

CHAPTER 326

PROPERTY

HOUSE BILL 08-1365

BY REPRESENTATIVE(S) McFadyen, Looper, Massey, Scanlan, and Stafford;
also SENATOR(S) Gibbs, and Kester.

AN ACT**CONCERNING THE FORECLOSURE OF ASSESSMENT LIENS AGAINST TIME SHARE ESTATES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 3 of article 33.3 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-33.3-316.5. Time share estate - foreclosure - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "JUNIOR LIENOR" HAS THE SAME MEANING AS SET FORTH IN SECTION 38-38-100.3 (12), C.R.S.

(b) "OBLIGOR" MEANS THE PERSON LIABLE FOR THE ASSESSMENT LEVIED AGAINST A TIME SHARE ESTATE PURSUANT TO SECTION 38-33.3-316 OR THE RECORD OWNER OF THE TIME SHARE ESTATE.

(c) "TIME SHARE ESTATE" HAS THE SAME MEANING AS SET FORTH IN SECTION 38-33-110 (5).

(2) A PLAINTIFF MAY COMMENCE A SINGLE JUDICIAL FORECLOSURE ACTION PURSUANT TO SECTION 38-33.3-316 (11), JOINING AS DEFENDANTS MULTIPLE OBLIGORS WITH SEPARATE TIME SHARE ESTATES AND THE JUNIOR LIENORS THERETO, IF:

(a) THE JUDICIAL FORECLOSURE ACTION INVOLVES A SINGLE COMMON INTEREST COMMUNITY;

(b) THE DECLARATION GIVING RISE TO THE RIGHT OF THE ASSOCIATION TO

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

COLLECT ASSESSMENTS CREATES DEFAULT AND REMEDY OBLIGATIONS THAT ARE SUBSTANTIALLY THE SAME FOR EACH OBLIGOR NAMED AS A DEFENDANT IN THE JUDICIAL FORECLOSURE ACTION;

(c) THE ACTION IS LIMITED TO A CLAIM FOR JUDICIAL FORECLOSURE BROUGHT PURSUANT TO SECTION 38-33.3-316 (11); AND

(d) THE PLAINTIFF DOES NOT ALLEGE, WITH RESPECT TO ANY OBLIGOR, THAT THE ASSOCIATION'S LIEN IS PRIOR TO ANY SECURITY INTEREST DESCRIBED IN SECTION 38-33.3-316 (2) (a) (II), EVEN IF SUCH A CLAIM COULD BE MADE PURSUANT TO SECTION 38-33.3-316 (2) (b) (I).

(3) IN A JUDICIAL FORECLOSURE ACTION IN WHICH MULTIPLE OBLIGORS WITH SEPARATE TIME SHARE ESTATES AND THE JUNIOR LIENORS THERETO HAVE BEEN JOINED AS DEFENDANTS IN ACCORDANCE WITH THIS SECTION:

(a) IN ADDITION TO ANY OTHER CIRCUMSTANCES WHERE SEVERANCE IS PROPER UNDER THE COLORADO RULES OF CIVIL PROCEDURE, THE COURT MAY SEVER FOR SEPARATE TRIAL ANY DISPUTED CLAIM OR CLAIMS;

(b) IF SERVICE BY PUBLICATION OF TWO OR MORE DEFENDANTS IS PERMITTED BY LAW, THE PLAINTIFF MAY PUBLISH A SINGLE NOTICE FOR ALL JOINED DEFENDANTS FOR WHOM SERVICE BY PUBLICATION IS PERMITTED, SO LONG AS ALL INFORMATION THAT WOULD BE REQUIRED BY LAW TO BE PROVIDED IN THE PUBLISHED NOTICE AS TO EACH DEFENDANT INDIVIDUALLY IS INCLUDED IN THE COMBINED PUBLISHED NOTICE. NOTHING IN THIS PARAGRAPH (b) SHALL BE INTERPRETED TO ALLOW SERVICE BY PUBLICATION OF ANY DEFENDANT IF SERVICE BY PUBLICATION IS NOT OTHERWISE PERMITTED BY LAW WITH RESPECT TO THAT DEFENDANT.

(c) THE ACTION SHALL BE DEEMED A SINGLE ACTION, SUIT, OR PROCEEDING FOR PURPOSES OF PAYMENT OF FILING FEES, NOTWITHSTANDING ANY ACTION BY THE COURT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), SO LONG AS THE PLAINTIFF COMPLIES WITH SUBSECTION (2) OF THIS SECTION.

(4) NOTWITHSTANDING THAT MULTIPLE OBLIGORS WITH SEPARATE TIME SHARE ESTATES MAY BE JOINED IN A SINGLE JUDICIAL FORECLOSURE ACTION, UNLESS OTHERWISE ORDERED BY THE COURT, EACH TIME SHARE ESTATE FORECLOSED PURSUANT TO THIS SECTION SHALL BE SUBJECT TO A SEPARATE FORECLOSURE SALE, AND ANY CURE OR REDEMPTION RIGHTS WITH RESPECT TO SUCH TIME SHARE ESTATE SHALL REMAIN SEPARATE.

(5) THE PLAINTIFF IN AN ACTION BROUGHT PURSUANT TO THIS SECTION IS DEEMED TO WAIVE ANY CLAIMS AGAINST A DEFENDANT FOR A DEFICIENCY REMAINING AFTER THE FORECLOSURE OF THE LIEN FOR ASSESSMENT AND FOR ATTORNEY FEES RELATED TO THE FORECLOSURE ACTION.

SECTION 2. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is

filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to assessment liens against which foreclosure actions are commenced on or after the applicable effective date of this act.

Approved: May 28, 2008