

Reversal of the Free House Decision

It has been a year and a half since the ruling in the Washington case. Was that decision the end of it or has there been more activity around the case since then?

In New Jersey, the Washington decision was reversed completely. Essentially the decision was, the original decision was based on what I would say is a clever argument of a debtor's counsel and resistance to being flexible from other counsel on what the judge was suggesting and how he felt he had to move. The judge's ruling really didn't sync up with the ultimate intent of the statute, so that's what the appellate division of the district court ended up ruling—that the judge's rationale didn't line up with New Jersey's statute of limitations.

The original decision was that if you accelerate, you have six years from acceleration to initiate that foreclosure. The filing of the complaint is the acceleration. So the only way that his interpretation would work is those cases that were filed, lasted more than six years, were then dismissed, and then bring a new foreclosure. It was kind of an oddball decision. The district court said, well, here is the statute of limitations in New Jersey. You have your original mortgage, which is typically a 30-year mortgage, and your statute (of limitations) runs six years after the maturity date of the mortgage, 20 years after it defaults, or essentially 36 years from origination, unless the loan is longer than a 30-year loan. So there are really two operative parts of that statute: six years after maturity and 20 years after default. That's the blackline in New Jersey now. It's pretty clearly defined, and the old Washington vs. SPS decision is gone. It has been erased.

How did the overturning of the Washington decision affect the foreclosure legal landscape?

It sent a little bit of a shiver through New Jersey when it was decided, but its scope was rather limited, because it had to be an active case that got dismissed after six years, and there wasn't an effort to decelerate the loan and say that "We're going to forget that old case. We're going to reset the clock." It didn't really create tremendous ripples in the landscape other than firms were cautious about older cases. It really hasn't changed the dynamic of how people were pushing their cases. I think everybody pretty much expected that the Washington decision would be overturned. For other states' statute of limitations, it's a lot of heated issues. Florida is a hotbed for statute of limitations. New York has a lot of interesting issues popping up with statutes of limitations. New Jersey, I think, was looked at as an aberration. I think the rationale behind the first (Washington) decision was actually

pretty good, and the argument in that underlying case, maybe it's always easy to second-guess. There may have been a little different angle. I'm a believer that if you have a five or six year old demand notice, that maybe it's time to say the old demand notice is no good and you're going to restart with a new demand notice. That would have actually cured the Washington issue before it arose. It's a curious case because it's an aberration. Some practical handling of the case may have avoided the ultimate legal battles. But ultimately, we got the right decision, so maybe the case did have some significant value because it set straight what the New Jersey statute of limitations means.