

New Jersey Foreclosure Spotlight

RECENT COURT DECISIONS IMPACTING BORROWERS AND LENDERS



FORECLOSURE JUDGMENT BINDS COMMERCIAL LENDER TO ACCEPT AMOUNT OF THE JUDGMENT

In a decision issued on 2/26/18, a New Jersey appellate court rejected a commercial lender's attempt to amend a foreclosure judgment to incorporate additional loans guaranteed by corporate guarantors that would have more than tripled the amount due on the foreclosure judgment. [Customers Bank v. Reitnor Investment Properties, LP, Docket A-0920-16T3 \(App. Div. 2018\).](#)

APPELLATE COURT SAYS BORROWER ENTITLED TO FAIR MARKET VALUATION TO AVOID WINDFALL TO LENDER

In a decision issued on 2/21/18, the NJ Appellate Division held that a commercial borrower should receive a fair market value determination where it appeared the lender might have recovered more than 100% of its mortgage loan. [Brunswick Bank & T. v. Hein Mgmt, LLC., 2018 WL 987809 \(App. Div. Feb. 21, 2018\).](#)

COURT PROHIBITS BORROWER'S SEPARATE LAWSUIT AGAINST LENDER AFTER FORECLOSURE COMPLETED

In a published decision issued on 1/31/18, the Appellate Division held that New Jersey's entire controversy doctrine and the principles of res judicata and collateral estoppels barred defendant from pursuing a separate lawsuit against the lender for fraud after the lender obtained a final judgment in the foreclosure case. [Adelman v. BSI Fin. Svcs., Inc.v. 2018 WL 636756 \(App. Div. Jan. 31, 2018\).](#)



“N.J.S.A. 2A:50-56.1(a) unequivocally provides that the statute of limitations for a mortgage foreclosure action will expire 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. In this case, six years from the October 1, 1995 maturity date of the note and the mortgage was October 1, 2001, rendering plaintiff’s August 31, 2015 filing of its foreclosure complaint untimely.”

[Anim Investment Company v. Shalhoub](#), * 8.



LENDER’S FORECLOSURE SUIT BARRED BY 6-YEAR STATUTE OF LIMITATIONS

In 2009, New Jersey passed a law providing a period of 6-years from the time a residential mortgage loan matures or becomes due in full in which a lender can file a foreclosure case. N.J.S.A. 2A:50-56.1.a. This law was recently applied retroactively to bar a residential mortgage lender’s suit in [Anim Investment Company v. Shalhoub, Docket No. A-5266-15T2 \(App. Div. February 28, 2018\)](#).

In that case, the residential mortgage loan matured on October 1, 1995. Defendant defaulted on November 1, 1990, within a month of signing the mortgage. On October 14, 1997 the original lender sold and assigned the loan to Anim Investment Company. The loan apparently fell through the cracks because Anim Investment waited almost another 8 years before issuing a pre-foreclosure suit notice and filing a foreclosure complaint.

The trial court dismissed the plaintiff’s foreclosure complaint with prejudice, agreeing with the defendant’s argument that the debt was uncollectible under the 6-year statute of limitations provided by N.J.S.A. 2A:50-56.1.a. because the foreclosure suit was filed well beyond 6-years from loan maturity date. The trial court also rejected plaintiff’s reliance on the 20-year statute of limitations for filing mortgage foreclosure suits that is tied to the date of the borrower’s default. When a residential mortgage loan matures and has not been paid, the lender has 6 years from that date in which to file a foreclosure action.

The Appellate Division affirmed for the reasons stated by the trial court, and agreed with the trial court’s determination to apply the 6-year statute of limitations period retroactively to this particular mortgage loan which pre-existed the statute’s enactment in 2009.