

TIMING IS KEY

“Prompt” Payment Needed to Extinguish Pre-Foreclosure Sale Condo Assessments

BY: BLAKE A. STRAUTINS, ESQ. AND MICHAEL R. SCHUMANN, ESQ., KLUEVER & PLATT, LLC
bstrautins@klueverplatt.com, mschumann@klueverplatt.com

A RECENT ILLINOIS appellate court decision provides necessary guidance in determining when a judicial foreclosure sale purchaser should start making assessment payments to extinguish a condominium association’s lien for prior unpaid assessments. While there is no strict deadline for when foreclosure sale buyers must start making condominium assessment payments, best practices dictate that to avoid being on the hook for any outstanding pre-sale assessments, such purchasers should begin making monthly assessment payments beginning the first month after the judicial sale.

When a condominium owner fails to pay his assessment fees, the other owners bear the burden of paying the delinquent owner’s portion, which typically occurs when an owner’s unit is in foreclosure. To help combat this issue, the Illinois Legislature enacted Section 9(g)(3) of the Condominium Property Act (765 ILCS 605/9 (the “Condo Act”)), which provides:

The purchaser of a condominium unit at a judicial foreclosure sale . . . 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 . . . Such payment confirms the extinguishment of any lien created pursuant to paragraph (1) or (2) of this subsection (g) by virtue of the failure or refusal of a prior unit owner to make payment of common expenses, where the judicial foreclosure sale has been confirmed by order of the court.

The Illinois Appellate Court for the First District clarified Section 9(g)(3) in *Country Club Estates Condominium Association v. Bayview Loan Servicing*, 2017 IL App (1st) 162459, holding

that the purchaser of a condominium at a judicial foreclosure sale must make “prompt” payment of post-sale assessments.

Bayview purchased a condominium unit at a judicial foreclosure sale, at which time the unit had accumulated unpaid monthly assessments. Bayview initially refused to pay any past or present assessments, but seven months later, Bayview ultimately paid the assessments accruing after the foreclosure sale. The Association refused the partial payment because it did not include payment of pre-sale assessments.

The Association argued that under the Illinois Supreme Court’s interpretation of Section 9(g)(3) of the Condo Act in *1010 Lake Shore Association v. Deutsche Bank National Trust Co.*, 2015 IL 118372, a foreclosure buyer is required to make “prompt” payment of post-sale assessments to extinguish an association’s lien for prior unpaid assessments, and Bayview’s seven-month delay was not prompt as a matter of law. The trial court disagreed, however, ruling that Bayview’s ultimate tender of post-sale assessments extinguished the Association’s lien for pre-sale assessments. The Association appealed.

The appellate court noted that because the text of



Section 9(g)(3) does not contain any time limit for confirming the extinguishment of an association’s lien, it needed to look beyond the statute’s language. With no legislative history to review for Section 9(g)(3), the court looked to other legislative debate regarding the difficulties faced by condominium associations when a unit owner fails to pay his or her share of the common expenses. The appellate court also discussed the Illinois Supreme Court’s decision in *1010 Lake Shore*, which acknowledged an implicit time requirement in the second sentence of (9)(g)(3), “insofar as that section gives foreclosure buyers an ‘incentive for prompt payment’ . . . [U]nder the plain language of section 9(g)(3), the payment of post-foreclosure sale assessments formally approves and makes certain the cancellation of the condominium association’s lien.”

The appellate court reversed the trial court’s ruling that Bayview’s payment of post-sale assessments seven months later was prompt, resulting in Bayview being

on the hook for both pre- and post-sale assessments. Although the appellate court recognized that under the Condo Act, foreclosure buyers become responsible for paying assessments “from and after the first day of the month after the date of the judicial foreclosure sale,” it did not go as far as placing a rigid deadline for the payment. In certain cases there may be extenuating circumstances that would excuse a failure to tender the required assessments commencing the month after purchase, such as unreasonable refusal of payment by a condominium association or delay in confirming the sale through the judicial process.

Purchasers of condominiums at judicial sales should take the above circumstances into account when determining when to make such a payment. But in the absence of any extenuating circumstances, it is recommended that a purchaser begin making payment of post-sale assessments beginning with the first full month after the sale to ensure they meet the Condo Act’s “prompt” standard. ■