

REAL PROPERTY TAXES AND ASSESSMENTS ON CONDOMINIUM UNITS

A. Condominium Assessments

Condominium expenses are allocated among unit owners in accordance with the condominium documents. While it is typically true that all unit owners share only the cost of maintaining the general common elements, it is not always the case. In some projects, the Association maintains the limited commons (or even portions of units) and passes those costs on to all unit owners. It is only when the condominium documents are silent that we look to the Condominium Act to determine how expenses will be allocated. The Condominium Act provides that when the documents are silent, if an expense relates to a limited common element, the expense will be split equally among the units to which the limited common element is assigned and that all other expenses shall be shared by all units in accordance with the units' respective percentages of value. MCL 559.169. While most amendments to condominium documents require a sixty-six and two-thirds approval, a change in the method or formula of calculating percentages of value for apportioning expenses must be unanimously approved.

The board of directors establishes the budget which must include a ten percent reserve. Recent legislation provides that if the association's annual revenue is \$20,000, the association must have an audit performed by a certified public accountant, unless the association's members vote to waive this requirement. MCL 559.157. If a unit owner does not pay his assessment, the association can lien the unit and foreclose the lien using the same procedures used in a mortgage foreclosure. MCL 559.208.

Even if no lien is filed, the purchaser of a condominium unit is liable for all past due condominium assessments on that unit unless he or she requests an account statement from the

condominium association at least five days before the closing. MCL 559.211. If the buyer receives a statement showing past due amounts, then the past due amounts will be paid from closing proceeds. If the association does not respond within the five-day period, then the buyer would take title free and clear of any past due amounts (unless the association had a previously recorded lien against the unit).

A condominium association's recorded lien will have priority over a first mortgage if, and only if, the condominium association's lien was recorded prior to the first mortgage. On the other hand, a condominium association's lien will have priority over a second mortgage even if the second mortgage was recorded before the condominium association's lien. MCL 559.208(1).

If a lender with a first mortgage takes title as a result of foreclosure, that lender is not responsible for any of the past due assessments. MCL 559.158. An assignee of the original first mortgagee has the same rights in this regard as the original first mortgagee. *Coventry Parkhomes Condo Ass'n v Fed Nat'l Mortgage Ass'n*, 298 Mich App 252 (2012). A lender who forecloses is responsible for all assessments on the unit made after the foreclosure sale, even though the lender will not have absolute legal title to the unit until the redemption period expires. *Wells Fargo Bank v Country Place Condo Ass'n*, 304 Mich App 582 (2014).

B. Condominium Taxation

Under the Condominium Act, common elements are not separately assessed for tax purposes. Rather, each unit is assessed for its individual value and its proportionate share of the value of the common elements. MCL 559.161; MCL 559.231(1). (This will not be true in the year the project is created because the units will not yet be separately assessed.) Expandable areas are not part of the condominium project and are separately assessed to the developer. On the other hand, it has been held that a common area that may be "converted" to units or even

withdrawn from the project at a later date may not be separately assessed. *Paris Meadows v City of Kentwood*, 287 Mich App 136 (2010):

Although a developer may retain rights to withdraw or develop land within the project, until it records an amended master deed, the land remains part of the project and, under MCL 559.231, no part of the project is taxed separately from the units.

This has been held to be the case even in the case of a 17-unit project with a large vacant common area designated to possibly include as many as 100 units. *Richmond St v City of Walker*, Michigan Court of Appeals Docket No. 286454 (2009). The court held that the assessment on the vacant “convertible” land was to be apportioned among the units.

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