



State of Nevada Department of Business & Industry

Bruce Breslow, Director

901 S. Stewart Street, Suite 1003

Carson City, Nevada 89701

Phone (775) 684-2996 | Fax (702) 684-2998

business.nv.gov

Contact: Teri Williams, Public Information Officer

Phone: (702) 486-2756 ; E-mail: twilliams@business.nv.gov

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Real Estate Division Issues Super Priority Lien Advisory Opinion

Las Vegas, NV- The Nevada Real Estate Division today released an Advisory Opinion interpreting the law that defines the super priority lien homeowner associations have for delinquent assessments. The opinion provides homeowner associations a better understanding of the law in order to act in the best interest of their members.

Nevada law makes special provision for the recovery of past due assessments by associations through the establishment of a "super priority lien." By providing this priority lien status, the law provides for extraordinary protection of the HOA's interest in the collection of up to nine months of unpaid assessments.

The opinion clarifies what constitutes a super priority lien and what is not part of the super priority lien. The Division's Advisory Opinion finds that an association's super priority lien is limited to not more than nine months of assessments as reflected in the budget plus any abatement charges incurred. The law does not specify that "costs of collecting" (as defined by NRS 116.310313) are a lien against a unit and, therefore, such costs cannot be included in the super priority lien.

Central to the controversy relating to HOA recovery of delinquent assessments is the practice of turning over debts to collection agencies and including those costs in the lien placed against the property. Since costs of collecting cannot be liened against a unit, inclusion of these costs in the lien is improper. Fees and costs incurred by the association in foreclosing the association's lien are a personal liability of the homeowner. If the homeowner does not reimburse the association for these expenses, the association can only recover such costs if there are proceeds from the association's foreclosure sale.

“Homeowner associations should be concerned about recovering delinquent assessments in order to properly fund and maintain their communities. After evaluating each situation, a determination should be made concerning the best course of action. It may not be in the associations’ best interest to routinely turn over unpaid assessment accounts to a collection agency since the association may ultimately be responsible for the costs of collecting. The association should be using its option to enforce its super priority lien status to receive payment from the lender,” said Gail Anderson, Real Estate Division Administrator. *“The timing of lien enforcement is another important factor that the association must take into consideration. The Division recommends the initiation of foreclosure of an assessment lien after no less than nine months, so as not to limit the super priority lien amount the association can recover.”*

In instances where the lender initiates a foreclosure, the association should also initiate the foreclosure process in order to preserve the super priority lien and seek payment of the super priority lien amount from the lender. If the lender does not foreclose and instead works with the homeowner to modify the mortgage or agrees to a short sale, the association has minimized their costs attempting to collect the debt and increases the probability of recovering the full amount of the delinquent assessments.

“We have seen many instances where collection fees, accrued by homeowners’ associations in an attempt to collect delinquent assessments, have derailed the short sale process by the placement of improper liens on a property that include costs of collecting. In addition, the costs of collecting incurred by the association have also contributed to the failure of loan modifications because the homeowner is financially unable to reimburse the association those costs. Those added costs are just one more obstacle that a delinquent homeowner must overcome. The goal, of course, is to have a home occupied and regular assessment payments made on that property,” stated Anderson.

The Ombudsman’s Office, a division of the Nevada Real Estate Division, assists Nevada association residents and board members better understand their rights and responsibilities under the law and governing documents. Information contained in the Advisory Opinion will be included in the content of future classes, which are available to board members and owners free of charge. To find an upcoming class, please visit www.red.state.nv.us and click on “Classes and Presentations.”

The full text of the Advisory Opinion can be found on the Real Estate Division’s website.

About the Real Estate Division

The Real Estate Division is an agency of the State Department of Business & Industry. The mission of the Real Estate Division is to safeguard and promote interests in real estate transactions by developing an informed public and a professional real estate industry. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels Ombudsman's Office was created to assist homeowners and board members in common interest communities to better understand their rights and obligations under the law and their governing documents. For more information about the Division or the Ombudsman's Office, please visit <http://www.red.state.nv.us/>.

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