



KEOUGH
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November
2018
Newsletter

Fall has arrived!

At Keough & Moody, we are actively planning for 2019 and looking forward to the year ahead. We are excited to welcome two new attorneys, Natalie Tomes and Nikhil Mehta. Ms. Tomes and Mr. Mehta will work closely with the senior attorneys of K&M in order to learn more about community association law and to become acquainted with our clients.



If your association has not already adopted a written complaint policy required by the Condominium and Common Interest Community Ombudsperson Act, please do so by January 1, 2019. If you need assistance with this adoption, please let me know (cmk@kmlegal.com).

We wish you all a very Happy Thanksgiving!

Chuck Keough

1010 LAKE SHORE ASSOCIATION TODAY: THE DEBATE AS TO WHAT IS A "PROMPT" PAYMENT CONTINUES

Please note that the contents of this Article only relates to condominium associations.

As you may recall, in its *1010 Lake Shore Association* decision, the Illinois Supreme Court held that a condominium association's lien for unpaid assessments is not extinguished through a foreclosure until the purchaser has made a post-sale assessment payment, as required by Section 9(g)(3) of the Illinois Condominium Property Act. However, a question remained as to when a payment must be made to be considered "prompt" and thus confirm extinguishment of the lien. Illinois appellate courts addressed the ambiguity of the *1010 Lake Shore Association* decision in 2017. Nevertheless, 2017 left us with no clear, hard-and-fast rule about what is considered a "prompt" payment for the purposes of 9(g)(3).¹

The appellate courts further addressed the *1010 Lake Shore Association* decision in 2018. In *Quadrangle House Condominium Association v. U.S. Bank, N.A.*, the First District Court of Appeals held that there is no timeliness requirement in 9(g)(3) and, therefore, payment of post-purchase assessments, whenever made, confirms the extinguishment of a condominium association lien. The following month, the First District contradicted its *Quadrangle* opinion in *V&T Investment Corporation v. West Columbia Place Condominium Association*, by holding that while a purchaser has the duty to pay assessments starting on the first day of the month following the judicial sale, a payment is "prompt" and extinguishes the lien when it is made shortly after the order confirming the judicial sale is entered. Next, another First District *Quadrangle* case, *U.S. Bank, N.A. v. Quadrangle House Condominium Association* ("Quadrangle II"), was decided. The *Quadrangle II* Court held that a purchaser's payment of post-sale

assessments more than two months after confirmation of the judicial sale was adequate to extinguish the lien for pre-sale assessments.

If you think these decisions are all over the place, you are not alone. Illinois courts will likely make future decisions that clarify whether there is a timeliness requirement in 9(g)(3) and, if so, what is considered a "prompt" payment for the purpose of extinguishing a lien for condominium assessments. Even so, it appears that 2018 will end with only one thing certain about a condominium association's ability to collect pre-foreclosure sale assessments pursuant to 9(g)(3). That is, what is considered to be a "prompt" payment will be determined on a case by case basis.

DOES EXTINGUISHMENT OF THE PRIOR OWNER'S LIEN PREVENT THE ASSOCIATION FROM COLLECTING ANY AMOUNTS DUE AND OWING?

Even if the lien on a property related to a prior owner's delinquency is successfully extinguished or otherwise eliminated following a foreclosure sale, the association may still have the ability to collect a portion of the prior owner's delinquency from the third-party purchaser. If your association is a condominium, Section 9(g)(4) and 9(g)(5) of the Illinois Condominium Property Act provides the association the right to collect six (6) months of unpaid common expenses preceding a collection action against the prior owner, plus attorney's fees and costs. If your association is a townhome or homeowner's association, and otherwise not a condominium, Section 18.5(g-1) of the Illinois Condominium Property Act provides your association the right to collect the six (6) months unpaid common expenses preceding a collection action against the prior owner, plus costs of collection.

However, in order to seek any of these amounts, whether or not the association is a condominium, townhome or homeowner's association, the association is required to have instituted a collection action against the prior owner prior to the completion of the foreclosure. Therefore, it is important to advise legal counsel as soon as there is a delinquency on any owner's account, **even if** a foreclosure proceeding is pending against the current owner.

It is also recommended that you seek the advice of legal counsel in calculating the amount of six (6) months of unpaid common expenses to collect from the subsequent purchaser. Too often, we see an association request less than the full amount that the law allows it to collect. Once the amount is paid, it is nearly impossible for the association to collect the balance of what it could have. Remember, the statute allows the association to collect six (6) months of unpaid common expenses, plus attorney's fees and costs. Properly calculating the amount due and owing also ensures that the association properly writes off any uncollectible balance.

Should there be any question regarding your association's ability to collect on an owner's delinquency, please contact Dawn Moody, at d1m@kmlegal.com or at (630)369-2700 x 207.

1. Click [Here](#) for a link to our previous article regarding the *1010 Lake Shore Association* case.

Attorney Gabriella Comstock will be presenting at the **2018 CONDOLIFESTYLES STATE OF THE INDUSTRY SEMINAR** where she will present the pertinent legal and case law updates affecting the industry. See below for more information!

2018 CONDOLIFESTYLES STATE OF THE INDUSTRY SEMINAR

11:00AM - 3:00PM

December 13, 2018

Chicago Cultural Center
78 E. Washington St., Chicago IL

5th Floor
Washington & Garland Rooms

For more information
Call **630-202-3006**

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TOPICS INCLUDE:

- State of the Industry Panel Discussion, Q & A
- Legal and Case Law Updates
(Boucher Case, Board Obligations for Closed Sessions, Deadline for Association Complaint Procedure - Ombudsman Act, ICPA Update & More)
by Gabriella Comstock - Keough & Moody, P.C.
- Bulk Purchasing Trends
- Chicago Ordinance Update
(AirBnB, Energy Benchmarking/Ratings)
- Current Capital Projects: Ventilation & Air Quality, Energy Efficiency, Riser Replacements, Windows & Roofing
- Funding & Financing Capital Projects
- Managing Aging Mechanical Systems
- OSHA Facade Access Requirements
- Property Tax Appeals, Property Values & Assessments
- RFP's & Contracts
- Managing Business Relationships
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- Tairre Dover-Sutton** - Tairre Management
- Natalie Drapac & Molly Trogdon** - Community Specialists
- Gail Filkowski** - First Community Management
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