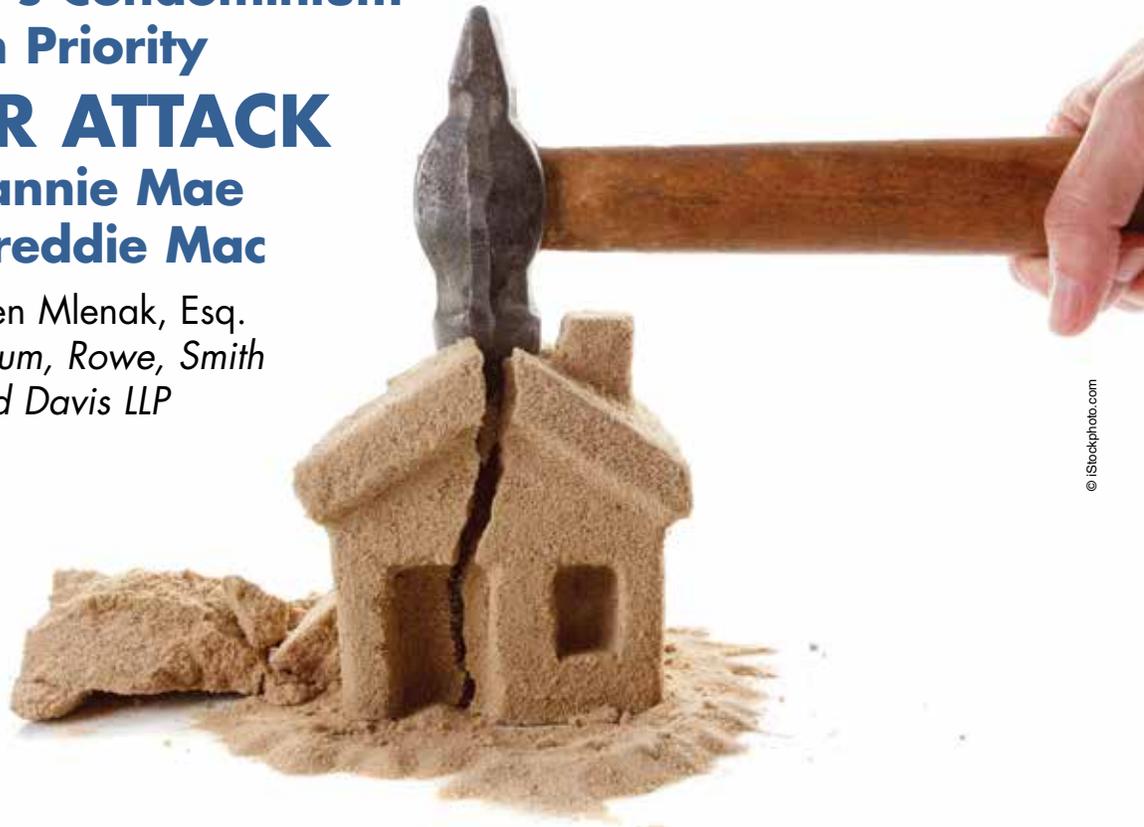


New Jersey's Condominium Lien Priority

UNDER ATTACK

by Fannie Mae
and Freddie Mac

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As is the case in 21 other states, and the District of Columbia, New Jersey allows condominium associations a limited lien priority of up to six (6) months of “customary condominium assessments” over prior recorded mortgages and other non-governmental liens provided that the association’s lien was timely recorded and with proper notice to the mortgage lender. N.J.S.A. 46:8B-21. In lay terms, when a mortgage lender forecloses on a condominium unit and the unit is sold at a sheriff’s sale, up to six (6) months of “customary condominium assessments” must be paid to the association by the purchaser of the unit in order to discharge the association’s lien.

This lien priority, sometimes referred to as a “super lien,” was adopted by the Legislature in 1996 with the intent to alleviate some of the burden felt by associations when units within their condominium, often vacant and abandoned, face foreclosure. Now more than ever, it provides some measure of financial stability for condominium associations impacted by high foreclosure rates, while incentivizing mortgage lenders and servicers to complete foreclosures on vacant or abandoned homes. Now, this lien priority is under attack at the federal level.

Much of the current mortgage market is controlled by two federally-chartered companies, Fannie Mae and Freddie Mac. Among other functions, these companies set and manage the standards mortgage lenders use when extending loans to homeowners. When the standards set by Fannie Mae and Freddie Mac are not met, most banks will choose not to extend credit. In the context of community associations, lenders look to the standards to confirm an association’s financial stability, that it is properly insured and that the governing documents meet certain standards.

In 2014, the Federal Housing Finance Agency (FHFA), the independent federal agency which regulates Fannie



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Courtesy CAI-NJ.

Mae and Freddie Mac, began targeting the limited lien priority statutes throughout the country. The FHFA points to the Housing and Economic Recovery Act (HERA) which contains a provision that provides that "no property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to property of the Agency." 12 U.S.C. § 4617(i)(3). Based upon this language, the FHFA has argued in federal courts throughout the country that it must consent to any lien priorities on Fannie Mae or Freddie Mac loans. Without such approval, the FHFA argues the lien priorities should be invalidated.

The FHFA has already been successful in several cases before the District of Nevada. While the FHFA began its challenges in Nevada, the issue is now being heard in courts throughout the country and is expected to continue its challenges through the federal appeals courts. In addition, Fannie Mae and Freddie Mac are now looking to change their lending standards to outright prohibit lending to condominium homeowners in states which afford associations a lien priority over the first mortgage. If adopted, such changes would drastically impact condominium associations in New Jersey.

CAI's Federal Legislative Action Committee continues to rally against the changes proposed by Fannie Mae, Freddie Mac and the FHFA. Together with the local LACs,

CAI is working with legislators throughout the country to support housing finance reform legislation which would require that federal regulators verify that evidence-based standards for community associations be developed, tested, and accepted by community associations, lenders, and mortgage investors prior to transitioning to a new mortgage finance system.

Still, the threat to New Jersey's statutory lien priority is at serious risk. Should FHFA be successful in its mission

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to eliminate the lien priority, the financial and social welfare of condominium associations throughout the country would be immediately impacted. Members are encouraged to learn more about this developing topic on CAI's dedicated webpage at www.caionline.org/Advocacy/FederalAdvocacy/PriorityIssues/Pages/Mortgage-Finance-Reform.aspx. ■

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