

## **New Jersey Appellate Court Holds 2009 Statute of Limitations for Foreclosure Action Does Not Apply Retroactively**

New Jersey's Appellate Division recently held that a foreclosure action commenced more than six years after the underlying loan's maturity date was not barred by the six-year statute of limitations because that statute was not enacted until the year after the maturity date and could not be applied retroactively. See *Pfeifer v. McLaughlin*, 2018 WL 4167334 (N.J. Super. Ct. App. Div. Aug. 31, 2018). In the case, plaintiff gave a \$53,000 loan to the borrowers in 2007, and the loan was secured by a mortgage on the borrowers' property. The note had a maturity date of 2008. After the borrowers failed to make the final two payments, plaintiff brought a foreclosure action in 2009, but the court later dismissed the action for failure to prosecute. In 2010, the borrowers sold the property to defendant. Due to an issue with how the mortgage was recorded, defendant was unaware of plaintiff's mortgage and it was never paid off. In 2015, plaintiff brought a new foreclosure action against defendant. Among other defenses, defendant argued that the six-year statute of limitations had run. The trial court agreed and dismissed the action, and plaintiff appealed.

On appeal, the Court reversed. Under N.J.S.A. 2A:50-56.1, an action to foreclose must be brought by the earliest of: (i) six years from the maturity date; (ii) 36 years from the date of recording (or if the mortgage was not recorded, the date of execution) so long as the repayment period under the mortgage does not exceed 30 years; or (iii) 20 years from the date of default. The trial court had applied the first limitations period and found that plaintiff had until six years from the maturity date to bring this action and had missed this deadline by one year. However, N.J.S.A. 2A:50-56.1 was enacted in 2009, and the Appellate Division found that there was no indication that it was to apply retroactively. "Without a clear expression of contrary intent, a statute that relates to substantive rights and changes settled law will be applied prospectively." Accordingly, because the default occurred prior to the 2009 statute's enactment, the Court found that this action was subject to the 20-year limitations period that existed before the statute and reinstated the case.