



Missouri: Condo Lien Priority Law Changes

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During and after the foreclosure process, the issue of priority between home/condominium associations and deeds of trust arises frequently. Both a lien recorded prior to the deed of trust that is to be foreclosed, and a lien against a former owner, would take priority and need to be cleared from title.



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Home association liens and assessments are not controlled by a Missouri statute, and thus, are governed by individual covenants and declarations. These liens and assessments typically, but not always, subordinate to a first lien or purchase-money deed of trust. Condominium association assessments are governed by Missouri statute.

In August 2014, Missouri enacted House Bill 1218, impacting the lien priority of condominium association liens in relation to deeds of trust under Mo. Rev. Stat. § 448.3-116.

Under the prior wording of Mo. Rev. Stat § 448.3-116.2, a purchase-money deed of trust (a deed of trust that was taken out for the purpose of purchasing a condominium, rather than a refinance mortgage) had priority and any pre-foreclosure assessments would be extinguished through foreclosure. This meant that the lender was liable for any assessments

due after the foreclosure sale. Under the prior statute, the condo association could place liens, or even foreclose, on the condo nonjudicially — in like manner as a mortgage on real estate, or power of sale, pursuant to Mo. Rev. Stat. § 443 — and the deed of trust would be left intact with a priority position. Following a foreclosure sale on a purchase-money deed of trust, the new owner would only be subject to liens or assessments incurred after the foreclosure sale date.

While the above is still good law for purchase-money deeds of trust that were taken out and recorded prior to August 28, 2014, for those deeds of trust taken out after that date, the amended statute has added a new subsection that addresses priority of assessments over deeds of trust. Mo. Rev. Stat. § 448.3-116.2(3) states that, generally, condominium liens will be subordinate to any deed of trust, purchase-money or refinance, recorded prior to the date that a condominium assessment becomes due.

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The remainder of subsection three discusses common expense assessments for a six-month period. An assessment tied specifically to a unit is subordinate to a deed of trust recorded prior to the date the assessment comes due, but the condominium association will be able to collect a portion of up to six months' worth of common

expense assessments. Section seven of the statute has been revised to allow for collection of costs and reasonable attorneys' fees, incurred in connection with the collection of assessments.

As the amended statute is relatively new, the effect is not yet completely known, nor are the practical consequences of it. As such, this changing area of law will continue to be monitored. ■

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