

Title

FREQUENTLY ASKED ^ QUESTIONS

September 2013

Q Title to the condominium unit under examination is vested in the foreclosing lender by Sheriff's Deed. The condominium association was joined in the foreclosure as a defendant. There was a condominium lien filed after the lis pendens. Do I still have to worry about outstanding condominium fees/charges?

A Yes.

The New Jersey Supreme Court addressed this exact issue in 2006 in their decision in Highland Lakes Country Club v. Franzino, 186 N.J. 99 (2006) and held that while the Association's lien was terminated by the final judgment in foreclosure, the underlying debt remained and the Association could look to the new owner (who in that case had purchased from the lender who took title by Sheriff's Deed) for the arrearages. The Court found that the new owner had notice of this potential obligation because of the provisions of the Master Deed and by-laws of the Association.

New Jersey law provides a mechanism for avoiding this type of problem in NJSA 46:8B-21(d) which provides,

d. Any unit owner or any purchaser of a unit prior to completion of a voluntary sale may require from the association a certificate showing the amount of unpaid assessments pertaining to such unit and the association shall provide such certificate within 10 days after request therefor. The holder of a mortgage or other lien on any unit may request a similar certificate with respect to such unit. Any person other than the unit owner at the time of issuance of any such certificate who relies upon such certificate shall be entitled to rely thereon and his liability shall be limited to the amounts set forth in such certificate.

The amount(s) shown as due on such a certificate must be paid in full at closing. If they are not, the exception for outstanding Association charges/assessments may not be removed and the ALTA 4.1-06 should not be issued as it insures that such charges are not prior to the insured mortgage.

As always, feel free to address any questions to a member of our underwriting staff.