



**McCalla Raymer Leibert Pierce, LLC: Illinois update: Appellate court continues to clarify requirements of a purchaser at a foreclosure sale in extinguishing condominium association lien.**

*Quadrangle House Condo. Ass'n v. United States Bank, N.A.*, 2018 IL App (1st) 171713

Illinois continues to present challenges to purchasers of condominiums at foreclosure sales. Many associations make it difficult to pay the proportionate share of assessments following the foreclosure sale by refusing to provide ledgers, providing ledgers untimely or by adding on unwarranted fees and costs to their ledgers. Because of the potential for litigation in this area, Illinois continues to present updates to existing case law which refine the process of lien extinguishment post foreclosure sale. Fortunately, the First District Appellate court of Illinois, in its April 20, 2018 opinion, provided purchasers additional clarity on what can constitute extinguishment of an association's lien.

In *Quadrangle House Condo. Ass'n v. United States Bank, N.A.*, 2018 IL App (1st) 171713, the association appealed the trial court order granting summary judgment in favor of U.S. Bank, N.A., the purchaser of the condominium unit following the foreclosure sale that occurred on November 13, 2015. The only issue on appeal presented by the association was whether, "pursuant to section 9(g)(3) of the Act, the Bank's \$5411.31 payment for post-purchase assessments on September 13, 2016, confirmed the extinguishment of any lien in its favor by reason of the prior unit owner's failure to pay assessments accruing prior to the Bank's purchase of the Subject Unit at the foreclosure sale." *Quadrangle House Condo. Ass'n v. United States Bank, N.A.*, 2018 IL App (1st) 171713, ¶ 9.

The association argued that section 9(g)(3) of the Illinois Condominium Property Act (hereinafter "Act") required a strict deadline for payment of assessments and US Bank was required to make its payment for assessments the month following the judicial foreclosure sale. Having issued payment approximately ten months after the sale, the association concluded that U.S. Bank failed to extinguish its lien for pre-sale assessments. The Court rejected the association's argument and found:

As this court noted in its decision in *Country Club Estates Condominium Ass'n v. Bayview Loan Servicing LLC*, 2017 IL App (1st) 162459, ¶ 14, "it is clear that a foreclosure buyer's duty to pay monthly assessments begins on 'the first day of the month after the date of the judicial foreclosure sale.' [Citation.] But on the face of the statute, section 9(g)(3) does not contain any time limit for confirming the extinguishment of an association's lien."

See also *5510 Sheridan Road Condominium Ass'n v. U.S. Bank*, 2017 IL App (1st) 160279, ¶ 20. In its decision in *1010 Lake Shore*, the supreme court did state that "[t]he first sentence of section 9(g)(3) plainly requires a foreclosure sale purchaser to pay common expense assessments beginning in the month following the foreclosure sale." *1010 Lake Shore*, 2015 IL 118372, ¶ 24. However, we do not interpret that phrase to mean that the purchaser of a condominium unit at a foreclosure sale must commence remitting payments for post-purchase assessments in the month following the sale. *Quadrangle House Condo. Ass'n v. United States Bank, N.A.*, 2018 IL App (1st) 171713, ¶ 11.

Further in its opinion, the Court explained that prompt payment was not a condition precedent to the extinguishment of an association lien created under 9(g)(1) of the Act holding "Section 9(g)(3) of the Act, the legislature did not place any temporal requirement on the payment of post-purchase assessments in order for the payment to confirm the extinguishment of any lien created under subsection 9(g)(1) of the Act; nor do we believe that the supreme court in *1010 Lake Shore* found promptness of payment to be an implicit requirement in the statute. To the extent that the decision in *Bayview* held to the contrary, we decline to follow it." *Quadrangle House Condo. Ass'n v. United States Bank, N.A.*, 2018 IL App (1st) 171713, ¶ 15.

In affirming the Trial Court's order, the Appellate Court found that U.S. Bank's payment of post foreclosure sale assessments, ten months after the sale occurred, sufficiently extinguished the lien of the association. As counsel for Plaintiff at both the Trial and Appellate level in this matter, McCalla Raymer Leibert Pierce, LLC is pleased to offer this significant update on Illinois law. Condominium units are frequently purchased at the foreclosure sale by the foreclosing Plaintiff. A purchaser should act quickly to request a ledger from the appropriate association following sale so that prompt payment of post-sale assessments can be made and the association lien can be extinguished. This decision offers clarity in Illinois as to what actions the purchaser of a condominium unit at a judicial foreclosure sale must take to extinguish an association lien. As associations often seek pre-sale assessments and charges, purchasers are now armed with authority stating that payment of the post-sale obligation confirms extinguishment of the lien from the prior owner's unpaid obligation, which could save thousands of dollars per unit. Equally important is that Counsel be obtained in the event an association seeks unwarranted fees or assessments following the foreclosure sale because a successful challenge to an association could save tens of thousands of dollars.

For questions, please feel free to contact:

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