

The Increasing Threat to Lender Priority Rights by HOA Foreclosure Sales in Nevada

**By: Robin P. Wright, Esq. and Dana J. Nitz, Esq., Wright, Finlay & Zak, LLP
March 15, 2013**

In the last few months in Nevada there has been a wave of quiet title and declaratory relief actions by third party buyers who acquired their interest at Home Owner Association (HOA) lien foreclosure sales. They claim the lender's first deed of trust is trumped by the statutory HOA nine-month super-priority lien through which they claim their interest. While Nevada case law and statute still weigh in favor of the lenders' priority the third party buyers' hopes have been buoyed partially by a Washington State case where the bank lost its first position lien to an HOA judicial foreclosure sale and a recent Nevada Attorney General Opinion which suggests the lender may lose its secured interest if it does not pay the HOA lien. Without any Nevada Supreme Court case or statute on point, third party buyers are relying on these secondary authorities for some legal basis to strip a first mortgage of their lien, or at least try to exact inordinately large settlements. This challenge must be met with diligence and might to discourage further actions and to prevent a few errant district court judges' decisions to snowball into the de facto rule.

Prior state of the law regarding HOA liens.

The established law in Nevada is that an HOA enjoys a super-priority lien up to 9 months for prior HOA dues once the bank forecloses on real property, but the first lienholder retains a superior right to the property. NRS 116.3116(2)(b) states:

2. A lien under this sections prior to all other liens and encumbrances on a unit except: ... (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent.

In addition to this statute, almost all Conditions, Covenants and Restrictions ("CC&Rs") contain mortgagee protection clauses that gives the first lien holder superiority over any HOA lien or interest.

The Washington Case Summerhill Association v. Roughly

A Washington Appellate Court case has given some support to third party buyers' position. In Summerhill Vill. Homeowners Ass'n v. Roughly, 289 P.3d 645, 649. (Wash. Ct. App. 2012), the court found that because a lender did not respond to a judicial HOA lien foreclosure, they lost their interest in the property. Third party buyers argue this case supports an HOA lien foreclosure right to invalidate the first deed of trust through a non-judicial foreclosure sale. This case is not binding on Nevada, and even if it were, this dealt specifically with a judicial HOA.

The content of this website and the articles herein are for general informational purposes only and any unauthorized use is strictly prohibited.