

# FEDERAL HOUSING FINANCE AGENCY (FHFA) PROTECTS BIG BANKS AT THE EXPENSE OF AMERICAN HOMEOWNERS

FHFA, as conservator of Fannie Mae and Freddie Mac, has chosen to protect the big national lenders by fighting community association priority lien laws at the state. FHFA has an option to hold servicers accountable for their obligation through the Fannie Mae and Freddie Mac servicer guides. Instead FHFA is protecting the big banks at the expense of homeowners in community associations.

# Interpretation of the Uniform Condominium Act and Common Interest Ownership Act

1. In recent years, the courts have clearly ruled that community association lien priority is a true priority and not a payment priority; including District of Columbia, Massachusetts, Nevada and Rhode Island
2. The Uniform Commissioners drafted the Uniform Condominium Act in 1977-38 years ago-condominium association liens have always been a true priority which wipes out the lender’s first mortgage-but lender may bid in at sale so has all the protection it needs.
3. The American Bankers Association, Mortgage Bankers Association and Fannie and Freddie were at the bargaining table for the limited priority lien in 1977 and always knew a condominium lien foreclosure extinguished the first mortgage.  Fannie or Freddie I’m told wrote about it in 1978 and it follows over a one hundred years of real estate law that a lien having priority extinguishes everything behind it including the first mortgage in the 22 limited priority states plus D.C.

# The Big, National Banks Caused the Housing Crisis and are Leaving Americans in HOAs and Condos to Bailing Them Out Again

1. The big, national lenders underwrote bad loans and community associations had no say in inheriting new unit owners not qualified to pay condominium fees or their mortgage., the limited priority lien power to foreclose ahead of the first mortgage isa very effective tool that enhances the collateral of the 95 unit with performing loans and benefit the unit owners who do not have to subsidize lenders by giving them free master insurance, management, landscaping, water and sewer and common utilities.

# Fannie Mae and Freddie Mac are Protected from Priority Lien through Their Long-Standing Servicer Guide – FHFA Ignores Enforcement

1. The Fannie Mae and Freddie Mac long-standing servicer guides specifically instruct their servicers to take steps to pay off the priority portion of lien necessary to protect the integrity of the Fannie and Freddie liens.
2. The Fannie/Freddie Condominium Rider to mortgaged used in all 50 states provides that failure to pay condominium fees is a default under the mortgage so lenders clearly know it is critical that condominium fees be paid.
3. This subsidy of Fannie, Freddie and request of lender trade organization for all lenders is simply another bailout for poor underwriting practices by big, national lenders.
4. Since the Fannie Mae Servicing Guide says Fannie and Freddie are only responsible for 6 months of fees and the lender/servicer is required to keep condominium fees current and to prevent the association getting a priority and since the servicer is responsible for all legal fees and costs of the condominium and any amounts over 6 months, FHFA is effectively using HERA to protect big, national lender/servicers.  It thus makes sense that General Counsel for FHFA, Alfred Pollard, is a former Bank of America employee.

# Priority Lien Creates Housing Recovery at the Local Level; Protect Main Street from Wall Street

1. You’ve heard the example we have given of how the limited priority lien works but it is worth repeating.  Brookside Condominium in Framingham, Massachusetts had 160 out of 180 unit NOT paying condominium fees prior to enactment of the limited priority lien and could not pay for essential services and values of units dropped to $5,000.  By the end of 1993-the limited priority lien took effect April 6, 1993, almost all unit owners were current.  That is just one of many stories of disasters prior to the limited priority lien and the limited priority lien helped not only paying unit owners but also lenders on performing loans because values increased dramatically from $5,000 after the limited priority lien took effect.
2. FHFA should not step in 23 years later and say that the limited priority lien is a disaster-there is simply no proof other than to the contrary.  It is telling that since 1993, Fannie and Freddie did not write even ONE letter to the legislature in Massachusetts complaining about the limited priority lien and it increased not decreased lending.  It is also telling that in 1993, Graham Kidner from the legal department at Freddie Mac flew up to meet with me to discuss where notices should be sent for Freddie Mac loans so they could be paid.
3. We urge you not to permit FHFA to bring Massachusetts condominiums back 23 years.  It is not good for condominium owners and condominium associations and is not good for lenders.