



LIEN ENFORCEMENT: MAXIMIZE YOUR RECOVERY

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Lien Enforcement

Maximize your Recovery

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3



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Gina Desrochers serves as an Associate Attorney at Perkins & Anctil, P.C., where she leads the firm's Lien Enforcement department. With more than ten years of litigation experience, Gina concentrates her practice on lien enforcement and condominium law. She regularly represents clients in state courts throughout the jurisdiction, advocating for clients seeking to protect and enforce their legal interests. Gina's extensive courtroom experience encompasses complex civil litigation matters where she helps clients navigate challenging legal disputes.

4

Agenda

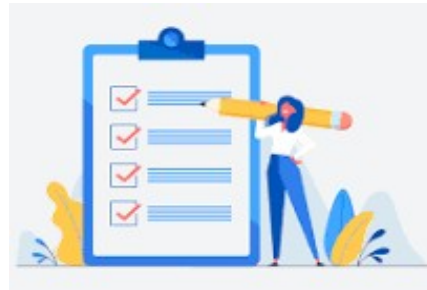
- Introduction & Overview
- Types of "Enforceable" Assessments
- Understanding the Priority Lien
- The Lien "Rolling" Process
- 6(d) Certificates
- Payment Plans and Procedures
- Timeline & Costs
- Effects of Foreclosure
- Effects of Bankruptcy
- Best Practices & Cooperation with Counsel



5

Learning Objectives

- Understand the strong protections available for association liens under current law
- Know the proper procedures to maximize outstanding balance recovery
- Recognize when and how to involve legal counsel
- Understand the timeline and costs of lien enforcement
- Know how to handle foreclosure and bankruptcy situations



6

Introduction - The Challenge

The Reality of Lien Enforcement



- Unfortunately, enforcement of liens for delinquent assessments is a recurring issue
- Good News: M.G.L. c. 183A offers strong protections for association liens
- Bad News: Some statutory terms and concepts cause confusion
- Key: Associations must properly adhere to established procedures



7

M.G.L. Chapter 183A, Section 6 - The Foundation

The Legal Backbone of Condominium Lien Enforcement

Why Section 6 Matters:

- Provides statutory authority for associations to assess fees, charges, fines, and costs against unit owners
- Creates the priority lien mechanism that "jumps over and in front of all other liens, including all mortgages"
- Mandates the 6(d) certificate process for establishing account balances

Key Subsections:

- 6(a)(ii): Assessment authority and lien creation
- 6(c): Priority lien definition and scope
- 6(d): Certificate requirements and effects



8

What Makes an Assessment "Enforceable"?

Beyond Monthly Fees - M.G.L. c. 183A, §6(a)(ii)

Associations may assess: "any fees, attorney's fees, charges, late charges, fines, costs of collection and enforcement, court costs, and interest"

Problem Unit Owners: Associations may assess expenses "incurred as a result of the unit owner's failure to abide by requirements" or "misconduct of a unit owner, family members, tenants, or invitees"



9

Enforceable Assessments - Key Points

ALL ASSESSMENTS CREATE LIENS

- All assessments "constitute a lien against the unit from the time the assessment is due and shall be enforceable as common expense assessments"
- Late fees, fines, legal fees = enforceable liens
- Best Practice: If balance consists solely of non-routine fees, discuss with your legal counsel



10

The Priority Lien - A Powerful Tool

M.G.L. c. 183A, §6(c) - Jumping Ahead of Mortgages

Priority lien "jumps over and in front of all other liens, including all mortgages, judicial liens etc., and into first position"

What's Included: Common expense assessments "during the six months immediately preceding institution of an action" plus "costs and reasonable attorneys' fees"



11

Priority Lien - What's Excluded

Important Limitations

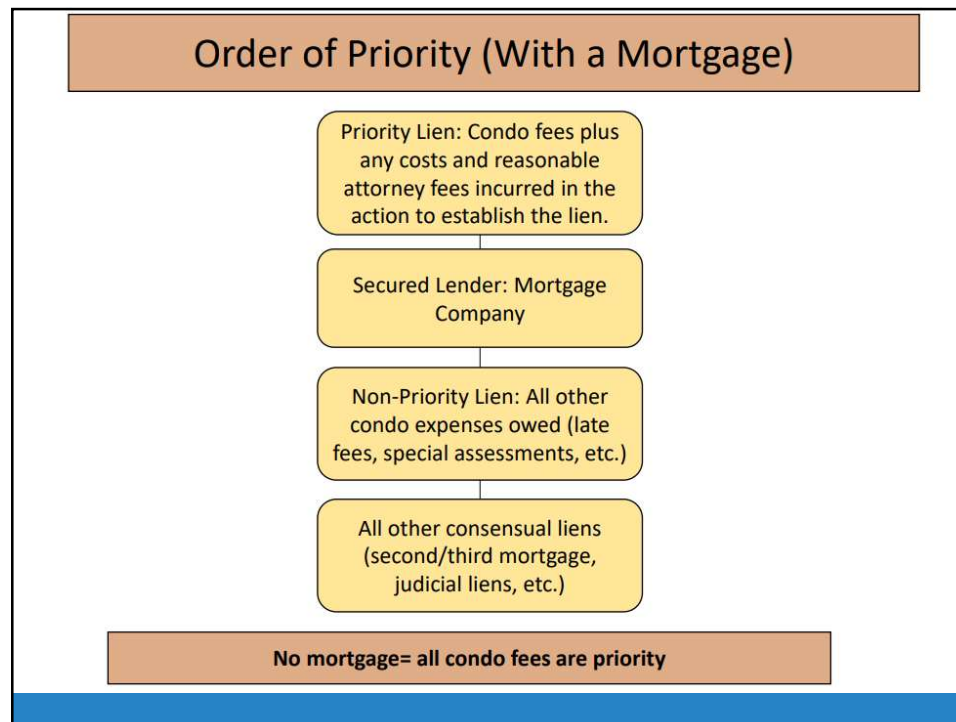


•Priority lien "shall not include any amounts attributable to special assessments, late charges, fines, penalties, and interest"

•Best Practice: Avoid levying "special assessments" - instead:

- 1) increase monthly fee;
- 2) assess "supplemental" assessment as budget amendment; or
- 3) structure loan payment as routine assessment

12



13

“Rolling” the Lien

Maximizing Recovery Through Multiple Priority Liens

"Rolling" means creating multiple priority liens to protect all outstanding monthly assessments every six months during ongoing enforcement

Legal Validation: Supreme Judicial Court reversed Appeals Court on March 29, 2016 in the "Drummer Boy" case, allowing associations to "roll the lien" and create multiple priority liens

Best Practice: Begin enforcement at 60 days delinquency; communicate with counsel every six months



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The 6(d) Certificate

Essential Documentation - M.G.L. c. 183A, §6(d)

Requirements:

- Must be provided within 10 business days of a written request
- Establishes account balance for transactions

Two Critical Points:

1. If an active lien enforcement exists, direct your requests to your attorney
2. Foreclosing mortgage holders not required to obtain 6(d) certificates



15

6(d) Certificate - Consequences of Errors

High Stakes Documentation

Once recorded, a 6(d) certificate "shall operate to discharge the unit from any lien" and "shall be binding on the organization"

Best Practices:

- Review ledgers carefully; refer to legal counsel if balance exists
- Always provide "good through" date matching certificate date
- "Dirty" certificates are valid – a new owner assumes the stated balance



16

Payment Plans and Procedures

Managing Resolution Attempts

Key Principles:

- Direct unit owners to submit payment to your attorney's office
- Apply payments to oldest balance and non-priority items first
- Beware of "final payment" or "full payment" notations on checks

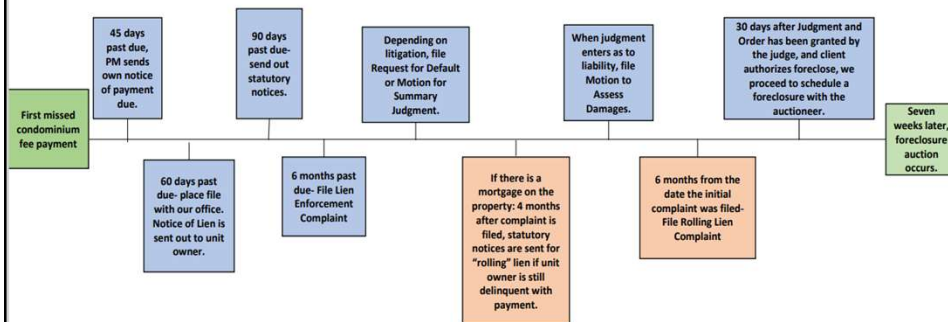
Payment Plans:

- Associations are not required to accept payment plans
- Consider: past defaults, balance amount, mortgage existence, time period



17

Massachusetts Lien Enforcement Overview- Timeline



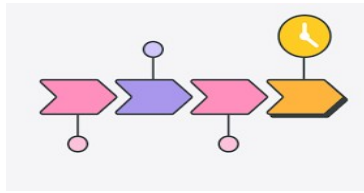
18

Timeline Reality Check

Factors That Can Extend the Process

Common complications include:

- Account sent after 60 days delinquent
- Problems locating a unit owner
- Military or deceased unit owners
- Unit owner is contesting the matter
- First mortgage holder involvement
- Bankruptcy filings



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Effects of Foreclosure

What Happens When Someone Forecloses

Association Rights:

- Association is entitled to payment of priority lien
- Ongoing lien enforcement actions should be closed
- May pursue "write off" amount against former owner personally



After Foreclosure:

- Establish a new ledger for the new owner as of purchase date
- Prior owner's balance doesn't carry forward

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Effects of Bankruptcy



The Automatic Stay and Its Implications

Bankruptcy filing creates "Automatic Stay" prohibiting creditor collection actions

Key Concepts:

- Filing date creates "bright line" dividing debt into pre-petition and post-petition
- If 60 days delinquent on post-petition debt, inform your attorney
- Priority lien is still collectible; remaining balance is personal liability



21

Cooperation with Legal Counsel

Keys to Successful Cases

At Referral:

- Refer accounts in a timely manner (60 days delinquency)
- Maintain accurate unit owner contact information
- Convey special circumstances and prior correspondence

During Case:

- Direct all unit owner communications to your attorney
- Report payments received promptly
- Respond promptly to attorney requests



22

Critical Best Practices Summary

Essential Takeaways

1. 60-Day Rule: Begin enforcement at 60 days delinquency
2. Avoid Special Assessments: Use alternatives to maintain priority status
3. Communication: Direct all unit owner contact to your attorney once referred
4. Documentation: Maintain accurate records and contact information
5. Prompt Notification: Report foreclosure/bankruptcy notices to your attorney **immediately**
6. 6(d) Certificates: Review carefully, involve counsel when balances exist



23

Contact and Resources

Getting Help When You Need It



Remember:

- The goal is to "minimize risks associated with accounts receivable and maximize recovery of outstanding funds"
- Contact counsel with questions or concerns
- Monthly status reports are available upon request
- Emergency consultation is available by email, phone or Zoom.

Thank You for Your Attention!



24

QUESTIONS



25

Your Feedback Matters

 A blue ribbon graphic with the text "THANK YOU!" in white, uppercase letters.

THANK YOU!

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