



Homeowner Association Liens

About Homeowner Association (HOA) Liens

Homeowners in condominiums, townhomes or common interest communities are usually required to pay assessments and fees to an association. The homeowner association (HOA) has a lien on the home as security for payment of assessments and fees.¹ The HOA can foreclose on the home if the homeowner does not pay.

The same basic foreclosure processes that apply to mortgages also apply to foreclosure of HOA liens.² However, attorney's fees are governed by the Minnesota Common Interest Ownership Act. For this reason, attorney's fees could end up being more expensive than in a mortgage foreclosure, because state law does not cap the amount of fees that the HOA can collect.³

If the HOA forecloses on the lien, all of the higher priority liens will remain intact on the home. For example, the first mortgage and any liens for taxes and government assessments would still be secured by the home.⁴ If the association purchased the unit at the foreclosure sale, it would assume responsibility for these higher priority liens.

However, a foreclosure would wipe out lower priority liens, such as a second mortgage or mechanic's lien.⁵ The homeowner might be liable for lower priority liens if there is a foreclosure of the HOA lien. For example, if there was a second mortgage on the property and the second mortgage was not paid off out of the proceeds from the foreclosure sale, the second lender might attempt to collect the debt from the borrower. If you are served with a lawsuit, you should talk with an attorney right away. If you wait too long, you could lose in court without ever having the chance defend yourself.

Options for Homeowners Who Cannot Pay an HOA Lien

1. *Settlement:*

Since it is unlikely that an HOA would want to own property by foreclosing, the association might want to settle (accept an amount less than what is owed), because the amount of the assessment or dues is probably much less than the first mortgage and the expense of selling the home. Settlement might take the form of a payment plan or a reduction in the amount due each month. However, the perceptions of other homeowners in the association may be a barrier to settlement. Members of an HOA are sometimes unwilling to give one owner a break when the other owners are also paying assessments and fees.

¹ Minn. Stat. § 515B.3-116(h)

² Either foreclosure by advertisement under Chapter 580 or foreclosure by action under Chapter 581, except that attorney fees are governed by the Minnesota Common Interest Ownership Act.

³ Minn. Stat. § 515B.3-116(h)(4)(ii)-(iii).

⁴ See Minn. Stat. § 515B.3-116(h)

⁵ *Id.* at § 515B.3-116(b).



Options for Homeowners Who Cannot Pay an HOA Lien (Continued)

2. *Loan or Refinance:*

Homeowners may get a second mortgage or unsecured loan to pay arrears. If there is already a second mortgage, the second mortgagee might agree to refinance in order to pay off the HOA and avoid foreclosure. Homeowners can speak with a reputable nonprofit housing counselor for more information about potential options or other tools to prevent foreclosure.

3. *Bankruptcy:*

Homeowners should be careful before turning to bankruptcy to avoid foreclosure. HOA liens are secured debts. This means that in a Chapter 7 bankruptcy filing, even though the HOA could not pursue collecting the debt, they could still foreclose on the unit. Filing for Chapter 13 bankruptcy would give the homeowner more time to pay off the arrears, but the homeowner would be responsible for this payment plan in addition to the normal monthly assessments. This might be a workable option for homeowners who need extra time to make up arrears, but who have enough income to cover the normal payments plus the extra payments in the Chapter 13 plan.

*Note: This page provides general information and is not intended as legal advice.
Consult a competent legal professional for advice specific to your situation.*

For additional information about foreclosure contact a Homeownership Advisor in your area by contacting the Minnesota Homeownership Center today: 651-659-9336 or 866-462-6466 or www.hocmn.org.