

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

In re Mark William Rones and Ronda
Jacqueline Rones,

Debtors.

Whispering Woods Condominium
Association, Inc.,

Appellant,

v.

Mark William Rones and Ronda Jacqueline
Rones,

Appellees.

Civil Case No.: 3:15-CV-04271 (FLW)

**DECLARATION OF TIMOTHY P.
DUGGAN IN SUPPORT OF MOTION
FOR ORDER GRANTING MOTION
FOR LEAVE TO FILE *AMICUS BRIEF***

I, Timothy P. Duggan, of full age, upon his oath deposes and says:

1. I am a shareholder of the firm of Stark & Stark, PC, counsel for the Condominium Associations Institute (“CAI”).
2. Attached hereto as Exhibit “A” are three article from NJ.Com which discuss the rising foreclosure rates in New Jersey.
3. Attached hereto as Exhibit “B” are copies of statistical information obtained from the website maintained by the United States Bankruptcy Court for the District of New Jersey.

4. Attached hereto as Exhibit "C" is the unpublished bankruptcy court decision of *In re Gonzales*, 2010 Bankr. LEXIS 1291 (Bankr.S.D.Fla. 2010).
5. Attached hereto as Exhibit "D" is the proposed *Amicus* brief.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Timothy P. Duggan

TIMOTHY P. DUGGAN

Dated : August 23, 2015

EXHIBIT "A"



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N.J.'s 'zombie foreclosure' rate highest in U.S.



The "zombie foreclosure" rate in New Jersey is the highest in the nation, according to a new report, which tracked the number of homes in foreclosure that have been vacated by their owners. A foreclosure sign sits outside of a Egg Harbor Township home in this file photo. (Mel Evans/AP)



By Erin O'Neill | NJ Advance Media for NJ.com
Email the author | Follow on Twitter
on June 11, 2015 at 11:49 AM

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While the number of homes in foreclosure that have been vacated by their owners decreased last quarter from a year ago nationwide, New Jersey experienced a steep jump in those types of properties over the same time frame, **according to a new report** released Thursday morning.

The report from Irvine, Calif.-based housing research firm RealtyTrac found nearly 17,000 of the roughly 70,000 **homes in foreclosure in New Jersey** in the second quarter of this year were "zombie foreclosures." That represents about a quarter of homes in foreclosure in the state and accounts for one in every 210 housing units, which the report shows is the highest rate of any state.

The number of zombie foreclosures in New Jersey spiked by nearly 40 percent from a year ago, the report shows, as the number of those properties decreased by 10 percent at the national level.

Nearly a quarter of the 526,000 properties in foreclosure in the second quarter of 2015 had been vacated by their owners in the U.S., according to RealtyTrac, and those homes account for one in every 1,040 housing units.

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Man killed his fiancée, her brother in hours-long armed standoff, sources say

Daren Blomquist, vice president at RealtyTrac, said in a statement that a zombie foreclosure is worth more than 20 percent less than an owner-occupied foreclosure, "indicating that it is in a foreclosing bank's best interest to have a home occupied during the foreclosure process and also demonstrating how these zombies are contributing to blight in neighborhoods across the country."

The report also looked at the zombie foreclosure rate among 183 metropolitan areas and found Atlantic City and Trenton topped the list, followed by Tampa, Fla., and Binghamton, N.Y.

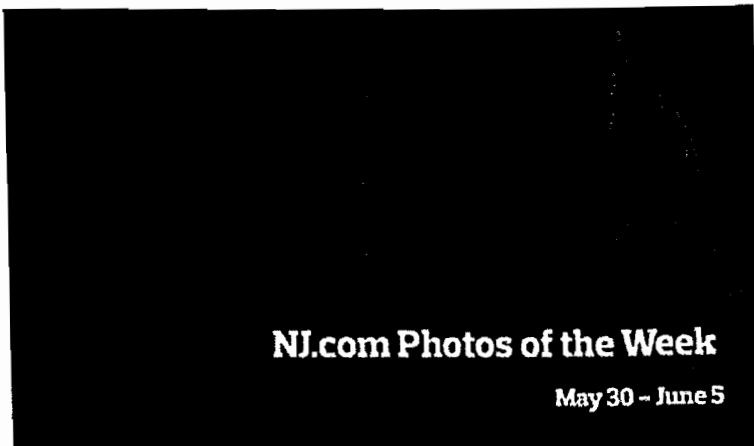
Top 5 zombie foreclosure rates among states:

- New Jersey (one in 210 housing units)
- Florida (one in 324 housing units)
- New York (one in 476 housing units)
- Nevada (one in 495 housing units)
- Indiana (one in 574 housing units)

Top 5 zombie foreclosure rates among metro areas:

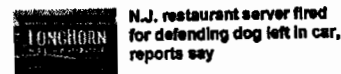
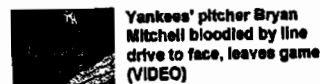
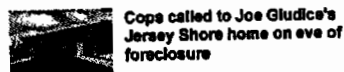
- Atlantic City (one in 130 housing units)
- Trenton (one in 166 housing units)
- Tampa (one in 218 housing units)
- Binghamton (one in 260 housing units)
- Ocala, Fla. (one in 262 housing units)

Erin O'Neill may be reached at oneill@njadvancemedia.com. Follow her on Twitter @LedgerErin. Find NJ.com on Facebook.



Patil Saone | NJ Advance Media for NJ.com

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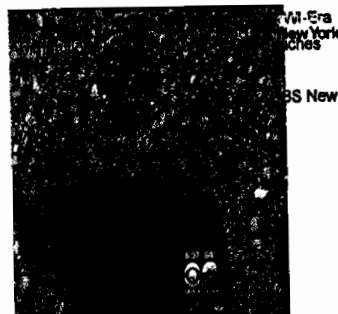


Active Discussions

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The news about foreclosures in N.J. isn't getting much better



New Jersey's foreclosure rate still ranks among the highest in the country, according to a new RealtyTrac report. Here, a foreclosure sign sits outside a home in this file photo. (David Zalubowski/AP)



By Erin O'Neill | NJ Advance Media for NJ.com
Email the author | Follow on Twitter
on May 21, 2015 at 7:45 AM, updated May 21, 2015 at 7:50 AM

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The number of homes entering the foreclosure process in New Jersey dipped in April as the pace of bank repossessions spiked, **a new report shows**, following a national trend that a housing expert said represents a "continuation of the clean-up phase of the last housing crisis."

Nearly 1,680 foreclosures were completed in New Jersey in April, a 375 percent increase over a year ago and a nearly 108 percent jump from March, the RealtyTrac report found. Foreclosure starts in the state fell roughly 20 percent from a year ago to more than 2,650 in April and dropped nearly 38 percent from March.

Nationally, bank repossessions increased 50 percent in April from a year ago and 25 percent from March and foreclosure starts dropped 5 percent from a year ago and 3 percent from March, according to the report from the Irvine, Calif.-based firm.

Daren Blomquist, vice president at RealtyTrac, said the increase in bank repossessions in April was foreshadowed by a 23-month high in scheduled foreclosure auctions last October.

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Man killed his fiancée, her brother in hours-long armed standoff, sources say

"Many of those scheduled auctions are now taking place, and properties are going back to the foreclosing lender," Blomquist said in a statement. "Meanwhile we continue to see foreclosure starts decrease, and foreclosure starts nationwide are now running consistently below pre-crisis levels — indicating that the overall increase in foreclosure activity in April is a continuation of the clean-up phase of the last housing crisis, not the start of a new crisis."

RealtyTrac also noted in its report it started receiving bank repossession data from a new source in the first quarter of this year that provides the data more quickly in some cases than other sources.

ALSO: Most who lost homes in N.J. won't return to real estate market by 2023, study finds

New Jersey's foreclosure rate still ranked among the top in the nation, the report also found, with a filing on one in every 594 housing units.

Only Maryland, Nevada and Florida had higher foreclosure rates last month. Florida had the highest rate, with foreclosure filings on one in every 425 housing units, according to the report. That's more than two times the national average.

The Atlantic City region also posted the highest foreclosure rate in the nation among metropolitan areas with a population of at least 200,000. One in every 297 properties in the area had a foreclosure filing, according to the report.

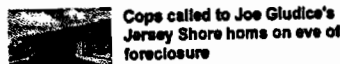
Other metropolitan areas that posted the highest foreclosure rates in the U.S. last month were concentrated in Florida, including: Jacksonville, Tampa, Daytona-Deltona Beach-Ormond Beach and Miami.

Erin O'Neill may be reached at oneill@njadvancemedia.com. Follow her on Twitter [@LedgerErin](#). Find [NJ.com on Facebook](#).



Here is a look at the top photos from around New Jersey from the staff at NJ Advance Media for the week of May 8 to May 14, 2015.

William Portman | N.J. Advance Media for NJ.com



Cops called to Joe Giudice's Jersey Shore home on eve of foreclosure



Yankees' pitcher Bryan Mitchell bloodied by line drive to face, leaves game (VIDEO)



N.J. restaurant server fired for defending dog left in car, reports say



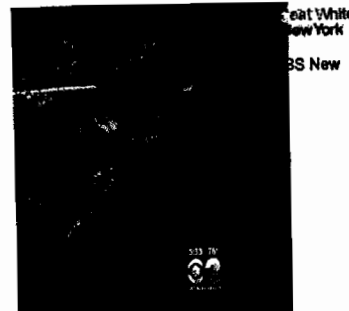
Teresa Giudice's Jersey Shore home sold back to bank for \$100 at auction

Active Discussions

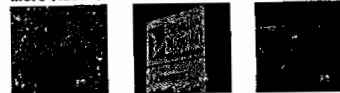
- 1 Christie worse than 11 Republicans in 2016 matchup with Clinton, polls show (88 comments)
- 2 Christie comes out swinging at N.J. teachers' union in N.H. (1356 comments)
- 3 Christie gets no 2016 traction in Florida, Ohio, Pa., polls show (14 comments)
- 4 Chelsea O'Donnell found with man who has drug history, report says (14 comments)
- 5 Beer Cam: Cute orphaned N.J. cub (24158 comments)

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THE LIST: TOP 10 COUNTIES IN NEW JERSEY WITH THE HIGHEST FORECLOSURE RATES

MAX LEONE | JULY 13, 2015

The Garden State has the dubious distinction of having the second-highest foreclosure rate in the country



It's no secret that New Jersey has a foreclosure problem. In fact, it's the state with the **second-highest foreclosure rate**, after Florida, according to realtytrac.com,

And as NJ Spotlight has reported, the Garden State ranks No.1 for "zombie foreclosures": instances in which a foreclosed property is vacated but not repossessed, thus remaining uninhabited. Another dubious distinction: New Jersey has the longest foreclosure timeline in the country-- 1,103 days, one of

the main factors in the "zombie" problem.

Where are foreclosure problems the worst? This list counts down the 10 counties with the highest foreclosure rates, using data from realtytrac.com, which ranks counties by calculating the number of housing units -- houses, apartments, and so on -- all told, and how many of those have been foreclosed on. The foreclosure total is a sum of all the assorted foreclosure filings in a county. If a single property receives multiple filings, only the most recent is counted.

The state as a whole was home to 7,378 foreclosed housing units in May 2015, out of 3,563,130 total units. One in every 483 properties in New Jersey has been foreclosed on, meaning that 0.21 percent of the state's housing is undergoing the foreclosure process. These numbers are strikingly higher than the national average: in the United States, one in every 1,041 housing units had been foreclosed, which works out to 0.10 percent. In Florida, the national leader, one in every 409 housing units is in foreclosure. Its most-foreclosed county, Pasco, has one foreclosure for every 203 housing units.

1. Atlantic County: 1 in every 230 housing units foreclosed

Atlantic County is New Jersey's most foreclosure-prone area, and one of the most foreclosure-riddled counties in the country. As of May 2015, one in every 230 housing units in the county had been foreclosed, which translates into 553 units out of a total of 126,929.

2. Camden County: 1 in every 257 units foreclosed

A total of 39 percent of the county's 513,512 housing units have been foreclosed on: that's 799 properties, the highest number in the state.

3. Sussex County: 1 in every 266 units

In Sussex County, 038 percent of a total of 61,993 housing units have been foreclosed on, for 233 foreclosures all told.

4. Cumberland County: 1 in every 273 units

This county in southern New Jersey hosted 205 foreclosure filings in May 2015; 0.37 percent of its 55,992 housing units are in foreclosure.

5. Salem County: 1 in every 319 units

The List: Top 10 Counties in New Jersey with the Highest Foreclosure Rates - NJ Spotlight Page 2 of 2

New Jersey's smallest county has one of its highest foreclosure rates. Only 86 housing units were in foreclosure in May 2015, but the county as a whole has only 27,469 units -- 0.31 percent of these are foreclosed.

6. Burlington County: 1 in every 331 units

This county's foreclosure rate is 0.30 percent; 532 of its 176,180 housing units are in foreclosure.

7. Union County: 1 in every 407 units

This county hosts 200,061 housing units, 492 of which have received foreclosure filings, equaling a 0.25 percent foreclosure rate.

8. Ocean County: 1 in every 426 units

This coastal New Jersey county has a 0.23 percent foreclosure rate, with 654 out of 278,766 units foreclosed on.

9. Mercer County: 1 in every 456 units

This central county is home to New Jersey's state capital. A total of 315 foreclosures in May out of 143,656 housing units, gives it a 0.22 percent foreclosure rate.

10. Gloucester County: 1 in every 466 units

This South Jersey county, boasts 110,415 housing units; 0.21 percent of which have received foreclosure notices.

Max Leone is an editorial intern for NJ Spotlight.

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EXHIBIT “B”



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

**Case Filings By County By Nature Of Debtor
For The 12 Months Ending December 2013**

Camden County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Atlantic	34001	27	1128	15	1	0	0	2	367	1539
Burlington	34005	14	501	6	0	0	0	1	210	732
Camden	34007	22	1606	9	0	0	0	4	884	2525
Cape May	34009	9	215	6	1	0	0	0	80	311
Cumberland	34011	5	597	0	0	0	0	6	472	1080
Gloucester	34015	23	880	5	2	0	0	4	441	1355
Salem	34033	7	185	0	0	0	0	1	125	318
Camden Totals		107	5112	41	3	0	0	18	2579	7860

Newark County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Bergen	34003	93	2106	34	10	0	0	3	339	2585
Essex	34013	43	1959	17	0	0	0	8	438	2465
Hudson	34017	31	1757	28	4	0	0	3	248	2071
Morris	34027	60	799	18	6	0	0	3	145	1031
Passaic	34031	36	1388	16	2	0	0	5	212	1659
Sussex	34037	20	479	1	0	0	0	3	61	564
Union	34039	20	1,355	20	2	0	0	2	259	1658
Middlesex	34023	0	3	0	0	0	0	0	0	3
Newark Totals		303	9846	134	24	0	0	27	1702	12036

Trenton County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Burlington	34005	7	761	7	2	0	0	1	410	1188
Hunterdon	34019	16	238	6	1	0	0	0	56	317
Mercer	34021	26	754	8	3	0	0	2	352	1145
Middlesex	34023	40	1840	12	0	0	0	6	410	2308
Monmouth	34025	47	1385	25	6	0	0	2	468	1933
Ocean	34029	42	1845	13	3	1	0	7	420	2331
Somerset	34035	38	504	6	1	0	0	1	134	684
Union	34039	3	13	0	0	0	0	0	0	16
Warren	34041	17	296	1	0	1	0	0	77	392
Trenton Totals		236	7636	78	16	2	0	19	2327	10314
All Others County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
All Others	00000	0	0	0	0	0	0	0	0	0
NJ Totals		Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
Totals		646	22594	253	43	2	0	64	6608	30210

* This report does not reflect cases with out of state, empty or partial zip codes.

* Cases re-opened within the 12 month period are counted once.



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

**Case Filings By County By Nature Of Debtor
For The 12 Months Ending December 2014**

Camden County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Atlantic	34001	23	981	11	2	0	0	4	353	1372
Burlington	34005	13	455	3	2	0	0	3	217	693
Camden	34007	38	1500	7	0	0	0	2	901	2448
Cape May	34009	11	208	2	0	0	0	0	66	287
Cumberland	34011	3	604	3	0	0	0	1	480	1091
Gloucester	34015	16	819	7	4	0	0	4	430	1280
Salem	34033	3	188	0	0	0	0	0	109	300
Camden Totals		107	4755	33	6	0	0	14	2556	7471

Newark County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Bergen	34003	85	1845	24	10	0	0	3	364	2331
Essex	34013	43	1753	20	7	0	0	7	495	2325
Hudson	34017	24	1504	17	3	0	0	3	254	1805
Morris	34027	27	737	9	3	0	0	2	171	949
Passaic	34031	25	1213	12	3	0	0	3	210	1466
Sussex	34037	14	425	4	0	0	0	3	67	513
Union	34039	36	1,288	19	3	0	0	2	342	1690
Middlesex	34023	0	3	1	0	0	0	1	2	7
Newark Totals		254	8768	106	29	0	0	24	1905	11086

Trenton County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Burlington	34005	9	698	3	2	1	0	2	383	1098
Hunterdon	34019	11	179	5	0	1	0	0	58	254
Mercer	34021	34	707	10	2	0	0	8	330	1091
Middlesex	34023	44	1616	19	2	0	0	0	433	2114
Monmouth	34025	34	1271	30	7	0	0	5	419	1766
Ocean	34029	34	1598	14	6	0	0	6	561	2219
Somerset	34035	20	405	8	0	0	0	4	133	570
Union	34039	1	3	1	0	0	0	0	0	5
Warren	34041	9	269	0	0	0	0	3	101	382
Trenton Totals		196	6746	90	19	2	0	28	2418	9499

All Others County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
All Others	00000	0	0	0	0	0	0	0	0	0
NJ Totals		Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Totals		557	20269	229	54	2	0	66	6879	28056

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 UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEW JERSEY

**Case Filings By County By Nature Of Debtor
 For The 12 Months Ending July 2015**

Camden County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Atlantic	34001	19	1001	8	2	0	0	2	346	1376
Burlington	34005	10	387	1	2	0	0	4	241	645
Camden	34007	16	1456	6	0	0	0	4	920	2402
Cape May	34009	13	187	1	1	0	0	2	74	278
Cumberland	34011	5	512	3	0	0	0	2	460	982
Gloucester	34015	14	744	9	1	0	0	4	428	1200
Salem	34033	3	179	1	0	0	0	1	95	279
Camden Totals		80	4466	29	4	0	0	19	2564	7162

Newark County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Bergen	34003	90	1691	29	10	0	0	5	403	2228
Essex	34013	53	1588	16	7	0	0	6	521	2191
Hudson	34017	23	1424	10	5	0	0	5	256	1723
Morris	34027	26	661	13	4	0	0	0	194	898
Passaic	34031	26	1136	14	3	0	0	2	234	1415
Sussex	34037	10	434	2	1	0	0	0	88	535
Union	34039	20	1,197	8	3	0	0	7	392	1627
Middlesex	34023	0	1	0	0	0	0	0	0	1
Newark Totals		248	8132	92	33	0	0	25	2088	10618

Trenton County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
Burlington	34005	14	678	5	2	0	0	2	378	1079
Hunterdon	34019	11	178	1	0	0	0	2	60	252
Mercer	34021	27	644	6	1	0	0	4	351	1033
Middlesex	34023	40	1439	19	4	0	0	4	454	1960
Monmouth	34025	29	1054	20	8	0	0	4	432	1547
Ocean	34029	33	1488	12	4	0	0	6	568	2111
Somerset	34035	9	384	5	2	0	0	5	148	553
Union	34039	0	6	0	0	0	0	0	1	7
Warren	34041	7	270	1	0	0	0	1	91	370
Trenton Totals		170	6141	69	21	0	0	28	2483	8912

All Others County	Code	Chapter 7		Chapter 11		Chapter 12		Chapter 13		Total
		Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	Bus.	Cons.	
All Others	00000	0	0	0	0	0	0	0	0	0
NJ Totals		498	18739	190	58	0	0	72	7135	26692

- * This report does not reflect cases with out of state, empty or partial zip codes.
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EXHIBIT “C”



3 of 100 DOCUMENTS

In re: BERNADETTE GONZALES, Debtor.

PROCEEDINGS UNDER CHAPTER 13, CASE NO. 07-14968-BKC-AJC

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT
OF FLORIDA

2010 Bankr. LEXIS 1292; 22 Fla. L. Weekly Fed. B 423

April 20, 2010, Decided

COUNSEL: [*1] For Bernadette Gonzales, Debtor:
Jordan E Bublick, Esq, North Miami, FL.

Trustee: Nancy N Herkert, Miramar, FL.

JUDGES: A. Jay Cristol, Judge.

OPINION BY: A. Jay Cristol

OPINION

**MEMORANDUM DECISION SUSTAINING
DEBTOR'S OBJECTION TO CLAIM 12-1 AND
GRANTING MOTION TO DETERMINE SE-
CURED STATUS, AND MOTION TO AVOID LIEN
OF THE NORTHGATE CONDOMINIUM ASSO-
CIATION, INC.**

THIS MATTER came before the Court upon Debt-
or, Bernadette Gonzales' (the "Debtor") Objection to
Claim 12-1 and 13-1 [DE 177] and Motion to Value
Collateral in Plan, Motion to Determine Secured Status,
and Motion to Avoid Lien [DE 175] as to The Northgate
Condominium Association, Inc. ("Northgate").

Undisputed Facts

On June 27, 2007 (the "Petition Date"), the Debtor
filed a petition for relief under Chapter 13 of title 11 of
the Bankruptcy Code in this case. Debtor's Schedule A
reflects that Debtor resides at and holds title to a town-
house located at 1701 N.E. 115th St., # 18A, Miami,
Florida (the "Property"). The Property is encumbered by
a first mortgage and it appears the parties do not dispute
that the first mortgage exceeds the value of the Property
and is therefore undersecured.

Northgate filed a secured claim, Claim 12-1, in the
amount of \$ 21,448.54. It [*2] also filed what appears
to be a duplicate secured claim, Claim 13-1, in the
amount of \$ 21,448.54. Both claims purport to be based
on "condominium assessment dues." Attached to the
proofs of claim is a register of monthly amounts out-
standing to substantiate the claim.

The parties agree that Northgate filed a document
styled a "claim of lien" post-petition on September 20,
2007 in the Official Records of Miami-Dade County,
Florida at book 25939 at page 4035. Northgate also filed
a "claim of lien" on June 13, 2006 in the Official Records
of Miami-Dade County, Florida at book 24626 at page
4255.

* Northgate and Banco Popular North America
additionally entered into a "collateral assignment
of right to collect assessments and assignment of
lien rights" which was recorded on February 18,
2007 in the Official Records of Miami-Dade
County, Florida at book 25377 at page 3248; but,
contrary to the Debtor's suggestion, and pursuant
to the language in the assignment itself, this as-
signment did not affect Northgate's rights and
ability to collect assessments and enforce any
liens.

Debtor objects to the claim seeking to (1) strike
Northgate's Claim 12-1 on the grounds that it is super-
seded and duplicated [*3] by Claim 13-1 and (2) modi-
fy Northgate's Claim 13-1 and allow it as wholly unse-
cured. The Motion to Value Collateral in Plan, Motion to
Determine Secured Status, and Motion to Avoid Lien
seeks to value the Property, determine Northgate's se-
cured status and to "strip off" or cancel its lien. The

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Debtor contends that Northgate's claim should be "stripped off" pursuant to 11 U.S.C. § 506, as the amount owed to the first mortgagee exceeds the value of the Property, and the association's claim is admittedly inferior to the claims of the first mortgagee. Debtor asserts Northgate has a wholly unsecured claim. In response, Northgate argues that inasmuch as the condominium's claim of lien is secured by the debtor's principal residence, 11 U.S.C. § 1322(b)(2) prohibits modification of the condominium association's lien rights.

Analysis

Initially, the Court sustains the objection to Claim 12-1 and strikes same as a duplication. It appears from Northgate's submissions that it is pursuing only one claim in the total amount of \$ 21,448.54. It further appears that Claims 12-1 and 13-1 are actually duplicate copies of the same document. Thus, it appearing there is no dispute as to the duplication of [*4] Northgate's claim, this Court grants the Debtor's motion to strike Claim 12-1 as being superseded by Claim 13-1.

In the remaining Claim 13-1, Northgate asserts it holds a secured claim based upon a lien for condominium assessments. Upon review of Claim 13-1 and the undisputed facts, it appears Northgate's lien is wholly unsecured and, as the Court has previously held in *In re Baez*, 11 U.S.C. § 1322 does not prevent the stripping of a wholly unsecured lien on property. As such, any lien arising from the Northgate's assessments may be avoided.

The parties do not dispute that, for the purposes of the motion before the Court, the value of Debtor's home ("Property") is \$ 140,000.00 and Northgate's lien is junior to the first priority mortgage on the Property held by Aurora Loan Services, LLC in the amount of \$ 144,654.64.

Section 506(a) of the Bankruptcy Code defines the secured and unsecured components of debts according to the value of the underlying collateral. *Tanner v. FirstPlus Financial, Inc. (In re Tanner)*, 217 F.3d 1357, 1358 (11th Cir. 2000). Section 506(a) provides in pertinent part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest...is [*5] a secured claim to the extent of the value of each such creditor's interest in the estate's interest in such property...and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim.

In the instant case, because the Property is valued at \$ 140,000.00 and Aurora holds the first mortgage in an amount undisputedly in excess of that, Aurora holds a secured claim on the Property, and the value of the Property is setoff by the amount of Aurora's claim. 11 U.S.C. § 506(a). Applying Section 506(a), there is no value remaining in the Property after Aurora's claim is setoff. Therefore, Northgate, admittedly inferior to Aurora, holds a wholly unsecured claim and has the status and rights of an unsecured creditor.

The Court concludes that Northgate does not have a secured claim under 11 U.S.C. § 506(a), as the plain language of the statute specifies a lien on the Property is secured only to the extent of the value of the Property. Because the Property's value is only \$ 140,000.00 and there is a pre-existing priority secured claim held by Aurora Loan Services, LLC for over \$ 140,000.00, there is no [*6] value left in the Property to be secured by Northgate's lien.

In addition, section 1322(b)(2) defines the rights of the Chapter 13 Plan to adjust the Debtor's liabilities. Section 1322(b)(2) of the Bankruptcy Code provides in pertinent part:

Subject to subsections (a) and (c) of this section, the plan may...modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims. 11 U.S.C. § 1332(b)(2) (2008).

Accordingly, Northgate's claim is not subject to the anti-modification provisions of 11 U.S.C. § 1322(b)(2), as the statute only applies to secured claims with an interest in real property that is the debtor's principal residence. As Northgate's claim is not secured by the value of the Property, its rights may be modified under the Chapter 13 plan. While Northgate relies on *Florida Statute 718.116(1)(a)* to propose that its association lien is given special preference as a secured claim in bankruptcy proceedings, the aforementioned statute only addresses the secured status of condominium association [*7] liens in state foreclosure proceedings or proceedings involving transfers of deeds in lieu of foreclosure and does not directly apply to prevent the strip off of unsecured liens in bankruptcy proceedings.

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However, *Florida Statute 718.116* does provide a statutory right to be paid a certain sum by the first mortgagee. *Florida Statute 718.116* provides condominium associations special treatment, to some extent, for association liens, and, the Court believes that, to the extent that Florida law provides for the payment of certain outstanding assessments from a mortgagee upon foreclosure, to wit, the lesser of six months of unpaid condominium assessments or one percent (1%) of the original mortgage, regardless of whether there's equity in the property, authority should not be exercised to extinguish or avoid that certain amount of condominium assessments for which a mortgagee would be responsible. To do otherwise would unfairly provide the mortgagee, a non-debtor, the benefit of the Bankruptcy Code's avoidance powers.

In Florida, condominium associations have greater protections. Florida law specifically holds that a condominium association's lien is superior to that of a second mortgagee. [*8] *Garcia v. Stewart 906 So.2d 1117 (Fla. 4th DCA, 2005)*. *Florida Statute 718.116(1)(a)* provides:

A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

Sections (1) and (2) of section 718.116(1)(b) impose and limit liability as follows:

The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

1. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

2. One [*9] percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee."

In the case *sub judice*, and pursuant to the provisions of the foregoing statute, regardless of the value of the homestead property, and even assuming that a first mortgagee is granted relief from the automatic stay and is entitled to proceed to foreclosure, pursuant to *Florida Statute 718.116*, at a minimum the condominium association is entitled to the lesser of six months of unpaid condominium assessments or one percent (1%) of the original mortgage even if the first mortgagee becomes the owner of the subject property and even if there is no equity in the property whatsoever. Therefore, a condominium association's right to be paid under *Florida Statute 718.116* cannot be completely avoided because a portion of what is owed to the association in unpaid assessments is [*10] part of the secured claim of the first mortgagee, to be paid for by the first mortgagee or whoever obtains title to the property at a foreclosure sale. Indeed, *Florida Statute 718.116* specifically states that if the first mortgagee obtains title to the unit, the association may file a claim of lien against the first mortgagee for the statutory amounts owed, 30 days after the certificate of title is issued.

Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Northgate's Claim 12-1 is stricken, as it is duplicated and superseded by Claim 13-1.

2. Northgate's claim 13-1 is allowed as an unsecured claim in this bankruptcy case. Claim 13-1 indicates the claim is in the amount of \$ 21,448.54; if that amount is contested, the parties shall obtain a date from the Courtroom Deputy Clerk and schedule an evidentiary hearing to determine the amount of the claim.

3. Nothing in this Order is intended to impact any statutory right of Northgate to be paid the lesser of six months of unpaid condominium assessments or one percent

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(1%) of the original mortgage by the first mortgagee, or whoever acquires the property at a foreclosure sale, pursuant to *Florida Statute 718.116*.

ORDERED in the Southern District [*11] of Florida on April 20, 2010.

/s/ A. Jay Cristol

A. Jay Cristol, Judge

United States Bankruptcy Court

EXHIBIT “D”

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

In re Mark William Rones and Ronda
Jacqueline Rones,

Debtors.

Civil Case No.: 3:15-CV-04271 (FLW)

Whispering Woods Condominium
Association, Inc.,

Appellant,

v.

Mark William Rones and Ronda Jacqueline
Rones,

Appellees.

CONDOMINIUM ASSOCIATIONS INSTITUTE *AMICUS* BRIEF

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I. RULE 8017(b)(4) STATEMENT

Timothy P. Duggan, Esquire of Stark & Stark authored this brief. No party contributed money that was intended to fund preparing or submitting the brief.

The brief was written on a pro bono basis.

II. STATEMENT OF THE BASIS OF APPELLATE JURISDICTION

The Condominium Associations Institute (“CAI”) adopts the Statement of Basis of Appellate Jurisdiction as set forth by the Appellant in this matter and takes no position in connection with any dispute among the parties, if any, with respect to same.

III. STATEMENT OF ISSUES AND STANDARD OF REVIEW

CAI adopts the Statement of Issues and Standard of Review as set forth by the Appellant in this matter and takes no position in connection with any dispute among the parties, if any, with respect to same.

IV. STATEMENT OF THE CASE

CAI adopts the Statement of The Case as set forth by the Appellant in this matter and takes no position in connection with any dispute among the parties, if any, with respect to same.

V. ARGUMENT

SUMMARY OF ARGUMENT

The Bankruptcy Court properly held that a condominium lien is a security interest recorded against the debtor's residence. However, the Bankruptcy Court erred in its interpretation of *N.J.S.A.* 46:8B-21(a)-(b) (granting condominium associations a superpriority lien) and 11 U.S.C. §1322(B)(2) (prohibiting the modification of certain residential mortgages).

New Jersey granted condominium associations a superpriority lien in order to provide condominium associations with additional leverage in collecting unpaid association assessments. The superpriority lien is created by subordinating all mortgages, judgments and other liens (except real estate taxes and municipal charges) to *a portion* of a properly filed condominium lien, limited to six months of association assessments. Once subordinated, the condominium lien is partially in first position and partially in third or fourth (depending on when it was filed and whether there are intervening mortgages or liens), but the lien remains as a single lien with dual priority.

Congress, seeking to protect residential mortgage lenders, prohibited Bankruptcy Courts from modifying most residential mortgages in Chapter 13 bankruptcy cases. The anti-modification clause prohibits the Bankruptcy Court from confirming a Chapter 13 bankruptcy plan that cram downs, strips off or

modifies a mortgage (or security interest) secured by real property if the only collateral for the lien is the debtor's residence and there is at least some value to secure the mortgage or security interest.

When the plain and unambiguous language of *N.J.S.A.* 46:8B-21(a)-(b) is given effect, it is clear that the Appellant holds a secured claim. Although other creditors may not think this is fair, one cannot question the clear intent of the New Jersey legislators or United States Congress in providing condominium associations and mortgage lenders with preferred rights when dealing with defaulting debtors. The New Jersey Bankruptcy Court's finding that the superpriority lien is not a priority lien, but a priority in payment, contradicts the plain reading of the New Jersey statute and deprives condominium associations of a state law right in Chapter 13 cases.

ARGUMENT

The Bankruptcy Court cited the well established law in this circuit that to the extent there is *any value* securing the Appellant's security interest in the debtor's home, the entire claim is subject to the anti-modification clause of 11 U.S.C. § 1322(b). *In re Nobelman*, 508 U.S. 324 (1993); *In re McDonald*, 205 F. 3d 606 (3rd Cir. 2000). The issue in contention is whether there is at least some value (ie. \$1.00) securing the Appellant's security interest (condominium lien) thereby

prohibiting the lien from being stripped off the property in the debtor's Chapter 13 plan.

The starting point in the analysis is *N.J.S.A. 46:8B-21*, which states, in pertinent part:

21. a. The association ***shall have a lien*** on each unit for any unpaid assessment duly made by the association for a share of common expenses or otherwise, including any other moneys duly owed the association, upon proper notice to the appropriate unit owner, together with interest thereon and, if authorized by the master deed or bylaws, late fees, fines and reasonable attorney's fees; provided however that an association shall not record a lien in which the unpaid assessment consists solely of late fees. ***Such lien shall be effective from and after the time of recording in the public records of the county*** in which the unit is located of a claim of lien stating the description of the unit, the name of the record owner, the amount due and the date when due. Such claim of lien shall include only sums which are due and payable when the claim of lien is recorded and shall be signed and verified by an officer or agent of the association. Upon full payment of all sums secured by the lien, the party making payment shall be entitled to a recordable satisfaction of lien. Except as set forth in subsection b. of this section, all such liens shall be subordinate to any lien for past due and unpaid property taxes, the lien of any mortgage to which the unit is subject and to any other lien recorded prior to the time of recording of the claim of lien.

b. ***A lien recorded*** pursuant to subsection a. of this section shall have a ***limited priority over prior recorded mortgages*** and other liens, except for municipal liens or liens for federal taxes, to the extent provided in this subsection. This priority shall be limited as follows:

(1) To a lien which is the result of customary condominium assessments as defined herein, the amount of which shall not

exceed the aggregate customary condominium assessment against the unit owner for the six-month period prior to the recording of the lien.

* * * * *

(6) *When recording a lien which may be granted priority pursuant to this act*, an association shall notify, in writing, any holder of a first mortgage lien on the property of the filing of the association lien. An association which exercises a good faith effort but is unable to ascertain the identity of a holder of a prior recorded mortgage on the property will be deemed to be in substantial compliance with this paragraph.

* * * * *

e. If a mortgagee of a first mortgage of record or other purchaser of a unit obtains title to such unit as a result of *foreclosure* of the first mortgage, such acquirer of title, his successors and assigns *shall not be liable for the share of common expenses or other assessments by the association pertaining to such unit or chargeable to the former unit owner* which became due prior to acquisition of title as a result of the foreclosure. Any remaining unpaid share of common expenses and other assessments, except assessments derived from late fees or fines, shall be deemed to be common expenses collectible from all of the remaining unit owners including such acquirer, his successors and assigns.

f. *Liens for unpaid assessments may be foreclosed by suit brought in the name of the association in the same manner as a foreclosure of a mortgage on real property.* The association shall have the power, unless prohibited by the master deed or bylaws to bid on the unit at foreclosure sale, and to acquire, hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same. Nothing herein shall alter the status or priority of municipal liens under R.S.54:5-1 et seq.

N.J.S.A. 46:8B-21 (emphasis added).

Critical to this case is *N.J.S.A. 46:8B-21(b)* and the lien subordination language contained in the statute. Specifically, the statute clearly states a “lien recorded” shall have “limited priority”. The statute does not use the word payment or grant the condominium association any special payment rights. The recorded lien gives the condominium association the right to *foreclose* its lien just like a mortgagee has the right to foreclose its mortgage.

The error in the decision can be traced to the Bankruptcy Court’s conclusion that:

1. “The Act is clear that priority is granted only for an amount equal to six months’ worth of customary charges of the condominium association. ***It excludes the balance of the lien.*** It is an exception to the general rule of “first in time, first in right” whereby the oldest recorded lien maintains senior priority status. In limiting the amount a condominium association can collect, ***the Act addresses payment, not security.***” (Decision, at 16) (emphasis added).
2. “If the Court were to accept the position of Whispering Woods, that the statutory priority provided by the Act gives it security necessary to be subject to the antimodification provision, it would have to accept that the Act provides additional security for the Lien.” (Decision, at 17).

The Bankruptcy Court’s finding that the Act addresses payment, not priority, is not supported by the controlling statute. *N.J.S.A. 46:8B-21(b)* does not limit the amount an association *can collect*; it limits the amount that is in first position. The

balance of the lien is still a lien and can be foreclosed; it is not excluded as suggested by the Bankruptcy Court.

As for the “additional security”, there is no additional security. The debtor’s home is the only collateral. The lien attaches to one parcel of real estate.

The weakness in the debtor's argument in the case at bar can be underscored by reference to Florida law. *In re Gonzales*, 2010 Bankr. LEXIS 1292 (Bankr.S.D.Fla. 2010) (Duggan Dec., Exhibit “C”). In *Gonzales*, the condominium association argued that its lien for unpaid association assessments is “given a special preference as a secured claim in bankruptcy proceedings” and cannot be modified under 11 U.S.C. §1322(b)(2). The condominium association relied upon Florida law which provides:

718.116 Assessments; liability; lien and priority; interest; collection.

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.

(b)1. The *liability of a first mortgage* or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee’s acquisition of title is limited to the lesser of:

- a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
- b. One percent of the original mortgage debt. . .

§ 718.116(1)(b), Fla Stat.

The *Gonzales* court agreed that the condominium claim is given special treatment, but found that the Florida statute is limited to “state foreclosure proceedings or proceedings involving transfers of deeds in lieu of foreclosure and does not directly apply to prevent the strip off of unsecured liens in bankruptcy proceedings”. *In re Gonzales*, at 6-7. Under the Florida law, “a condominium association’s right to be paid under Florida Statute 718.116 cannot be completely avoided because a portion of what is owed to the association in unpaid assessments ***is part of the secured claim of the first mortgagee***, to be paid for by the first mortgagee or whoever obtains title to the property at a foreclosure sale.” *Id.*, at 9-11 (emphasis added).

Florida did not grant the condominium association a superpriority lien, merely a right to look to the foreclosing mortgagee to get paid. Since the mortgagee is liable to the condominium association, the mortgagee can add those amounts to its mortgage claim. However, no priority lien rights were given to

condominium associations. This is an example of a payment priority, not lien priority, scheme.

New Jersey chose a different path and decided that lien subordination was a better way to deal with the issue. New Jersey does not make mortgagees liable for unpaid condominium fees after a sheriff sale. *N.J.S.A.* 46:8B-22 provides:

Effect of sheriff's sale. (a) A unit may be sold by the sheriff on execution, *free of any claim, not a lien of record, for common expenses or other assessments by the association*, but any funds derived from such sale remaining after satisfaction of prior liens and charges but before distribution to the previous unit owner, shall be applied to payment of such unpaid common expenses or other assessments if written notice thereof shall have been given to the sheriff before distribution. Any such unpaid common expenses which shall remain uncollectible from the former unit owner for a period of more than 60 days after such sheriff's sale may be reassessed by the association as common expenses to be collected from all unit owners including the purchaser who acquired title at the sheriff's sale, his successors and assigns. Unless prohibited by the master deed or bylaws, the association may bid in and purchase the unit at a sheriff's sale, and acquire, hold, lease, mortgage and convey the same.

N.J.S.A. 46:8B-22 (emphasis added).

New Jersey could have adopted a mechanism like Florida to shift the financial burden to lenders and make them liable for payment of past due amounts. It did not. New Jersey chose to use a lien subordination mechanism which grants condominium associations a lien with foreclosure rights.

VI. Policy Considerations

The condominium form of ownership by its very nature is a housing model based on collective ownership of property and is inherently dependent on timely and full payment of assessments to ensure the financial integrity of the association for the benefit of all owners. Accordingly, payment of assessments is an independent and express contractual obligation of any owner upon membership in a community association. Section 46:8B-17 of the Condominium Act in New Jersey provides in part that “the amount of common expenses charged to each unit shall be a lien against such unit...” *N.J.S.A.* 46:8B-17. Most states have Condominium or Uniform Property Acts with similar provisions.

Condominium associations depend on the assessments to maintain common elements, such as roofs, roads and storm water facilities. Associations manage and insure communities of hundreds and sometimes thousands of units, so in addition to common expenses, boards are charged with growing reserves for capital projects and for employing professionals, such as engineers, accountants and lawyers. In many ways these associations mimic the roles of municipal governments. Robert Nelson, a noted Maryland University economist and professor in the School of Public Policy, has written that “[T]his [referring to community associations] new private governance structure substitutes in many areas for the old local governance in the public sector.” Robert Nelson, HOAs as

Private Governments: A Special Mini Symposium, 13 *The Independent Review*, A *Journal of Political Economy* 546 (2009). When any one unit in an association fails to pay assessments, the debts accrue as the non-paying individual continues to occupy the unit pending foreclosures that oftentimes endure for two years or more. The debts typically accumulate to the thousands and tens of thousands of dollars for even one delinquent unit owner, forcing every other owner in a community to subsidize the loss. And in too many instances, as evidenced during the recent economic downturn, entire communities were financially devastated because of the growing number of owners who defaulted on payment of assessments.

The bankruptcy anti-modification clause was created to protect mortgage lenders from uncertainty in the value of their loans to be sold in the secondary market. The non-commercial interest of condominium associations and the residents of condominiums are no less dependent on the certainty of collecting the assessments than the commercial interests of lenders that, unlike associations, have the ability to determine the credit worthiness of those they lend to, while associations are forced to accept all owners to whom they provide essential value-enhancing services in return for the promise of payment. If Bankruptcy Courts are permitted to strip away the non-priority portion of a condominium association's lien, the effect will be to unjustly enrich delinquent owners and burden every other owner to subsidize the difference.

More importantly, associations will be left with little to no recourse to be made whole. If the full lien of a condominium association is not afforded the protections of the anti-modification provisions, then unlike lenders who may still have the ability to realize the value of their mortgages through foreclosures, condominium associations will be left with practically no recourse, even if equity remains after the foreclosure of the first mortgage. Without a guarantee that the association's lien will remain intact, a Chapter 13 bankruptcy means that the association loses ability to collect the fees as well as its non-priority portion of the lien, which is usually far more significant than the six month priority lien.

The Uniform Law Commissioners (ULC) have recognized since 1982 the unique structure of community associations and the importance of their ability to collect the assessments due. Starting in 1982 with the drafting of the Uniform Common Interest Ownership Act ("UCIOA"), provisions concerning limited lien priorities have been part of the Uniform Property Acts. The Uniform Condominium Act ("UCA") and the Uniform Planned Community Act, dealing with specific types of community associations also contain the same lien priority provisions in favor of various types of common interest communities. Eleven states have adopted UCIOA, fourteen states have adopted the UCA, and one state (Pennsylvania, which also adopted the UCA) adopted the UPCA. Hence 25 states have adopted at least one of the Uniform Property Acts. Many other states, such as

New Jersey, started with the limited lien priority provisions in the Uniform Property Acts and adopted individual statutes amending their common interest ownership statutes to provide for limited lien priorities modeled on the Uniform Property Acts. There is nothing in any of those acts or in the commentary of the ULC to indicate that a six month priority creates two liens rather than one lien with differing priorities.

The commentary of the ULC concerning section 3-116 of UCIOA, which provides for a limited priority, is instructive.

The six-month limited priority for association liens constituted a significant departure from pre-existing practice, and was viewed as striking an equitable balance between the need to enforce collection of unpaid assessments and the need to protect the priority of the security interests of lenders in order to facilitate the availability of first mortgage credit to unit owners in common interest communities. This equitable balance was premised on the assumption that, if an association took action to enforce its lien and the unit owner failed to cure its assessment default, the first mortgage lender would promptly institute foreclosure proceedings and pay the unpaid assessments (up to six months' worth) to the association to satisfy the association's limited priority lien. This was expected to permit the mortgage lender to preserve its first lien and deliver clear title in its foreclosure sale — a sale that was expected to be completed within six months (in jurisdictions with nonjudicial foreclosure) or a reasonable period of time thereafter, thus minimizing the period during which unpaid assessments would accrue for which the association would not have first priority. Likewise, it was expected that in the typical situation, a unit would have a value sufficient to produce a sale price high enough for the foreclosing lender to recover both the unpaid mortgage balance and six months of assessments.

More significantly, long delays have developed in the completion of foreclosures. In states permitting only judicial

foreclosures, these delays were often beyond lender control. In many situations, however, mortgage lenders strategically delayed the institution or completion of foreclosure proceedings on units affected by common interest assessments. When a lender acquires a unit at a foreclosure sale by way of a credit bid, it becomes legally obligated to pay assessments arising during the lender's period of ownership. Some lenders have chosen to delay scheduling or completing a foreclosure sale, fearful that they may be unable to resell the unit quickly for an appropriate return in a depressed market. During this period of delay, neither the unit owner nor the mortgage lender is paying the common expense assessments — the unit owner is often unable or unwilling to do so, and the mortgagee is not legally obligated to do so prior to acquiring title. In the meantime, the association (and the remaining unit owners) bear the full financial consequences of this situation, because the association must either force the remaining owners to bear increased assessments to meet budgeted expenses or reduce expenditures for (or the level of) community maintenance, insurance and services.

If other unit owners have to pay the burden of increased assessments to preserve community services or amenities, the delaying lender receives a benefit in that the value of its collateral is preserved while the lender waits to foreclose. Yet this preservation comes through the community's imposition of assessments that the lender does not have to pay or reimburse. This benefit constitutes unjust enrichment of the mortgage lender, particularly to the extent that the lender enjoys this benefit by virtue of a conscious decision to delay completing a foreclosure sale.

Thus, the ULC recognized the fact that the six-month lien priority, based initially on the expectation that lenders would be motivated and able to foreclose a

first mortgage in approximately six months, is not current reality. The foregoing commentary makes clear the importance of the liens of condominium associations. Condominium associations expend monies collected from all unit owners to maintain the exteriors of the units, care for roads, storm water facilities and landscaping, all of which enhances the value of the individual units in the community. As the Uniform Law Commissioners point out, to the extent the association cannot collect upon the non-priority portion of the lien, the lenders and owners of the delinquent units receive a benefit through the condominium association's forced maintenance of the common elements owned by all the unit owners and forming a part of the security of mortgage holders.

It is estimated that 29.4 million Americans live in condominiums in the United States. Community Associations Fact Book (2014), Foundation for Community Association Research. By statute and the associations' governing documents, the same force of authority that created the condominium simultaneously created the lien right secured by singular collateral---the home. If liens are stripped, the ability of an association to pay for governmental-styled services will be undermined. The creation of the lien, secured by the home, by force of law makes the Association a secured creditor. Accordingly, the association should be afforded the same protections as any other secured creditor meeting the standards under the anti-modification provisions of the Bankruptcy

Act. Without the ability to collect the full amount of its lien, whether the part that is granted priority by statute or the much larger non-priority part of the same lien, associations suffer significant shortfalls in income, triggering larger assessments that, in turn, trigger additional delinquencies. For those associations dealing with numerous bankruptcies and foreclosures, created to a large extent by lenders that improvidently lent money to those who could not afford to repay the loans, collecting full and timely assessments is essential to the sustainability of the condominium association and all of its owners.

The Appellant holds a single secured lien against the debtor's residence. As a result, it cannot be modified under the bankruptcy anti-modification clause.

Stark & Stark, PC

By: /s/ Timothy P. Duggan
Timothy P. Duggan

Dated: August 27, 2015