

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0710.01 Duane Gall

HOUSE BILL 11-1197

HOUSE SPONSORSHIP

Gardner D.,

SENATE SPONSORSHIP

(None),

House Committees
Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE PRIORITY OF LIENS IN FORECLOSURE PROCEEDINGS,
102 AND, IN CONNECTION THEREWITH, AMENDING PROVISIONS
103 GOVERNING ENFORCEMENT OF THE LIEN GRANTED TO A UNIT
104 OWNERS' ASSOCIATION UNDER THE "COLORADO COMMON
105 INTEREST OWNERSHIP ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Existing law gives a unit owners' association (a/k/a homeowners'

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

association or HOA) a lien for past-due assessments and other charges, of which the most recent 6 months' worth of assessments are granted a superpriority over all other liens, including the mortgage on the unit. The bill amends and clarifies the rights of the HOA in foreclosure proceedings as they pertain to this superpriority portion by:

- ! Bifurcating the superpriority portion from the remainder of the lien and prohibiting the HOA from foreclosing on both portions as though they were one lien with a single priority;
- ! Requiring a senior lienholder who forecloses its lien to pay the HOA the amount the HOA is due under the superpriority provision;
- ! Prohibiting the HOA from adding attorney fees or other fees and costs to the amount it may enforce under the superpriority provision, but allowing it to collect interest on the base amount if a senior lienholder fails to pay the HOA within 6 months after foreclosing; and
- ! Requiring the HOA to provide a ledger accounting for the past-due assessments upon request even if it has assigned its interests to another party.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 38-33.3-316 (2) (b), (2) (c), (8), and (11), Colorado
3 Revised Statutes, are amended to read:

4 **38-33.3-316. Lien for assessments.** (2) (b) Subject to paragraph
5 (d) of this subsection (2), a lien under this section is also prior to the
6 security interests described in subparagraph (II) of paragraph (a) of this
7 subsection (2) to the extent of:

8 (I) An amount equal to, BUT NOT EXCEEDING, the common
9 expense assessments based on a periodic budget adopted by the
10 association under section 38-33.3-315 (1) which would have become due,
11 in the absence of any acceleration, during the six months immediately
12 preceding institution by either the association or any party holding a lien
13 senior to any part of the association lien created under this section of an
14 action or a nonjudicial foreclosure either to enforce or to extinguish the

1 lien. EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (IV) OF THIS
2 PARAGRAPH (b), THE AMOUNT RECOVERABLE PURSUANT TO THIS
3 PARAGRAPH (b) DOES NOT INCLUDE ANY ADDITIONAL FEES AND COSTS,
4 INCLUDING ATTORNEY FEES AND COSTS, OF THE ASSOCIATION.

5 (II) (Deleted by amendment, L. 93, p. 653, § 21, effective April
6 30, 1993.)

7 (III) IF A LIENHOLDER HOLDING A LIEN SENIOR TO ANY PART OF
8 THE ASSOCIATION LIEN CREATED UNDER SUBSECTION (1) OF THIS SECTION
9 INITIATES AN ACTION OR A NONJUDICIAL FORECLOSURE EITHER TO
10 ENFORCE OR EXTINGUISH ITS LIEN, THE PARTY MUST, WITHIN SIX MONTHS
11 AFTER THE DATE OF THE RECORDING OF THE NOTICE OF ELECTION AND
12 DEMAND PURSUANT TO SECTION 38-38-102, OR OF THE NOTICE OF LIS
13 PENDENS, AS THE CASE MAY BE, PAY TO THE ASSOCIATION THE AMOUNT OF
14 THE ASSOCIATION LIEN SPECIFIED IN SUBPARAGRAPH (I) OF THIS
15 PARAGRAPH (b).

16 (IV) IF A PARTY FAILS TO PAY THE AMOUNT DUE TO THE
17 ASSOCIATION WITHIN THE PERIOD SET FORTH IN SUBPARAGRAPH (III) OF
18 THIS PARAGRAPH (b), THE ASSOCIATION IS ENTITLED TO THE GREATER OF
19 THE FOLLOWING:

20 (A) STATUTORY INTEREST ON THAT AMOUNT, CALCULATED FROM
21 THE DATE OF THE RECORDING OF THE NOTICE OF ELECTION AND DEMAND
22 PURSUANT TO SECTION 38-38-102 OR OF THE NOTICE OF LIS PENDENS; OR

23 (B) INTEREST ON THAT AMOUNT, CALCULATED IN ACCORDANCE
24 WITH APPLICABLE PROVISIONS OF THE DECLARATION, BYLAWS, OR RULES
25 AND REGULATIONS OF THE ASSOCIATION.

26 (V) UPON A LIENHOLDER'S COMPLIANCE WITH SUBPARAGRAPH (III)
27 OF THIS PARAGRAPH (b), THE PORTION OF THE ASSOCIATION LIEN

1 DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IS SATISFIED IN
2 FULL:

3 (A) WITH RESPECT TO ALL PARTIES, INCLUDING THE UNIT OWNER;
4 AND

5 (B) FOR PURPOSES OF ANY SUBSEQUENT FORECLOSURE
6 PROCEEDING COMMENCED BY THE ASSOCIATION OR SENIOR LIENHOLDER.

7 (c) (I) This subsection (2) does not affect the priority of
8 mechanics' or materialmen's liens or the priority of liens for other
9 assessments made by the association. IN ADDITION, ANY OTHER LIENS FOR
10 OTHER ASSESSMENTS, FEES, CHARGES, LATE CHARGES, ATTORNEY FEES,
11 FINES, AND INTEREST MADE BY THE ASSOCIATION ARE SEPARATE FROM THE
12 LIEN DESCRIBED IN SUBPARAGRAPH (I) OF PARAGRAPH (b) OF THIS
13 SUBSECTION (2) AND ARE NOT LIENS PRIOR TO THE SECURITY INTERESTS
14 DESCRIBED IN SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS
15 SUBSECTION (2). A lien under this section is not subject to ~~the provisions~~
16 ~~of part 2 of article 41 of this title or to the provisions of section~~
17 15-11-201, C.R.S.

18 (II) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
19 ASSOCIATION SHALL NOT FORECLOSE TWO OR MORE PORTIONS OF ITS LIEN
20 UNDER THIS SECTION THAT HAVE DIFFERENT PRIORITIES AS PART OF THE
21 SAME LIEN.

22 (8) The association shall furnish to a unit owner or ~~such~~ THE unit
23 owner's designee, or to a holder of a security interest or its designee, upon
24 written request, delivered personally or by certified mail, first-class
25 postage prepaid, WITH A return receipt DIRECTED to the association's
26 registered agent, a written statement setting forth the amount of unpaid
27 assessments currently levied against ~~such~~ THE owner's unit AND A LEDGER

1 REFLECTING THE UNPAID ASSESSMENTS, REGARDLESS OF WHETHER THE
2 ASSOCIATION HAS ASSIGNED ITS INTERESTS TO ANOTHER PARTY. The
3 ASSOCIATION SHALL FURNISH THE statement ~~shall be furnished~~ within
4 fourteen calendar days after receipt of the request. ~~and is binding on~~ THE
5 STATEMENT BINDS the association, the executive board, and every unit
6 owner. If no statement is furnished to the unit owner or holder of a
7 security interest or his or her designee, delivered personally or by certified
8 mail, first-class postage prepaid, return receipt requested, to the inquiring
9 party, then the association ~~shall have~~ HAS no right to assert a lien upon the
10 unit for unpaid assessments ~~which~~ THAT were due as of the date of the
11 request.

12 (11) The association's lien may be foreclosed by any of the
13 following means; EXCEPT THAT A FORECLOSURE BY THE ASSOCIATION
14 DOES NOT EXTINGUISH ANY RIGHT, TITLE, OR INTEREST OF A SENIOR
15 LIENHOLDER IN THE PROPERTY:

16 (a) In a condominium or planned community, the association's lien
17 may be foreclosed in like manner as a mortgage on real estate.

18 (b) In a cooperative whose unit owners' interests in the units are
19 real estate as determined in accordance with ~~the provisions of~~ section
20 38-33.3-105, the association's lien must be foreclosed in like manner as
21 a mortgage on real estate.

22 (c) In a cooperative whose unit owners' interests in the units are
23 personal property, as determined in accordance with ~~the provisions of~~
24 section 38-33.3-105, the association's lien must be foreclosed as a security
25 interest under the "Uniform Commercial Code", title 4, C.R.S.

26 **SECTION 2. Act subject to petition - effective date -**
27 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day

1 following the expiration of the ninety-day period after final adjournment
2 of the general assembly (August 10, 2011, if adjournment sine die is on
3 May 11, 2011); except that, if a referendum petition is filed pursuant to
4 section 1 (3) of article V of the state constitution against this act or an
5 item, section, or part of this act within such period, then the act, item,
6 section, or part shall not take effect unless approved by the people at the
7 general election to be held in November 2012 and shall take effect on the
8 date of the official declaration of the vote thereon by the governor.

9 (2) The provisions of this act shall apply to foreclosure actions in
10 which the notice of election and demand is filed on or after the applicable
11 effective date of this act.