No. 31

Are Judicial Foreclosures on the Rise Amid the COVID 19 Pandemic?

BY NORMA LEWIS, LLM

In a judicial foreclosure, the property owner gives a mortgage and note to a lender in exchange for a loan. The real property is collateral for the loan. Suppose the borrower fails to repay the loan or otherwise defaults on the loan by failing to follow the loan terms. In that case, the lender may file a foreclosure action in the appropriate New York State Court, which would be the Supreme Court in the county in which the property is located.

Most foreclosure cases in New York State are of the judicial type. Another type of non-judicial foreclosure involves a mezzanine loan. A mezzanine loan consists of a security interest in the company's stock shares that owns the real estate in question, similar to a coop loan.

Because New York State currently has a moratorium, due to the effects of the Covid-19 pandemic, on judicial foreclosures. Under this Administrative Order, "no auction or sale of property in any residential or commercial matter shall be scheduled to occur before October 15, 2020." However, not every foreclosure case in New York is a judicial foreclosure or requires the lender to go through the Court. Non-judicial foreclosures occur most commonly in proceedings instituted on behalf of cooperatives.

Now let's explore the Judicial Foreclosure Process in New York State: To commence judicial foreclosure litigation here in New York State, there are (3) three court pleadings that the lender usually prepares to initiate a foreclosure lawsuit, i.e., the complaint, a summons, and a notice of Lis Pendens.

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Avoiding Real Estate Scams!

If any part of a transaction seems to good to be true, you may be the victim of a real estate scam.

There are many types of real estate scams. The Federal Trade Commission (FTC) warns consumers to beware of the many, increasingly sophisticated tactics criminals are using to swindle their victims.

Loan modification scams

If you're in danger of losing your home, it can be a time of desperation, but keeping your wits about you will help you avoid a common loan modification scam. Typically these scams involve someone posing as a financial advisor or debt relief consultant asking you to pay an up-front fee and sign a contract, with promises of lowering your payments or eliminating debt. They may even try to convince you to sign over the title of the property, or redirect your mortgage payments to their own bank accounts.

According to the Homeownership Preservation Foundation, these kinds of scams became so prevalent during the recent housing crisis that the FTC issued a rule in 2011, forbidding companies from accepting up-front fees to negotiate mortgage-reduction payments on behalf of a homeowner.

The Department of Housing and Urban Development (HUD) suggests that homeowners facing foreclosure instead contact a HUD-approved housing counselor to explore their options.

Deed scams

Scammers around the country looking to capitalize on misinformation about the legal proceedings surrounding homeownership have been perpetrating a deed scam. This usually involves a mailed letter offering to provide a certified copy of your property deed, usually for a fee around $90-$100. The fee for obtaining a copy of your deed is usually much lower, and you can easily obtain the document yourself from the county clerk's office. The cost can be as little as $1 per page for a regular copy and about $10 for a certified copy.

Rental scams

If you find your dream property in an online listing and the price seems like a steal, you may be dealing with a rental scammer. Rental scams are relatively easy for criminals to pull off. They swipe legitimate listing photos and details, pre-sent a peach of a deal and ask for a cash deposit or credit or application fee. They may even invent a property entirely. They walk away with your cash, and you're left with nothing but regret.

According to the FTC, the surest sign of a fraud is if you're asked to wire money. "Wiring money is the same as sending cash — once you send it, you have no way to get it back," according to the FTC.

Working with an "agent" who's located outside the U.S. or being asked to put down money before signing a lease are also red flags.

Report scams

It's important to report scams to help prevent others from being victimized. To report a loan modification scam, contact local police. Rental scams should be reported to local law enforcement authorities as well as to the FTC at www.ftc.gov.■

Increasing Your Home's Value

BY JOE SZYNKOWSKI

Not all home improvement projects are the same. The impact of a project or upgrade depends on factors such as the market you're in, and your existing home value. Some projects like adding a pool or wood floors tend to have bigger increases for more expensive homes, while projects like a kitchen remodel or adding a full bathroom tend to have a bigger increase for less expensive homes.

With housing prices increasing again, there has never been a better time to invest in your home. There are always ways to improve the value of your home — no matter your budget. Check out the following suggestions, categorized into three modest price points:

Improvements under $500

●Paint. Simple and cost effective, fresh paint will have a dramatic impact on a space.

●Remove outdated ceilings. In the 1980s and 90s, popcorn ceilings were all the rage. And now, their time has come to an end. This project requires more elbow grease than money.

●Attend to small repairs. This means things like a loose hinge on a kitchen cabinet, burned out light bulbs, squeaky doors and jiggly handles. While these things may not seem like much, they speak to the care of a home.

Improvements $500-$1,500

●Install closet storage. Closets can be a blank canvas for clutter. Installing organizers keeps things in their place and provide a little luxury.

●Improve small bathrooms. This could be as simple as new light fixtures, an updated vanity or a new shower curtain. You are guaranteed to see a return on investment on most bathroom upgrades, so this is a safe area to spend on.

●Upgrade old appliances. Kitchens add big value to your home, so even updating the sink or swapping out a microwave range hood for a sleek drop down will maximize value.

Improvements $1,500 and Up

●Update flooring. This could be as simple as replacing the tiles in the small hall bath or removing the wall-to-wall carpeting and installing hardwoods throughout.

●Refresh exterior paint. Curb appeal is a big deal and can increase the property values of an entire neighborhood. A fresh coat of paint keeps things looking clean and crisp.

●Resurface concrete. While a cracked driveway or walkway may not seem like much, the weeds growing in the cracks whisper of neglect. A solid surface stained eith an attractive color shows that a property is well-looked-after.

Remember that the cost and payback of each project will vary depending on your region of the country, neighborhood within that region, as well as the overall condition of your home.■

Need assistance? We will be happy to meet with you and share our guidance. Schedule an appointment today. Call us at 888-670-6791.

File for Bankruptcy, Save Your Home

BY D.S. HILDEBRAND

New research from the University of North Carolina (UNC) Center for Community Capital and the UNC School of Law suggests that homeowners in foreclosures who file for bankruptcy have a better chance to retain their home.

Specifically, the report, "Bankruptcy During Foreclosure: Home Preservation Through Chapters 7 and 13," says that filing for Chapter 7 or Chapter 13 bankruptcy reduces the chance of foreclosure by 70 percent. Surprisingly, the study also found that only about 8 percent of homeowners actually file for bankruptcy.

Differences between Chapter 7 and Chapter 13 Bankruptcy

While Chapter 7 relieves unsecured debts, Chapter 13 protects home ownership with a debt repayment plan. Regardless, both types of bankruptcy protection stop foreclosure proceedings.

In general, Chapter 7 liquidates unsecured debt, such as credit cards and medical bills, for those with little or no disposable income. A court-appointed trustee oversees the case. The trustee's job is to review the filing documents and sell all assets not exempt from the proceedings. The trustee repays the creditors from the money gained.

On the other hand, a Chapter 13 bankruptcy reorganizes rather than liquidates debts. It is for those with a regular income who can repay their debts, but need time and legal protection to do so. It allows homeowners to retain both their exempt and non-exempt assets in exchange for repayment (or partial repayment) of debts.

As in Chapter 7 bankruptcy, Chapter 13 follows similar procedures. After a homeowner files the papers and pays a fee, the court appoints a trustee. Homeowners make a monthly payment to the trustee who repays creditors according to a specified order.

Which bankruptcy a homeowner chooses depends on current income, amount of assets and debts, and desired goals. However, it's important to note that Chapter 7 generally takes four to six months to complete. Chapter 13 bankruptcy can take up to five years to complete.

Deciding if Bankruptcy is the Right Choice

Before deciding that filing for bankruptcy is the right move, homeowners need to take into account the impact of this action.

First, homeowners should consider if there are alternative actions they might take, such as borrowing from a family member or liquidating an asset instead of waiting for the court to do so.

Next, understand the laws and ramifications. Homeowners need to determine if they are eligible. Additionally, they need to learn which assets (such as pension, car, and home) they will lose and what debts (such as credit card, medical, and loans) the court will forgive.

Finally, homeowners should understand the impact a bankruptcy has on their life. It's intrusive. The court will review every inch of their financial life. It's invasive. In Chapter 7, the trustee sells off personal items. It's long lasting. Chapter 7 bankruptcy stays on the homeowner's credit record for 10 years. Chapter 13 bankruptcy stays on a credit record for seven years.

While bankruptcy offers homeowners an opportunity to retain their home, there are downsides to consider. It's important that homeowners understand all angles and talk to an expert before they take action.

Free Consultation

Need assistance? We will be happy to meet with you and share our guidance. Schedule an appointment today. call us at 855-768-8845. ■

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What is the Complaint for Foreclosure?
The "complaint," sometimes called a "petition," for foreclosure sets out the claims of the foreclosure lawsuit. It generally describes the following:
•the mortgage
•the promissory note
•the property to be foreclosed.
•the default
•the amount due, and
•the defendants, along with their interest in the property.

The complaint will also state the type of relief or remedy the lender is seeking; For example, the complaint will ask for the right to sell the property and apply the sale proceeds to the mortgage debt. The complaint may also request a deficiency judgment if the proceeds at the foreclosure sale do not fully cover the total debt amount.

What is a Summons in a Foreclosure Lawsuit?
In a judicial foreclosure, a summons is issued by the Supreme Court for each Defendant named in the foreclosure lawsuit. Once prepared and dated, the Summons should be filed in the Supreme Court of the county where the property is located. Typical defendants in a foreclosure lawsuit are the:
•homeowners (borrowers)
•lienholders
•judgment holders, and
•occupants (if any).

The Summons notifies Defendant their right to file an answer to the suit and how many days Defendant has to respond, which is usually 20 to 30. As per CPLR[1] §3012(d), a party may extend the time to appear or plead or compel acceptance of a pleading untimely served, upon such terms as may be just and upon the showing of reasonable excuse for delay or fault.

Additionally, the parties stipulate to extend the time to answer if it is so warranted. The Summons is generally issued to the Defendant in his/ her native language. If you want to answer the complaint's claims and fight the foreclosure, you must file your answer within this time frame once you duly served.

What is a Notice of Lis Pendens?
"Lis pendens" is a Latin phrase that means "suit pending." When a lender starts a foreclosure, a notice of lis pendens is recorded in the County Clerk's records. The notice of Lis Pendens' purpose is to inform the public that a lawsuit involving the property is pending. In other words, the lis pendens serves as actual and constructive notice to the world that there is a pending lawsuit concerning the real property.

The notice of lis pendens is typically a one- or two-page document that includes the legal description of the property and states that a foreclosure has been started.

How to answer the Foreclosure complaint?
In your answer, you need to address all of the allegations in the complaint. For each numbered paragraph in the complaint, you should admit, deny, or say you don't have sufficient information to admit or reject (and therefore you deny) the allegations contained in that particular paragraph. You may also ask that the lender prove its causes of actions, like how much it says you owe and the fees it says are due. Remember that if you admit an allegation, the lender doesn't have to prove it. You'll also need to raise any defenses, and affirmative defenses in your answer, such as the lender doesn't have standing (the right to foreclose) or improper service of process. Also, as well as any counterclaims, like the servicer violated federal mortgage servicing laws when you applied for a loan modification, if applicable.

Suppose this is your first foreclosure lawsuit, and you decide to answer the foreclosure complaint without an attorney's assistance and represent yourself in court proceedings. In that case, you'll need to devote a substantial amount of time to conducting research, getting your paperwork in order, and preparing your arguments. Because the law is complicated and court procedures vary quite a bit, it's a good idea to hire a skilled attorney to assist you in the process.

In conclusion, because your home is your castle and you may have invested a significant amount of money and resources before default, you should consult with a professional attorney to assist you in the judicial foreclosure process. ■

[1] CPLR- Civil Practice Law and Rules