

Headaches with Condominiums

As we work through the latter stages of the recession, a number of us have been involved with significant foreclosures. One of the most misunderstood aspects of foreclosure in the Commonwealth is the liability of a bank with respect to uncompleted condominium projects, as well as nuances with respect to condominium financing.

Massachusetts General Laws Chapter 183A§22 provides, in essence, "in the event of a foreclosure upon a condominium development, the lender taking over the project shall succeed to any obligations the developer has with the unit owners and to the tenants, except that the developer shall remain liable for any misrepresentation already made and for warranties on work done prior to the transfer."

This seemingly simplistic statute has little case law interpreting it. The case law which does interpret the statute has held, to the horror of a number of lenders, that this is a Consumer Protection statute and the legislature has made a determination that condominium associations need not only seek compensation from financially weakened developers, but they have the opportunity to hold the financial institution liable for damages.

The logic of the courts is remarkable and it is precedent in this state that "this will have the beneficial effect of forcing lenders to finance only those developers capable of properly constructing the condominium or, at the very least, capable of providing compensation of defective performance." While this seems inconceivable, the court went on to rule that the "obligations" to which a foreclosing lender shall be liable following a foreclosure, include actions against the developer for negligent construction, breach of warranty and breach of fiduciary duty. Condominium construction projects must be monitored closely as a foreclosure might expose you to significant liability over and above the typical risks.

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Sincerely,

A handwritten signature in black ink, appearing to be 'P. Shrair', with a long horizontal line extending to the right.

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