

Date of Hearing: April 25, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 2273 (Wieckowski) – As Amended: April 16, 2012

SUBJECT: Common interest developments: required documents

SUMMARY: Requires an acquiring owner in a common interest development (CID) to notify the homeowners association (HOA) of his or her mailing address and provide a copy of his or her deed of trust after purchasing a separate interest in a CID. Specifically, this bill:

- 1) Requires an acquiring owner in a CID to provide the HOA's board secretary, agency, manager, or designated representative of the following within 30 days of receiving title, unless the HOA acknowledges a transfer of title:
 - a) A copy of the owner's deed or other document transferring title to the acquiring owner of the separate interest; and
 - b) The acquiring owner's mailing address in writing.
- 2) Exempts an owner, subdivider, or agent selling a separate interest in a CID from the requirement to provide a HOA with a copy of the deed transferring title and the acquiring owner's mailing address.
- 3) Requires that the sale of a property in a CID, executed under the power of sale contained in a deed of trust or mortgage, meet the following requirements:
 - a) The sale must be made to the highest bidder at an auction held Monday through Friday between 9:00 a.m. and 5:00 p.m.; and
 - b) The sale must be recorded in the office of the county recorder where the property is located within 30 days, after the date of the sale.
- 4) Provides that if the trustee of a deed of trust or mortgage fails to record a trustee's deed within 30 days, then the acquiring owner is liable for all liens recorded by the HOA on the property.
- 5) Provides that any failure by an acquiring owner to record a deed in the office of county recorder within 30 days will not affect the validity of a sale in favor of a bona fide purchaser.

EXISTING LAW

- 1) Allows the HOA in CID to record a lien on an owner's separate interest for any delinquent assessments owed by the owner, including delinquent assessment, any costs of collection, late charges, and interest (Civil Code Section 1367).
- 2) Provides that an HOA may not foreclose on a separate interest in a CID until the delinquent assessments reach \$1800 or are more than 12 months delinquent (Civil Code Section 1367.4)

FISCAL EFFECT: None.

COMMENTS:

According to the author, "even prior to the current housing crisis, it has been a struggle for homeowners associations in CIDs to keep track of new owners within the development. All too often, in the current market, a beneficiary under a deed of trust will acquire title to a separate interest through foreclosure, or under a deed in lieu, and will provide no notice to the HOA whose interest is of record that the beneficiary has acquired title. Following foreclosure the acquiring beneficiary may fail to maintain the property or comply with the HOA's Covenants, Conditions, and Restrictions (CC&Rs)."

HOAs are funded solely through the assessments paid by owners in the CID. When a foreclosing lender fails to record a deed after the sale, the HOA does not know who to collect assessments from. As a result, HOAs are left with limited choices, including increasing the assessments on the existing homeowners to cover the loss or defer the expenses of the CID.

Foreclosing lenders are not required to record a trustee deed when taking a property back as a credit bidder, which prevents the HOA from determining who is responsible for the assessments.

HOA Liens: HOAs have the authority to record a lien on property in a CID if the owner fails to pay the assessments. The HOA cannot foreclose on the property until the pass due reach either \$1800 or are more than one-year delinquent. HOAs can take a homeowner to small claims court in the interim to recover delinquent assessments. In many cases a homeowner may stop paying their assessments at the same time or prior to the time they stop paying their mortgage. An HOA may record a junior lien at the owner stops making assessments but if the home is underwater, the HOA lien will be extinguished by the sale, further contributing to the HOA's deficit.

AB 2273 makes several changes to existing law to facilitate the HOAs ability to determine who the owner is once a home is foreclosed. The bill requires that any acquiring owner provide the HOA a copy of the owner's deed of trust and the owner's mailing address. Acquiring owner is not defined, but would include a buyer that purchases a separate interest to live in or rent or a lender that takes a property back at foreclosure as a credit bidder. In an effort to encourage foreclosing lenders to record a deed of trust after foreclosure, the bill requires the trustee to record the deed within 30 days of the sale in the county in which the foreclosed property is located. If the trustee fails to do so, the acquiring owner must pay any liens recorded on the property by the HOA post foreclosure.

Staff comments: If a trustee deed is not recorded within 30 days, the bill requires an acquiring owner, including an individual who purchased the property to occupy it, to pay the liens for delinquent assessments recorded on the previous owner. The committee may wish to consider if this is appropriate or if this penalty should be limited to the foreclosing lenders that takes a property back as a credit bidder in a foreclosure.

HOAs have limited options for collecting on delinquent assessments that start accruing prior to the foreclosure. The remedies include, small claims court, foreclosure, when the liens reach the foreclosure threshold, or payment when a bank forecloses and there is equity in the property. The committee may wish to consider that the liens for delinquent assessments are the debt of the foreclosed owner and therefore if it is appropriate to require the foreclosed lender to pay them as a penalty for not recording the trustee deed.

The bill provides two mechanisms for HOAs to identify the acquiring owner for the purpose of charging assessments. Acquiring owners must give the HOA their mailing address and provide a copy of their trustee deed within 30 days. If an owner does not, there is no penalty in the bill. In the second mechanism, the acquiring owner must record the trustee deed within 30 days, and if not pay the HOA the lien for the previous owner's delinquent assessments. If the deed is recorded in the county recorder's office, the HOA can determine who the new owner is and start billing them for future assessments. The committee may wish to consider if both of these mechanisms are necessary.

Committee amendments:

- 1) Page 4, line 38, delete "*both of the following to*"
- 2) Page 4, line 39 delete, ":"
- 3) Page 5, delete lines 1-2.
- 4) Page 5, line 3, delete (B) W and replace with "w"
- 5) Page 7, delete lines 7 through 11 and insert the following:

"In the event the foreclosing lender acquires the property as a credit bidder at the foreclosure sale, and in the event a trustee recording or mortgagee fails to record a trustee's deed pursuant to paragraph (3) of subdivision (a), the foreclosing lender shall be responsible for the amount of all liens recorded pursuant to Section 1367 or 1367.1 that remain unpaid on the foreclosed property."

Double referred:

If AB 2273 passes this committee, the bill will be referred to the Committee on Judiciary.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Associations Institute (co-sponsor)
Conference of California Bar Associations (co-sponsor)
Congress of California Seniors

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085