

SB 10-93 Orderly Resolution of Claims in Foreclosures Involving Junior Liens

By Senator Lundberg

**Community Associations Institute (CAI: An Association of HOAs)
Urges you to OPPOSE SB 93**

The Bill

As amended, the bill permits a certificate of purchase (COP) holder to pay a junior lienor the secured debt without the ability of the junior lienor to refuse payment and without adequate procedural safeguards to protect the interests of homeowner associations and other junior lienors under Colorado law.

The Concerns

- Doesn't attempt to balance interest of stakeholders.
- Provides no clarity in the process and no protections for junior lienors.
- The amended bill creates the following unanswered questions:
 1. When can payments be tendered to junior lienor?
 - After junior lienor has started the redemption process?
 - After junior lienor has already redeemed?
 - Do board members of not for profit HOAs have to be available at work to accept tender?
 - Do they have to accept payments at their homes at night?
 - Do they have to sit home waiting for a COP holder to tender payment?
 - Do agents of HOAs have to accept payment outside of normal business hours?
 2. How can the payments be made?
 - What if the agent for the junior lienor is not permitted to accept cash?
 - Are junior lienors required to accept personal checks?
 - What if the check is NSF?
 - What if a hold is put on the check past the redemption timeframe?
 3. How will the payment amount be determined?
 - HOAs have a statutory lien and are not required by statute to record a paper lien.
 - For recorded liens - you can't rely upon the amount stated in the lien because it's a continuing lien.
 - Do junior lienors have to accept tender of an insufficient amount?
 - What happens if they don't accept tender?

4. How will junior liens be released?
 - Who is responsible for releasing the liens?
 - What is the timeframe for releasing the liens?

5. How do the provisions in the amendment affect other inconsistent procedures and timeframes in the public trustee foreclosure statute?
 - Do they trump the other provisions?
 - How will the public trustees procedurally handle payments by COP holders?
 - Are the public trustees prepared to answer questions, and field complaints, about the inconsistencies in the statute and the requirements for COP holder payments to junior lienors?
 - Who else will clarify these inconsistencies after legislation is enacted?

Conclusion

The amended version of the bill provides *no protections for junior lienors* who have also suffered monetary loss.

The statutory inconsistencies created by this bill will result in *confusion* among COP holders, junior lienors and public trustees. The lack of clear timeframes could create *title disputes*. COP holders and junior lienors will rely on public trustees to answer questions and fill-in timeframes that the statute does not make clear.

The amended bill *permits bullying* of junior lienors by COP holders in the form of inadequate payments, payments outside of business hours, payments that are not certified, and in other ways that introduce uncertainty into the process without any guarantees that junior lienors will net anything from the sales.

The *uncertainty* of all of these issues *will lead to litigation* which will be extremely costly for community associations. Associations are struggling financially right now and don't have the money to litigate these matters. Even if associations do not participate in the foreclosure, they may get caught in the middle of a title dispute between a COP holder and junior lienor and will not know which party to pursue for assessments or covenant violations.

PLEASE VOTE NO ON SB 10-93

For more information please contact:
Amy Redfern with Aponte & Busam at 720.837.5435