

## Alert

### **ALERT: Foreclosure of Condominium Lien Extinguishes First Deed of Trust**

**September 19, 2014**

**Lenders beware:** A first deed of trust secured by a condo unit in Washington, D.C. might not be safe. In the case of Chase Plaza Condominium Association, Inc. and Darcy, LLC v. JPMorgan Chase Bank, N.A., decided on August 28, 2014, the D.C. Court of Appeals held that a condo association's foreclosure of its statutory "super priority" lien for six months of condo assessments extinguished the unit owner's prior-recorded deed of trust.

In Washington, D.C., liens recorded first generally have priority over subsequently recorded liens. In Chase Plaza, however, the Court held that a lien for delinquent condo assessments recorded in 2008 had "super priority" status over the unit owner's deed of trust recorded in 2005 because Section 42-1903.13(a) of the D.C. Condominium Act requires priority of the condo association's lien, although only to the extent of six months of common expense assessments. Any additional amounts covered by the condo association's lien would not have "super priority" status and would be junior to the first deed of trust. Citing the common law rule that the foreclosure of a senior lien extinguishes all junior liens, the Court further held that the foreclosure of the condo association's "super priority" lien extinguished the prior-recorded deed of trust, even though proceeds of the foreclosure sale were insufficient to pay off the lender secured by the first deed of trust. Although the Court acknowledged "legitimate policy concerns" (namely, that such a holding could leave mortgage lenders unable to protect their interests), the Court concluded that the lender failed to show that such a decision by the Court would be "absurd or clearly unreasonable."

The Court noted in its decision that lenders have the option to protect themselves by requiring borrowers to escrow six months of condo assessments (as lenders do with property taxes), or by simply paying off the delinquent condo assessments themselves.

If you have any questions or would like more information about the Chase decision, please feel free to contact any of the Linowes and Blocher LLP attorneys listed below. We are available to assist you.

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