

# Rhode Island: Condominium Act Amendments

by **Kathryn D. Ryan**  
Partridge Snow & Hahn LLP  
USFN Member (MA, RI)



In July of 2008, Chapter 34-36.1 of the Rhode Island General Laws was amended to allow condominium associations a six-month "superlien" for common expenses, with priority over first mortgages. Rhode Island condominium associations, which sought the superlien status enjoyed by associations in the neighboring states of Connecticut and Massachusetts, are now provided with an enforceable remedy for the collection of common area expenses. It is the association's ability to foreclose its lien and extinguish a prior recorded mortgage that conveys the superlien power. Rhode Island law, however, is drafted differently than its New England

neighbors and, consequently, its implementation over the last two years has proved to improperly empower associations, and has resulted in unintended negative treatment of lenders.

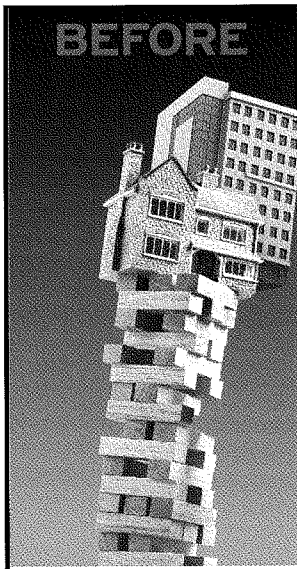
Pursuant to the law, an association perfects its lien by simply recording its condominium declaration. While the statute clearly states that "no further recordation of any claim of lien for assessment under this section is required," association attorneys are recording a lien for the amount of the arrearage and including costs associated with drafting, recording, and discharging the lien in their calculation of collection costs and attorneys' fees. The unnecessary recordation cost is improperly being passed onto lenders seeking protection of the priority of their mortgages.

The lien itself is comprised of common assessments "which would have become due in the absence of acceleration during the six (6) months immediately preceding the foreclosure of the interest of the unit owner...". Unfortunately, this language does not define how to determine which six months should be included in the lien in the event the mortgagee is not pursuing foreclosure of the property.

Perfection of the lien and the foreclosure thereof requires no judicial action to be taken by the association prior to the foreclosure sale. Associations are required to send sixty-day delinquency notices to unit owners and lenders, so mortgagees and their servicers must ensure that the address in the mortgage, or assignment on record, is the proper address for the mortgagee and its servicer, or ensure that they have provided the proper address to the association directly. After expiration of the sixty days, the association can schedule a foreclosure sale.

Lenders may receive these delinquency notices, but often await further legal action before responding, hoping that the delinquent unit owner will become current with the association. Also, lenders mistakenly believe that the new law requires the filing of a judicial complaint, similar to the Massachusetts law. Should a mortgagee fail to respond to the notice of foreclosure, the association's foreclosure sale will wipe out its lien, unless the property is redeemed within thirty days following receipt of the notice of the sale results. Redemption requires payment of the entire ledger balance, rather than just the six-month superlien priority amount.

*see HOA Talk on page 21*



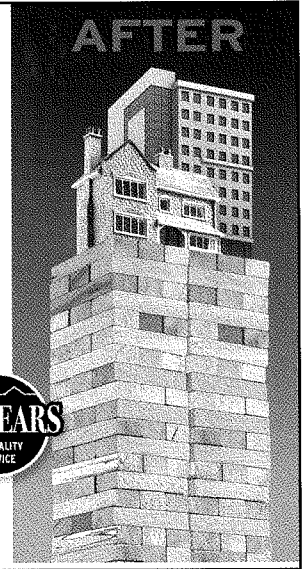
## Asset Preservation: How to Build Stronger Results

Preserving commercial and residential property assets takes just the right combination of regulatory-compliant field services and advanced technology solutions. These are exactly the pieces we've been delivering to mortgage servicers nationwide for over 40 years.

Experience the Five Brothers difference... **stronger results from the ground up.™**



www.fivebrms.com  
586.772.7600



PROPERTY PRESERVATION • INSPECTIONS • REO MANAGEMENT • APPRAISALS/BPOs • ADVANCED TECHNOLOGY SOLUTIONS