



Featured Article

When Is Nine Months, Not Nine Months? (When It’s An Annual Assessment)

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In the midst of everything else going on in the summer of 2020, the Nevada Supreme Court recalculated nine months to be one year, at least when HOA assessments are due annually. In the case of *Noonan* (136 Nev. Adv. Op. 41, Jul. 9, 2020). The Nevada Supreme Court determined that where assessments are billed annually, as long as that due date was within the nine months preceding the filing of the notice of default by the HOA, the entire amount of that annual assessment is the nine month super-priority.

In *Noonan*, annual assessments became due in January of every year in the sum of \$216.00. The homeowners failed to pay the January 2011 assessment and four months later, the HOA recorded a lien, and proceeded with a notice of default. The loan servicer requested a ledger, a super-priority and paid nine months of assessment ($\$216/12 \times 9 = \162).

Despite the payment, the HOA continued with foreclosure and eventually went to sale 2014. Litigation followed. The District Court determined that the tender of an amount equal to nine months of the entire amount, satisfied the super-priority portion of the lien. The Supreme Court disagreed.

The Supreme Court determined that the plain language of the statute,

“the assessments for common expenses based on the periodic budget adopted by the [HOA] . . . which would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien.” NRS 116.3116(2).”

meant that if the assessment becomes due in the nine months preceding the action to enforce the lien then that entire assessment is due as a super-priority. That is regardless as to whether the assessment is annual, quarterly, or monthly. The Supreme Court found that the plain language of the statute, said that if it was due, regardless of the period it covered, in the nine months preceding an action to enforce, it was the super-priority.

As such, any assessments, under current law, that becomes due in the nine months preceding the recording of the Notice of Default is part of the super-priority. It is important to note, that the language “based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien” on which the Nevada Supreme Court relied, has not changed in NRS 116.3116 since 2009.

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Notably, Justice Stiglich, disagreed with the majority, finding that because the statute was silent on the treatment of annual assessments, that the Supreme Court should have looked further.

The takeaway here is if the assessment is due annually, quarterly, or monthly, if the due proceeds the Notice of Default by

nine months, it is part of the super-priority lien in Nevada. There may be a lot more annual assessments in Nevada in upcoming developments.



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