

Chapman Client Alert

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Current Issues Relevant to Our Clients

Foreclosure Condo Purchasers Beware: Suit Not Required Before Past-Due Condo Association Assessments Must Be Paid

In a case of first impression, the Illinois Appellate Court has held that a condominium association does not have to first sue the prior owner of a condominium for unpaid assessments before it can seek unpaid assessments from the new owner that purchased the condominium at a foreclosure sale. While the Illinois Condominium Property Act provides that condominium associations can collect up to six months of a prior owner's unpaid assessments from a foreclosure buyer other than a mortgagee ("Section 9(g)(4)"), before *Sylva, LLC v. Baldwin Court Condominium Association, Inc.*,¹ it was unclear exactly what a condominium association had to do in order to invoke this right. With this decision, condominium associations can immediately seek unpaid assessments from the foreclosure sale purchaser.

In *Sylva, LLC* the plaintiff purchased a condominium unit at a judicial foreclosure sale. Before the sale, the Condominium Association had filed a lien against the unit and sent notice to the foreclosed owners that back assessments were due. After the sale to *Sylva*, the Association demanded that *Sylva* pay six months of assessments that had been incurred but not paid by the previous owner. Under duress, *Sylva* paid the outstanding assessments in order to obtain an Association letter that there were no liens against the property. *Sylva* then sued the Association to try to get its money back.

Sylva argued that since the Association never filed suit against the previous owners for unpaid assessments, *Sylva* never should have had to pay them. *Sylva's* relied on the Illinois Condominium Property Act provision that "[t]he purchaser of a condominium unit at a judicial foreclosure sale, other than a mortgagee...shall have the duty to pay the proportionate share, if any, of the common expenses...during the 6 months immediately preceding **institution of an action** to enforce the collection of assessments..."² The trial court agreed with *Sylva* that the "institution of an action," language required the Association to first file a lawsuit against the previous owner first before looking to the foreclosure purchaser for the 6 months of unpaid assessments.

On appeal, the Association noted that it had in fact instituted an action to collect the unpaid assessments—it filed a lien claim and sent notice to the prior unit owner. Not entirely convinced that the Association's reading was the correct one, the Appellate Court looked to previous case law, common sense, and legislative history in interpreting the statute to discern the meaning of the disputed language.

Citing *Wing Street of Arlington Heights Condominium Ass'n v. Kiss The Chef Holdings, LLC*, 2016 IL App (1st) 142563, the Court explained that it held that Section 9(g)(4) imposes an independent obligation on third-party purchasers and, once that obligation is breached, a separate statutory lien under Section 9(g)(4) arises in favor of the condominium association. Because the statute creates a new and separate lien against the new owner, the Court explained, there is no reason that a lawsuit against the previous owner should be a prerequisite to coming after the new owner. Thus, the statute being clear on its face, the Court said it was not necessary to look at any extrinsic evidence.

The Court went on to note that even if it did resort to extrinsic evidence in interpreting the statute, requiring that a condominium association first sue the prior unit owner would create needless litigation and would not be helpful in solving the issue that Section 9(g)(4) was enacted to address. Common sense thus dictates that such a prerequisite cannot have been the intent of the legislature.

The Court also looked to the legislative history for Section 9(g)(4). The Court reviewed the testimony given in support of the bill amending the Illinois Condominium Property Act and determined that the discussion before the House “supported an interpretation that the bill was intended to ‘guarantee’ collection from a new owner, even where the association had not previously filed a lawsuit for unpaid assessments.”³

Foreclosure purchasers should therefore beware: even if there has been no suit against the unit’s prior owner to collect on back assessments, a claim for up to 6 months of unpaid assessments is likely coming. As the statute intended, condominium associations need only to pursue a non-mortgagee owner for the 6 months of past due assessments, rather than expend time and resources trying to recover from the previous owner.

[For More Information](#)

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- 1 2018 IL App (1st) 170520.
 - 2 765 ILCS 605/9(g)(4) (emphasis added).
 - 3 2018 IL App (1st) 170520 ¶¶ 19-20.

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