

**CONDOMINIUM ASSOCIATIONS:
“DO I PAY MY ASSOCIATION FEES IF I’M IN FORECLOSURE?”**

By Nosheen Rathore, Esq.

As more and more condos are foreclosed upon, unit-owners are often unclear about whether they should continue to pay their association fees. Further, unit-owners are often times surprised to find that the condo association may have filed a separate suit to foreclose on the unpaid association fees and are moving for eviction.

When a unit-owner fails to pay the monthly assessments or fees on time, the association can automatically record a notice of lien against the condo.¹ A lien against a condo for unpaid association fees will take priority over all other recorded or unrecorded liens and encumbrances, except for: (a) taxes, special assessments, and special taxes which are levied by any political subdivision or municipal corporation of Illinois, or any other state or federal taxes which by law are a lien on the interest of the unit owner prior to preexisting recorded encumbrances and (b) encumbrances on the interest of the unit owner recorded prior to the date of such failure to pay association fees or refusal which by law would be a lien thereon prior to subsequently recorded encumbrances.² Further, any action brought to extinguish the lien of the association will include the association as a party to the suit.³ Once notice of the lien is recorded, the lien may be foreclosed by an action brought by the association in the same manner as mortgage on a property may be foreclosed.⁴ Although foreclosing upon the lien is an option, the preferred remedy in Illinois is a forcible entry and detainer action.⁵ The Condominium Property Act provides that “in the event of any default by any unit owner in the performance of his obligations under this Act or

¹ See 765 ILCS 605/9(g)(1).

² *Id.*

³ *Id.*

⁴ See 765 ILCS 605/9(h).

⁵ See 765 ILCS 605/9.2.

under the declaration, bylaws, or the rules and regulations of the board of managers, the board of managers or its agents shall have such rights and remedies . . . including the right to maintain an action for possession against such defaulting unit owner . . . for the benefit of all the other unit owners in the manner prescribed by Article IX of the Code of Civil Procedure.⁶

When an association files an action for forcible entry and detainer, it is only seeking possession of the delinquent unit.⁷ The unit owner will still retain title and will remain obligated to continue paying his or her monthly mortgage payment. Once the association obtains a judgment for possession, the order can be placed with the sheriff to evict the unit-owner from the premises, as is done with rental property evictions. The unit-owner would have to tender the entire amount due on the lien to halt the association from taking possession of the condo.

In the event that a property is foreclosed upon by the mortgagee, the Condominium Property Act states that “the purchaser of a condominium unit at a judicial foreclosure sale, or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by common law strict foreclosure or otherwise takes possession pursuant to court order under the Illinois Mortgage Foreclosure Law, shall have the duty to pay the unit’s proportionate share of the common expenses for the unit assessed from and after the first day of the month after the date of the judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in common law strict foreclosure, or taking of possession pursuant to such court order.”⁸ This payment confirms the extinguishment of any lien created for failure to pay association fees

⁶ See 765 ILCS 605/9.2(a).

⁷ *Id.*

⁸ See 765 ILCS 605/9(g)(3).

where the judicial foreclosure sale has been confirmed by order of the court, a deed in lieu thereof has been accepted by the lender, or a consent judgment has been entered by the court.⁹

The Condominium Property Act also provides that the purchaser of a unit at a foreclosure sale must pay the association up to six months of unpaid assessments owed by the prior unit owner if several conditions are met.¹⁰ First, the condominium association must file a lawsuit to collect unpaid assessments to be entitled to this special relief. Second, the purchaser of the unit must be someone other than a mortgage holder; if a bank or other mortgage holder purchased the unit at a foreclosure sale, the obligation to pay assessments shifts to the third-party purchaser. Third, the new owner is liable to pay past assessments only to the extent that the assessments have not been paid by the previous owner. Finally, a person who buys from a mortgage holder is liable for payment of pre-foreclosure assessments only if the condominium association's paid assessment letter and section 22.1 disclosures specified the amounts that must be paid.¹¹

Because legislators have given condo associations a fair amount of power to pursue unit-owners and even subsequent purchasers for unpaid association fees, it is important to consider whether purchasing a condo with an association fee is the best option for you. Even after foreclosure proceedings are over, condo associations will still be able to recover unpaid fees based on a breach of contract. For these reasons, it is usually in a unit-owners best interest to stay current on the association fees or if in default, try to negotiate a payment plan to catch up with past due amounts.

⁹ *Id.*

¹⁰ *See* 765 ILCS 605/9(g)(4).

¹¹ *See* 765 ILCS 605/22.1