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**ARTICLE**

**ASSESSMENT LIENS AND FORECLOSURE IN COMMON INTEREST DEVELOPMENTS**

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**I. INTRODUCTION**

An owner's association in a common interest development<sup>1</sup> must be able to "tax" or assess its members in order to obtain the revenue necessary to carry out its functions. These functions usually are integral to the value and utility of an owner's subdivision interest, and may include the provision of security and the maintenance and repair of common area. The only source of revenue an association has to perform these functions is the levying of assessments and the timely payment of these assessments by the owners. An association therefore requires some effective means of compelling prompt and voluntary payment by all owners in the subdivision. Traditionally, this has been the threat of a recorded assessment lien and non-judicial foreclosure against delinquent or recalcitrant owners under the Davis-Stirling Common Interest Development Act.<sup>2</sup>

The prospect that an owner with substantial equity in his or her subdivision interest might be foreclosed out by an association seeking to collect a relatively small delinquent assessment has led to efforts to regulate and limit association lien foreclosure processes. The intensifying pressure for such regulation resulted in the adoption of Senate Bill 137, which was signed by the Governor on October 4, 2005.<sup>3</sup> The most publicized aspects of SB 137 are that it prohibits foreclosure on a separate subdivision interest for monetary amounts below \$1,800, and creates a new statutory right of redemption to enable a homeowner whose interest has been sold in foreclosure to pay off the delinquent sum and retain his or her subdivision

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interest. Less publicized, but possibly more importantly, SB 137 also erects a multi-layered series of statutory hurdles for associations seeking to record and foreclose on any lien for delinquent assessments.

The new legislation imposes a number of formalistic requirements on the pre-lien notice and dispute resolution processes as well as association board actions initiating foreclosure, and otherwise has made the process of recording a lien and of initiating and completing a foreclosure to collect delinquent assessments extraordinarily cumbersome and complex. Aside from the obvious costs and delays of compliance, this legislation evidences a hostility even to routine collection of regular assessments, which are the lifeblood of any association. It turns what ought to be an efficient voluntary payment procedure into a potentially adversarial process which, almost by definition, will reward the "slow-pay" owner at the expense of the other members of the association. Whether these drastic and far-reaching alterations in the assessment lien and foreclosure process will prove workable in practice for common interest development associations is seriously in doubt.

## II. PRE-2005 ASSESSMENT LIEN FORECLOSURE PROCESSES

Ever since its enactment in 1985, the Davis-Stirling Common Interest Development Act has required an association to deliver an annual statement of its collection and lien enforcement policies to all members each fiscal year.<sup>4</sup> Until 2003, Civil Code, §1367 required a notice of delinquency prior to imposition on a lien on the owner's subdivision interest and authorized the recording of a lien and appointment of a trustee authorized by the association to enforce the lien by sale under Civil Code, §§2924 et seq., within 30 days after recording of the lien.<sup>5</sup> Associations were prohibited after 1996 from using the power of assessment and foreclosure as a sanction for rule-breaking or other disciplinary sanctions, except to the extent an assessment could be imposed to defray the cost of repairing damage to common areas and facilities caused by the member or the member's guests or tenants.<sup>6</sup> This restricted the ability of associations to use strong-arm tactics to enforce their rules through the abusive imposition of monetary sanctions and the threat of foreclosure.

More recently, the Legislature prescribed the time, manner, and purpose for which an association's liens for assessments could be imposed and eventually foreclosed. These restrictions, originally proposed by the California Law Revision Commission and enacted as AB 2289<sup>7</sup> in 2002, assured procedural fairness by giving the owner an opportunity for notice and payment of the delinquent assessment before it was recorded as a lien.<sup>8</sup> They also gave the owner an express right to request a private meeting with the association board to discuss a payment plan for the assessment before a delinquent assessment was recorded as a lien.<sup>9</sup>

Although AB 2289 (2002) provided several new procedural protections for the assessed property owners, the resulting statute also established a

clear and straightforward pathway for associations to enforce assessments. The statute required the association to provide a detailed statement of the amount assessed plus any interest, late charges, and fees by certified mail at least 30 days prior to recording a lien to collect a past due assessment.<sup>10</sup> This included specific notice of an owner's right to a private meeting with the board or the association and of the potential for loss of the owner's subdivision interest in foreclosure if the debt was not resolved.<sup>11</sup> The owner had a statutory right to dispute the debt by submitting a written explanation of the reasons for the dispute.<sup>12</sup> The form and content of assessment liens and the power of designated officers to execute and record such liens were specified.<sup>13</sup> Provided the association afforded the owner the required notice and opportunity to dispute or to request a payment plan, and followed the required recording procedure, the association still could initiate foreclosure 30 days after recording the lien and could cause a duly appointed trustee to conduct a non-judicial sale in the manner provide for mortgages and deeds of trust under Civil Code, §§2924 et seq.<sup>14</sup> However, the owner also had an express statutory right to reinstate and pay the lien and thereby avoid foreclosure and sale, and the association had a mandatory duty to record a lien release within 21 days after such payment.<sup>15</sup> If the association failed to provide the proper notices and otherwise proceed as required, it had to begin the whole process over again and the association had to absorb, without right of reimbursement, any excess costs resulting from its error.<sup>16</sup> All of these provisions became applicable for liens filed on or after January 1, 2003.<sup>17</sup>

As was contemplated by the Law Revision Commission, the enactment of AB 2289 (2002) thus enhanced the fairness and predictability of the assessment and lien procedure process; it contained provisions beneficial both to the association and the owner whose subdivision interest was being assessed. Still, it left the owner exposed to possible foreclosure for very small monetary amounts. It provided no express right to a hearing on any disputed assessment amounts. The "private meeting" provision was only to discuss a "payment plan," not to discuss the reasons the assessment was disputed.<sup>18</sup> The statute did not restrict an association from recording a lien for delinquent assessments while these other discussions were ongoing. It also provided no relief for the owner who, through a failure to receive actual notice or other circumstances, had not paid off the lien before the property was sold in foreclosure by the association.

A number of very well publicized cases in which elderly or infirm homeowners were foreclosed by non-judicial sale for a few hundred dollars in assessments (which may well have arisen from pre-2003 liens) gave rise to a public outcry which precipitated a much more radical overhaul of these procedures in 2005.

### III. SB 137 (THE “ANTI-FORECLOSURE” STATUTE)

The 2005 legislation, known as Senate Bill 137,<sup>19</sup> includes four principal components:

- pre-lien notification and dispute resolution procedures
- pre-foreclosure notification and dispute resolution procedures
- prohibition of foreclosure for small dollar amounts
- post-foreclosure redemption rights

Each of these is discussed separately in parts A, B, C, and D, below. In addition, this article also briefly addresses certain education requirements and programs established by SB 137.

#### A. Pre-Lien Notification and Dispute Resolution

SB 137 revises the pre-lien notification process of the prior statute. As under prior law, the notification still must include the legend: “IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION.”<sup>20</sup> SB 137 also continues the requirement that the owner be sent an itemized statement of charges and a statement that the owner is not liable for interest, costs of collection, and other charges if it is determined that the assessment was paid on time to the association. This notice must be given at least 30 days prior to recording the lien.<sup>21</sup> It must include notification of the owner’s right both to request a meeting with the board of directors of the association and to dispute the debt by written request for dispute resolution under a “meet and confer” program under Civil Code, §§1363.810 et seq. The statute also requires notice of the right to request alternative dispute resolution with a neutral third party under Civil Code, §§1369.510, et seq.<sup>22</sup> These notifications all are to be included within the notification to the owner that the debt is past due.<sup>23</sup> Then, prior to recording the lien (but after this pre-lien notice is given), the association must meet with the owner, if requested.<sup>24</sup> The association must provide the owner with its practices and standards for payment plans, if it offers any payment plans, and the board must meet with the owner in executive session within 45 days of the postmark of the request to discuss the payment plan.<sup>25</sup> Although these provisions were in the prior statute, the new statute now permits an agreed payment plan to include additional assessments accruing during the payment plan, and precludes the imposition of additional late fees if the owner remains in compliance with the payment plan.<sup>26</sup>

Because the pre-lien notice must be given after the debt becomes past due, the association cannot record a lien before the due date of the assessment. While this is a continuation of existing law, the actual time the association must wait before filing the lien has been prolonged by other requirements of SB 137. In addition to a private meeting to discuss payment

plan alternatives, the owner now has the right to invoke various dispute resolution processes before a lien can be recorded. The association must participate both in a non-binding meet and confer program and, if requested by the owner, in an alternative dispute resolution procedure with a neutral third party. The meet and confer requirement is mandatory prior to recording a lien.<sup>27</sup> Both meet and confer and neutral third party dispute resolution must be offered again prior to initiating foreclosure.<sup>28</sup> These new statutory hurdles under SB 137 will prolong the process before an association can exert meaningful pressure to collect a delinquent assessment. Since the priority of an association's assessment lien relates back to the date of recording,<sup>29</sup> the potential exists that the association lien will be junior to other intervening liens while the meet and confer process is pending.

In addition, after January 1, 2006, a decision to record a lien can only be made by the board of directors of the association and may not be delegated to an agent of the association (such as its manager or a collection agency). The board must approve the decision by a majority vote of the board members in an open meeting and the board must record the votes in the minutes of that meeting.<sup>30</sup> This additional layer of decision-making means, in effect, that first there may be one or more meetings with the owner in a private session to address disputed issues after the lien becomes delinquent, and then, after an interval of time, another board meeting must be held in which the affirmative board decision is made to record the lien.

The form and content of the recorded lien notice also has been changed. The itemized statement of charges owed by the owner required under Civil Code, §1367.1, subd. (a)(2) must be recorded together with the notice of delinquent assessment. The notice of delinquent assessment must state the name and address of the trustee authorized to enforce the lien by sale, and a copy of the recorded notice must be mailed by certified mail to every person whose name is shown as an owner of a separate interest in the association's records within 10 calendar days after recording. The notice of assessment must be signed either by a person designated in the CC&Rs or by the association for that purpose, or by the president of the association.<sup>31</sup>

The statute also imposes new notification procedures and adds to the notification burden even for normal assessment processes. Requirements have been added that a copy of any "notice of default" must be served on the owner's legal representative or attorney.<sup>32</sup> An owner can request that copies of all notices sent with respect to delinquent assessments (not only notices of default) be sent to multiple addresses; the owner has the right to change the secondary address from time to time, and the association must send additional copies of notices to these locations. However, if a new or changed secondary address is added during the course of the col-

lection process, only from that point forward must the new or additional address be used.<sup>33</sup>

#### **B. Pre-Foreclosure Notification and Dispute Resolution Procedures**

Even after giving the required pre-lien notices, and after the special board decision required in order to record a notice of assessment in accordance with the foregoing requirements, if the assessment still remains unpaid, the association still may not initiate foreclosure without yet another meeting of the board of directors of the association. The decision to initiate foreclosure of a validly recorded lien can only be made by the board of directors acting by majority vote **in executive session**.<sup>34</sup> The confidentiality of the delinquent owner's identity must be maintained by the board through the device of recording in its minutes for the next meeting of the board open to all members, the parcel number of the affected property rather than the name of the delinquent owner. This must be followed by specific mailed notice to the owner of the affected subdivision interest, who may designate both primary and secondary addresses for this purpose, all of which must be observed.<sup>35</sup>

The board's vote to approve foreclosure must take place at least thirty (30) days "prior to any public sale".<sup>36</sup> It is not clear whether this vote must be taken prior to recording a notice of default under Civil Code, §2924b, which triggers a three-month reinstatement period and is a prerequisite to a non-judicial sale, or whether the board's vote must only precede the giving of a notice of sale by the trustee under § 2924f, which is a prerequisite for holding the sale. A "public sale" is only the culmination of the foreclosure process, which starts much earlier than 30 days before the ultimate sale in either judicial or non-judicial foreclosure. The prudent course of action for an association would be to initiate a separate board action both before filing the notice of default and before filing the notice of sale. If the process is to initiate a judicial foreclosure by filing a complaint, the executive session decision presumably would have to be made before the judicial foreclosure complaint is filed and perhaps should be voted on again before the sheriff's sale is noticed. Either way, after voting in executive session to "initiate foreclosure," the board must give "notice by personal service to any owner who occupies his or her subdivision interest, and also mailed notice to any non-resident owner," if there is a vote to commence foreclosure.<sup>37</sup>

The entire procedure to foreclose the lien, as noted, can occur only **after** the association has offered the owner the opportunity to participate in a dispute resolution process or a meet and confer process, and the owner is entitled to choose which process to follow.<sup>38</sup> This multi-layered notification requirement, coupled with the homeowner's right to meet and confer, to participate in payment plans, and to participate in various types of alternative dispute resolution, all are subject to the further provision that if the association errs in failing to provide proper notices or otherwise to

proceed as required by the statute, the association must begin the entire process all over and the association must absorb, without right of reimbursement, any excess costs and expenses resulting from its error.<sup>39</sup> Also, if a dispute resolution process determines “that an association has recorded a lien for a delinquent assessment in error” then all late charges, fees, interest, cost of collection, and notification costs must be reversed, the lien must be released, and the association must pay all costs of the dispute resolution or alternative dispute resolution process.<sup>40</sup> If the “error” in lien recordation has to do with some form of failure of notice or failure to conduct proper meetings, even though the assessment itself is due and delinquent, the efforts of the association to protect its lien position on the property will wind up costing the association money, often far more than the assessment it sought to collect. The statute seems to have been designed to discourage even the filing of a lien, thus evidencing an inexplicable hostility to the normal process of collecting the uniform assessments which every owner knows (or should know) is part of the price of ownership in a common interest development.

### C. The \$1,800 Limitation

One of the few sensible parts of SB 137 is that it prohibits any type of foreclosure, judicial or non-judicial, if the amount of the delinquent assessments is less than \$1,800.<sup>41</sup> Effective for debts which arise on or after January 1, 2006, and regardless of whether the CC&Rs or governing documents permit otherwise,<sup>42</sup> the law no longer permits any type of foreclosure, judicial or non-judicial, on a common interest development assessment lien unless the aggregate amount of delinquent assessments (excluding accelerated assessments and excluding late charges, interest and fees) have accumulated to an amount of \$1,800 or more.<sup>43</sup> If the association wishes to collect a smaller amount, it is relegated to a small claims court proceeding.<sup>44</sup> The association may, however, elect to record a lien after the first delinquency and then wait for additional delinquencies to accumulate and initiate foreclosure when these delinquencies (excluding interest, late charges and collective costs) equal more than \$1,800.<sup>45</sup> If the association elects to do this, then the association will have to observe the notice, meeting and dispute resolution requirements both with respect to the initial decision to record the lien, and then again when the decision to foreclose is taken.

Although the other restrictions of SB 137 on association collection proceedings are for the benefit of any owner of a subdivision interest in any common interest development, the statute specifically states that the limitation on foreclosure for amounts under the \$1,800 minimum does not apply: (i) in timeshare projects; or (ii) to “assessments owed by developers.”<sup>46</sup> This allows an association to collect assessment liens of less than \$1,800 per unit against a developer by non-judicial foreclosure or by judicial foreclosure.<sup>47</sup>

#### D. The Owner's Post-Sale Redemption Right

SB 137 also provides a foreclosed-out owner with a special right of redemption following either judicial or non-judicial sale.

##### 1. Redemption After A Judicial Foreclosure Sale

SB 137 provides a 90-day redemption period after a sale which arises from a *judicial foreclosure* initiated by the association of a common interest development.<sup>48</sup> This section has been added to Chapter 1 of Title 10 of the Code of Civil Procedure, which is applicable to judicial foreclosure actions generally.<sup>49</sup> As a result, the new provision for community association foreclosures has been made a part of a pre-existing statutory scheme which includes a specified redemption procedure. The decree of foreclosure and the notice of sale must state that the property is sold subject to a right of redemption,<sup>50</sup> and the levying officer who conducts the sale must specially serve notice of the right of redemption on the debtor.<sup>51</sup> Under this procedure, the redemption price is to be deposited with the levying officer who conducted the sale before expiration of the redemption period.<sup>52</sup> The redemption price equals the purchase price paid at the sale, plus assessments, taxes and reasonable amounts for fire insurance, maintenance, upkeep and repair and improvements on the property, plus any amounts paid on senior debt secured by the property, plus interest at the legal rate, subject in some cases to offset for rents earned.<sup>53</sup> There is also a procedure for tendering the deposit of redemption and for a court hearing on disputed redemption prices.<sup>54</sup> All of these provisions, which preexisted the enactment of SB 137, are made applicable following a judicial foreclosure on an assessment lien as a result of the new statute.

##### 2. Redemption After a Non-Judicial Sale

Under SB 137, any sale by *non-judicial foreclosure* is also subject to a "right of redemption" within a period of 90 days after the sale.<sup>55</sup> The manner in which such a redemption is to occur is not specified. For example, there is no requirement that the redeeming subdivision interest owner give advance notice of his or her intention to redeem. While it may be assumed that redemption occurs by reimbursement of the full price paid to the purchaser at the sale (plus taxes, interest and charges, and minus any net operating income), this also is left unstated in the statute. It is not at all clear whether any of the provisions of the Code of Civil Procedure applicable to judicial foreclosures of assessment liens, or all of them, might apply in the case of a non-judicial sale. Ordinarily, there is no right of redemption under California law following a non-judicial sale of a property for a debt secured by a deed of trust or mortgage under the procedure in Civil Code, §§2924 et seq. The mere creation of a right of redemption for association-initiated foreclosure under SB 137 without augmenting §§ 2924 et seq., to include specific procedures and amounts to be paid in redemption is a glaring omission in the statute.

It can be anticipated that unless and until the Legislature acts to augment these procedures with a defined redemption process following non-judicial foreclosure, it will be extremely difficult, if not impossible, to complete a foreclosure sale by non-judicial foreclosure of an assessment lien and to obtain insurable title for the purchaser. For example, unlike the judicial foreclosure process, which includes a mechanism for tendering the amount paid in redemption and delivering a certificate of redemption to the person seeking to redeem, and which provides a mechanism for terminating the sale upon completion of the redemption,<sup>56</sup> there is no comparable provision for a non-judicial foreclosure. At minimum, a party attempting to conduct a non-judicial foreclosure of an assessment lien under SB 137 will be advised to include a notice of the right of redemption in the sale notice, in order to avoid surprises and possible disputes with purchasers in foreclosure. The party conducting a sale also would be well advised to provide the homeowner a special notification of the right to redeem after the sale and to maintain a verifiable record of service of this notice upon the foreclosed-out owner, specifying the exact timeframe in which redemption can occur and the party to whom the redemption payment should be made. Unfortunately, there is no safe harbor for the conduct of such sales or for the carrying out of the redemption process, and even with these precautions it is likely that purchasers at such sales will find it difficult to obtain marketable title to any subdivision interests so sold.<sup>57</sup>

#### **IV. OTHER PROVISIONS OF SB 137**

Every association is required within a 60 day period at the beginning of the association's fiscal year to distribute a special notice, printed in 12-point type, to each owner, outlining the foreclosure and assessment lien process. This requirement existed in prior law, but the form and content of this notice specified has been completely rewritten due to the extensive revisions and restatements of the assessment and lien recordation and enforcement procedures enacted in the 2005 legislation.<sup>58</sup>

SB 137 also creates a special program requiring the Department of Consumer Affairs and the Department of Real Estate to develop an on-line education course for the board of directors of an association regarding the role, duties, laws and responsibilities of board members and prospective board members, and the judicial and non-judicial foreclosure processes.<sup>59</sup> This is a necessary program, due to the almost Byzantine complexity of the new procedures, although one questions whether the cost or time commitment required for this education will produce any beneficial public policy results.

#### **V. CONCLUSION**

The California Law Revision Commission's effort in AB 2289 to provide a simplified and yet fair and easily administrable process for pre-lien delin-

quency notifications, including ample opportunities for cure, and regularized foreclosure processes, have been substantially undone by SB 137. The new legislation has created an over-complicated and confused process which must be followed by an association to collect effectively on a delinquent assessment. To a considerable extent, these changes undermine the ability of an association to assure the effective and efficient payment of assessments by delinquent or recalcitrant owners. The opportunities for delays and procedural maneuvering, as well as opportunities for litigation, and the one-sided potential for penalties to be imposed on the association for relatively innocent mistakes, likely will cause associations to defer collection proceedings except in the most egregious cases, and may have the unintended consequence of causing other owners to bear a disproportionate share of operating costs of their project.

The 90-day redemption right and the statutory minimum of \$1,800 before an assessment lien may be foreclosed will protect against the loss of equity through inadvertence or ignorance on the part of the delinquent owner. These aspects of SB 137 may be perceived as good public policy. The extraordinary procedural hurdles, and opportunities for costly mistakes on the part of an association attempting to collect a just debt which also are imposed by SB 137, however, seem out of proportion to the nature of the wrongs the Legislature was attempting to right, and ultimately will prove expensive for all concerned. In effect, the Legislature has converted the routine collection of assessments into an adversarial procedure and has granted the delinquent owner rights to contest the debt, resist the lien, and avoid foreclosure. These procedures seem to be founded on the inaccurate assumptions that all assessments are inherently suspect or unfair. The Legislature seems not to have understood that common interest development assessment procedures are fundamentally more akin to tax assessment and revenue collection than to consumer debt collection.<sup>60</sup> No municipal government is required to incur such extraordinary administrative burdens and costs for the normal collection of revenue, and it is questionable whether many community associations can function effectively under the misguided requirements of this legislation.

#### NOTES

1. A "common interest development" is defined in Civil Code, §1351, subd. (c), as a condominium project, a planned development, a stock cooperative, or a community apartment project. Certain provisions of the Davis-Stirling Common Interest Development Act are not applicable to industrial or commercial projects. These are enumerated in Civil Code, §1373. The provisions of SB 137 (2005) do not include any of the sections enumerated in § 1373 and therefore apply uniformly to all common interest developments, including residential, commercial, industrial and mixed-use developments. The only exception is that the \$1,800 limitation, as discussed at text accompanying note 47, below, does not apply to foreclosure of liens on subdivision interests owned by "developers" or to timeshare projects.
2. Civil Code, §§1350 to 1378.
3. 2005 Stats., Ch. 452 (SB 137).
4. Civil Code, §1365, subd. (d).

5. Civil Code, §§1367, subds. (a), (b), (d) (as enacted, 1985 Stats., Ch. 847, § 14)).
6. Former Civil Code, §1367, subd. (c) (as enacted, 1996 Stats., Ch. 1101 (AB 1317), and since relocated to Civil Code, §1367.1, subd. (e)).
7. Civil Code, §1367.1 (as enacted, 2002 Stats., Ch. 1111 (AB 2289), § 7).
8. Civil Code, §§1367.1, subd. (a), (d) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
9. Civil Code, §1367.1, subd. (c)(2) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
10. Civil Code, §1367.1, subd. (a) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
11. Civil Code, §1367.1, subd. (a) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
12. Civil Code, §1367.1, subd. (c)(1) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
13. Civil Code, §1367.1, subd. (d) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
14. Civil Code, §1367.1, subd. (g) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
15. Civil Code, §1367.1, subd. (d) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
16. Civil Code, §1367.1, subd. (j) (as enacted, 2002 Stats., Ch. 1111 (AB 2289)).
17. Civil Code, §1367.1, subd. (k) (as enacted, 2002 Stats., Ch. 1111 (AB 2289), § 7).
18. See 2002 version of the Civil Code, §1367, subd. (c)(2).
19. 2005 Stats., Ch. 452 (SB 137).
20. Civil Code, §1367.1, subd. (a)(1) (notice to be in 14-point bold face type if printed, or in capital letters if typed.).
21. Civil Code, §§1367.1, subds. (a)(2), (3).
22. Civil Code, §§1367.1, subds. (a)(4), (5), (6). (Binding arbitration is not available as a form of alternative dispute resolution if the association intends to initiate judicial foreclosure, although third party mediation would be available).
23. Civil Code, §1367.1, subd. (a).
24. Civil Code, §§1367.1, subds. (c)(1), (3).
25. Civil Code, §1367.1, subd. (c)(3).
26. Civil Code, §1367.1, subd. (c)(3). Agreement to a payment plan does not impede the association's ability to record a lien on the owner's interest, however, and if the owner defaults on the payment plan, the association may resume its efforts to collect.
27. Civil Code, §1367.1, subd. (c)(1)(A).
28. Civil Code, §1367, subd. (c)(1)(B).
29. Civil Code, §1367.1, subd. (f).
30. Civil Code, §1367, subd. (c)(2).
31. Civil Code, §1367.1, subd. (d).
32. Civil Code, §1367.1, subd. (j).
33. Civil Code, §1367.1, subd. (k).
34. Civil Code, §1367.4, subd. (c)(2).
35. Civil Code, §1367.4, subd. (c)(3).
36. Civil Code, §1367.4, subd. (c)(2).
37. Civil Code, §1367.4, subd. (c)(3). This requirement for special personal service of a notice of intent to foreclose does not exist for ordinary deed of trust foreclosure processes under Civil Code, §§ 2924b, 2924c and 2924f.
38. Civil Code, §1367.4, subd. (c)(1).
39. Civil Code, §§1367.1, subds. (l)(1), (2). By reason of Civil Code, §1367.1, subd. (f), discussed in text accompanying note 29, above, the association also could lose lien priority if its initial lien was improperly filed or foreclosed.
40. Civil Code, §1367.5.
41. Civil Code, §1367.4, subd. (b).
42. Civil Code, §1367.4, subd. (a).
43. Civil Code, §1367.4, subd. (b).
44. Civil Code, §1367.4, subd. (b)(1). The statute also allows pursuit of remedies other than small claims court actions, excluding foreclosure (Civil Code, §1367.4, subd. (b)(3)), but except for an action to collect in superior court, it is hard to imagine another meaningful remedy. Actions by common interest community associations to collect delinquent assessments are made exempt from the one-form-of-action bar of Code of Civil Procedure §726 pursuant to Civil Code, §1367.1, subd. (h).

45. Civil Code, §1367.4, subd. (b)(2).
46. Civil Code, §1367.4, subd. (d).
47. The procedural protections of §1367.1 and §1367.4 still would be available to a developer; only the dollar amount limitation is mentioned in §1367.4, subd. (d).
48. Code of Civil Procedure §729.035 (as added, 2005 Stats., ch. 452 (SB 137), §8).
49. Code of Civil Procedure §§729.010 to 729.080.
50. Code of Civil Procedure §729.010.
51. Code of Civil Procedure §729.050.
52. Code of Civil Procedure §729.060, subd. (a).
53. Code of Civil Procedure §729.060.
54. Code of Civil Procedure §729.070.
55. Civil Code, §1367.4, subd. (c)(4).
56. Code of Civil Procedure §§29.080, subsd. (b), (c), (d).
57. The drafters of this legislation evidently did not appreciate the potential detriment resulting from an undefined redemption right. The vagueness of the statutory redemption scheme for non-judicial sales could discourage prospective bidders and result in reduced bid amounts. Since the amount of the foreclosed debt for a delinquent assessment is small in relation to property value, this will reduce the probability that the owner will receive any of the sale proceeds as an overbid amount, and leave the owner to his or her redemption rights as the sole means of preserving equity in the property. An earlier version of the legislation would have required an association to employ a professional appraiser to conduct an appraisal of the property prior to foreclosure, and required a minimum sale price of 65% of the fair market value of the property foreclosed on, net of senior encumbrances. (SB 137, §4, as proposed, February 2, 2005, at (proposed Civil Code, §1367.4, subd. (c)). This section was dropped from SB 137 prior to its enactment.
58. Civil Code, §1365.1, subsd. (a), (b).
59. Civil Code, §1363.001.
60. Industry lobbyists sought unsuccessfully to have a “pay under protest” procedure incorporated into SB 137. This would have assured association’s receipt of the necessary revenue to operate while enabling owners to assert legitimate claims for refund of erroneous or excess assessments, as is provided for ad valorem property tax bills, but was rejected by the bill sponsor. Such a procedure should be incorporated into the Davis-Stirling Act, at least for regular assessments as designated for special assessments by the Board.

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