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ATTORNEYS AT LAW

When the bank is foreclosing (known as a Trustee's Sale) against a home located in a homeowners association, it is important for the association to know what mortgage, or deed of trust, is at issue. If the holder of a first deed of trust forecloses, as of the date of the foreclosure/trustee's sale, the association's assessment lien gets wiped out.

The new owner (bank or third-party purchaser) will take title to the property with a zero assessment lien balance. This purchaser is not responsible for any of the past due balance owed as of the date of the Trustee's Sale.

However, that new owner (which may be the bank) then has the obligation to pay assessments moving forward. If the holder of a first deed of trust forecloses and then does not pay assessments moving forward, the association could pursue a lien foreclosure action against that owner when the delinquency meets the required statutory minimum of \$1,200 or 12 months of unpaid assessments.

However, if the holder of a second deed of trust forecloses, the purchaser at that Trustee's Sale takes ownership of the lot subject to the association's assessment lien. In other words, whoever ends up the owner of the property (bank or third-party purchaser) will need to bring the past due assessments, related late fees and costs of collection current if they want to have clear title to the property. This is because an association's assessment lien against the property does not get wiped out when the holder of a second deed of trust (or other junior lien) forecloses.

The new owner is also responsible to pay assessments moving forward. In addition, if the new owner does not resolve the assessment lien delinquency owed as of the Trustee's Sale date and/or the assessments coming due after the Trustee's Sale, the association could pursue its own lien foreclosure action based on the entire delinquency (provided the delinquency meets the required statutory minimum).

Because association assessment liens survive a Trustee's Sale involving the holder of a second deed of trust is why it is important an association knows which lender is foreclosing.

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6720 North Scottsdale Road, Suite 261 * Scottsdale, Arizona 85253

Telephone 480/922-9292 * Fax 480/922-9422

e-mail curtis@ekmarklaw.com

www.ekmarklaw.com