

## Obtaining Lien Payoffs

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**H B 104 is the result of a several-year discussion and compromise between the LAC and the title industry.** Spearheaded by Curt Webb, a Utah legislator and the owner of a title company, the title industry has for a long time sought a legislative solution to the problem of obtaining payoffs on community association liens. In short, it is sometimes very difficult to figure out who to ask for payoff information and to actually get that information in a timely fashion.

Community associations managed professionally or properly self-managed are not the source of the problem. They generally are easily identified and keep good records. The real problem arises from smaller associations that are not professionally managed. Title companies are sometimes left to knock on doors or cold-call owners to try to find out who is on the board and who might be able to provide some information on assessments.

In response to this problem and as part of a larger compromise involving UCIOA Light and a fairly dramatic increase in the priority of Association liens, HB 104 was born.

HB 104 addresses several issues and deserves close attention. Initially, it is retroactive and applies to all community associations, regardless of when they were formed. It applies to both condominiums and PUDs since it includes changes to both the condominium act and the community association act. Most importantly, if you fail to comply with its provisions, the association can lose its lien rights.

Substantively, it first places limits on the fees that can be charged for a payoff. It is important to note that the LAC fought hard to carefully exclude limitations on fees for other information, such as information provided through CondoCerts, Community Archives, etc.

The fee limitations apply only to providing payoff information. The industry also required certain information to be included in a request and required the actual owner to sign the request. This is important both to assure us that the owner consents to the disclosure and as it relates to avoiding potential FDCPA claims.

The next important component of this bill is the requirement for registration with the department of commerce. The commerce department informs me that online registration and updates to registration information will be available beginning Thursday, June 16, 2011. In short, the law requires associations to provide basic contact information to the department and to keep this information updated. This is so title companies can go to one place to obtain information to request payoffs. Then, with comfort, they can send their request and expect a payoff within the time period provided by statute. The final concession the title companies won was if the association either fails to register or fails to respond in a timely manner to a request for a payoff, it can lose its lien rights and the title company can simply proceed with a closing without concern for whether there is unpaid assessments.