

NEW DOUBTS ON LI

Homeowners seek dismissals, saying lenders missed 6-year deadline

BY MAURA MCDERMOTT
maura.mcdermott@newsday.com

A small but closely watched number of Long Island homeowners are asking judges to dismiss foreclosure cases against them, saying lenders missed New York's six-year deadline to file such lawsuits.

Already, a judge has thrown out a Sound Beach couple's foreclosure case because the lender took too long to file its second lawsuit, after the first one was dismissed. The case has drawn intense scrutiny from attorneys who represent homeowners and lenders. In interviews with Newsday, attorneys said more homeowners have filed court papers seeking the same result.

As Long Island struggles to emerge from its yearslong foreclosure crisis, the deadline could mean a yet-to-be-determined number of Long Island homeowners win their foreclosure cases and stay in their homes.

It also could give some homeowners leverage to negotiate more affordable loan terms.

In a typical scenario, a lender first sues to take back a home in 2007. Years later, a judge throws the case out because of problems with the lawsuit. The lender eventually files a new case. But by then, six years have passed — and the statute of limitations may have expired.

The deadline was never much of an issue before the 2007-2009 recession, since foreclosure cases rarely encountered yearslong delays, state Supreme Court Justice Dana Winslow in Nassau County said in an interview.

Three to four years ago, when judges began warning lenders about the statute of limitations, the lenders "looked at it as so far in the future that they didn't need to be reactive," Win-

slow said.

Court officials and attorneys said there are no reliable estimates of the number of cases facing the deadline.

In Suffolk County, judges have seen "a very small number" of cases in which the statute of limitations may have expired, said Robert Quinlan, spokesman for the state court in Suffolk County.

However, Quinlan said, "it's felt that we may see an increase in motions claiming the [lawsuit] should be dismissed on statute of limitations grounds."

With New York's foreclosure process now taking an average of four years, the looming deadline raises fundamental questions about what is fair — to homeowners and to lenders — and about the proper resolution of long-drawn-out foreclosure cases.

"There's a perception, which is false, that people are looking for free houses, and that is not true," said Ivan Young of the Young Law Group in Bohemia, who represented Fred and Theresa Tovar, the Sound Beach couple who won their foreclosure case in December.

Lender plans to appeal

The Tovars' mortgage company, Beneficial Homeowner Service Corp., an affiliate of HSBC, has filed court papers indicating it plans to appeal. The lender still has a lien on the home. The Tovars and Beneficial both declined to comment.

"The bank is forcing [homeowners] into a situation where they have no choice but to raise the statute of limitations defense, because the bank has consistently refused to offer a loan modification," Young said.

Attorneys for lenders see it differently.

"The reason [it takes] six years is because the system



CENTRAL ISLIP. Barbara and Christopher Joseph are hoping the statute of limitations, which imposes a six-year deadline on foreclosure suits, will help them keep the home they bought in 2005.

makes the process so cumbersome," said Bruce Bergman, a Garden City-based attorney who represents lenders and author of the book "Bergman on Mortgage Foreclosures." "It's troubling and the end result could be viewed as not being very fair to lenders."

Among the Long Islanders hoping New York's six-year deadline will help them keep their homes are Christopher Joseph, a military veteran, and his wife, Barbara, an assistant teacher.

In 2002, Christopher Joseph was deployed to Iraq as an Army staff sergeant. Now 52, Joseph walks with a cane due to injuries he suffered repairing trucks and jumping from a vehicle under enemy fire.

After his return, the Josephs bought a small, four-bedroom home in Central Islip for \$294,000 in 2005. The following year, Christopher Joseph

said, he lost his civilian job because his injuries made it impossible to perform his demanding physical duties preparing military trucks for combat.

Fell behind on payments

The Josephs, who now have three grown daughters, fell behind on their \$1,839 monthly mortgage payments. Their mortgage company sued to foreclose in 2006. Barbara Joseph said the couple drained more than \$18,000 from their savings and pension funds and their youngest daughter's college fund in an effort to catch up. They tried repeatedly to get a loan modification. But as the monthly payments on their adjustable-rate mortgage grew to \$2,839 in 2008, and \$4,586 in 2010, it was impossible to keep up, Barbara Joseph said.

Christopher Joseph now works as a medical support assistant for the Northport VA

Medical Center. The family's finances have stabilized. However, Joseph said their mortgage debt has climbed to more than \$400,000, including penalties — twice the value of comparable homes in Central Islip.

"If we could have worked out something reasonable, we would have gotten back on track and we'd be paying right now," Joseph said.

The foreclosure case eventually was dismissed when a Suffolk state Supreme Court judge ruled the lender never served the Josephs with the summons and complaint that started the lawsuit. Their lender filed a new lawsuit this year.

Young, who is representing the Josephs, said the new lawsuit should be thrown out, since it was filed more than six years after the lender declared the entire balance due in 2006.

The Josephs' mortgage servicer, Wells Fargo, said in a state-