

## **El Paso County Public Trustee policy on redeeming HOA liens**

A Homeowners' Association (HOA), or its assignee, has the right to redeem in the most-senior junior position to the first Deed of Trust if **all of the following** are true:

A) The first Deed of Trust (DoT) is the one in foreclosure, and it was recorded after the Declaration of Covenants for the HOA.

B) Either the DoT or the Declaration of Covenants was recorded after 6/30/1992.

C) There is a positive balance remaining after doing the following:

i) Take the amount of unpaid assessments, fines, and (unless the declaration provides otherwise), charges, late charges, attorney fees, and interest, due through the end of the first redemption period.

ii) Subtract an amount equal to the common expense assessments due (paid or unpaid) absent acceleration in the six months immediately prior to the recording of the NED.

In order to meet the requirement of C.R.S. 38-38-302(1.f) with respect to "setting forth the amount required to redeem," the El Paso County Public Trustee requires **all of the following** to be submitted with any intent to redeem on an HOA assessment:

1) Evidence of lien:

a) If a lien has NOT been separately recorded, the original or a certified copy of the entire recorded Declaration of Covenants (a qualified holder may provide an ordinary copy)

b) If a lien has been separately recorded, the original or a certified copy of the recorded lien (a qualified holder may provide an ordinary copy), along with an ordinary copy of the entire recorded Declaration of Covenants

2) A notarized affidavit signed by an officer of the HOA that does the following:

a) Links the recorded Declaration of Covenants to the property described in the Deed of Trust in foreclosure.

b) Provides the amount of unpaid assessments, fines, and (unless the declaration provides otherwise), charges, late charges, attorney fees, and interest, due through the end of the first redemption period,

c) Sets forth the amount of common expense assessments due (paid or unpaid) absent acceleration in the six months immediately prior to the recording of the NED, and

d) Optionally, subtracts "c" from "b" to produce the junior portion of the lien.

3) A recorded assignment of lien, if applicable.

Once we have those documents, and have verified that there is a positive balance remaining after subtracting the value of the super-priority lien, we can accept the Intent to Redeem, with a lien amount equal to the balance in C above. None of these documents need to be recorded other than the original Declaration of Covenants, and any assignment – the lien is statutory. The HOA lien is always in first position behind the first Deed of Trust, and is senior to any other Deeds of Trust.

### **Note regarding Overbid and Redemption proceeds**

C.R.S. 38-38-306(2) applies to mechanic's lien claimants and persons claiming the right to a statutory lien (such as an HOA lien). The holder of an HOA statutory lien may redeem the Certificate of Purchase holder and receive a Certificate of Redemption (and, if not subsequently redeemed, a Confirmation Deed). The amount claimed under the statutory lien would be included in the Certificate of Lienor, stating the amount that must be paid in a subsequent redemption. If a subsequent redemption occurs, however, the portion of that payment that is based on the statutory lien will be held in escrow until a final judgment is entered on the claim and all periods for appeal have expired. Since there is no time limit on this process for the statutory lien (unlike a mechanic's lien), one year after the expiration of all redemption periods this office will interplead the claimed amount to the Clerk of the Court.

It is our policy to apply the logic of 38-38-306(2) to the payment of overbid funds in 38-38-111(2). Overbid funds claimed by the holder of a statutory lien, or by a mechanic's lien claimant, will be held in escrow until a final judgment is entered on the claim and all periods for appeal have expired. Since there is no time limit on this process for the statutory lien (unlike a mechanic's lien), one year after the expiration of all redemption periods this office will interplead the claimed amount to the Clerk of the Court.