



## Judicial Foreclosure Gone Wrong

*Huntington v. Miner*

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In a decision certified for publication, the California Court of Appeal has held that a homeowners association must accept partial payments made by owners in common interest developments, and that those payments must be applied first to the assessments owed until paid in full, before being applied to interest, late fees, and collection costs. This requirement extends throughout the collection process, even if a lien has been recorded against the owner's property. Bear in mind that an Association cannot foreclose on its lien unless the assessments alone owed exceed \$1,800 or are 12 months delinquent. The effect of this decision is that homeowners will be able to pay less than the total amount owed to the Association and avoid foreclosure.

Prior iterations of this decision were not binding throughout the State of California, although they had persuasive authority on the other courts in the State. With this decision from the Court of Appeal, however, the decision is now the law of the land, at least for the time being. There is no indication that this opinion will have any retroactive application. Several law firms had previously formed the opinion that the *Huntington* decision by the Superior Court's Appellate Division was only binding in one county, if at all. Make no mistake; this decision is now authority throughout California.

The Court of Appeal based its decision on the express language of the Davis-Stirling Act, particularly *Civil Code* § 5655(a) which states: "Any payments made by the owner of a separate interest toward a debt described in subdivision (a) of Section 5650 shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest." The Court of Appeal held that the above provision both permits an owner to make partial payments and requires an Association to accept the partial payments, crediting the owner's account in the order prescribed by statute.

The Court of Appeal was clear that this decision would apply both to judicial and non-judicial foreclosures. It also made clear that this decision was intended to allow delinquent homeowners to avoid foreclosure of their homes by paying an amount of the delinquent assessments such that the debt falls below the statutory limits for foreclosure actions. Meaning, if an owner pays only enough to bring the assessment portion of their account below the \$1,800 limit, and the remaining delinquent amounts are not more than 12 months old, the Association can no longer foreclose on the property. That is not to say that the Association will be left without recourse. The homeowner is still liable for the total amount of the debt and the Association may still keep its lien in place; it merely cannot foreclose on its lien unless the amount of the delinquent assessments or the age of the delinquency meets the statutory threshold. The Association still has all other options available to it for collecting on this debt, including obtaining a court judgment against the delinquent homeowner.

The Court recognized that foreclosure is an extreme remedy and wanted to ensure that it was used only as a last resort by homeowners associations. In practice, this should have little effect on our clients' daily operations. Most delinquent homeowners understand the need and importance of their assessment payments, and make an effort to pay them in a timely manner. The owners who do not pay have generally lost the ability or the intention to do so for a variety of reasons, and have resolved to walk away from their property already. There will inevitably be a few unscrupulous owners who game the system and cause a variety of issues, but that has always been the case and the Association still has plenty of tools with which to handle these individuals.

Our affiliate assessment collection company, Association Lien Services (ALS), has had procedures in place for accepting partial payments since January, 2014. The impact of accepting partial payments thus far has been minimal. In fact, many of our clients have commented that they prefer receiving partial payments throughout the collection process which would have otherwise been returned to delinquent owners. The change has been mostly seamless.

If you have any questions or would like to discuss the implications of the *Huntington* case further, please feel free to contact one of our attorneys.