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***1010 Lake Shore Update***

By Andrew K. Scott

Last year, the First District Appellate Court's ruling in *1010 Lake Shore Association v. Deutsche Bank National Trust* significantly affected the rights of associations to collect back due assessments. The Court held that if a purchaser of a condominium at a foreclosure sale subsequently fails to pay assessments they can be held liable for the amounts owed prior to the foreclosure. The ruling was a huge win for associations who –in light of the recent economic downturn and mortgage foreclosure crisis– were often losing out on a significant amount of assessment money after unit owners entered foreclosure. Unsurprisingly, Deutsche Bank has appealed this decision before the Illinois Supreme Court. The Supreme Court agreed to hear the appeal and heard oral arguments on September 24, 2015. The ruling is expected in early 2016 and will have a significant effect on banks and associations specifically as it relates to what is due to associations after a foreclosure sale and when.

The crux of the ruling in *1010 Lake Shore Association v. Deutsche Bank National Trust* is the statutory interpretation of a nuanced section of the Illinois Condominium Property Act: Section 9(g). Section 9(g) relates to the association's lien on a unit for unpaid assessments. Pursuant to Section 9(g)(1), the association has a lien for common expenses and fines when due, along with unpaid interest, late charges, and reasonable attorneys fee incurred that supercedes all other liens other than tax and other governmental liens. Section 9(g)(3) obligates the purchaser of a condominium at a judicial foreclosure sale to begin paying assessments the first day of the month after the foreclosure sale. Section 9(g)(4) obligates a third-party purchaser at a foreclosure sale to pay six months of unpaid assessments.

But what happens when the purchaser does not begin paying assessments on the first day of the month after the foreclosure sale? The Court in *1010 Lake Shore* looked to a clause in Section 9(g)(3) that states that payment of assessments after the first day of the month after the foreclosure sale "confirms the extinguishment of any lien" the association has for unpaid common expenses and interpreted that clause to mean that a third-party purchaser's failure to pay assessments when obligated lead to the third-party purchaser owing the entire lien amount, or the balance owed on the unit.

Prior to the court's ruling in *1010 Lake Shore*, associations were entitled to a six month calculation of assessments and common expenses due under Section 9(g) of the Illinois Condominium Property Act. Should *1010 Lake Shore* be overturned by the Illinois Supreme Court, the Association would still be entitled to collect under the six month calculation theory. Due to the length of time foreclosures take, if the Illinois Supreme Court overturns *1010 Lake Shore* it would result in associations missing out on recovering a significant amount of assessment money.

Hopefully, the Illinois Supreme Court will bring some clarification to the amounts due under Section 9(g) and when they come due. Stay tuned to our newsletter for updates on this case.