

NotebookLM's assessment in *Walworth State Bank v. Abbey Springs Condominium Association, Inc.* (2014AP000940), including amicus briefs

After reviewing the briefs, **Walworth State Bank** appears to have presented the more persuasive argument. Here's a breakdown of why:

- **Violation of Wis. Stat. §703.165(2):** Walworth State Bank effectively argues that Abbey Springs' policy, which forbids the use of recreational facilities to owners with delinquent assessments (regardless of foreclosure), attempts to hold new owners, like the bank, liable for past due assessments after an involuntary grant, thus violating **Wis. Stat. §703.165(2)**1.... This statute explicitly provides joint and several liability for assessments only in a voluntary grant⁵. The bank emphasizes that a foreclosure sale is not a "voluntary grant"⁶.... Abbey Springs' policy essentially tries to resurrect the obligation for these past assessments as a condition for using the facilities¹⁰.

- **Impact on Title and Marketability under §703.10(6):** The bank provides compelling evidence that Abbey Springs' "Membership and Guest Policy" affected the **quality of the unit's title or marketability** in violation of **§703.10(6)**2.... When the bank attempted to sell the unit, Abbey Springs issued a statement indicating that past due assessments needed to be paid for all charges to be current¹³.... This led the prospective buyers to refuse to close and threaten to sue the bank¹⁵.... The significant drop in the property's value due to this policy further supports the argument that marketability was severely impaired¹⁷....

- **Foreclosure Judgment:** Walworth State Bank underscores that the Judgment of Foreclosure specifically barred and foreclosed all of Abbey Springs' right, title, interest, lien, or equity of redemption in the mortgaged premises, which included claims for unpaid assessments²⁰.... Abbey Springs did not object to this judgment or appeal it²¹.... The bank argues that Abbey Springs' subsequent policy effectively attempts to circumvent this court order²⁷....

- **Distinguishing Apple Valley Gardens:** While Abbey Springs heavily relies on *Apple Valley Gardens Ass'n, Inc. v. MacHutta*²⁹..., Walworth State Bank persuasively distinguishes this case³¹. They argue that *Apple Valley* dealt with a restriction on use (renting) by the current owner and did not involve a situation where a condominium association was trying to compel a new owner after foreclosure to pay the debts of the previous owner as a condition for using common amenities³².... The restriction in this case is directly tied to the unpaid assessments³⁵.

- **Policy Concerns for Lenders:** As highlighted in the amicus curiae brief by the Wisconsin Bankers Association (WBA), Abbey Springs' policy creates significant uncertainty for lenders⁹.... Banks rely on the clarity provided by foreclosure statutes to assess risks when underwriting condominium loans²⁷.... If condominium associations can effectively resurrect extinguished liens through such policies, it undermines this statutory framework and negatively impacts the lending market²⁸....

While Abbey Springs argues that the bank should have inquired about their policies²⁹..., and that the assessment itself was not "wiped out" only the lien⁴³..., their policy of restricting access to recreational facilities based on a debt the new owner is not legally obligated to pay appears to contradict the protections afforded to purchasers at foreclosure sales under Wisconsin law. The practical impact on the bank's ability to sell the property at a reasonable price due to this policy is a strong indicator that the marketability of the title was indeed affected.