

SPECIAL ASSESSMENTS PAYABLE IN INSTALLMENTS

The Michigan Legislature recently amended the Township Improvement Act to address the situation whereby all future installments of a special assessment must be paid in full when a house is sold. Under this legislation, if a special assessment is payable in installments, the lien covers only the particular installment that is due.

The problem with the legislation is that it doesn't come close to covering all types of municipal special assessments. There are twenty or so different statutes authorizing local governmental units to impose a special assessment. The new legislation only covers assessments imposed by townships (not by cities or counties) and not even all township assessments. It is also not clear whether the change covers future installments of an existing special assessment or only assessments imposed after the legislation was enacted.

Some purchase agreement forms condition the responsibility for payment of a special assessment on whether or not it is a lien. For example:

SPECIAL ASSESSMENTS which are a lien on the property before the date of Closing will be paid by SELLER.

The potential ramifications of using such a proration clause is perhaps easiest to explain through the use of a hypothetical. Assume a county drain commissioner specially assesses a property \$15,000 and permits the property owner to pay the special assessment in 15 annual installments of \$1,000. Under the Drain Code, the entire amount of the special assessment would be a lien against the property, whether it is in the first year, tenth year or fifteenth year.

Assume that a township makes a special assessment against this same property in the amount of \$15,000 under the Township Improvement Act and permits the property owner to pay the special assessment in 15 annual installments of \$1,000. At any given time, the lien against the property would be no more than \$1,000, *i.e.*, the installment due in the year of sale.

If this property is sold in the third year of the county drain special assessment, the lien would be for \$12,000 which the seller would be required to pay at closing. If the sale is in the third year of the special assessment under the Township Improvement Act, the only lien on the property that the seller would be required to pay would be the \$1,000 installment due in the year of sale.

In order to avoid this confusion, Realtors® are encouraged to use purchase agreements that do not condition responsibility for future installments of a special assessment on whether or not the installments are currently a lien on the property. A purchase agreement form can simply refer to responsibility for “all future installments of any special assessment” without reference to whether or not these installments are “a lien.” For example:

SPECIAL ASSESSMENTS: All special assessments for municipal improvements shall be paid by the Seller, provided, however, that in the event a special assessment is payable in installments, current and future installments shall be allocated between Seller and Buyer using the same method for the proration of real estate taxes; or paid in full by Seller at closing.

By using an assessment provision that avoids the lien discussion, parties can avoid having to figure out whether all future installments of a particular assessment currently are or are not a lien on the property.

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