

**FOCUS ON CONNECTICUT**  
**FORECLOSURES**

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## BACKGROUND

- In July 2008, two major legal changes took place that materially impacted the foreclosure process in Connecticut. These are the “Housing and Economic Recovery Act of 2008,” passed by the Federal government (Public Law 110-289) and “An Act Concerning Responsible Lending and Economic Security,” passed by the State government (Public Act 08-176). These major initiatives are designed to afford relief to financially distressed homeowners facing foreclosure as a result of payment shock and property devaluation. See 9/9/08 report.
- As to homeowners, these remedial legislative schemes are directed to the pre-foreclosure and foreclosure processes. The first purpose of these federal and state initiatives is to establish, capitalize and implement various loss mitigation programs that prevent foreclosure and provide homeowner counseling. The second purpose is to require the delivery of clear and unambiguous notices about the availability of these loss mitigation resources, as a condition to foreclosure.
- ***THE PROGRAMS ARE:***
  - Hope For Homeowners
  - Foreclosure Prevention for Service Members
  - HERO Program
  - Emergency Mortgage Assistance Payment Program (EMAPP)
  - The Workplace, Inc. Mortgage Crisis Job Training
  - Foreclosure Mediation
  - MHA
  - Connecticut Families (awaiting reinstatement in April 2009 to be insured by CHFA instead of FHA)
  - Mortgage Moratorium Statute (amendments attempted but failed)
- ***THE NOTICES ARE:***
  - Old Law...But Good Law
    - ♦ Specific demand notice language prior to note acceleration is governed by the terms of the loan documents rather than statute. If required, typically 30 day notice.
  - New Connecticut Statutes, Judicial Standing Orders and Administrative Regulations
    - ♦ The following are notices that are a condition to obtaining a judgment of foreclosure effective July 1, 2008, the lender must send:

- 60 day EMAPP Notice (or if combined with the Demand Notice “Super NOI”) that notifies the borrower that he has sixty days to have a conference with a lender or a credit counseling agency to resolve the default and to contact CHFA.
- Notice of Mediation
- You Are Being Sued Notice
- EMAPP Notice must contain the list of CHFA designated consumer credit counseling agencies.
- ◆ DOB Regulation supplements a mandatory notice about the availability of relief under the Mortgage Moratorium statute and other mini-Miranda warnings required under old law.
- ◆ Statutes and standing orders regarding the manner of presentation of the above Notices in relation to the foreclosure complaint.

## **PRELIMINARY TITLE CONSIDERATIONS**

- Unreleased mortgages
- Municipal taxes
- Real estate, sewer and water
- Condo Association 6 month statutory priority
- Death Certificate
- Connecticut law requires that **ALL** encumbrances of record, both prior and subsequent to the mortgage being foreclosed, be named in the complaint.

## **ELEMENTS OF A PRIMA FACIE CASE OF FORECLOSURE**

- Standing to Foreclose
  - Plaintiff must prove that it owns the mortgage debt.
  - Each assignment of mortgage is a transfer of title.
  - Plaintiff must be the record owner of the mortgage to come out of the foreclosure with good title.
- Mortgagor defaulted under the note and the mortgage.
- Mortgagor did not cure the default.
- Plaintiff accelerated the note.

## **ADVANCING TO FORECLOSURE JUDGMENT**

- Plaintiff advances to judgment of foreclosure by filing appropriate motions to default the defendants, and a motion for judgment of foreclosure, with a copy of an appraisal attached.
- 5 days prior to the judgment hearing, plaintiff must file a preliminary statement of debt (Uniform Standing Order F).

- The Bench Bar Foreclosure Committee has promulgated numerous uniform procedures that must be followed to obtain and enforce a foreclosure judgment, effective December 1, 2008.

## **INTERRUPTIONS TO ADVANCING TO FORECLOSURE**

- Under Public Act 08-176, no judgment shall enter for sixty days from the date the EMAPP notice was sent.
- Filing for relief under the Mortgage Moratorium statute.
- Filing an application for Mediation.
- Filing an EMAPP application with CHFA.
- Judicial referral to Mediation.

## **JUDGMENT**

- Strict Foreclosure
- Foreclosure by Sale

## **FORECLOSURE**

- Changes to State and Municipal Laws affecting:
  - eviction and ejection
  - tenant rights
  - cash for keys agreements; and
  - mortgagee duties to protect mortgaged property during and after foreclosure.
- President Obama's Plan – Making Home Affordable Loan Modifications