



No. 30

Brooklyn: Foreclosure Capital. Do Not Lose Your Home to Scammers or Foreclosure. Get Help Today.

BY VICTORIA FALK

The Coronavirus pandemic has not only wreaked havoc over people's physical and mental well-being; it also has devastating effects on people's finances. Over the last months, many businesses have closed, and many of those who have jobs have not been able to get to work due to enforced social distancing. According to the U.S. Department of Labor reports, over 2 million New Yorkers have filed for unemployment benefits within the last three months. Furthermore, New City Mayor De Blasio has since announced that 22,000 city workers are at risk of being laid off their jobs. Therefore, it comes as no



surprise that many homeowners are having difficulty meeting required mortgage payments and are at risk of losing their homes due to foreclosure. To make matters worse, scammers see this as the perfect opportunity to prey on those in desperate need of help and steal their properties.

Last year, September 3, 2020, Senator Roxanne J. Persaud, representing Senatorial District 19, held a live online seminar, with

representatives from several community-based organizations, to provide information to the community to help prevent foreclosure protect homeowners from scammers. Senator Persaud was especially concerned because homeowners who fall within 11236 zip code in her district reported having the highest foreclosure rate across all of Brooklyn. Also, senior citizens, who have been the scammers' preferred victims, reside pre-



dominantly in Brooklyn neighborhoods.

Senator Persaud reported that creating a Cease-and-Desist Zone in East New York and teaching homeowners how to recognize scams has proven helpful. If you or someone you know has been the victim of a scam, you are encouraged to report it. Senator Persaud said, "The Brooklyn District Attorney investigates scams. Attorney General of New York, Letitia James, investigates scams."

"The Department of Finance has an alert after someone tries to steal your deed. Do not sign any documents for

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Understanding the Foreclosure Process & Common Defenses

BY TRISTAN PHILLIP
EQUITY SMART REALTY INC

Foreclosure is a legal process by which a lender takes possession of collateral pledged to secure a loan. Because it is a complex legal action, and because there are few resources for homeowners, vehicle owners, and other borrowers to research precisely how a foreclosure works, being involved in such an ordeal can be both stressful and confusing.

Like all legal disputes, the excellent news is foreclosure cases must allow the borrower to state their case. There are numerous ways for borrowers to protect themselves, many of which are guaranteed under federal and state laws.

Common Defenses

Some of the most common defenses to foreclosure include:

- the foreclosing bank didn't follow the required state procedures
- the foreclosing party can't prove it owns the loan (it lacks "standing")

- the mortgage servicer made a grave mistake when handling your loan
- you're a servicemember on active duty and protected by the Servicemembers Civil Relief Act
- the statute of limitations has passed, and
- the servicer used a defective affidavit or declaration.

If you are involved in a foreclosure, here are some things to consider.

The Time Factor

Because of the mandated notice lenders must provide to borrowers before they can legally take possession of the collateral, foreclosing on a home, a vehicle, or land is by no means a quick and simple act. Lenders must file a Notice of Default which begins a phase called the reinstatement period. Roughly 12 weeks later, a lender is required to post a Notice of Sale on the property and deliver the same to the borrower.

Generally speaking, this three-month window is a borrower's opportunity to bring their loan current and avoid the sale of their property.



Judicial Foreclosure

Some states require the involvement of a court during the foreclosure process in much the same way the federal government requires bankruptcies to be subject to the jurisdiction of a federal judge. In states where judicial foreclosure is mandated, borrowers have the opportunity to state their case opposing the sale of their home in a hearing before a judge.

Like all litigation, a foreclosure case is subject to the orderly processes of the court, which means a defendant borrower has the same compulsory process as the lender. Motions can be filed. Evidence can be presented, and the actions of the lender can be contested at each step.

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- Advise you on whether a deed transfer would violate the terms of your mortgage.
- Advise you on the best way to take title (eg: tenants in common or joint tenants with right of survivorship).
- Advise you on the best type of deed to use (there are many types of deeds).

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Advantages of a Listing Agent

Before listing your home for sale, many home sellers are tasked with the decision to hire an agent or make the venture alone.

While the FSBO (For Sale By Owner) avenue might save you a little money by avoiding the commission cost of a listing agent, a real-estate transaction is best navigated with the guidance of an expert.

Recent data from the National Association of Realtors reveals that only 7% of FSBO attempts were actually successful in 2017. Typically, these sales were made when sellers already had a buyer in mind. Finding the right listing price is considered the most difficult task for this type of sale. Before attempting to join this small percentage of those who sell their homes without expert help, consider the advantages of hiring a professional real estate agent.

Setting the Price

Choosing a price point is more involved than having a home appraised and asking that amount. In fact, while an appraisal is a good starting point, an expert can access a CMA or comparative market analysis to analyze current trends in the area including what similar homes sell for, current market trends, interest of local buyers, and how



long homes are listed.

With this important information, a real estate expert can price your home to ensure a profitable sale with a quick turnaround.

Suggest Renovations

A real estate agent is efficient in finding flaws in your property that may slow down a transaction or effect bids from buyers. For instance, if you live in an area that experiences heavy rain fall, a new roof or air-tight windows and doors may be necessary before listing. Homes for sale in regions with intense summers and brutal winters can benefit from an updated HVAC system. If



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BRIAN FIGEROUX, ESQ.

you decide to purchase a new unit, make sure to keep warranty paperwork on hand to pass on to the next owner. Small incentives like this can make the difference between receiving unimpressive offers and making a sale.

Be sure to brag about recent upgrades in your listing. Buyers know what they're looking for, and an agent understands how to advertise your property so they can find it.

Dealing with Negotiations

Once you have accepted an offer from a home buyer, there is still one roadblock in the way before you head to close. Most offers are contingent on a home inspection, meaning an independent professional will inspect the property for flaws or defects that may otherwise go unnoticed.

Keep in mind, some states require you to

disclose information about known problems that may affect the value of your home. If you fail to inform them, you may be held legally responsible for fines and fees or the rescission of a sale. Your real estate agent is an expert on the sometimes-complicated responsibilities that sellers face and can ensure your deal won't fall through.

If unexpected problems are discovered, it's common for a new offer to be written up. An agent will use his expertise to negotiate with the buyer's agent to maintain fair terms.

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7. Preparation for closing
8. Resolving all disputes before closing
9. Representation of you at your successful closing



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What to Expect When Facing Judicial or Non-Judicial Home Foreclosure

BY JANET HOWARD

Recent surveys show that a significant number of Americans are unprepared to handle an unexpected bill of \$500. As many as 80% of Americans live paycheck to paycheck. A sudden job loss, illness or accident can create financial chaos. For anyone paying off a home mortgage, foreclosure and the impending loss of their home can quickly become a reality. The COVID-19 pandemic has heightened the problem.

State foreclosure laws vary, and a homeowner facing foreclosure should quickly become familiar with state and federal laws outlining procedures and requirements. Both the process and length of time involved will depend on the type of foreclosure allowed by state law and documents that were signed to finance the home purchase.

Judicial vs. Non-Judicial Foreclosure

Just under half the states employ judicial foreclosure in which the foreclosing party must begin a lawsuit to regain the property. A complaint and summons are filed in court and then served on the homeowner. The remaining states use non-judicial foreclosure,



a process that generally works more quickly and begins when the homeowner receives a notice of default from the loan servicer that foreclosure and sale of the home is imminent.

Judicial foreclosures are more common when a mortgage is involved. Non-judicial foreclosures are most common where ownership involves a deed of trust which includes a power of sale clause.

Judicial foreclosures tend to take longer for several reasons. First, federal law requires homeowners to be 120 days in ar-

rears before a foreclosure suit may be filed. Second, the court process is slow due to crowded dockets, required hearings and a limited number of available judges. Once a homeowner has been served with a complaint, he or she usually has 20-30 days to file an answer which either admits or denies the allegations, raises potential defenses and tells the court why foreclosure is improper. Filing an answer prevents the lender from obtaining a default judgment and automatically winning.

In non-judicial foreclosures the homeowner must initiate court proceedings by filing the complaint. The initial filing should also request a temporary restraining order (TRO) and a preliminary injunction to prevent the foreclosure action from proceeding pending court action. Obtaining a TRO requires the person seeking it to show he or she will suffer irreparable harm unless the order is granted. The potential loss of a family home usually meets that requirement.

Once the matter is in court, the foreclosure process naturally slows down. If a homeowner can survive a motion for summary judgment in which the lender wins by showing there is no legitimate dispute regarding a material fact, the discovery and trial preparation process will likely take months to complete.

The discovery process allows both sides to request information from the other including property and financing records. Depositions may be taken or written questions may require answering as each party tries to obtain further evidence to justify or defend against foreclosure.

Judicial foreclosures are less expensive for the homeowner since the owner is not the one starting the lawsuit. Judicial foreclosures place the burden on the lender to prove the foreclosure is justified and that applicable laws have been followed. Conversely, the homeowner must pay to start a lawsuit in non-judicial foreclosures. The lender, at least initially, does not need to prove anything. The homeowner has the burden to show the foreclosure action is improper.

Remaining in the Home

A homeowner can remain in the home without making payment at least until the fore-

closure process is completed. In fact, the homeowner should remain in the home since the owner is ultimately responsible for the home and any damage to the property until required to vacate. Remaining in the home is often a requirement to take advantage of a loan modification program. Staying without paying also provides the opportunity to save money to put toward a new, less costly residence if saving the current home proves to be impossible.

The homeowner should explore options which can prevent loss of the home or which might, at least, minimize the damage to the owner's credit report. Losing a home through foreclosure will appear on a credit report and will typically prevent purchase of a home for the following 3-5 years. Options to foreclosure include loan modification, short sales and surrendering the deed to the property in lieu of foreclosure.

If a court determines a judicial foreclosure is appropriate, the homeowner still has time before being required to vacate the property. The lender must schedule a date for the home sale and publicize the sale. Notice often requires several weeks of publication in a local newspaper. State law may also require a current home appraisal be performed.

Some states also provide for a redemption period following foreclosure during which the homeowners can buy back the property. Depending on state law, the homeowner may be able to live in the home during the redemption period even if the buyback proves impractical in the end.

Length of the Foreclosure Process

Pre-COVID, the average foreclosure took more than 800 days from the time of first notice to end of the foreclosure process. In many states the actual process may take more than a year, and in a handful of states the foreclosure process often takes several years.

Receiving notice of foreclosure does not mean loss of a home is inevitable. A number of defenses may be available to prevent the loss. Actions can be taken to slow down the process, minimize the anxiety and even save the home under the right circumstances. Consultation with an experienced real estate attorney should be among the first steps taken for anyone facing foreclosure.

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Do Not Lose Your Home/ continued from page 1

people you do not know – even if you're trying to get a short sale of your property. Slick people come to your home saying they can help you if you sign forms. Do not, I repeat, do not, do not sign your deed over to anyone. Do not take money. If you take money, it's seen as you sold the deed to your home," warned Angella Davidson, Program Director at a local non-profit.

If it sounds too good to be true, it probably is. Homeowners beware of unsolicited phone calls, mail, emails, text messages, special offers, and people knocking on the door of your home offering to help you get a forbearance on your loan. You do not have to pay anyone to request a forbearance on your mortgage loan, and several community-based organizations provide free services to homeowners. Therefore, do not delay in getting the help that you need. As soon as you feel you may be at risk of having problems, is the time to reach out to your mortgage servicer to discuss your options and one of the community-based organizations for counseling and assistance. Each of the housing professionals who participated in the recent meeting with Senator Roxanne J. Persaud agreed that homeowners should take action immediately and reach out for help before they have a crisis.

Do not let fear or shame cause you to wait until the last minute to respond to foreclosure notices and/or apply for assistance. If you do not respond to foreclosure notices



within the time allotted, you make it easier for the bank to prove its case against you, and your home may be sold at a foreclosure auction. The chances of you getting your house back after it is sold at a foreclosure auction are slim, to none. Therefore, you want to respond immediately to foreclosure notices.

Homeowners: Don't just stop making your payments. If approved for a mortgage forbearance, it allows you to stop making payment on your loan without the fear of foreclosure.

Those payments are still owed and are put on the end of your loan. You may also request that the mortgage be modified to make it more affordable.

Counseling is essential to help homeowners figure out which of the available options will work best for them. Each of the housing counselors agreed that the One-Shot Deal loan program, offered by the New York City Human Resources Administra-

tion, maybe another option to help homeowners get back on track financially and request reductions in utility bills. Senator Roxanne J. Persaud stressed, "We can not afford to have middle-class homeowners who worked hard, lose their homes, and walk away." The good news for homeowners is the moratorium on foreclosures and evictions is extended until December 2020, and no property will be foreclosed on during the moratorium.

Getting Help

Do not delay getting assistance. There are things you can do now to save your home. If you have questions about your rights as a homeowner, landlord, or tenant, if you have been scammed, fear foreclosure, or are being harassed for your inability to pay your bills, contact the Law Firm of Figeroux and Associates for a free consultation at 855-768-8845. Get the legal help you need now! ■

Foreclosure Defenses/ continued from page 1

Auctions

During the normal course of a foreclosure, the property in question usually ends up being auctioned off by the lender to recover the property's value and pay off the loan. Auctions typically take place shortly after the reinstatement period ends. By and large, if your foreclosure reaches the auction phase, it is probably too late to save the property.

One option all property owners have before the auction is negotiating with the lender to perform something called a "short sale." This can have some significant tax ramifications, but it also gives you the option to plan for the sale of your home rather than have everything proceed according to the lender's schedule.

If you are facing foreclosure, your best options are to consult with a real estate attorney and then negotiate with your lender. Most banks and finance companies will make many concessions if it helps them avoid acquiring a house, they have to either sell or maintain.

It is also important to recognize you have alternatives and time to avoid an unfortunate outcome. Take your time, perform your due diligence and use the options available to you.

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