

Some Observations On Doing It Right...

...The First Time, And Why It Can Take Longer Than You Expect

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Ah, the tortuous, ritualistic mortgage foreclosure case. Too often in some judicial foreclosure states the roadblock is followed by a glitch, succeeded by a miscue which leads to misinterpretation. Then there is the possibility of an omission, blunder, botch, bungle, flub and maybe even a muff before a goof or a downright fool mistake - assuming, of course, no legal pratfall.



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If all this suggests (with at least a touch of hyperbole to make the point) that exceptional care is the watchword of pursuing the judicial foreclosure case, then the thought has been effectively conveyed.

Meticulousness and appreciation of nuance are two truly vital ingredients in the foreclosure recipe, or at least in the efficiently pursued foreclosure. Such care can perhaps on occasion add some time to the case, but it tends to avoid far more time-consuming problems which seem inevitably to arise when the requisite care is not employed in the first instance.

Doing it right is never easy, but the suggestion here is that it's worth the effort.

For example...

The foreclosure search - that vital prerequisite to preparing the pleadings - is fertile ground to be exacting.

The judgment search may very well list many liens against a borrower with the same or similar name as your mortgagor. Including all of these creditors as defendants could elicit spending more money in process service and take more time in locating those parties than would probably be necessary. But selecting too few could mean that not everyone with an

interest will have his lien extinguished.

What to do? Counsel should expend the extra effort in trying to as-

certain whether all those judgments are against your borrower. It may mean reviewing the credit file to locate prior addresses in addition to ex-

ploring the matter with the lender or servicer. That should narrow the field and where there may be doubt as to whether a particular judgment is

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against your borrower, then the choice is to opt for prudence. Name and serve the questionable parties.

Tax delinquencies

Tax delinquencies present another area of possible trouble.

It hardly need be observed, but in the foreclosure case there is certainly some possibility that taxes may have been neglected, either by the borrower (if it was his obligation) or some other lender who had assumed that responsibility by taking an escrow.

The tax search is worth studying carefully and counsel should bring delinquencies to the attention of the lender or servicer. Eventually, there comes a time when title to the prop-



erty will be divested by the taxing authority. When that could occur should be analyzed and diaried so the possible event won't be neglected. The time and expense of redeeming property silently taken for failure to pay taxes is well worth avoiding.

The metes and bounds description, the section block and lot and possibly the tax lots - all of these create room for confusion and typographical error. Precisely which parcel or parcels are being foreclosed upon may or may not be very well understood. If there is a doubt, when it comes time for a title search after the foreclosure sale, some other title insurer is likely to question whether the mortgaged property was ever the subject of the foreclosure.

While the resultant difficulty may be subject to solution, the frustration of more time, money and confusion after the sale only underscores why solving this dilemma at the beginning would have been worth the effort.

There's even more

And there is more in the search.

What about those mortgage documents? The incessant Fannie Mae form of mortgage has the dreaded non-uniform covenant (typically paragraph 19), requiring a 30-day cure letter as a prerequisite to acceleration and foreclosure. Except as it may be changed or eviscerated by a rider, that letter must contain a host of warnings and assertions.

If the cure letter doesn't contain each and every mandated statement, or worse, if the letter is not sent at all, a wily borrower has a chance to defeat the entire foreclosure and cause it to be started anew by claiming he was never given the contractually bound notice. So, be sure to prepare the letter very carefully and be certain to post it.

Service of process

When it comes to service of process, anyone can claim they weren't served. And even if the world's most skilled process server (if there is such a thing) was engaged, it doesn't assure that a court would not find a deficiency with the jurisdiction.

The best way to defeat an eve-of-sale "It wasn't served" claim is to painstakingly read each affidavit of service with care as it comes in. It's onerous to do so, but counsel can do much to assure at the inception that the service is good. The method is not foolproof, but it does weed out the patently defective affidavits - and thus some of the deficient service.

Should a defendant have the typical temerity to interpose an answer in the foreclosure case, it is sometimes worth a special letter from counsel to try persuading withdrawal of the answer. But even if that is unsuccessful, the motion for summary judgment should accomplish the task - so long as it is done well.

Think about it. In the residential situation, might the typical court assume that a poor, strapped borrower

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Loan Workout Program Partners Insurer With Community Groups

In an effort to help economically distressed low- and moderate-income homeowners and reduce the number of foreclosures in targeted cities, Mortgage Guaranty Insurance Corporation (MGIC) of Milwaukee and the National Training and Information Center (NTIC) of Chicago have developed a specialized mortgage loan default counseling program for community housing groups.

The unique counseling program assists community groups working with delinquent borrowers and mortgage servicers to prevent foreclosure.

The one-day seminar helps housing counselors enhance their budgeting and debt counseling skills and provides collateral materials to counsel low- and moderate-income homeowners who have experienced economic hardship and risk losing their homes.

Participants receive a counselor's manual and desktop reference guide that provide information on:

- developing a budget,
- setting financial priorities,
- responsibilities of homeownership, and
- strategies for working with mortgage servicers to identify when loan workouts are possible and develop plans to preserve homeownership.

There are a variety of workout strategies that can be considered to help homeowners avoid foreclosure, such as modifying the terms of a bor-

rower's mortgage and establishing a repayment plans that allows the borrower to repay delinquent mortgage payments over time.

"When a homeowner experiences financial problems, it's important to quickly address the situation," says Gordon H. Steinbach, MGIC's executive vice president in charge of affordable housing. "Time is the enemy when a borrower falls behind on mortgage payments, especially for lower income households that may have little or no cash reserves to call upon in the event of hardship."

MGIC first introduced the "Preserving Homeownership" in 1991 to help mortgage lenders and servicers develop loan workout skills in economically troubled areas such as California and the Northeast, where there were high mortgage delinquency and foreclosure rates. More than 3,500 lenders have since participated.

MGIC's partnership with NTIC has been customized to meet the special needs of community-based organizations. It was piloted in Chicago in January and sessions are being scheduled in other major cities this year.

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asserting some defenses is totally wrong and should suffer being thrown into the street with his wife and children in the dead of winter?

Perhaps not, unless the motion for summary judgment is crafted with the requisite precision, demonstrating the complete validity of the foreclosure complaint and the total lack of merit in the answer. Usually that is the truth of the case, but it requires sufficient proof of each and every allegation of the complaint.

After all, in case it isn't so widely known among non-lawyers, the motion for summary judgment in most states is the procedural equivalent of a trial. So it should be approached with the appropriate level of attention.

It's rarely boring

Are there more hints about efficiency and explanations as to why foreclosures can frequently take longer than any of us would prefer?

The answer, of course, is yes, which is one of the reasons why mortgage servicing is rarely boring.

To be sure, no one has all the answers and anyone can make a mistake. But in the foreclosure case, taking care of business early - and with precision - is a very wise approach indeed.

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