



COLORADO HOA SUPER LIENS

The Colorado “Super Lien” (limited priority lien) is created pursuant to the Colorado Common Interest Ownership Act (CCIOA). CCIOA was enacted with an effective date of July 1, 1992 (see, section 38-33.3-316(2)(b)(1) C.R.S). In a nutshell, this statutory Super Lien gives home owners associations (HOAs) priority over a first deed of trust (or commonly called a mortgage in other states) for an amount equal to the common expense assessments which would have come due during a six (6) month period before a foreclosure action is commenced by the HOA or a foreclosing lender. Before July 1, 1992 HOAs had no recourse on delinquent fees other than to redeem if a senior deed of trust foreclosed on the property.

“Assessments” may include fees, charges, late charges, attorney fees, fines and interest. Accordingly, the Super Lien may include amounts that are more than just the assessments alone (see, First Atlantic Mortgage, LLC vs. Sunstone North Homeowner’s Association, 2005 WL 427700 (Colo.App.)). The First Atlantic decision provided that the Super Lien is capped up to a total amount equal to six (6) months of “regular” assessments, plus attorney fees, interest and other allowable items. HOAs are not required to record a statement of lien in the public record for the unpaid assessments and other allowed charges.

CAUTIONARY ITEMS

HOAs are now routinely arguing that their Super Lien is due and owing even if no delinquency previously existed. Further, HOAs are also providing that even if a delinquency exists that is less than 6 months and/or less than the capped amount, the Super Lien remains payable after a foreclosure action is completed. If a foreclosure action is cancelled then restarted, some HOAs have argued that a new six (6) month time period applies to collect unpaid assessments and other allowed charges.

Once a foreclosure action has been completed (all redemption periods have expired), the successful bidder (usually the lender) is obligated to pay current assessments. When the property is resold, the new owner is responsible for payment of HOA assessments from that closing date on a go forward basis. If an HOA commences a foreclosure action, the HOA is only responsible for providing notice to any parties having a recorded interest in the property. So if the original lender no longer holds the deed of trust and no assignment of the deed of trust was recorded in the public record, the successor lender may not receive that notice and be unaware their security interest is at risk given the HOA foreclosure action.

Some suggest it may be prudent for a lender selling a REO property to escrow for HOA Super Lien amounts given there may be some uncertainty at closing for all allowable amounts on top of the regular assessments that are outstanding. REO property investors should include the Super Lien analysis in their due diligence efforts.

**No legal or tax advice is being communicated in this Primer; seek legal or tax advice from your attorney or accountant.

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