

Condo Liens Entitled To Super-Priority Status Regardless Of Number Of Months Sought

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Under D.C. Code sec. 42-1903.13, liens imposed by a condominium association for up to six months of unpaid condo fees were entitled to super-priority status ahead of all other liens on the condo. In two prior decisions, the D.C. Court of Appeals held that a foreclosure sale under such a super-priority lien necessarily wiped out all other liens of the property, and did not sell subject to those liens, and also held that a condominium could not waive that super-priority status and opt to sell subject to other existing liens. In [4700 Conn 305 Trust v. Capital One, N.A.](#), the Court resolved a question left open: whether a lien for more than six months unpaid fees constituted a split-lien, wherein six months were entitled to super-priority and the remainder not, or it should be considered a single lien lower in priority than the first mortgage or deed of trust. Again, the Court, through a unanimous opinion by Senior Judge Farrell, held that the protections of the Code could not be waived, and therefore the first six months worth of any condo lien must always receive super-priority status, thereby potentially wiping out any first mortgage on the condo. The Court, however, remanded the case back to the trial court to consider in the first instance whether the foreclosure sale could be challenged on equitable or contractual grounds due to its low sale price, indicating that lienholders may have relief available in some instances. It is important to note that the current version of the statute, effective as to foreclosure sales occurring after April 7, 2017, expressly requires the condominium to state whether it is foreclosing pursuant to the six-month super-priority lien, or for more than that lien subject to the first deed of trust. This language would appear to permit a condominium to sell subject to a first deed of trust, although lienholders must be careful given the Court's prior rulings.

TAGGED: D.C. Court of Appeals, D.C. Code sec. 42-1903.13, 4700 Conn 305 Trust v. Capital One