually reached a compromise in good faith with the condominium associations and interested lawmakers to allow for a six-month priority lien. However, fundamental to the agreement was that the bill be limited to one lien, and be applied only to mortgage agreements entered into prospectively. HB 1261 as proposed revisits the two provisions central to the agreement that was reached at that time.

We recognize the difficulties some condominium associations have faced as a result of this difficult economic climate. However, we are very concerned allowing condo associations to place multiple liens on a property will result in a significant burden on mortgage holders. Knowing that lenders will now be the "dues payer of last resort", associations are unlikely to aggressively pursue the condominium owners for delinquent dues. The potential exposure for financial institutions would be increased substantially, as all financial liability would be placed solely on the lender. The unlimited scope of this provision would have a detrimental impact on both the cost and availability of condominium loans in our state.

Furthermore, both Fannie Mae and Freddie Mac only permit priority liens for condominium associations up to six months. These entities, which currently finance a significant number of

mortgages, would no longer purchase condominium mortgages in the State of New Hampshire. I can assure you this will have a severe impact not only on individuals seeking a mortgage to finance a condominium, and those looking to sell a condominium, but also the condo associations which are seeking this legislation. The passage of HB 1261 will have a direct impact on the ability of consumers to access credit, at a time when we need to see increased real estate activity in the state to further aid in the state's economic recovery.

We are adamantly opposed to the proposal to retroactively change properly presented and consummated contracts between two willing parties. The reason the 2010 legislation was amended to be prospective was to give lenders who underwrite condominium mortgages the ability to take potential risks into account when making condominium loans. If the condominium association can attain a priority lien on previously agreed to mortgage contracts, the lender never had the ability to underwrite the loan recognizing that potential risk. Retroactively changing these contracts through legislation sends an extremely unsettling message to the business community. Banks, like other businesses, enter contracts with an understanding they will be legally binding. HB 1261 fails to recognize the importance of honoring existing contract agreements.

In fact, the NHBA questions whether or not changes to existing contracts retroactively would be considered constitutional. Part 1 Article 23 of The N.H. Constitution reads, "*Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes, or the punishment of offenses.*" For this reason, we would urge the Committee to consider the appropriateness of this provision in HB 1261.

In closing, New Hampshire's banking institutions would urge the Committee to oppose this legislation. Passage of HB 1261 would result in fewer and more costly credit options, which would be damaging to New Hampshire home buyers and the local economy. I can assure you, faced with the prospect of unlimited liens being placed on condominiums; lenders will evaluate the risks associated with condominium lending in the future. This might require banks to leave the condominium lending business altogether, require escrow for condominium fees, increase down-payment requirements, or increase origination costs. It also sends a disturbing message to New Hampshire's business community that contract agreements made can be completely disregarded. We do not believe this legislation is in the best interest of consumers and businesses across this state.

BANKERS New Hampshire ASSOCIATION

P.O. Box 2586, Concord, NH 03302-2586
15 North Main Street, Suite 204, Concord, NH 03301
Phone (603) 224-5373 Fax (603) 224-3381
www.nhbankers.com

The 37 Banks in New Hampshire, By Charter Type

Headquartered in NH

State-Chartered (18)

Bank of New England
Centrix Bank
Claremont Savings Bank
Community Guaranty Savings Bank
First Colebrook Bank
Franklin Savings Bank
Hampshire First Bank
Laconia Savings Bank
Meredith Village Savings Bank
Merrimack County Savings Bank
Northway Bank
Optima Bank & Trust
Piscataqua Savings Bank
Salem Co-operative Bank
Savings Bank of Walpole
Sugar River Bank
The Nashua Bank
Woodsville Guaranty Savings Bank

Federally-Chartered (6)

Federal Savings Bank
Lake Sunapee Bank, FSB
Monadnock Community Bank
Peoples United Bank
Profile Bank, FSB
Mascoma Savings Bank

Headquartered Out-of-State

State-Chartered (7)

Enterprise Bank (MA)
Kennebunk Savings Bank (ME)
Passumpsic Savings Bank (VT)
Pentucket Bank (MA)
The Lowell Five Cent Savings Bank (MA)
The Provident Bank (MA)
Union Bank (VT)

Federally-Chartered (6)

Bank of America (NC)
Citizens Bank (RI)
Connecticut River Bank, N.A. (VT)
Ledyard National Bank (VT)
Sovereign Bank (PA)
TD Bank (ME)

Thank you Mr. Chairman,
Thank you members of the committee For the record I`m Representative . Don LeBrun representing Nashua wards 5,8 and 9
I`m here today in support of hb 1261.
Home Owners Associations currently are not given consideration when a home is foreclosed on and the HOA member is in arrears on membership fees. The banks come in and process foreclosures without regard to the HOA loss of fees which then have to be passed on to the remaining residents by way of increases in fees to make up the loss. This bill levels the field to some extent by allowing the HOA to place a lien in an effort to recoup some of those losses.
Currently the banks reap all the benefits available while the residents coming under the umbrella of the HOA are left with no process to recoup the unpaid fees neglected by the homeowner .
This bill simply allows the Association to impose a lien to assure the unpaid fees are considered a viable part of the process.
This concludes my testimony Mr. Chairman and in the interest of time i will take no questions, but rather defer that time to the prime sponsor to field questions.
Thank you Mr. Chairman and members.

HB 1261
February 2, 2012

Cal Davison
Cardiff Management, Inc.
603/372-6400

I am in favor of this bill. As a co-owner of a condominium property management firm that has been managing condominium communities in NH for over 30 years, I can speak from experience regarding the negative effects of the current protections afforded to the lenders at the expense of a condominium association and the paying members of it.

In this regard, I can say that **the testimony of Representative Ohm is factual.**

Let me, however, elaborate a bit on his testimony.

Association fees collected from unit owners are the source of funds from which associations pay for the services that the condominium association legally recorded and binding documents and the NH Condominium Act obligate the association to assume responsibility for. Those with an interest in the property are obligated to pay their share of the funding necessary - *except when the party with an interest is a mortgage lender.*

Lenders discriminate against condominium associations. They will foreclose on a property located on a public street without much delay because they know that if they do not take control, the property will more likely than not fall into disrepair that will be costly for the lender to bring back up to marketable condition to list for sale. When the property is located in a condominium community, however, they know delaying the foreclosure will be to their financial advantage since the property will continue to be maintained by the condo association even though the association is receiving no funds from the unit to cover its share of the costs.

The bill that passed two years ago intended to somewhat address these issues. However, it was so 'watered down' based on some inaccurate information that it currently offers little assistance nor will it for the foreseeable future.

Passage of HB 1261 will more effectively move toward addressing the negative impact of lenders being able to hide behind unfair and illogical protections afforded to them at the expense of all paying owners in a condominium community.

First, so that there be no confusion, let me review what services I am referring to.

The services that must be paid for by the association per statute or per the specific association legally recorded documents, can include, but not be limited to: insurance on the structure and the interior as originally conveyed, water; sewer; snow plowing of driveways and clearing of walkways and steps; mowing and fertilizing and other lawn care; street lighting; trash disposal services; maintaining any swimming pools, tennis courts, or clubhouses; roof repairs, clearing of gutters, and repairs to the roadways. If the buildings are wood sided, there is painting every 5-6 years as well as pre-painting clapboard repairs. Even vinyl siding can require repairs. When there are replacement needs such as new roofs, new paving, etc. the association has to cover those expenses.

So that there be no impression that I am misleading anyone, I acknowledge that there is a provision in RSA 356-B, the Condominium Act, that allows for termination of certain services to a delinquent owner subject to defined notice requirements. Those services are, however, minimal; you can't not mow the lawn in front of a delinquent owner since that would negatively impact the association overall.

<u>Current Priority Lien Provisions vs HB 1261</u>

The current priority lien provisions apply to only loans executed as of 1/1/11. In other words, the excessively significant majority of outstanding condominium mortgages in NH (all those executed prior to 1/1/11) are not included. It will, therefore, take years before the current priority lien provisions will provide any appreciable help to associations throughout NH and the good paying unit owners within them.

What that means is that for years to come, lenders will continue to benefit - financially and otherwise - by associations maintaining and servicing the properties they (the lenders) have an interest in even

though they know the property is not paying anything to cover the costs for. This makes no sense!

My understanding is that in other states with priority lien provisions, they are applicable to <u>all</u> mortgages, not solely to those executed as of a defined date!

***** HB 1261 will help to address these issues *****

<u>Prior Priority Lien Bill and Anticipated Objections to Current, HB 1261</u>

As I anticipate there will be at least the same objections to the current bill as there were in the past, let me comment 'before the fact'.

While the current priority lien provisions will ultimately help, there is virtually little benefit now nor would there be when a lender delays the inevitable foreclosure for substantially longer than 6 months, in some cases for two (2) years or more!

I just returned from the Community Association Institute (most generally known as "CAI") Law Seminar in California. In speaking with attorneys from around the country I found that despite the limitation of only 6-month by FHA, Fannie Mae and Freddy Mac, there ARE some states where their priority lien is more than 6-months. Those states simply have language in their statute that addresses how to process those loans notwithstanding their statutes vs. the FHA, etc., restrictions. To address these conflicts, therefore, NH *should* be able to do the same.

As to the priority lien provisions that went into effect 1/1/11, we were told the justifications for denying application to those where the mortgage agreement
was executed prior to 1/1/11 were:

a) That it would be in conflict with the NH Constitution - although *how* it would be in conflict was never explained despite several inquiries by myself and others.

Regardless, as Bill referenced, the AG's office has confirmed no such restrictive language in the NH Constitution

b) That it would mean an unlawful change to an existing contract, i.e. the mortgage agreement.

There is no evidence that this is true. In fact and to the contrary, in researching recorded mortgage documents, I find no difference in the language of mortgage agreements executed prior to 1/1/11 than those executed subsequent to that date. And by the way, the main document to reference that is made a part of the mortgage agreement is the Condominium Rider that Bill referenced which, I believe, he has provided you with copies of. The Rider reads the same today as it has since at least 1981 when my husband and I first purchased a NH condominium.

c) That the bankers would not like it.

With all due respect to the many bankers I've had good relationships with over the years, I have yet to understand why keeping the bankers happy is an obligation of our elected representatives and should, therefore, be a consideration. The last I heard, the citizens of NH - not the bankers - vote on who will be elected to hold office and it is the citizens they are elected to serve, not the bankers.

and

d) That banks would not finance the purchase of condominiums in NH.

This is a threat that's been made throughout the country since the first priority lien provision was being considered. Yet, I know of no state where that's been the case even after a priority lien bill has, indeed, passed.

Summary

In summary, associations and all the good paying unit owners are doing their part to maintain property values that all owners and all lenders benefit from. We are asking no more than for the lenders to do their part by not getting all those services at absolutely no cost.

Passage of HB 1261 will substantially assist in addressing these problems.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION ON HOUSE BILL 1261

BILL TITLE: relative to recovery of delinquent condominium fees.

DATE: February 14, 2012

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Peter Silva

Seconded by Rep. Brian Murphy

Vote: 12-4 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES (**NO**)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Lenette M. Peterson Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION ON HOUSE BILL 1261

BILL TITLE: relative to recovery of delinquent condominium fees.

DATE: {Type DATE} 2/14/12

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, (Interim Study) (Please circle one.)

Moved by Rep. Silva

Seconded by Rep. Murphy

Vote: (Please attach record of roll call vote.) 12-4

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES (NO)

Silva

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Lenette M. Peterson Clerk

OFFICE OF THE HOUSE CLERK 2012 SESSION

JUDICIARY

Bill #: HB 1261 Title: _____

PH Date: 2/2/12 Exec Session Date: 2/14/12

Motion: Interim Study Amendment #: _____

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	✓	
Sorg, Gregory M, V Chairman	✓	
Souza, Kathleen F	✓	
Hagan, Joseph M	✓	
Silva, Peter L	✓	
~~Hopper, Gary S~~ Keane, T	✓	
Andolina, Donald C	✓	
Giuda, J. Brandon	✓	
LaCasse, Paul D	✓	
McClarren, Donald B	✓	
Murphy, Brian JX	✓	
Palmer, Barry J	—	—
Peterson, Lenette M, Clerk	✓	
Wall, Janet G		✓
Potter, Frances D		✓
Weber, Lucy M		✓
Watrous, Rick H		✓
	12	4

TOTAL VOTE:

Printed: 12/21/2011

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1261

BILL TITLE: **relative to recovery of delinquent condominium fees.**

DATE: October 16, 2012

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Cebrowski

Seconded by Rep. Wall

Vote: 10-0 (Please attach record of roll call vote.)

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Lenette Peterson, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1261

BILL TITLE: **relative to recovery of delinquent condominium fees.**

DATE: October 16, 2012

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep. Rep Cebrowski

Seconded by Rep. Rep. Wall

Vote: 10-0 (Please attach record of roll call vote.)

Motions: Recommended or Not Recommended for Future Legislation (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Lenette Peterson, Clerk

Murphy

JUDICIARY

Bill #: HB 1261 Title: _____

PH Date: ___/___/___ Exec Session Date: ___/___/___

Motion: Ought to Pass. Amendment #: _____

MEMBER	YEAS	NAYS
Rowe, Robert H, Chairman	/	
Cebrowski, John W, V Chairman	/	
Souza, Kathleen F		
Hagan, Joseph M		
Silva, Peter L		
Hopper, Gary S		
Andolina, Donald C		
Giuda, J. Brandon	/	
~~LaCasse, Paul~~ D (OTM)	/	
McClarren, Donald B	/	
Murphy, Brian JX	/	
Palmer, Barry J	/	
Peterson, Lenette M, Clerk		
Wall, Janet G	/	
Potter, Frances D		
Weber, Lucy M	/	
Watrous, Rick H	/	
	10	0
TOTAL VOTE:		

Printed: 3/9/2012

Committee Report

REGULAR CALENDAR

February 15, 2012

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on JUDICIARY to which was referred HB 1261,

AN ACT relative to recovery of delinquent condominium fees.

Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.

Rep. Peter L. Silva

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**JUDICIARY**
Bill Number:	**HB 1261**
Title:	**relative to recovery of delinquent condominium fees.**
Date:	**February 15, 2012**
Consent Calendar:	**NO**
Recommendation:	**REFER TO COMMITTEE FOR INTERIM STUDY**

STATEMENT OF INTENT

This bill attempts to close a loophole in foreclosures where condo associations are obligated to pay the carrying costs (insurance, maintenance, repairs, and heat) of vacant property. In foreclosures of single family homes, the mortgage holder pays these costs or risks significant losses due to fire, vandalism, etc. Partial relief was made last term by allowing a six month priority lien for mortgages closed after January 2011. This bill would allow multiple six month priority liens and eliminate grandfathering. Opponents of the bill argue that mortgage lending would be impaired as such restrictions prevent resale of the mortgage to government agencies such as Fannie Mae and Freddy Mac. They further argue that enhanced enforcement of default provisions (priority loans) or existing mortgages is unconstitutional. While the committee is sympathetic to the condo association position, they feel the consequences required further study.

Vote 12-4.

Rep. Peter L. Silva
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB 1261, relative to recovery of delinquent condominium fees. **REFER TO COMMITTEE FOR INTERIM STUDY.**

Rep. Peter L. Silva for JUDICIARY. This bill attempts to close a loophole in foreclosures where condo associations are obligated to pay the carrying costs (insurance, maintenance, repairs, and heat) of vacant property. In foreclosures of single family homes, the mortgage holder pays these costs or risks significant losses due to fire, vandalism, etc. Partial relief was made last term by allowing a six month priority lien for mortgages closed after January 2011. This bill would allow multiple six month priority liens and eliminate grandfathering. Opponents of the bill argue that mortgage lending would be impaired as such restrictions prevent resale of the mortgage to government agencies such as Fannie Mae and Freddy Mac. They further argue that enhanced enforcement of default provisions (priority loans) or existing mortgages is unconstitutional. While the committee is sympathetic to the condo association position, they feel the consequences required further study. **Vote 12-4.**

Original: House Clerk
Cc: Committee Bill File

HB 1261 Blurb

This bill attempts to close a loophole in foreclosures where condo associations are obligated to pay the carrying costs (insurance, maintenance, repairs, and heat) of vacant property. In foreclosures of single family homes, the mortgage holder pays these costs or risks significant losses due to fire, vandalism, etc. Partial relief was made last term by allowing a six month priority lien for mortgages closed after January 2011. This bill would allow multiple six month priority liens and eliminate grandfathering. Opponents of the bill argue that mortgage lending would be impaired as such restrictions prevent resale of the mortgage to government agencies such as Fannie Mae and Freddy Mac. They further argue that enhanced enforcement of default provisions (priority loans) or existing mortgages is unconstitutional. While the committee is sympathetic to the condo association position, they feel the consequences required further study.

INTERIM STUDY
COMMITTEE REPORT

COMMITTEE: JUDICIARY

BILL NUMBER: HB 1261

TITLE: Relative to recovery of delinquent condominium fees.

DATE: October 16, 2012

☐ RECOMMENDED FOR FUTURE LEGISLATION

X NOT RECOMMENDED FOR FUTURE LEGISLATION

STATEMENT OF INTENT: (May be handwritten)

HB 1261 would permit a condominium unit owners' association to file multiple liens for unpaid condominium fees and also remove a grandfathering provision for mortgages executed prior to January 1, 2011. The committee, reacting to the Committee to Study the Laws Relating to Condominium and Homeowners' Associations and to testimony from the prime sponsor of HB 1261, agrees that there is insufficient support from the condominium community for this bill and that we should let the relatively new current law play out and monitor its effect. The committee therefore recommends no further legislation at this time

COMMITTEE VOTE: **10-0** (Attach Committee Voting Sheet)

Rep. John W. Cebrowski

INTERIM STUDY
COMMITTEE REPORT

COMMITTEE: Jud.

BILL NUMBER: HB 1281

TITLE:

DATE: 10/16/12

☐ **RECOMMENDED FOR FUTURE LEGISLATION**

☒ **NOT RECOMMENDED FOR FUTURE LEGISLATION**

STATEMENT OF INTENT: (May be handwritten)

See attached

COMMITTEE VOTE: 10-0 (Attach Committee Voting Sheet)

Rep. John Czaplewski
For the Committee

Rev. 7/98

HB 1261 draft blurb

HB 1261 would permit a condominium unit owners' association to file multiple liens for unpaid condominium fees and also remove a grandfathering provision for mortgages executed prior to January 1, 2011.

The committee, reacting to the Committee to Study the Laws Relating to Condominium and Homeowners' Associations and to testimony from the prime sponsor of HB 1261, agrees that there is insufficient support from the condominium community for this bill and that we should let the relatively new current law play out and monitor its effect.

The committee therefore recommends no further legislation at this time.

