

# **RECEIVERSHIPS A MEANS OF COLLECTING ASSOCIATION ASSESSMENTS**

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# RECEIVERSHIPS A MEANS OF COLLECTING ASSOCIATION ASSESSMENTS

## Introduction

A receiver is a court-appointed rental manager for a property. Once appointed, the property is referred to as being in "receivership." The receiver should be a disinterested person with experience in managing rental property. The receiver collects the rents and disburses the rents according to the court's orders.

A receivership can be beneficial to the association in the following areas:

- Payment of current assessments
- Payment of past due assessments
- Preventing waste and deterioration of the property

## Keys to an Effective Receivership

Before an association pursues a receivership on a property, the following keys to an effective receivership should be determined:

- ❖ Assessments are delinquent
- ❖ The property is not occupied by the owner, i.e., the property is vacant or occupied by a tenant
- ❖ The property is not in foreclosure by the first lien lender
- ❖ The property is in relatively good condition and requires minimal cost to make it rentable

## Lawsuit Seeking the Appointment of a Receiver

If the key elements reviewed above are met, the association can proceed with a lawsuit requesting that the court appoint a receiver.

The key elements of a receivership lawsuit are as follows:

- ✓ A complaint seeking the appointment of a receiver and other pleadings are filed in either county court or district court.
- ✓ An affidavit is to be a part of the lawsuit, setting forth certain information.
- ✓ The lawsuit is served on the owner.

[Personal service of the Summons and Complaint is not required on the owner to get a receiver appointed, but it is desirable to allow the association to seek a money judgment for the delinquent assessments against the owner at the same time as the receiver is appointed.]

- ✓ A bond is required (to ensure the receiver's performance of his duties).
- ✓ The association's attorneys notify the first mortgagee and other lienholders by mailing them copies of the pleadings filed with the court. These lienholders are not personally "served" with the pleadings.
- ✓ A court hearing is set and attended by the association's attorneys.
- ✓ At the hearing, the court may require witnesses to testify, and the owner has the opportunity to object to the appointment of the receiver.
- ✓ At the hearing, the court enters an order granting or denying the requested receivership/attachment.
- ✓ If granted, the association provides the order to the receiver.
- ✓ The receiver then provides the order and the receiver's letter of instruction to the tenants, instructing them to pay rent to the receiver. The order and letter are posted or served on the occupants or, the receiver seeks to rent a vacant property.
- ✓ The receiver manages the property, collects the rents, and applies the money to the receiver's management fee, the maintenance/repair costs for the unit, the attorney fees to obtain the receiver, and to current assessments. Many courts will authorize the receiver to also apply the rents received against the amount of delinquent assessments.
- ✓ The court may require the receiver to submit periodic reports to the court.
- ✓ The receiver handles all rental management issues.
- ✓ The receiver can continue to collect the rents until the assessments are current and the owner demonstrates the likelihood of continued payment or a transfer of the ownership of the property occurs.
- ✓ If the owner fails to pay the mortgage and the property goes into foreclosure, the receivership should be terminated no later than the date of the foreclosure sale.

## **Colorado Law on Equity Skimming**

Colorado law prohibits owners from skimming the equity from a property, in certain circumstances, and not paying the mortgage. See the attached state statutes on equity skimming and related offenses.

The equity skimming statute allows an association to use rule of crime procedure (Rule 102 on attached Addendum dealing with the seizure of property or rents) to support a receiver. Presumably, County Court Rule 402 is also available.

## ADDENDUM

### **PART 8 EQUITY SKIMMING AND RELATED OFFENSES**

#### **18-5-801. Definitions.**

As used in this part 8, unless the context otherwise requires:

- (1) "Lease" means any grant of use and possession for consideration, with or without an option to buy.
- (2) "Real property" means land and any interest or estate in land and includes a manufactured home as defined in section 42-1402 (106) (b), C.R.S.
- (3) "Rent" means any moneys or any other thing of value received as a payment or as a deposit for the privilege of living in or using real property.
- (4) "Security interest" means an interest in personal property which secures payment or performance of an obligation.
- (5) "Vehicle" means any device of conveyance capable of moving itself or of being moved from place to place upon wheels or a track or by water or air, whether or not intended for the transport of persons or property, and includes any space within such "vehicle" adapted for overnight accommodation of persons or animals or for the carrying on of business. "Vehicle" does not include a manufactured home as defined in section 42-1-102 (106) (h), C.R.S.

**Source: L. 87:** Entire part added, p. 670, § 1, effective July 1. L. 94: (2) and (5) amended, p. 2552, § 42, effective January 1, 1995.

#### **18-5-802. Equity skimming of real property.**

- (1) A person commits the crime of equity skimming of real property if the person knowingly:
  - (a) Acquires an interest in real property that is encumbered by a loan secured by a mortgage or deed of trust and the loan is in arrears at the time the person acquires the interest or is placed in default within eighteen months after the person acquires the interest; and
  - (b) Either:
    - (I) Fails to apply all rent derived from the person's interest in the real property first toward the satisfaction of all outstanding payments due on the loan and second toward any fees due to any association of real property owners that charges such fees for the upkeep of the housing facility, or common area including buildings and grounds thereof, of which the real property is a part before appropriating the remainder of such rent or any part thereof for any other purpose except for the purpose of repairs necessary to prevent waste of the real property; or
    - (II) After a foreclosure in which title has vested pursuant to section 38-38-501, C.R.S., collects rent on behalf of any person other than the owner of the real property.



violation of a criminal law. *People v. Phelps*, 837 P.2d 755 (Colo. 1992).

#### 18-5-803. Equity skimming of a vehicle.

(1) A person commits equity skimming of a vehicle if, knowing the vehicle is subject to a security interest, lien, or lease, he accepts possession of or exercises any control over the vehicle in exchange for consideration given which may be verbal assurance or otherwise, and:

(a) Obtains or exercises control over the vehicle of another and then sells or leases the vehicle to a third party without first obtaining written authorization from the secured creditor, lessor, or lienholder for the transaction of the sale or lease to the third party, unless the entire balance of the security interest, lien, or lease is paid or satisfied within thirty days of said transaction; or

(b) Arranges the sale or lease of the vehicle of another to a third party without first obtaining written authorization from the secured creditor, lessor, or lienholder for the transaction of the sale or lease to the third party and exercises control over any part of the funds received, unless the entire balance of the security interest, lien, or lease is paid or satisfied within thirty days of said transaction; or

(c) Knowingly fails to ascertain on a monthly basis whether payments are due to the secured creditor, lienholder, or lessor and to apply all funds he receives for any lease or sale of the vehicle toward the satisfaction of any outstanding payment due to the secured creditor, lienholder, or lessor in a timely manner.

(2) Equity skimming of a vehicle is a class 6 felony.

Source: L. 87: Entire part added, p. 671, § 1, effective July 1. L. 89: (2) amended, p. 839, § 74, effective July 1.

#### 18-5-804. Civil action.

A condominium association, a property owners' association, or any like association of real property owners which charges fees for the upkeep of a housing facility, a housing project, or a common area thereof may proceed pursuant to rule 102 of the Colorado rules of civil procedure if such fees have not been received by the condominium association, property owners' association, or any like association for a period of ninety days or more.

Source: L. 87: Entire part added, p. 672, § 1, effective July 1.