



New York

State Snapshot
from Woods Oviatt



Contact our Editor Natalie Grigg, Esq.
at ngrigg@woodsoviatt.com

JUDICIAL

Analysis: State of the State

DEFICIENCY
JUDGMENTS
ALLOWED

REDEMPTION
PERIOD
NONE

In February 2016, after taking office, Chief Judge Janet DiFore announced the Excellence Initiative in New York, which was designed to evaluate overall court operations and improve timelines. As a result of this initiative, we have seen multiple courts scheduling Administrative Dismissal days or status conferences, with the expectation that counsel appear and report the file is moving forward, and if not, the reason for the delay. Additionally, the Courts have adopted numerous strategies for dealing with the backlog including Mandatory Appearance Parts, centralizing the adjudication of cases with fewer judges, employing quasi-judicial staff to assist with settlement conferences, and even utilizing court attorneys in the upstate judicial districts to draft decisions on the backlog of motions. Overall, the initiative has resulted in a report from a vast majority of counties that the backlog of foreclosure cases has reduced in volume, statistics that have not been seen in New York in years.

1283 DAYS

*Estimated New York State Foreclosure Timeline at the end of 2016

90 Day Notice Update

While the legislation that went into effect earlier this year amended the requirements that a servicer has when issuing the 90 day notice, an unexpected change came from the Department of Financial Services requiring three new fields upon registration of the Step 1 filing to include whether the loan is seller finances, the lender's NMLS and the mortgage loan officer's NMLS.

Expedited Judgement of Foreclosure

Plaintiff in any foreclosure proceeding may make an application by notice of motion or order to show cause for a judgment of foreclosure and sale on the grounds that the subject property is vacant and abandoned. The Motion papers or Order to Show Cause must contain language set out in the statute that advises the defendant that the lender is asking the court to expedite a judgment of foreclosure and sale of his or her property on the ground that it is vacant and abandoned and also be supported by an affidavit and other proof of the ownership of the note and mortgage, photographs evidencing the property is vacant and abandoned, and other supporting documentation of same.

Keep your eye on the New York Case Law

Avail Holding LLC v. Ramos

Avail Holding LLC v. Ramos, 2017 U.S. Dist. LEXIS 34660: Defendant made a motion to dismiss a residential foreclosure action commenced in federal court, pursuant to the abstention doctrine. The Defendant argued that abstention was appropriate because the New York State courts continue to grapple with the parameters for good faith negotiation standard and appropriate remedies for failure to negotiate in good faith. The court declined to dismiss the action, noting that there was not any case law that suggested it was standard practice for federal courts to defer to state courts when it comes to residential mortgage foreclosure actions.

LEGISLATION

RPAPL 1308 – applies only to first lien mortgage holders on a vacant and abandoned residential 1-4 family property. 1308 establishes rules for inspecting, security and maintaining vacant, abandoned residential real property in that within 90 days of a borrower delinquency the servicer shall complete an exterior inspection of the subject property to determine occupancy. Thereafter, throughout the delinquency of the loan, the servicer shall conduct an exterior inspection of the property every 25-35 days, at different times of the day. Once it is determined that the property meets the vacant and abandoned criteria, a servicer shall post a notice on the property within seven days containing a toll free number and contact information. In the event there is no response from the posted notice, the service thereafter shall take reasonable and necessary actions to maintain the property.

6 Six Years Foreclosure Process Limitation

90 90 Days Deficiency Judgment limitation

30 30 Days Appeal From Final Order

*90 days after delivery of the Referee's Deed*30 days from the date after service by the party of a copy of the order appealed from and written notice of its entry.

*30 days from the date after service by the party of a copy of the order appealed from and written notice of its entry.

Hot in New York: Statute of Limitations

Statute of Limitations continues to be a hot topic item in New York given the backlog of cases in the court system and the courts attempt to clear that backlog by scheduling administrative dismissal calendars. Notably, this year we received a new and important ruling out of the Supreme County in Suffolk County in the Nationstar v. MacPherson (N.Y. Supr. Court, Suffolk County, April 3, 2017). MacPherson held that under the terms of a Fannie/Freddie Uniform Instrument, New York's 6 year Statute of Limitations does not completely bar suit on a previously accelerated loan. A second foreclosure action is not time-barred but is instead limited to the unpaid installments occurring six-years immediately preceding the commencement of the second action.

THE SOL EVAL

1. Review dismissal orders and the reason for the dismissal. If the dismissal was for lack of standing, then the debt was never accelerated and remains on a monthly installment default.

2. Review restart reasons for the same standing issues. If an action needed to be restarted because it was commenced in the wrong plaintiff name, the loan was not properly accelerated as the prior entity would not have had the ability to do so.

3. Review whether the action voluntarily discontinued during the 6 year time frame and if the discontinuance constitutes a deacceleration.

4. Review for any tolling of time due to court orders and/or Bankruptcy filings.

5. Review for prior loan modifications or loss mitigation options that may have renewed the Statute.

6. Review for any affirmative act of deacceleration.

7. Review if a dismissal was with prejudice – if so, a new action may be able to commenced on a new default.

8. Review whether the loan is federal owned/insured as in New York, courts have recognized that state statutes of limitations do not apply to Federal Agencies or their assignees.