

BERGMAN ON MORTGAGE FORECLOSURES:

Condo Lien as a Continuing Lien—and Why Lenders Care

By Bruce J. Bergman

A new case *firmly* confirms an important principle: a condominium common charge lien is a *continuing* lien [*Board of Mgrs. of Netherlands Condominium v. Trencher*, 128 A.D.3d 452, 9 N.Y.S.3d 213 (1st Dept. 2015).] What precisely that means to condominiums and why it is quite meaningful as well to mortgage lenders is our focus here.

The Continuing Lien Concept

Just as it is with a mortgage lender, a condominium (through its Board of Managers) will wait a certain amount of time before it feels the need to file its condominium common charge lien. However many months (or years) that may be, when the lien is filed it represents a finite number of the various sums due, which include, among other things, common charges, assessments, late charges, interest, penalties, among other possible charges. Even if the unit owner eventually pays the past due amounts, the amount due will be *greater* than is recited in the lien, for the obvious reason that the passage of time caused further items to accrue.

Of similar import, if a condominium common charge lien action is begun, and whether it is paid off sometime during the action or actually proceeds to foreclosure sale, the sum due is considerably larger than the amount identified in the lien—for the same apparent reasons. In that re-

gard, a referee in the foreclosure is required to make the computation and his numbers will need to reflect accruing sums, not merely the number in the lien.



Must a condominium file liens periodically to address the growing sums? And if they do, do they need to start separate actions? How does this all relate to the condominiums foreclosure action? Happily, the simple answer (as confirmed by the new case) is that the condo lien is a *continuing* lien, that is, the lien encompasses, and the foreclosing condo plaintiff is entitled to receive, not only the amount claimed in the lien, but also the aggregate of unpaid common charges and fees that have accrued since the filing of the lien.

While we have long believed that this was indeed the law, it had not been directly addressed by an *appeal* court—although that is solved with this new case. Thus, higher court authority has stated what all the lower courts had concluded so that there can be no issue but that a condominium common charge lien is a continuing lien—obviously good and comforting news for any condominium board of managers.

Why This Matters to Mortgage Lenders

Some of our readers will be aware that statute affords to condominiums a *special* priority to the condominium common charge lien. It is declared to be senior to (essentially) all other liens and mortgages *except* a first mortgage. (This is pursuant to RPL §337-z.)

Thus, while the holder of a first mortgage is not concerned with the growing sum due on the *junior* condominium common charge lien, the holder of a second or more inferior mortgage upon the condo unit *does* care. The subordinate mortgagee is subject to an ever increasing sum due on the condominium lien and, depending upon that amount, this could be consequential. In sum, that a condominium lien is a continuing lien has meaning both to condominiums and to lenders.

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