



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.



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.

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Types of Property Deeds

BY SUSAN M. KEENAN

The legal documents used to transfer titles to real estate are referred to as property deeds. The names of the legal owners to real estate are placed directly onto the property deeds. Each time a piece of real estate is sold, a new property deed must be issued. The two most commonly used types of property deeds are warranty and quit claim deeds.

Warranty Deeds

Commonly used in most real estate transactions, warranty deeds provide guarantees that the property being sold is free and clear of any encumbrances or claims. The grantor, or seller of the property, warrants that he is the rightful owner of said property and that he holds the title to it. Therefore, he offers the assurance that he has the right to transfer the title to the property. The guarantee that the property is free and clear is limited to that particular transaction only. Each time a property is sold, a new deed must be issued.



Quit Claim Deeds

Used when special circumstances exist, quit claim deeds do not offer any guarantees that the property is free and clear. However, the grantor of the real estate guarantees that he owns the property and has the right to transfer it with a quit claim. Circumstances when quit claim deeds are used include:

- Property ownership is transferred into a living trust.
- A spouse is removed from inclusion on the deed.
- A property is transferred as part of an inheritance.

Survivorship Deeds

A survivorship deed is used to transfer ownership of a property to a surviving spouse. It is used most commonly when property is purchased by couples and one of the spouses dies. This type of property deed allows the surviving spouse to avoid probate.

Life Estate Deeds

A life-estate deed is designed to transfer the title to real estate directly to a new owner upon the previous owner's death. It is sometimes used when a parent promises a child that he will receive the property when the parent dies. A life-estate deed includes the stipulation that the parent can remain in the home until the time of his death. Life estate deeds are utilized less frequently than other types of property deeds.

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Advantages of a Listing Agent

Before listing your home for sale, many home sellers are tasked with the decision to hire an agent or make the venture alone.

While the FSBO (For Sale By Owner) avenue might save you a little money by avoiding the commission cost of a listing agent, a real-estate transaction is best navigated with the guidance of an expert.

Recent data from the National Association of Realtors reveals that only 7% of FSBO attempts were actually successful in 2017. Typically, these sales were made when sellers already had a buyer in mind. Finding the right listing price is considered the most difficult task for this type of sale. Before attempting to join this small percentage of those who sell their homes without expert help, consider the advantages of hiring a professional real estate agent.

Setting the Price

Choosing a price point is more involved than having a home appraised and asking that amount. In fact, while an appraisal is a good starting point, an expert can access a CMA or comparative market analysis to analyze current trends in the area including what similar homes sell for, current market trends, interest of local buyers, and how



long homes are listed.

With this important information, a real estate expert can price your home to ensure a profitable sale with a quick turnaround.

Suggest Renovations

A real estate agent is efficient in finding flaws in your property that may slow down a transaction or effect bids from buyers. For instance, if you live in an area that experiences heavy rain fall, a new roof or air-tight windows and doors may be necessary before listing. Homes for sale in regions with intense summers and brutal winters can benefit from an updated HVAC system. If

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BRIAN FIGEROUX, ESQ.

you decide to purchase a new unit, make sure to keep warranty paperwork on hand to pass on to the next owner. Small incentives like this can make the difference between receiving unimpressive offers and making a sale.

Be sure to brag about recent upgrades in your listing. Buyers know what they're looking for, and an agent understands how to advertise your property so they can find it.

Dealing with Negotiations

Once you have accepted an offer from a home buyer, there is still one roadblock in the way before you head to close. Most offers are contingent on a home inspection, meaning an independent professional will inspect the property for flaws or defects that may otherwise go unnoticed.

Keep in mind, some states require you to

disclose information about known problems that may affect the value of your home. If you fail to inform them, you may be held legally responsible for fines and fees or the rescission of a sale. Your real estate agent is an expert on the sometimes-complicated responsibilities that sellers face and can ensure your deal won't fall through.

If unexpected problems are discovered, it's common for a new offer to be written up. An agent will use his expertise to negotiate with the buyer's agent to maintain fair terms.

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ing; 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 De-



fendant 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



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7 Things You Need to Know Before Switching Careers to Real Estate

If you've been thinking of changing careers and earning your real estate license, there are a few things you should know before taking the leap:

1. You Decide How Successful You Are

That's right! You will get out of a real estate career exactly what you put into it. This is a career that rewards hard work. Your income potential as a real estate agent is basically unlimited. But it goes both ways... part-time effort will likely lead to part-time pay.

2. You're Going to Need a Plan

When newly licensed real estate agents fail, it's usually because they didn't think about that period of time between passing their exam and cashing their first commission check. You need to set goals, as well as develop a business plan and marketing plan.

3. You Should Have a Small Nest Egg

The period of time between earning a license and getting a commission check is not a set amount of time. You're going to need to be able to cover the costs of your day-to-day life, as well as business startup costs.

4. You're Going to Be the Boss Now

If you're used to the typical company structure with a boss telling you what you're responsible for, this can sometimes be a shock. The broker you work for will likely keep an eye on how you're performing. But for the most part, it's up to you. You need to be disciplined enough to take control of your career and make the most of your time.

5. You May Have to Work Some Weekends

If you are planning to work in residential real estate sales, you will likely need to dedicate at least a portion of your weekend to work. People shop for homes in their free time. And their free time is typically on nights and weekends. As a result, buyers and sellers expect their real estate agent to be available for showings, open houses, and office visits on the weekend.

6. You Need to Set Yourself Apart

So what are you going to do to set yourself apart from someone's neighbor, brother, or best friend from college? The most successful real estate agents know the value of differentiation. You need to develop a brand that sets you apart from the rest of the market.

7. Real Estate Is an Incredibly Rewarding Career

It isn't easy, and it is incredibly competitive. There also isn't a guaranteed weekly paycheck. But all of these challenges are what make real estate such a rewarding career. The rewards are worth it. ■

Source: Kaplan Real Estate Education

Saving Your Home from Foreclosure and Predators

BY ERIN TELESFORD

The greatest financial crisis in the United States was the last recession which spanned from December 2007 to June 2009. During this time, unemployment rates were raised by about 6.1% resulting in a loss of consumer spending and business investments. Before the recession, many Americans bought houses using mortgages they couldn't afford, eventually causing them to fall into poverty and their homes into foreclosure. The effects of the Great Recession did not recover once the economy stabilized in 2009. According to The State of Working America, "In October 2010, 16 months after the official end of the recession, the economy still had 5.4% fewer jobs than it did before the recession started." The unemployment levels are little to no better in 2019, and speculation that another economic collapse has come into the news.

The devastation of the Great Recession implored many people to take better action with their finances and mortgages in fear of another financial crisis that could cause them to lose their homes. However, many Americans lack knowledge on the options available for them in lieu of another recession and end up needing to file for bankruptcy when financial hardship arises. Much of the recent financial problems lower-income individuals and families face are a result of their inability to afford or deal with unexpected major expenses such as job loss or medical bills. When these expenses become detrimental, one decision could be to file for bankruptcy.

According to a study published recently, 46 percent of bankruptcies were related to outstanding medical conditions. The major cited reasons in this category included injury or illness, medical expenses not covered by insurance or losing at least two weeks' worth of work because of illness. Other causes of bankruptcy include reduced income, job loss, credit debt, illness/injury, unexpected expenses and divorce. In the same time period, the percentage of filers age 55 or older more than doubled; those filers now account for about 20 percent of all bankruptcy petitioners. The study also found that 60 percent of bankruptcy filers have salaries of less than \$30,000.

Bankruptcy is not a moral decision. It is a legal choice made when the debt situation is hopeless. Filing for bankruptcy can save your home and also stop wage garnishment. This can be troublesome due to the racial inequality involved with lawyers who specialize in bankruptcy.

In an interview with Brian Figeroux, Esq., on the radio show, *Ask the Lawyer*, he stated that you must "know the motives of the person giving you advice. There have been cases where people of color in America, specifically black Americans, encountered lawyers and investors who claim to want to help them save their homes when, in reality, 10 out of 10 times, they are trying to hoodwink you."

Figeroux also warned about a *New York Times* article which stated that white attorneys were not giving the best advice to black clients.

According to the *New York Times* article, "Blacks Face Bias in Bankruptcy," by Tara Siegel Bernard, blacks are about twice as



likely as whites to wind up in the more onerous and costly form of consumer bankruptcy as they try to dig out from their debts, a new study has found. The disparity persisted even when the researchers adjusted for income, homeownership, assets and education. The evidence suggested that lawyers were disproportionately steering blacks into a process that was not as good for them financially, in part because of biases, whether conscious or unconscious.

The vast majority of debtors file under Chapter 7 of the bankruptcy code, which typically allows them to erase most debts in a matter of months. It tends to have a higher success rate and is less expensive than the alternative, Chapter 13, which requires debtors to dedicate their disposable income to paying back their debts for several years.

The study of racial differences in bankruptcy filings was written by Robert M. Lawless, a bankruptcy expert and law professor,

and Dov Cohen, a psychology professor, both with the University of Illinois; and Jean Braucher, a law professor at the University of Arizona.

A survey conducted as part of their research found that bankruptcy lawyers were much more likely to steer black debtors into a Chapter 13 than white filers even when they had identical financial situations. The lawyers, the survey found, were also more likely to view blacks as having "good values" when they expressed a preference for Chapter 13.

As communities of color, we have to be aware of what is happening. Persons are coming into our communities, offering to purchase our homes for cash. These persons are not trying to help you. Your property is an investment. It is the path to wealth-building and transferring wealth from one generation to another. Do not be fooled.

Figeroux's real estate office, Equity Smart Realty, Inc., was created because he "saw how our people suffered" from these types of scams and wants to be truthful with the black community in order to prevent the wrongful foreclosure of our community's houses through bankruptcy consultation.

For a free bankruptcy or save your home from foreclosure consultation with the Law Firm of Figeroux and Associates, call 855-768-8845. ■

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