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REVISING REDEMPTIONS

By Ira L. Quiat, of the Denver Bar

THERE is pending in the present General Assembly a Bill relating to redemptions. The object of this Article is to explain briefly the defects in our existing statutes sought to be remedied and the provisions of the proposed law. An expression of opinion is requested from the Bench and Bar, so that a workable, just and constructive piece of legislation may be enacted. Comments addressed to Dicta or the writer will be appreciated.

There are two redemption statutes in this state. The one in relation to trust deeds is covered in Sections 5053-5057 of the Compiled Laws of 1921. Redemption from execution sales (including mortgages) is found at Sections 5950-5956.

The statutory period allotted in both cases to the grantor, owner, defendant, subsequent encumbrancer and assigns is six months. Under neither system is there any preference granted to successive encumbrances. Judgment creditors are granted an additional period of three months. Seniority of judgment creditors is not provided for in the statutory redemption of trust deed foreclosures. In the redemption from execution sales there is an attempt to create some system of preference; the senior judgment is granted a priority during the first two days and other creditors also have a preference to redeem during a like successive period in the order of the seniority of their judgments. But how is the rank determined? It has been held that a judgment creditor need not record his lien to be entitled to redeem. A search through judgment records of all courts would be the only way of determining the priority. In practice therefore these preferences are meaningless.

The Supreme Court in *Stryker vs. Dunn*, 72 Colo. 45, has pointed out some glaring defects in the statutory provisions concerning the redemption from a foreclosure of a trust deed. That case lays down the rule as to subsequent encumbrancers, although the question of subrogation was not decided. If a first trust deed is foreclosed and no redemption follows, it is elementary that the owners and all subsequent encumbrancers are barred. However, if there are three trust deeds and the holder of the second takes no action upon foreclosure of the

first, the holder of the third redeems at his peril, for then the second trust deed is not cut out. The second encumbrancer acquires an advantage through the act of the holder of the third trust deed, which he otherwise would not have.

The decision in the *Stryker* case could not be otherwise under our statute, yet it seems unfair and the opposite prevails in nearly all other states. Of course each person should be given an opportunity to protect his lien, but a definite period should be fixed for each lienor, and if he fails to redeem within the allotted time, his lien should be lost.

Many mooted questions founded on imaginary situations arising from redemptions by some subsequent encumbrancers and judgment creditors and a failure so to do by others, have been debated by lawyers since the *Stryker* decision. But neither time nor space permits such theoretical discussion here.

Mortgages are seldom used in this state and many lawyers are unaware that in a redemption by a junior encumbrancer from a mortgage or execution sale, that there is no authority for a Sheriff's deed. The certificate of purchase becomes void and the junior lienor must commence a new action on his own lien as well as the one from which he has redeemed.

There is no reason why two different statutes concerning redemption should prevail in Colorado. One law should be applicable to all such redemptions.

In a recent case the Supreme Court held that a leasehold was real estate and that there was a period of redemption from the foreclosure of a mortgage or lien against the same. Therefore the estate of a lessee under a lease for a few years, in this state, was handled and dealt with by business men, as personalty. Such security is of little value when the tenant can remain in possession of the leased premises for nine months after the sale.

The new proposed law is copied from the "Uniform Mortgage Act" of the American Bar Association, with such changes as are necessary to suit the different situations in this state.

The six month period of redemption of the owner has not been disturbed. A person liable on a deficiency in the foreclosure of any lien also may protect himself by redeeming

within the first six months, but no other person has the right to redeem during this period. Unless the original grantors or other intermediate grantees be liable on a deficiency, there is no reason to permit them any right of redemption. They have parted with their interest and are not in any way concerned. However, to prevent any hardship or inequitable injury, there is a provision which will be discussed later.

If the person liable for a deficiency redeems, either the owner or other person redeeming from him must pay, not the price for which the property was sold, but the actual amount of the lien, plus the costs, expenses, etc.

The different lienors (holders of trust deeds, mortgages or other liens) are granted definite successive preferences during fixed periods after the six months' period above mentioned. The spaces of time are the same as provided in the "Uniform Act". (It may be advisable to enlarge the periods.) The senior lienor has ten days to redeem and each subsequent lienor has a successive period of five days. The periods are fixed and if any lienor does not redeem within the period provided, his lien is eliminated. Each succeeding lien holder redeems by paying the amount paid in the previous redemption, plus the amount of the lien held by the party last redeeming.

There is a positive method of determining the priority of the liens. Every holder of a lien must, before the expiration of the sixth month period, file a statement with the public trustee, sheriff or other official, declaring his intention to redeem. At the end of the six months it is a simple matter to determine how many of the lien holders have elected to redeem, and when the final period has expired granted to all of the lien holders combined, the deed will issue.

No lienor has a right to redeem unless he has filed such declaration, and unless his lien has been recorded at least thirty days prior to the expiration of the six month period. In the "Uniform Mortgage Act" this later provision was not as liberal. There the lien must have been of record at the time of the sale or no right of redemption is granted. The committee who discussed the Bill believed that such provision was unfair and that thirty days before the six months would be ample time for all of the parties to be apprised of their various rights. There must be some limitation as to the record-

ing of the lien so that the sheriff or other official may determine before the end of the six months who has a right to redeem.

The Bill specifically provides that the holder of a lease is considered a lienor and may redeem, but if some subsequent lienor redeems from such lessee the party redeeming takes the same subject to the lease.

If the estate foreclosed be a leasehold expiring or terminating within ten years or less from the date of the sale, there is no period of redemption.

There is a provision for the benefit of such parties who may have some interest or right not provided for in the Bill, and who should be equitably entitled to redeem. Upon the proper application to the Court within the six month period, the Court may allow such party to redeem, subject to proper conditions.

The Bill further attempts to define and clear up the uncertainty now existing in regard to Receiverships. A Receiver may be appointed either before or after the sale upon proper showing. If it appears that the security is clearly inadequate or that the premises are in danger of being materially injured, or reduced in value by removal, destruction, deterioration, accumulation of prior liens or the security otherwise rendered inadequate, the applicant is entitled to such appointment before sale. After the sale, the owner is required to keep the premises in repair, to use reasonable diligence to continue to keep the premises yielding an adequate income, and he must pay the current taxes before penalty accrues and he must pay the interest on the prior incumbrances and keep the premises insured. Failure to do any of these things constitutes waste and a Receiver may be appointed.

The group who have worked in the preparation of this measure do not believe the contemplated law to be perfect. They are confident that it would be a vast improvement. However, experience teaches more than theory and from the experiences of the lawyers may be gathered additional ideas which would enable us to provide against other imperfections.