PUBLICATION

Lender Liability for Assessments in Florida

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Foreclosing lenders in Florida frequently take title to properties that are subject to homeowners' and condominium association assessments. Just as frequently, the newly-titled lender is presented with a bill from the association for past-due assessments that accrued during or preceding the foreclosure action. These demands are based on widely misunderstood Florida statutes governing liability for assessments that provide for recovery of specific amounts from foreclosing lenders. However, despite these demands from the associations, first mortgagee lenders are frequently not liable for some or all of the claimed amounts.

On its face, Florida Statute 720.3085(2)(c) provides that a first mortgagee which takes title to a foreclosed property subject to a homeowners' association is required to pay to the association the lesser of 12 months of assessments or one percent of the original mortgage amount. However, the ultimate question of lender liability for these assessments goes beyond just the simple calculation of "12 months or one percent." This statutory requirement only applies to (1) homeowners' association declarations that were recorded on or after July 1, 2008 or (2) mortgages that were recorded on or after July 1, 2008 (the effective date of the statute). In either of these two situations, the statute and the statutory cap apply. For instance, a first mortgagee lender that foreclosed on a mortgage that was recorded in 2010 would be subject to the statutory liability of 12 months or one percent.

But the statute does not apply to mortgages or homeowners association declarations that were recorded before July 1, 2008. In these situations, the extent of lender liability for assessments is controlled by the language of the homeowners' association declarations, not the statute. Fortunately for lenders, many of the homeowners' association declarations that were recorded prior to July 1, 2008 contain provisions that expressly and completely eliminate the liability of a foreclosing first mortgagee lender for the payment of any past-due assessments. Courts have consistently held that these declarations trump the language of the statute and eliminate liability of the lender for assessments. Notwithstanding the provisions of their own declarations, homeowners' associations will often demand payoffs without checking to see if the lender even has liability for the assessments. In these situations, a careful examination of the homeowners' association documents is required to determine what, if anything, the lender actually owes.

A similar statute exists regarding condominium associations, but questions as to lender liability for assessments arise less frequently in these contexts because this statute has been in place since 1992. Like the homeowners' association statute, a foreclosing first mortgagee lender of a condominium is liable for the lesser of 12 months of assessments or one percent of the original mortgage amount. In the increasingly rare instances where a first mortgagee forecloses on a condominium mortgage that was recorded prior to the effective date of this 1992 statute, liability for assessments will not attach to the lender. However, it should be noted that liability under this statute was increased from six months to 12 months in 2010. Therefore, lender liability for assessments on mortgages recorded prior to 2010 is limited to only six months of assessments.

A final important consideration to note is that lender liability under these statutes is expressly limited to past-due assessments. There is no provision for recovery of attorney's fees or other collection costs. Estoppel letters and payoff demands should be closely examined to ensure that the associations are not trying to collect more than what the statute allows.