



by Mary-Joy Howes, Esq.



Complex Collections

Knowing and Applying the R.I. Condominium Act Can Pay Off

Often, boards and property managers are under the impression that the association may not collect delinquent assessments in certain situations, such as unit owner bankruptcy, bank foreclosures, short sales and probate proceedings. There is also a common misconception that if a unit has been abandoned, there is no hope of collecting delinquent assessments.

In fact, the reality is that the so called “super lien” language of the Rhode Island Condominium Act protects the association in all of the aforementioned circumstances. It is the understanding of how to apply the statute that makes all of the difference. In this first of a two-part column, collection issues involving bankruptcy and bank foreclosure will be addressed.

The Super Lien

Sections 34-36.1-3.16 and 3.21 of the R.I. Condominium Act outline the lien for assessments and the right of the association to foreclose on their lien.

Pursuant to the statute, six months of common-area assessments are ahead of the first mortgage. This priority lien also includes reasonable attorney fees up to \$2,500 incurred in the collection and all costs of foreclosure up to \$5,000 (for a total aggregate of attorney's fees and costs of \$7,500). Costs of foreclosure include, but are not limited to, the cost of advertisement, recording fees, postage, title examinations and auctioneer fees.

The priority lien does not include late fees, interest, fines, or special assessments.

In order for the association to recover attorney fees and costs under the super lien, the association must send the first

mortgagee the required statutory 60-day notice that states the account is delinquent by at least 60 days.

If the association forecloses and the bank failed to pay the priority statutory lien amount, the association must notify the bank within seven days after the foreclosure and the bank will



then have 30 days to tender the full amount owed to the association. This means, to protect their interest in the property, the bank must pay all assessments, as well as all attorney fees and costs incurred by the association in connection with the collection and foreclosure process — not just the maximum described above.

Bankruptcy

Collecting association debt in light of a bankruptcy proceeding must be approached in a strategic and careful manner. When an individual files bankruptcy, there is a court-imposed freeze on all debt collection activities.

This freeze is called an automatic stay. Unless relief from stay is requested from and granted by the bankruptcy court, no collection activity can proceed against the unit owner until the bankruptcy is discharged. Creditors may be able to file a claim, called a proof of claim, with the bankruptcy court for money that is owed; however, doing so does not guarantee payment. Therefore, when a unit owner files for bankruptcy protection the association should always contact its attorney because of the time sensitive and unpredictable nature of bankruptcy proceedings.

If the unit owner is more than six months behind, if the debt includes unpaid special assessments and/or if creditors are not able to file a claim, an attempt should be made by the association's attorney to contact the lender¹. The lender may wish to work with the association to mitigate the costs the association would incur to go into bankruptcy court to obtain a relief from stay, as these costs will be part of the priority lien — which is ahead of the first mortgage.

The unit owner is responsible for fees assessed after the date of filing for bankruptcy protection, so long as they continue to have a legal, equitable or possessory interest in the unit.

Bank Foreclosure

As opposed to a situation where the association is foreclosing, many times it is the bank that is foreclosing on its lien and the association does not always receive notice. The foreclosing bank is required to pay the statutory priority amount as of the date of their foreclosure. Once the bank forecloses on a unit, the bank becomes the unit

owner and is responsible to pay assessments just as any other unit owner.

Depending on how far behind the unit owner is and depending on when the lender has their sale scheduled, the association may be able to hold its own condominium lien foreclosure ahead of the bank's foreclosure, especially since bank foreclosures are often postponed or canceled. The association's attorney should quickly identify the lender's counsel and open up the lines of communication. The costs and fees associated with these negotiations fall under the priority lien. If the lender has already foreclosed, these fees and costs are a valid and enforceable lien on the bank owned unit — with no priority limit.

Timing and Enforceability

Although the statute protects the association under these situations, the ability of the statute to be used to recover the full amount of unpaid assessments weakens over time, depending on how far behind the unit owner is in assessments. The above situations may take months or even years to be resolved. It is imperative that associations strictly enforce their rights pursuant to the statute. Requests for non payment should be made as soon as a unit owner's account is 60 days behind. The association should never wait and try to resolve past due balance outside of the statute's parameters. Failure to take action never pays off and may only result in a swelling debt that falls outside of the statute's ability to make the association whole.

Next month this column will review collection issues that arise in short sales, probate and abandoned units. CM

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¹ As practitioners in this field, our firm is of the opinion that negotiations with a unit owner's lender do not violate the automatic stay.



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