

## A New Kind of Earthquake May Be Near In Wisconsin Condominium Foreclosures

Sep 30 2011

Practice Area: Community Associations

---

Some Bank Foreclosures Fall Short of Legal Requirements.

*It pays to check a lender's representations and claims of priority over the Association.*

An earthquake in Wisconsin condominium foreclosures may be on the near horizon. Several large national banks which lent money easily and quickly have tried to foreclose easily and quickly on owners in default. But, it appears, these banks could not keep up with the paperwork when the loans were made, and they are skipping over or mischaracterizing the paperwork in the foreclosure actions. As a result of lawsuits, bad publicity and complaints, several lenders have stopped foreclosures. Chaos in the lending environment is not abating.

Typically, condominium associations are also made defendants, as lenders seek to erase Wisconsin condominium liens. Our interest is more than a desire not to see fraud perpetrated on the courts, as is now being alleged. We represent associations. Lenders routinely claim priority over associations on who gets paid first. But that lender priority over our clients doesn't apply if the lenders can't "prove up" the debt. And sometimes, the lender makes claims it can't deliver on.

Some months ago, in one of our conferences, we warned attendees that foreclosure actions were being filed which misstated lender priorities. Sometimes the lender could not find the paperwork which originated the loan. (The lending environment was really crazy a few years ago, remember?) In other cases, the Wisconsin Condominium lien was superior, even though the legal papers claimed otherwise.

Evidence is coming out daily, in the national press and elsewhere, that some of the foreclosure cases in court are based on documents and allegations by the banks which cannot be supported. There are more shoes to drop, undoubtedly.

Here are a couple of action steps for Wisconsin condominium associations:

1. Do not assume that a foreclosure action filed against a member by a lender has priority over a condominium lien. A knowledgeable condominium collection attorney can determine this in fairly short order, after which the Association can make informed choices.
2. A member in financial distress typically stops paying both the lender and the Association. In the past, the lender's court action was sometimes sufficient to remove the nonpayer from the community. But GMAC, JPMorgan Chase and Bank of America have at least temporarily stopped foreclosures because of the scandal. We don't know if more lenders will follow. We are watching to determine if Associations should play a more active foreclosure role. We also seek to make sure our associations are not tarred with the same brush as the lenders.

In the struggle and distress between a lender and a Wisconsin condominium home borrower, we do not take sides, except to reflect that the failure of the deal between them causes pain to our client too, because when one member doesn't pay, neighbors must pay that share. We also note that Wisconsin law, (unlike the law in many states,) does precious little to protect condominium communities.

In many states, not Wisconsin, the foreclosing bank must pay the assessment for half a year. Specifically, associations have at least six months priority in condominium assessments over lenders so the associations can continue to operate. The association spends the money to protect the community and thus the lender's collateral. But we don't have this law. Neighbors in the community – Wisconsin condo associations -- simply should not be paying for the mistakes, misfortunes and carelessness of borrowers – and lenders!

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.