

Condominium Collections

Making Sense of Non-Priority Liens

The Massachusetts condominium lien statute provides for a priority lien ahead of the first mortgage to the extent of six months of regular monthly condominium fees, plus the reasonable legal fees incurred in collection. The statute also specifically provides that the priority lien does not include late fees, interest or special assessments.

Typically, the debt owed by a unit owner is comprised of priority and non-priority amounts. Since the bank is only obligated to pay the priority portion of the debt, there is often a question about what to do with the unpaid non-priority portion that remains on the owner's account.

For example: The owner is behind \$5,500. This amount is comprised of \$3,000 in monthly condominium fees, \$2,000 in legal fees, \$300 in late fees and a \$200 special assessment for additional snow plowing. The association's attorney has filed suit and after the suit is ignored by the unit owner, who is in foreclosure, the first mortgage holder issues a payment for \$5,000. Through this payment, the bank has satisfied the priority lien to protect its lien position on the property, leaving unpaid \$500 in non-priority late fees and the special assessment.

Who is Responsible?

What does the property manager do with the \$500 in charges remaining? The first thing is to leave the charges on the account! Just because the bank is not obligated to pay the charges does not mean the owner is off the hook.

The unit owner is still liable for the \$500 and continues to be, unless they

were to file for bankruptcy. If the owner is able to get back on his feet, that \$500 must be paid. Were the owner to sell the unit, the \$500 would have to be paid at the closing.

If the owner is foreclosed on by the bank after the priority lien is paid, any non-priority charges left are wiped out as a lien on the unit. Just as the priority lien is ahead of the first mortgage, the first mortgage is ahead of the association's non-priority lien.

Therefore, the first mortgagee's foreclosure sale wipes out the non-priority lien. The non-priority amount continues to be the obligation of the former owner. However, it is typically not worth pursuing the former owner for the non-priority balance, since the owner's financial problems will make it difficult to collect.


The difficulty of understanding the non-priority lien is when the bank proceeds to sell the property to a third party after a foreclosure sale and the \$500 non-priority amount remains unpaid. From the date of the foreclosure sale forward, the bank is responsible for all common assessments, including late fees and special assessments. Assuming the bank has paid those assessments, the association cannot withhold a clean 6(d) certificate to the bank even though the \$500 is still unpaid. Since the bank has paid assessments from the date of sale and since the bank is not liable for non-priority charges, the clean 6(d) must be given. As stated above, the association's only remaining recourse for the \$500 is against the former owner.

Under this set of facts, the association takes a \$500 loss for the non-priority charges. The new owner's ledger should start at a zero balance, and the

new owner is only responsible for assessments going forward.

Collecting the Non-Priority Balance

Suing an owner for a non-priority balance is a multi-step process. First, the association's counsel would obtain a judgment against the owner in the original action filed against the owner and bank. Next, counsel would file a second action against the owner in District Court. Through this action, the association would seek either a court ordered repayment plan or a wage garnishment.

The difficulty in collecting a non-priority balance arises from the owner's personal financial situation. Since the owner fell behind on fees and may have also lost the unit to foreclosure, it is likely that the owner's income is poor or non-existent. The association's counsel would have to prove to a judge that the owner has the ability to make payments going forward, which would be most difficult in the short run. If the judge finds "no present ability to pay," the association would have to go back to court at a later day. The judgment obtained is valid for 20 years, giving the association time to pursue the owner in the future, should his/her financial situation improve. However, were the owner to file for bankruptcy at any time, the debt would be erased. For these reasons, we rarely recommend that the non-priority amount be pursued. 

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