

SB 306: Recent Changes to Homeowners' Association Foreclosures

By Lindsay Demaree, Esq.

This legislative session, the Nevada Legislature passed Senate Bill 306. See https://www.leg.state.nv.us/Session/78th2015/Bills/SB/SB306_EN.pdf. This bill amends NRS 116.3116 *et seq.* (the "Statute"), which authorizes homeowners' associations to foreclose on property to recoup unpaid assessments. None of SB 306's amendments alters the Nevada Supreme Court's holding that the Statute affords association liens "superpriority" status. See *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014). Instead, the legislature opted to add comprehensive protections for junior lienholders and to clarify several foreclosure requirements.

Right to Cure and Right to Redeem

Perhaps the most significant addition is SB 306's right to cure and right to redeem for junior lienholders. See SB 306, sec. 6. Under the amendment, a junior lienholder can cure an association's lien before a foreclosure sale by paying the amount of the association's lien that has priority over the junior lien. The junior lienholder may cure up to five days before the date of the association's foreclosure sale and treat the cure amount as a debt due from the delinquent homeowner. While the association still

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may proceed with a foreclosure sale for any remaining portions of its lien, the sale will not extinguish the curing party's lien.

If a junior lienholder does not cure, it may redeem the property for up to 60 days after an association foreclosure sale. Unlike curing, which merely keeps a junior lien intact, redemption gives the junior lienholder title to the property. To redeem, the junior lienholder must pay the foreclosure sale purchaser the purchase price and other costs related to the property. The redeeming lienholder must also pay off any liens that have priority over the redeeming party's lien (other than the association's foreclosed lien). After making these required payments, the redeeming party must serve the purchaser and association with a notice of redemption, certified copies of documents showing the redeeming party's interest in the property, and an affidavit stating the amount due on the

redeeming party's lien. The association must then deliver to the redeeming lienholder a deed without warranty that conveys all of the unit owner's title.

Amendments to Notice Requirements

SB 306 also amends the Statute's notice requirements. See SB 306, sec. 2. An association's notice of default and election to sell now must explain how the association calculated its superpriority lien, delineating the superpriority amounts attributable to delinquent assessments, costs to abate a public nuisance or maintain a home's exterior, and costs to enforce the association's lien. The legislature did not extend

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this change to an association’s notice of sale, however. The notice of sale must provide only “the amount necessary to satisfy the lien,” without differentiating between priority and non-priority lien amounts.

In addition, SB 306 requires a foreclosing association to mail a copy of the notice of default and election to sell, and a copy of the notice of sale, to each holder of a record security interest encumbering the property on which the association will foreclose. Before a foreclosure sale, the association (or its agent) must then record an affidavit identifying the secured parties and addresses to which the notices were mailed. To ensure notice is sent to a secured party’s correct address, the amendment requires certain financial institutions to provide the Nevada Division of Financial Institutions with a contact address, which an association must use.

Other Clarifications

Other notable changes include the following:

- The association can include costs of enforcing its lien as part of its superpriority lien, but SB 306 caps these costs at specific amounts.
- The three year statute of limitations and the nine month time frame for superpriority delinquent assess-

ments are now determined by reference to the date on which the association records its notice of default and election to sell. This change eliminates vague references to the date that the association “institute[s] an action” or “proceedings to enforce” its lien.

- An association or its agent is not required to be licensed as a debt collection agency to collect delinquent assessments.

See SB 306, sec. 1.

Prospective Application

SB 306’s revisions to the Statute apply to association foreclosures after October 1, 2015. See SB 306 sec. 9. While this legislation may not resolve the scores of association lien cases currently pending in Nevada courts, its clarifications and protections for lienholders should nevertheless curb future litigation. **■**

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