

# Right of Redemption on HOA Sales – A Solution or Just Another Problem for Servicers in Nevada?

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Between 2010 and 2014, Loan Servicers and Investors in Nevada had thousands of liens potentially wiped out by HOA foreclosures. The reason – poorly written statutory language that, unbeknownst to just about everyone, including HOAs, loan originators and title companies, created a super-lien for HOA dues that could wipe out an otherwise 1<sup>st</sup> position Deed of Trust at foreclosure. In response to what could be billions of dollars in losses and the ensuing tidal wave of litigation over the HOA sales, the Nevada Legislature passed SB 306, which became effective on October 1, 2015. SB 306 did not provide any relief to Investors and Servicers who may have already lost their liens, but it did provide some prospective relief by requiring notice to the lienholders before extinguishing their deeds of trusts, limiting HOA collection costs, and otherwise providing more structure to the HOA lien and foreclosure process. The crown jewel of SB 306 is the right of redemption in the event an HOA foreclosure sale slips through the cracks. On its surface, the right of redemption is a well-needed safety valve for lenders AND homeowners; however, its application may be challenging.

SB 306, codified as Nevada Revised Statute (NRS) 116.31166(3)-(6), provides that the homeowner or any lienholder can redeem the property within 60 calendar days following an HOA foreclosure sale by paying the following:

- To the HOA property purchaser (“Purchaser”), the purchase price plus 1% interest per month;
- Any “assessments (e.g., HOA dues), taxes or payments toward liens” paid by the Purchaser at, or after, the HOA sale;
- If the Purchaser was a lienholder, whose lien was superior to that of the redeeming party, then the amount of that lien with interest;
- Any “*reasonable* amount expended by the [P]urchaser which is *reasonably* necessary to maintain and repair the unit ...”; and
- If the redeemer is a junior lienholder, any lien that is senior to its lien (i.e., if a 2<sup>nd</sup> lienholder redeems the property, it must pay off the 1<sup>st</sup> lien).

Along with payment, the redeeming party must “serve” a Notice of Redemption on the Purchaser and the party conducting the sale, i.e., the HOA foreclosure trustee or collection agency. If a lienholder is the one redeeming, the Notice of Redemption must provide the original or certified copy of the Deed of Trust, a copy of any Assignment establishing the redeemer’s interest in the Deed of Trust along with a supporting affidavit, and a payoff statement with a supporting affidavit showing the amount “then actually due” on the redeemer’s lien. After redeeming the property, the foreclosing agent must convey title to the redeeming party in the form of a deed, and must also deliver a copy of the deed to the Office of the Ombudsman for Common-Interest Communities within thirty days after the deed is delivered to the redeeming lien holder or its agent.

Once the first lienholder redeems, it takes title to the property free and clear of any liens and free of the **homeowner's** interest. The redeeming lienholder no longer holds a Deed of Trust and no longer has a loan. Therefore, the lienholder no longer has to foreclose in order to obtain title to the property, as it will already have title via the redemption. The lienholder can go straight to eviction of the homeowner. The homeowner may not understand this harsh result, especially if the homeowner was working with the lender on getting a loan modification or worse, current on the lender's mortgage loan (which oddly enough, happens). Litigation can result.

If, on the other hand, the homeowner is the redeeming party, the homeowner would take title back to his/her property subject to all liens previously on record title (unless the Purchaser was also a lien holder; then the homeowner would have to pay off that lienholder at redemption). So, if the lender or loan Servicer misses the HOA sale and misses the right of redemption period, there is still a chance that the homeowner will timely redeem the property, which would save the lender's Deed of Trust.

Not only will the Servicer pay more in the way of HOA dues and collection costs with redemption than paying just nine months of super-priority dues before the foreclosure (putting aside the cost savings of bypassing the foreclosure process!), the redemption process requires several hoops to jump through making the process cumbersome and risky. First, the redemption must be completed within 60 calendar days from the HOA sale. This seems like a lot of time, but if the Loan Servicer missed the HOA sale due to a notice defect or a deficiency in its internal process, it may not even learn about the HOA sale in time to exercise its right of redemption. Even with the full 60 days to redeem, challenges abound. The lien holder must draft and send notices, locate all assignments, obtain a certified copy of its Deed of Trust from a title company, obtain payoff numbers of its loan, request/obtain redemption numbers from the HOA Purchaser (the servicer should do this in writing), calculate interest on the purchase price, draft and execute an affidavit attesting to the correctness of the Deed of Trust, the Assignment(s) and the payoff numbers, cut checks, etc. There is no time to waste. Upon realization of an HOA foreclosure, the Loan Servicer should immediately reach out to the foreclosing agent for sale amount and the Purchaser's contact information. Next, the Servicer must determine what, if any, senior liens existed and what is owed thereunder. The Servicer must reach out to the Purchaser (in writing) to find out: (1) if the Purchaser was a lienholder, the amount owed on that lien at the time of the HOA sale and any interest incurred thereafter; and (2) what "reasonable" amounts expended by the Purchaser that were "reasonably" necessary to maintain and repair the property.

In addition to chasing down parties and documents, the most obvious road block is counting on the HOA Purchaser - who has no incentive to timely do anything - to provide necessary information. The Purchaser has a huge upside if the redemption time period lapses. Unfortunately, the redemption process necessitates the ascertaining of certain expenses that only the Purchaser can provide. If the Purchaser drags its heels or outright refuses to respond, the Servicer (or even *homeowner*) is left to guess at what is owed and risks losing its right of redemption. In one matter that our office recently handled, the HOA Purchaser took the ridiculous legal position that despite the black letter law of SB 306, the lienholders have no right of redemption! Luckily, we were able to resolve just in time to exercise our right; if not, we would have been forced to file suit.

If the Servicer learns of the HOA sale shortly thereafter and the Purchaser timely cooperates, redemption should not be a problem. But, if the time to redeem is about to expire, the Purchaser will not timely cooperate or demands unreasonable amounts, the Servicer should timely tender to the Purchaser its best guestimate of the redemption amount. Further, the Servicer should consider filing a lawsuit (and a lis pendens) to force the Purchaser to cooperate and seek a TRO enjoining the HOA trustee from issuing the final deed to the Purchaser. The suit should include an allegation of timely tender of the amounts the Servicer and its' counsel reasonably believe are necessary to redeem the property.

Other issues in the redemption process: What does “serve” mean, and how does the redeeming party “serve” both the Purchaser and the HOA trustee an original Deed of Trust? What kind of Affidavit is required and what does it need to state? What are *reasonable* amounts that are *reasonably* necessary to maintain and repair the property that the Purchaser can add to the redemption price? SB 306 does not provide any mechanism for the redeeming lienholder or homeowner to challenge costs that could be considered unreasonable or not reasonably necessary. As written, the redeeming party must pay the Purchaser’s demand or lose its ability to redeem the property.

The intent of SB 306 was to provide Servicers and HOAs with clarity, structure and protections with post-October 1, 2015 HOA liens and foreclosures. In addition, it provided the framework for a tremendously valuable protection – the right to redeem the property following the HOA sale. Unfortunately, the mechanisms to redeem are not clear. More problematic is that redemption requires timely and reasonable cooperation by the Purchasers, the same Purchasers that the Servicers have been litigating with for the last several years. As a result, exercising the right of redemption could very well lead the Servicer into quiet title litigation—again.

If you have any questions about the redemption process in Nevada, please contact Robin Wright at [rwright@wrightlegal.net](mailto:rwright@wrightlegal.net) or 949-477-5059.

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Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice. We suggest contacting your in-house legal department, outside counsel or our office before exercising your right of redemption under SB 306.