

Condominium Liens – How Safe Is The Harbor?

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One of the leading cases affecting condominium associations in Florida is Bay Holdings, Inc. v. 2000 Island Blvd. Condo. Assn., 895 So.2d 1197 (Fla. 3d DCA 2005). For a seemingly small opinion, the impact on condominium liens is worthy of discussion. Bay Holdings addresses the Florida “safe harbor” liability of first mortgagees for condominium assessment liens.

Condominium liens are a creation of Florida Statute, declaration of condominium and association bylaws. Under Florida Statute, 718.116(5)(a)-(5)(b), a condominium association has a lien on each unit to secure payment of any unpaid general and/or special assessments, interest, late charges, and attorneys fees and costs incurred by the association, “incident to the collection process.”

When a condominium unit owner fails to timely pay their mortgage, the mortgagee (or lender) will initiate a foreclosure action and name the condominium association as a party to the foreclosure. The mortgagee will likely obtain a judgment of foreclosure and the condominium unit will proceed to a public sale to satisfy the foreclosure judgment. Hopefully, the condominium association retained an attorney to prepare an answer to the foreclosure complaint making it easy to tract the status of the foreclosure. This is the point when condominium associations should be paying careful attention.

The “safe harbor” of § 718.116 places a cap on the liability for the unpaid assessments due prior to the foreclosure. The cap only applies to the first mortgagee and the first mortgagee (or first lender) may actually be defined in the condominium declarations. In most foreclosures, there is one mortgage on the property. If the mortgagee acquires title to the condominium through foreclosure, it will be responsible for 12 months of unpaid common expenses or 1% of the original mortgage debt, whichever is less. The “safe harbor” amount must be paid by the mortgagee within thirty (30) days of the issuance of the certificate of title. Thereafter, the first mortgagee who takes title by foreclosure is now the record title owner of the condominium unit and is responsible for all condominium assessments *on a going forward* basis.

However, if another individual or entity acquires title to the condominium unit, that new third party will be responsible for the entire balance of the unpaid assessments before the foreclosure went into effect. *See* § 718.116, Florida Statutes. Regardless of who takes title, the condominium association, through its retained counsel should immediately make a demand for the “safe harbor” or the entire amount of the assessments after it knows who took the property at the sale.

Tags: Condominium Law; Condominium Associations; Condominium Liens; Commercial Litigation; Condominium Declarations; Condominium Litigation; Florida Condominium Statute; Florida Condominium Safe Harbor; First Mortgagee; Condominium Foreclosure; Foreclosure; Real Estate.

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