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Don't Lose Your Lien Rights

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The Colorado Common Interest Ownership Act ("CCIOA") was adopted in July, 1992 and governs associations in Colorado. Most provisions of CCIOA apply only to communities created after July, 1992. However, certain portions of CCIOA apply to all common interest communities regardless of when the community was formed or whether the community has opted into CCIOA. Many of these provisions are well known, such as the right of the Association to recover attorney fees, adopt reasonable rules and impose fines. However, one of the lesser known provisions is related to statements of accounts (C.R.S. §38-33.3-316(8)) and can have significant ramifications for associations.

C.R.S. §38-33.3-316 (8) provides:

The association shall furnish to a unit owner or such unit owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such owner's unit. The statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the association, the executive board, and every unit owner. If no statement is furnished to the unit owner or holder of a security interest or his or her designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the association shall have no right to assert a lien upon the unit for unpaid assessments which were due as of the date of the request. [Emphasis added].

While the provision is fairly simple, its practical compliance can be challenging. Therefore, it is crucial that associations have a procedure in place to respond to requests for statements of accounts. The following should be considered when establishing the policy:

- verify registered agent is current
- verify registered agent will respond to or forward the request timely
- verify whether the request complies with the statute
 - requested by owner or designee or holder of security interest
 - sent to registered agent
 - sent by certified mail
- calendar the response date
- have easy access to accounts of owners so that a statement may be promptly prepared
- send account via certified mail or deliver personally

If, despite its best efforts, an association fails to provide a statement of account, the statute provides that the association can no longer assert a lien for the delinquent balance. This means the association cannot foreclose its lien as a collection tool. However, the association may still pursue the owner using other collection remedies, such as filing a collection lawsuit, and taking a personal judgment against the owner for the delinquent balance. Once the personal judgment is obtained, the association may collect the judgment amount through collection techniques such as garnishment of bank accounts and wages.

Associations should be aware that this provision of CCIOA is routinely being used by law firms representing mortgage companies in connection with payment of the super lien under C.R.S. 38.33.3-316(2). Thus, in the event that an association fails to comply with this section of CCIOA and does not timely provide a statement of account, the association will lose its right to collect on its super lien, which is equal to six months of assessments. In conclusion, associations should protect their lien rights by being aware of this CCIOA provision and the consequences of not complying with it. Additionally, associations should have a procedure in place to provide statements of accounts, when requested to do so by appropriate persons. Being aware of, and complying with, its statutory obligations, the association will protect a valuable collection tool.