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Newsletter

Happy Holidays from Keough & Moody!

As 2018 rapidly winds down and focus shifts to more festive themes, we are mindful of what 2019 holds in store. The Second District Appellate Court recently provided its take on foreclosure of condominium assessments as discussed in the 1010 Lake Shore Drive case. Now that another appellate court has weighed in on the topic, perhaps we will see the Illinois Legislature clarify the requirement of "prompt payment" in 2019 for all condominiums. In the meantime, we wish you a joyous holiday season!



Chuck Keough

THE 2ND DISTRICT APPELLATE COURT TACKLES 1010 LAKE SHORE

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

As discussed in our November 2018 Newsletter, the current state of the law under the Illinois Supreme Court's decision in *1010 Lake Shore Association* has remained unsettled. Illinois Appellate Courts (solely the First District until now) have taken a varied, often conflicting approach in evaluating what constitutes "prompt payment" of assessments following a foreclosure sale.

Now the Second District Appellate Court has entered the fray. In an opinion filed on November 29, 2018 in the case of *Hometown Condominium Association No. 2 v. Mohammed*, the Second District discussed "prompt payment" and held that partial payment does not extinguish an association's lien created under Section 9(g)(3) of the Illinois Condominium Property Act ("the Act"). In *Hometown Condominium*, the foreclosure purchaser failed to pay post-foreclosure assessments, as required under Section 9(g)(3) of the Act, until 17 months after the confirmation of the foreclosure sale, when he made a payment for a single month of assessments.

While not directly ruling upon the "promptness" issue since it found in favor of the association based on partial payment, the Court acknowledged the "split of authority" on the issue. The Court went on to discuss the varied decisions of the First District Appellate Court and held that defendant's reliance on *5510 Sheridan Road Condominium* and *Quadrangle House Condominium* to justify late payment was misplaced, because those cases involved **full** payment of post-foreclosure assessments. "Each time the First District has wrestled with whether late payment of postsale assessments confirms the extinguishment of the lien for presale assessments, the foreclosure purchaser has made full payment of postsale assessments."

In its final review of the "promptness" issue, the Second District appeared to adopt analysis from the First District opinion in *V&T Investment Corp. v. West Columbia Place.*, which held that "routine delays" between the foreclosure sale and the order confirming sale could be a

justification for late payment of post-foreclosure assessments. Importantly, however, the Court held that the late payment in *Hometown Condominium* was not the result of a routine delay, but was instead a "blatant attempt to circumvent the lien-extinguishment requirement of Section 9(g)(3)."

So what does this all mean? First, it reinforces the notion that full payment of post-foreclosure assessments is required and that partial payment is insufficient. Second, while the 2nd District has still not directly ruled upon the "promptness" issue, it has demonstrated agreement with the "routine delays" analysis found in *V&T Investment*. However, under this approach, due to strict requirements under the Illinois Mortgage Foreclosure Law which requires courts to confirm sale absent certain limited circumstances, routine delays should be less common and late payments sought to be excused on this basis should rarely be granted.

Should there be any questions regarding your association's ability to collect on an owner's delinquency, please contact Dawn Moody, at d1m@kmllegal.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.
2. Click [Here](#) for a link to our previous article summarizing the current state of 1010 Lake Shore Association case law.

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