

HOA COMMUNICATOR

A Trusted Name Brings New Philosophy To HOA Representation

Recognized as Colorado's largest landlord advocate Law Firm, Hopkins Tschetter Sulzer, P.C. has developed a strong reputation for providing clients with the highest caliber legal service. Representing a large number of residential and commercial property management companies and private owners, the Firm is proud of the prompt, highly professional and personal service that we provide to our clients.

What might surprise some, however, is that we have been representing local Homeowner Associations for a number of years. In the last two years, this aspect of our practice has grown tremendously and fits well with our representation of landlords. The Firm relies heavily on our dedicated attorneys and staff, a state of the art database and our commitment to excellence in providing top quality service to a large number of clients. Utilizing these recognized Firm strengths in developing and expanding our Homeowners Association Department, we deliver an effective solution-based approach to our HOA clients in assisting them in achieving their goals. The Firm is excited to provide our clients with this inaugural newsletter devoted to our HOA representation. We would like to share with you a little about the Firm's philosophy concerning HOA advocacy.

The attorneys that lead our HOA Department are Wes Wollenweber and Peter Muccio. Another key member of the HOA team is paralegal and senior staff member Colleen Love who works very closely with the attorneys. Wes and Pete have a diverse background in their practice of law, which makes the HOA Department well rounded. Wes practices in Employment and Fair Housing law and has handled a wide variety of commercial and construction disputes. Pete has an advanced law degree in Taxation and has devoted a significant part of his practice to Real Estate Transactions and Litigation. The HTS HOA Department is a full service department, offering a full array of legal services to our HOA communities.

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Weathering The Foreclosure Storm: Law Change Impacts HOA's

Foreclosure headlines are constant. Nationally, Colorado consistently ranks high in foreclosures. Associations have to face the realities of homeowners who are going through foreclosure. The lender on the property is not the only party that is owed money. The homeowner usually owes the association dues. The Colorado legislature enacted several changes to reform the foreclosure process.



Under the new law, if a lien does not have current mailing information, then it is invalid. An invalid lien is eliminated in the foreclosure with-

out being paid. This article discusses several solutions for an association to preserve and protect their lien rights.

Under the current law, the association's interest in six months of dues has a priority over any mortgage recorded against the property (the "superlien"). Currently, assessment liens should have the current mailing address of the association, but some liens only refer to the declaration or the old management company.

The changes in the foreclosure law
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The Firm recognizes that the recovery of unpaid HOA dues is one of the cornerstones of HOA representation. The lifeblood of an association is its reserves and we acknowledge how critical it is for associations to recover unpaid dues. We also are sensitive to the fact that an association does not need



Pete and Wes review Fair Housing Complaint

to further harm their budget by paying its attorneys a lot of money to attempt to collect dues that the association never recoups.

Because of this concern for our clients, we have dedicated ourselves to a philosophy of helping our client's budgets through cost-effective collection of past dues.

As our current clients know and appreciate, we make contact with owners to resolve dues and other disputes. Lawsuits alone do not get the job done. Constant contact with owners leads to results and we provide the same contact with our clients to communicate to them the progress being made on their cases. The implementation of the HOA newsletter to advise our clients on current issues is just another way we demonstrate the Firm's philosophy that informed communication is the foundation of effective and successful representation.

In addition to HOA collections, we provide thorough but efficient reviews of governing documents, aggressive advocacy in litigation and a wide variety of educational opportunities. The hallmark of our Firm's representation is advocacy through loyalty, customer service and education. In the HOA department, this means that Wes and Pete pride themselves on being true trial attorneys. When litigation comes up and it does, you want counsel who knows how to effectively tell his client's story in court. It also

means that the Firm's HOA attorneys believe in constant contact with clients and ongoing education.

The Firm is known throughout Colorado for its many educational training programs that cover diverse subjects of importance to our clients. Fair Housing is the focus for the largest number of workshops that we provide to clients in our educational training. Fair Housing is critical to Homeowner Associations. **Last year, 40% of all Fair Housing civil rights complaints that the Colorado Civil Rights Division processed in connection with HUD were against HOAs!** We will be announcing a Fair Housing class for HOA clients in the very near future. Pete is developing several training seminars including a workshop for our Association Clients on a variety of emerging technology issues that affect Colorado communities; and a program for New Board Members regarding effective strategies for running a successful Association. Our educational opportunities are normally free of charge and are a service that we provide for our clients as a value-added benefit of being a Firm client.

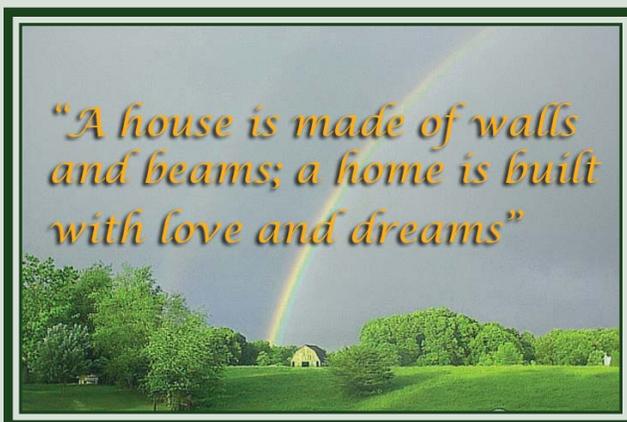
The Firm HOA Department will be providing our association clients with a bimonthly newsletter that will feature timely topics of interest

to associations as well as critical legal updates on emerging issues. Please feel free to share with us any topics you would like for us to research and publish in future editions of our newsletter. We always welcome and appreciate client input. Call 303-699-3484 – or email wes@htspc.com, pete@htspc.com



HOA Paralegal Colleen Enjoys Helping Association Clients

"A house is made of walls and beams; a home is built with love and dreams"



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require that a recorded instrument must give the address for the party claiming an interest; otherwise, the interest is eliminated in the foreclosure (Colorado Revised Statute §38-38-103(c) see www.htspsc.com – link for posting of statute). Association liens that do not contain a current mailing address will be eliminated in a foreclosure. Association liens must contain current addresses.

In Colorado, until December 31, 2007 a lien provided third parties with notice of a lien, even if there was no mailing address on the document. If the association lien did not have an address, the association still had a valid lien against the property. On January 1, 2008, any lien recorded that does not have a current



address of the association will be extinguished in the foreclosure process. Many assessment liens and declarations do not have current addresses for the association management. There is a chance that the Colo-

rado Common Interest Ownership Act (“CCIOA”) may trump the January 1, 2008 change in the foreclosure statute, and not require association liens or the declaration to have a current address. Nevertheless, we recommend that associations strictly comply with the new law to preserve their superliens. We advise associations to place a priority on recording assessment liens. The Firm prepares liens with current mailing information.

A review of your association liens for a mailing address is the first step to determine if there is a problem. The law change is not an issue for your HOA if your association has a current mailing address on all liens. If your HOA does not have a current mailing address then your association must choose a method to provide notice of the association’s current mailing address. Our firm recommends that your association adopt one of the following methods of notice:

1) Amend the declaration to include the current mailing address of the association; or

2) Record notices against every unit in the association of the contact information for the association; or

3) Make sure the current contact information is provided on every assessment lien and make sure your assessment liens are recorded promptly when the owners default.

Any of these three options will result in your association protecting their assessment liens.

1) Amending the Declaration

Amending the Declaration typically requires two-thirds approval of all members of the association. This can be a difficult and time-consuming process for an association, depending on how much agreement there is for the change and how active your owners are in the management of the association. If the association takes on the task of amending the Declaration, there will be some necessary clean up work. Amending the declaration takes months and is a large financial cost for the association. It makes financial sense to amend the declaration if the association has other issues, in addition to this current address issue, to fix in the governing documents. If your assessment liens refer to the Declaration, then this amendment should satisfy the notice requirements under the new law.

2) Recording Notices

Recording a notice of association address is faster than amending the Declaration. The legal descriptions for each unit must be verified. The fee for filing with the clerk and recorder is \$6 per notice. This can be an expensive proposition to larger communities, as there are also costs to prepare the notices. The cost of preparing and recording these notices may be justified by the possibility of losing superlien money when a property goes into foreclosure. However, there is a less expensive alternative available.

3) Assessment Liens

The third approach is the timely recordation of assessment liens. If your HOA is recording your assessment liens then make sure that your current mailing information is on the lien. This approach will be effective in situations where the association is prompt in recording liens against delinquent homeowners. The drawback is if the association’s collection policy and procedure

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does not place a priority on recording the assessment lien, then the superlien can be lost, under the new law. This policy problem is easily fixed by amending the association's collection policy and procedure to place a priority on promptly recording the assessment lien.

Some associations have a policy of delaying the recording of a lien until there is a large balance due, with the hope that there will be a large payoff from a title company. This is not a good approach, especially in light of the new law. Once an assessment lien is recorded, the association is entitled to demand the total current amount due (including attorneys' fees and interest) from any title company requesting a payoff in a purchase situation. In a foreclosure situation, the association will often only receive through the foreclosure up to the six months of dues, even if the assessment lien was recorded when there were only three months of dues. Any attorneys' fees and interest would still be the responsibility of the homeowner who is being foreclosed upon, and would not be included in the superlien.

There are other solutions for an HOA that we do not recommend. Some lawyers may recommend that the association do nothing, and hope that the current treatment of assessment liens continues. However, we view this position as overly optimistic and unrealistic.

Other lawyers may recommend that the association can record one document that references the declaration, but we do not recommend this approach. This is an attempt to circumvent the declaration amendment requirements. Circumventing the amendment requirements of the declaration can create problems for the association. After discussing this issue with several Front Range county clerk and recorder offices and a prominent title company, there are risks in this one notice approach. One, not all clerk and recorders will cross reference the document



to each individual unit in the HOA. Two, not all title companies will catch the notice in a typical title search for a foreclosure. Good title companies may catch the notice; bad title companies will miss it. Associations cannot rely upon title companies to protect their interests.

If your association does not currently have a mailbox, the association needs to get one. Management agreements change, and it is a hassle and additional expense for the association to go through updating the association address anytime there is a change in management. Either every HOA should have its own mailing address, a physical address, P.O. Box, or an address with a mail services company. Control over checking the mail can be made the responsibility of a board member or management company.



Your association needs to review your declaration and check for a current mailing address. The association should then weigh the benefits of the different approaches to providing parties with notice of their address. Record your assessment liens promptly, and choose the recommended approach that works for the association budget and implement the plan. Foreclosures are a difficult part of home ownership, but it is the reality of the current economic condition in many of our Colorado communities. Make sure your association is prepared to weather the storm.



CRS §38-38-103(c) effective 1/1/2008

“If a recorded instrument does not specify the address of the party purporting to have an interest in the property under such recorded instrument, the party shall not be entitled to notice and any interest in the property under such instrument shall be extinguished upon the execution and delivery of a deed pursuant to section 38-38-501.”

