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presents

Changes in Michigan's Mortgage Foreclosure Law

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The current state of the economy in Michigan has led to a significant number of mortgage foreclosures in the area, including mortgage foreclosures of condominium units. Since most residential mortgages allow the mortgage holder to foreclose on the property through advertisement, most of these foreclosures proceed with little to no oversight, and the process moves relatively quickly. In addition to the process moving quickly, however, many homeowners discovered that their mortgage holders were unwilling to work with them to prevent the foreclosure, or they did not know who to contact in order to negotiate new payment terms.¹ In response to this, the Michigan Legislature enacted legislation that changed mortgage foreclosure law in an effort to slow down the process and to give homeowners a chance to keep their homes. Governor Granholm signed these changes into law and they took effect in July of 2009². This article will examine the following: (1) which mortgages are affected; (2) the new mortgage foreclosure process; and (3) the effect these changes may have on condominiums.

Affected Mortgages

These changes to the mortgage foreclosure law apply to all mortgages on principle residences wherein the mortgage holder publishes the first notice of

foreclosure by advertisement after July 5, 2009 and before July 5, 2011. A person's "principle residence" is the residence they claim as their homestead for tax purposes. When this law was enacted, it was assumed that the economy would eventually recover and that the need for this legislation would cease. Therefore, this new law will expire on July 5, 2011.

The Foreclosure Process

When a mortgage holder wants to foreclose on a residence by advertisement, they must now begin a process that results in a 90-day delay of the foreclosure; this is called a 90-day pre-foreclosure process.³ This 90-day process is designed to give homeowners the opportunity to negotiate with their lender. The first step that the mortgage holder must take is to give actual written notice to the borrower that the mortgage is in default. This notice must be sent by first class mail and certified mail, restricted delivery, in order to ensure that the borrower receives the notice.⁴ The written notice must give the borrower certain information about the loan, including whom the borrower should contact to make agreements to modify the loan, and provide a list of housing counselors to the borrower.⁵ This requirement of providing actual notice to the borrower is a major change, since prior to the new law, mortgage holders were not required to make sure that the borrower was aware of the foreclosure. In addition to sending notice to the borrower, the mortgage holder must also publish notice in a newspaper in the county where the property is located.⁶ Typically, these notices are published in the local legal newspaper for the area. If a mortgage holder fails to provide the required notices to the borrower, the borrower may go to court to stop the foreclosure.⁷

Once the notice has been sent by the mortgage holder, the borrower has 14 days from the date the notice is mailed to request a meeting with the mortgage lender and have a housing counselor present during the meeting.⁸ The purpose of this meeting is to try to reach a loan modification agreement in order to keep the property out of foreclosure. If the parties at the meeting do not reach an agreement, then the mortgage holder must determine if the borrower qualifies for any other loan modification programs provided by the lender or the government.⁹

If the borrower qualifies for a loan modification under a government or lender program but the parties have not reach an agreement regarding a modification, the mortgage holder may still foreclose; however, the mortgage holder must now proceed with a **judicial** foreclosure so that the courts oversee the process.¹⁰ If the borrower does not qualify for loan modification at all, then the mortgage holder may proceed with foreclosure by advertisement. The foreclosure by advertisement may not be held until 90 days from the date on which the original written notice was sent to the borrower.¹¹

Effect on Condominiums

How does this new law affect condominium associations? First, condominium liens under Michigan law are foreclosed in the same manner as mortgages.¹² So, if a condominium association is foreclosing on its condominium lien via advertisement, then it must comply with this 90-day pre-foreclosure process and give the co-owner the notices required by the new law.¹³ Second, it could assist the condominium association in keeping valued co-owners in the community (who may have just temporarily hit hard financial times) by providing them with an opportunity to renegotiate their mortgage loan terms so that they may keep their homes. Third, the new law also may prevent units

from sitting vacant. With the cold temperatures here in Michigan, vacant units can cause trouble to other co-owners and their units if pipes freeze and burst. For this reason, having co-owners remain in their units longer is beneficial to the community as a whole.

Lastly, a downside to this new law (which many condominium associations have experienced) is that this 90-day pre-foreclosure process leads to a longer delay in receiving assessment payments. Usually when a co-owner is in mortgage foreclosure, he or she has stopped paying his or her condominium assessments as well. Oftentimes, the co-owner has become uncollectable (i.e., unemployed, lost major assets, and/or possible bankruptcy) so that the only relief the condominium association may receive is when the mortgage lender finally forecloses. The person/entity that purchased the unit at the foreclosure sale becomes the new owner and thus liable for the condominium assessments from that date forward. The 90-day waiting period merely extends the time until a new owner takes ownership of the unit and starts paying the assessments.

Whether or not this legislation will achieve its goal of preventing mortgage foreclosures remains to be seen. This law has been in effect for many months now, and although it did slow down the rate of mortgage foreclosures in Michigan, they are still quite high.¹⁴ As a result, I would not be surprised to see additional changes made to mortgage foreclosure law in the future. We will keep you advised of any further changes in mortgage foreclosure law and how they may affect your condominium association in the future.

¹ James Schmel, *Fixing Foreclosure Mess Tough for Michigan Lawmakers*, MLive.com; February 22, 2009.

² Act No. 29, Public Acts of 2009, amends MCL 600.3204 and adds section 3205 and section 3205a through 3205e.

³ MCL 600.3205a

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ MCL 600.3205b

⁹ MCL 600.3205c

¹⁰ *Id.*

¹¹ *Id.*

¹² MCL 559.208

¹³ These amendments to the mortgage law only apply to mortgages and condominium liens on property claimed as principal residences exempt from tax under section 7cc of the property tax act, MCL 211.7cc; in other words, homestead property. Therefore, if the condominium unit is not a homestead property, i.e. second home, then the mortgage holder and/or the condominium association could proceed with foreclosure by advertisement without the 90-day pre-foreclosure requirement. MCL 600.3205a

¹⁴ Mortgage foreclosure filings fell by 3% in November 2009 from the prior month; however, they are 10% higher than they were in November 2008. *Working to Drive Down the Foreclosure Rate*, Newschannel 3, www.wvmt.com; December 16, 2009.