

New Law Grants all Forms of Community Associations Lien Priority

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The Becker Community Association Practice Group is pleased to alert you to a very positive change to the current law concerning association lien priority. On Monday, March 25, 2019 both houses of the New Legislature unanimously adopted a law that will significantly expand the lien priority over foreclosing lenders that was previously available only to condominium associations, and, for the first time, grant the same lien priority rights to homeowner associations.

Although the laws are awaiting signature by the Governor in order to become effective, we are hopeful that he will sign them shortly.

The essence of the new law (which can be seen [here](#)) grants all forms of community associations a lien priority of up to thirty (30) months, based upon a six (6) month priority lien being filed each year for five consecutive years. Hence, while prior law limited condo associations to one six-month lien priority over first mortgages, the new law provides for up to thirty months of lien priority. By example, it would work like this:

1. 2019 Lien for full year's assessments	\$8,000
2. 2020 Lien for full year's assessments	\$8,200
3. 2021 Lien for full year's assessments	\$8,400
4. 2022 Lien for full year's assessments	\$8,600
5. 2023 Lien for full year's assessments	\$8,800
Total liens for five years	\$42,000
Six Month Lien Priority =	<u>\$21,000</u>

This example, of course, assumes that before foreclosure by a first mortgage holder five years of liens had accumulated. If only three years of liens had accumulated before the mortgage holder foreclosed, then the association would be entitled to one-half of three full years' assessments. But upon the foreclosure sale the association would be paid the full assessments going forward.

As we all know, the economic downturn starting in 2008 cost associations large

amounts of money, in significant part because the associations could only depend on receiving a total of six months of assessments from the lender. This new legislation is a strong move to address the previous inequity, increase the priority amounts collectible, and lenders will be motivated to complete foreclosures earlier than they have in the past. The bill granting associations an expanded lien priority was part of a package of bills enacted by the legislature that included new law intended to speed the foreclosure of mortgages in New Jersey, which ranked dead last in the country in the processing of foreclosures over the last 10 years, a dubious distinction.

The chair of the Becker Community Association Practice Group, David Ramsey, was intimately involved in the drafting of the new legislation. His experience at the national level provided him with the knowledge of other states that had reoccurring lien priorities and he was able to bring that experience to New Jersey through the new legislation. He also recognized that the legislature's interest in ending zombie foreclosures that left municipalities, neighbors and community associations with vacant deteriorating housing, provided a once-in-a-generation opportunity to enhance the interests of community associations through expansion of lien priority.

For additional information concerning the new law, please contact any of our attorneys in the New Jersey Becker Community Association Practice Group at [\(973\) 898-6502](tel:9738986502).