Senate Bill 122
A Gamble HOAs Can't Afford Colorado to Take
Prepared by Community Associations Institute

● Like the State of Colorado, homeowner associations ("HOAs") have been experiencing tough economic times. HOAs have one primary source of income – the assessments (also known as "dues") that homeowners are required to pay. This income is utilized by associations for the maintenance and upkeep of common areas and to provide necessary services to homeowners.

● As the foreclosure crisis in Colorado continues, HOAs continue to experience a reduction in assessment income. In HOAs where public trustee foreclosures are common, the reduction in assessment income is crippling. Here's why:

- ▬ Homeowners know well before a lender begins the public trustee foreclosure process that they are going to lose their homes to foreclosure. When this becomes apparent, they stop paying their association assessments. As a result, before the foreclosure process even begins – associations are already losing assessment income.
- ▬ Once a lender begins the foreclosure process; they have 110 to 125 days to set the foreclosure sale. Once the initial sale date arrives, lenders are permitted to continue the sale date for up to 1 year. In some cases, this whole timeframe is extended for an additional 90 days to comply with Colorado's Foreclosure Deferment Program. During this entire period of time, which can be as long as 18 months, homeowners are not paying their assessments.
- ▬ In some cases, after continuing the sale for a year, lenders withdraw the public trustee foreclosure action and commence another one – starting this lengthy process for a second time. During this time, homeowners are not paying their assessments.
- ▬ When homeowner's don't pay their assessments, all other homeowners in the community end up paying additional amounts to cover the HOA's expenses.

● HOAs have a statutory lien that automatically goes into effect when a homeowner becomes delinquent. Part of that lien, known as the "superlien," gives associations priority over the first mortgage for what would roughly equal 6 months of past due assessments. The remaining amount of the delinquency is junior to the first mortgage and is known as a "junior lien."

● Associations currently have the ability to assign their junior lien rights to investors who then exercise the association's right of redemption. When the association assigns the junior lien rights to an investor, the association is paid the full value of the delinquency. In short, an association is able to recover all of those months of delinquent assessments the homeowner did not pay before and during the foreclosure process.

● SB 122 permits the highest bidder at a public trustee foreclosure sale to elect (but is not required) to pay off junior lienors which would extinguish their right to redeem the property. Since the highest bidder will always pay off investors who purchase association redemption rights, investors will no longer seek assignment of an association's lien. As a result, associations will only receive payment of the superlien and will be required to recover the lost assessment income in other ways.

● If SB 122 is signed into law – paying homeowners will end up covering this lost income through assessment increases or even special assessments.

For questions relating to SB 122, please call Amy Redfern at 720-837-5435.