

## **COURT REVERSES BANKR COURT RULING FORECLOSURE WAS BARRED BY NJ SIX-YEAR STATUTE OF LIMITATIONS**

The U.S. District Court for the District of New Jersey recently held that New Jersey's 20-year statute of limitations for residential foreclosures applied to a re-filed foreclosure action, reversing a bankruptcy court's ruling that the shorter six-year statute of limitations period applied.

A copy of the opinion is available at: [Link to Opinion](#).

The borrower obtained a \$520,000 mortgage loan in February 2007. The Mortgage and Note listed March 1, 2037 as the maturity date. The borrower defaulted in July 2007, and a foreclosure action was filed. However, the foreclosure action was later dismissed for want of prosecution, and then dismissed with prejudice and the lis pendens discharged.

The borrower filed for bankruptcy in March 2014. In the bankruptcy action, the borrower sued the servicer and loan owner seeking a declaration that the mortgage debt is unenforceable because (1) the plaintiff in the foreclosure action was allegedly not the true owner and holder of the Note and Mortgage; and (2) enforcement of the Note and Mortgage was supposedly "barred by the doctrine of payment and the statute of limitations."

The bankruptcy court held that the creditors' proof of claim pursuant to 11 U.S.C. § 502(b)(1) to foreclose the mortgage on the accelerated note was time-barred under New Jersey's six-year statute of limitations. The bankruptcy court also held that, because the creditors could not foreclose on the mortgage loan, the creditors' proof of claim in bankruptcy also was barred because the underlying lien was unenforceable.

The creditors appealed.

On appeal, the trial court noted that an action to foreclose a residential mortgage in New Jersey must be commenced by the earlier of:

1. "Six years from the date fixed for the making of the last payment or the maturity date set forth in the mortgage or the note ... secured by the mortgage;"

2. “Thirty-six years from the date of recording of the mortgage, or, if the mortgage is not recorded, 36 years from the date of execution, so long as the mortgage itself does not provide for a period of prepayment in excess of 30 years;” or
3. “Twenty years from the date on which the debtor defaulted...”  
(N.J.S.A. § 2A:50-56.1.)

The Court noted that the bankruptcy court interpreted the words “six years from the date fixed for making the last payment or maturity date set forth,” to mean an “accelerated” mortgage or advanced maturity date.

However, the Court held, the word “accelerated” does not appear in the relevant subsection and is not defined. Moreover, the Court found no indication in the record to indicate that the maturity date in the loan documents (March 1, 2037) was accelerated by the default or by the filing of the foreclosure action.

In addition, the Court found persuasive two state court rulings, holding that if the maturity date were accelerated to the date of default then the plain meaning of the language in the six-year limitations period would be rendered superfluous, and that merely filing a complaint does not reasonably accelerate the mortgage and note. See *Pennymac Corp. v Crystal*, No. F-31289-14 (N.J. Super. Ct. Ch. Div. May 8, 2015); *Wells Fargo Bank v. Jackson*, No. F-29217-14 (N.J. Super. Ct. Ch. Div. May 6, 2015).

The Court also held that applying the shorter six-year statute of limitations would ignore the intended purpose of the statute. The Court noted that the New Jersey residential foreclosure statutes of limitations have “been construed to address problems caused by the presence of residential mortgages on property records, which have been paid or which are otherwise unenforceable,” and that the policy behind the statute is that “all homeowners should be given every opportunity to pay their home mortgages and that mortgagees benefit when defaulting loans return to performing status.”

In addition, and perhaps most importantly, the Court repeated the bankruptcy court's words that "[n]o one gets a free house." The Court held that "[d]eeming the mortgage collection claim as time-barred would be inequitable," and "would be contrary to public policy by depriving [the creditors] of any remedy for [the borrower's] default."