

Timeshare Foreclosure

This Act allows a plaintiff to commence a single judicial foreclosure action, joining as defendants multiple obligors with separate time share estates and the junior lienors thereto, under specified conditions. The action shall be deemed a single action, suit, or proceeding for purposes of payment of filing fees, so long as the plaintiff complies with the provisions of the bill. Each timeshare estate foreclosed shall be subject to a separate foreclosure sale, and any cure or redemption rights shall remain separate.

Submitted as:

Colorado

HB 1365

Status: Enacted into law in 2008.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as “An Act to Permit Single Judicial
2 Foreclosure Actions.”

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Section 2. [*Definitions.*] As used in this Act:

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(1) “Junior lienor” has the same meaning as set forth in [insert citation].

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(2) “Obligor” means the person liable for the assessment levied against a time share
7 estate pursuant to [insert citation] or the record owner of the time share estate.

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(3) “Time share estate” has the same meaning as set forth in [insert citation].

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Section 3. [*Single Judicial Foreclosure Action.*]

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(A) A plaintiff may commence a single judicial foreclosure action joining as defendants
12 multiple obligors with separate time share estates and the junior lienors thereto, if:

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(1) the judicial foreclosure action involves a single common interest community;

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(2) the declaration giving rise to the right of the Association to collect
15 assessments creates default and remedy obligations that are substantially the same for each
16 obligor named as a defendant in the judicial foreclosure action;

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(3) the action is limited to a claim for judicial foreclosure brought pursuant to
18 [insert citation]; and

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(4) the plaintiff does not allege, with respect to any obligor, that the Association's
20 lien is prior to any security interest described in [insert citation] even if such a claim could be
21 made pursuant to [insert citation].

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(B) In a judicial foreclosure action in which multiple obligors with separate time share
23 estates and the junior lienors thereto have been joined as defendants in accordance with this
24 section:

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(1) in addition to any other circumstances where severance is proper under the
26 [state rules of civil procedure], the court may sever for separate trial any disputed claim or
27 claims;

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(2) if service by publication of two or more defendants is permitted by law, the
29 plaintiff may publish a single notice for all joined defendants for whom service by publication is
30 permitted, so long as all information that would be required by law to be provided in the

31 published notice as to each defendant individually is included in the combined published notice,
32 and nothing in this paragraph (2) shall be interpreted to allow service by publication of any
33 defendant if service by publication is not otherwise permitted by law with respect to that
34 defendant.

35 (3) the action shall be deemed a single action, suit, or proceeding for purposes of
36 payment of filing fees, notwithstanding any action by the court pursuant to paragraph (1) of this
37 subsection (B), so long as the plaintiff complies with subsection (A) of this section.

38 (C) Notwithstanding that multiple obligors with separate time share estates may be joined
39 in a single judicial foreclosure action, unless otherwise ordered by the court, each time share
40 estate foreclosed pursuant to this section shall be subject to a separate foreclosure sale, and any
41 cure or redemption rights with respect to such time share estate shall remain separate.

42 (D) The plaintiff in an action brought pursuant to this section is deemed to waive any
43 claims against a defendant for a deficiency remaining after the foreclosure of the lien for
44 assessment and for attorney fees related to the foreclosure action.

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46 Section 4. [*Severability.*] [Insert severability clause.]

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48 Section 5. [*Repealer.*] [Insert repealer clause.]

49

50 Section 6. [*Effective Date.*] [Insert effective date.]