

HB1197_L.004

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Economic and Business Development.

HB11-1197 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. 38-33.3-316 (2) (b) and (8) and the introductory
4 portion to 38-33.3-316 (11), Colorado Revised Statutes, are amended, and
5 the said 38-33.3-316 is further amended BY THE ADDITION OF THE
6 FOLLOWING NEW SUBSECTIONS, to read:

7 **38-33.3-316. Lien for assessments - enforcement - procedural**
8 **requirements - specification of priorities - definition.**

9 (2) (b) (I) (A) Subject to paragraph (d) of this subsection (2), a lien under
10 this section is also prior to the security interests described in subparagraph
11 (II) of paragraph (a) of this subsection (2) to the extent of

12 (†) an amount equal to, BUT NOT EXCEEDING, the common expense
13 assessments based on a periodic budget adopted by the association under
14 section 38-33.3-315 (1) ~~which~~ THAT would have become due in the
15 absence of any acceleration, REGARDLESS OF WHETHER ASSESSMENTS ARE
16 DELINQUENT AT THE TIME OF RECORDING OF THE NOTICE OF ELECTION AND
17 DEMAND OR LIS PENDENS, during the ~~six~~ NINE months immediately
18 preceding institution by either the association or any party holding a lien
19 senior to any part of the association lien created under this section of an
20 action or a nonjudicial foreclosure either to enforce or to extinguish the
21 lien UNLESS REGULATIONS ADOPTED BY THE FEDERAL HOME LOAN
22 MORTGAGE CORPORATION OR THE FEDERAL NATIONAL MORTGAGE
23 ASSOCIATION REQUIRE A PERIOD OF PRIORITY FOR THE LIEN THAT IS
24 SHORTER THAN NINE MONTHS, IN WHICH CASE THE LIEN IS PRIOR TO ALL
25 SECURITY INTERESTS DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (a)
26 OF THIS SUBSECTION (2) DURING THAT SHORTER PERIOD OR SIX MONTHS,
27 WHICHEVER IS GREATER.

28 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (IV) OF
29 THIS PARAGRAPH (b), THE AMOUNT RECOVERABLE PURSUANT TO THIS
30 SUBPARAGRAPH (I) DOES NOT INCLUDE ANY ADDITIONAL FEES AND COSTS,
31 INCLUDING ATTORNEY FEES AND COSTS, OF THE ASSOCIATION, IN EXCESS
32 OF THE AMOUNT EQUAL TO THE ASSESSMENTS ACCRUING DURING THE
33 APPLICABLE PERIOD OF PRIORITY AS CALCULATED PURSUANT TO THIS
34 SUBPARAGRAPH (I). THIS SUB-SUBPARAGRAPH (B) DOES NOT AFFECT THE
35 ASSOCIATION'S ABILITY TO RECOVER COSTS AND ATTORNEY FEES
36 OTHERWISE RECOVERABLE UNDER SUBSECTION (7) OF THIS SECTION.

37 (II) (Deleted by amendment, L. 93, p. 653, § 21, effective April

1 30, 1993.)
2 (III) IF A LIENHOLDER HOLDING A LIEN SENIOR TO ANY PART OF
3 THE ASSOCIATION LIEN CREATED UNDER SUBPARAGRAPH (I) OF THIS
4 PARAGRAPH (b) INITIATES AN ACTION OR A NONJUDICIAL FORECLOSURE
5 EITHER TO ENFORCE OR EXTINGUISH ITS LIEN, THE LIENHOLDER OR ITS
6 ASSIGNEE MUST, WITHIN SIX MONTHS AFTER THE DATE OF THE RECORDING
7 OF THE NOTICE OF ELECTION AND DEMAND PURSUANT TO SECTION
8 38-38-102, OR OF THE NOTICE OF LIS PENDENS, AS THE CASE MAY BE, PAY
9 TO THE ASSOCIATION THE AMOUNT OF THE ASSOCIATION LIEN SPECIFIED IN
10 SUBPARAGRAPH (I) OF THIS PARAGRAPH (b).
11 (IV) IF A LIENHOLDER HOLDING A LIEN SENIOR TO ANY PART OF
12 THE ASSOCIATION LIEN CREATED UNDER SUBPARAGRAPH (I) OF THIS
13 PARAGRAPH (b) FAILS TO PAY THE AMOUNT DUE TO THE ASSOCIATION
14 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE ASSOCIATION IS
15 ENTITLED TO THE GREATER OF THE FOLLOWING; EXCEPT THAT THIS
16 SUBPARAGRAPH (IV) DOES NOT AFFECT THE ASSOCIATION'S ABILITY TO
17 RECOVER COSTS AND ATTORNEY FEES OTHERWISE RECOVERABLE UNDER
18 SUBSECTION (7) OF THIS SECTION:
19 (A) STATUTORY INTEREST ON THAT AMOUNT, CALCULATED FROM
20 THE DATE OF THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND
21 PURSUANT TO SECTION 38-38-102 OR OF THE NOTICE OF LIS PENDENS; OR
22 (B) INTEREST ON THAT AMOUNT, CALCULATED IN ACCORDANCE
23 WITH APPLICABLE PROVISIONS OF THE DECLARATION, BYLAWS, OR RULES
24 AND REGULATIONS OF THE ASSOCIATION.
25 (2.5) A LIEN FOR ASSESSMENTS IDENTIFIED IN SUBPARAGRAPH (I)
26 OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION IS DUE AND OWING
27 NOT MORE THAN ONCE IN THE APPLICABLE PERIOD OF PRIORITY,
28 COMMENCING ON THE DATE OF RECORDING OF THE NOTICE OF ELECTION
29 AND DEMAND PURSUANT TO SECTION 38-38-102 OR OF THE NOTICE OF LIS
30 PENDENS, AS THE CASE MAY BE, TO ENFORCE OR TO EXTINGUISH THE LIEN.
31 (7.5) THE COURT SHALL SEPARATELY IDENTIFY IN ITS JUDGMENT
32 OR DECREE THE PRIORITIES OF THE TWO PORTIONS OF THE LIEN OF THE
33 ASSOCIATION AND ITS ASSIGNEES, IF ANY, UNDER SUBSECTION (1) OF THIS
34 SECTION AND UNDER SUBPARAGRAPH (I) OF PARAGRAPH (b) OF
35 SUBSECTION (2) OF THIS SECTION AS SEPARATE PRIORITIES WITH ALL
36 RIGHTS TO CURE AND REDEEM AS PROVIDED UNDER ARTICLE 38 OF THIS
37 TITLE. A FORECLOSURE SALE INITIATED BY THE ASSOCIATION OR ITS
38 ASSIGNEE TO ENFORCE THE LIEN UNDER SUBPARAGRAPH (I) OF PARAGRAPH
39 (b) OF SUBSECTION (2) OF THIS SECTION MUST OCCUR SEPARATELY FROM
40 ANY OTHER FORECLOSURE SALE, INCLUDING A FORECLOSURE SALE
41 INITIATED BY THE ASSOCIATION OR ITS ASSIGNEE TO ENFORCE THE LIEN

1 UNDER SUBSECTION (1) OF THIS SECTION.
2 (8) The association, OR ITS ASSIGNEE FOR THE PORTION OF
3 THE LIEN IT HOLDS, shall furnish to a unit owner or such unit owner's
4 designee or to a holder of a security interest or its designee upon written
5 request, delivered personally or by certified mail, first-class postage
6 prepaid, WITH A return receipt DIRECTED to the association's registered
7 agent, a written statement setting forth IN DETAIL the ~~amount of~~ unpaid
8 assessments ~~currently levied~~ against ~~such~~ THE owner's unit. The
9 statement shall be furnished within fourteen calendar days after receipt of
10 the request. ~~and is binding on~~ THE STATEMENT BINDS the association, the
11 executive board, ~~and~~ every unit owner, AND THE ASSIGNEE OF THE
12 ASSOCIATION TO THE EXTENT OF THE ASSESSMENTS ASSIGNED. If no
13 statement is furnished to the unit owner or holder of a security interest or
14 his or her designee, delivered personally or by certified mail, first-class
15 postage prepaid, return receipt requested, to the inquiring party, then the
16 association ~~shall have~~ HAS no right to assert a lien upon the unit for
17 unpaid assessments ~~which~~ THAT were due as of the date of the request.
18

19 (11) PRIOR TO, OR CONTEMPORANEOUSLY WITH, COMMENCEMENT
20 OF A FORECLOSURE OF THE ASSOCIATION'S LIEN UNDER SUBPARAGRAPH (I)
21 OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, THE ASSOCIATION
22 SHALL SEND A WRITTEN NOTICE OF LIEN TO THE OWNER OF RECORD AND
23 THE FIRST SECURITY INTEREST OF RECORD FOR PAYMENT OF THE LIEN. THE
24 ASSOCIATION SHALL SEND THE WRITTEN NOTICE BY CERTIFIED MAIL,
25 POSTAGE PREPAID, WITH A RETURN RECEIPT DIRECTED TO THE ADDRESS OF
26 RECORD FOR THE OWNER OF RECORD AND FOR THE FIRST SECURITY
27 INTEREST RECORDED WITH THE CLERK AND RECORDER FOR THE COUNTY
28 IN WHICH THE PROPERTY IS LOCATED. IF PAYMENT OF THE LIEN IS NOT
29 RECEIVED BY THE ASSOCIATION FOR THAT PORTION OF THE LIEN
30 DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2)
31 OF THIS SECTION FROM THE OWNER OF RECORD OR THE FIRST SECURITY
32 INTEREST WITHIN THIRTY DAYS AFTER MAILING OF THE WRITTEN NOTICE,
33 the association's lien UNDER SUBPARAGRAPH (I) OF PARAGRAPH (b) OF
34 SUBSECTION (2) OF THIS SECTION may be foreclosed by any of the
35 following means:

36 (12) A FORECLOSURE COMMENCED PURSUANT TO SUBSECTION (11)
37 OF THIS SECTION TO ENFORCE ANY PORTION OF THE LIEN UNDER
38 SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION
39 MAY BE COMMENCED ONLY BY THE ASSOCIATION OR AN ENTITY PROVIDING
40 FINANCING TO THE ASSOCIATION, THE TERMS OF WHICH INCLUDE A
41 GENERAL ASSIGNMENT OF ALL OR ANY ASSESSMENTS TO SECURE THE

1 FINANCING. IF A FORECLOSURE COMMENCED PURSUANT TO SUBSECTION
2 (11) OF THIS SECTION IS COMMENCED BY THE LATTER ENTITY, AN
3 ASSIGNMENT OF ASSESSMENTS MUST HAVE BEEN RECORDED PRIOR TO THE
4 COMMENCEMENT OF THE FORECLOSURE ACTION AND THE RECORDING OF
5 THE LIS PENDENS WITH RESPECT TO SUCH FORECLOSURE.

6 (13) A FORECLOSURE COMMENCED PURSUANT TO SUBSECTION (11)
7 OF THIS SECTION INCLUDES THE RIGHT OF REDEMPTION FOR THE HOLDER
8 OF A FIRST SECURITY INTEREST OR ASSIGNEE THEREOF UNDER
9 SUBPARAGRAPH (II) OF PARAGRAPH (a) OF SUBSECTION (2) OF THIS
10 SECTION TO REDEEM THE PORTION OF THE ASSOCIATION LIEN SPECIFIED IN
11 SUBPARAGRAPH (I) OF PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION
12 WITHIN NINETY CALENDAR DAYS AFTER THE SALE.

13 (14) AS USED IN THIS SECTION, "FIRST SECURITY INTEREST" MEANS
14 A SECURITY INTEREST DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH
15 (a) OF SUBSECTION (2) OF THIS SECTION.

16 **SECTION 2. Act subject to petition - effective date -**

17 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
18 following the expiration of the ninety-day period after final adjournment
19 of the general assembly (August 10, 2011, if adjournment sine die is on
20 May 11, 2011); except that, if a referendum petition is filed pursuant to
21 section 1 (3) of article V of the state constitution against this act or an
22 item, section, or part of this act within such period, then the act, item,
23 section, or part shall not take effect unless approved by the people at the
24 general election to be held in November 2012 and shall take effect on the
25 date of the official declaration of the vote thereon by the governor.

26 (2) The provisions of this act shall apply to foreclosure actions in
27 which the notice of election and demand or lis pendens is recorded on or
28 after the applicable effective date of this act."

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