

# A Matter of Interpretation

Did the N.J. legislature really intend for debtors to get a free home six years after acceleration of a mortgage loan?

By Timothy P. Duggan

Over the years, courts have accumulated a large volume of decisions pertaining to statutory interpretation and what rules should be applied when deciphering legislative intent in cases where litigants disagree over the meaning of a statute. In some cases, the meaning of a particular word comes into play causing linguistic issues, and in other cases the use of specific words (i.e., "shall," "may," "or" and "and") help clarify the legislative intent.

In a recent case decided by the U.S. Bankruptcy Court for the District of New Jersey, the Bankruptcy Court found itself bound by the rules of statutory construction in a case where it was forced to decide whether the debtor would receive a free home (not really free, but close to it). *In re Washington*, Case No. 14-14573 (Bankr. D.N.J. Nov. 5, 2014). In the end, the Bankruptcy Court held that, under New Jersey law, a mortgage holder is time-barred from foreclosing on a residential mortgage if the complaint is not filed within six years of the date the mortgage loan was accelerated by the mortgagee. Since the mortgagee did not file its complaint within the six year time period, the mortgage loan was unenforceable and voided by the Bankruptcy Court.

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The facts of the case are not complicated. A homeowner (the "debtor") purchased a three-family home on Feb. 27, 2007, and borrowed \$520,000 to finance a portion of the purchase price. The loan was secured by a mortgage to be repaid over 30 years, with the first payment due April 1, 2007. The note secured by the mortgage defined the maturity date of the obligation as March 1, 2037 (an important date as discussed below).

The debtor failed to make the payment due July 1, 2007. The mortgagee sent a notice of intent to foreclose as required by New Jersey law, providing the debtor with 30 days to cure all defaults. When the defaults were not cured, the mortgagee filed a foreclosure complaint on Dec. 14, 2007.

Uncontested foreclosure cases are handled by the Office of Foreclosure of the Superior Court of New Jersey. The Office of Foreclosure enters final judgment after a careful review of the proofs and will reject submissions if there are irregularities in the documents or proofs of amount due. When there is a problem, the Office of Foreclosure will send a return notice to counsel and provide a deadline for resubmission of proofs. In this case, the Office of Foreclosure sent the mortgagee a

return notice on Oct. 28, 2010, raising issues with the application for final judgment. Final judgment was never entered and on July 5, 2013, the Office of Foreclosure dismissed the foreclosure, without prejudice, for lack of prosecution.

About nine months later, on March 12, 2014, the debtor filed for Chapter 13 bankruptcy protection. It is important to note that there was no foreclosure action pending when the bankruptcy petition was filed.

In the bankruptcy case, the mortgagee filed a proof of claim for the entire amount due and owing. The debtor filed an adversary complaint seeking an order determining the validity of the mortgagee's claim which constituted an objection to the mortgagee's claim under Bankruptcy Code § 502(b). After some minimal discovery, the parties moved for summary judgment on their respective positions.

Although the debtor raised several issues, this article will only focus on the issue relating to the statute of limitations. The debtor argued that the New Jersey Fair Foreclosure Act (FFA), N.J.S.A. §2A:50-53, et seq.) governs his loan since the loan meets the definition of a residential mortgage. Looking to section 2A:50-56.1(a) of the FFA, the debtor argued there is a six-year statute of limitations

to file an action on a residential mortgage loan that has been accelerated by the mortgagee. Although the mortgagee agreed that the FFA applies to the loan, it argued that the same statute has a 20-year limitation period for defaulted mortgage loans, relying upon subsection "c" of the same statute.

The statute in dispute states:

1. An action to foreclose a residential mortgage shall not be commenced following the earliest of:

a. 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*, bond, or other obligation secured by the mortgage, whether the date is itself set forth or may be calculated from information contained in the mortgage or note, bond, or other obligation, except that if

the date fixed for the making of the last payment or the maturity date has been extended by a written instrument, the action to foreclose shall not be commenced after six years from the extended date under the terms of the written instrument;

b. 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 repayment in excess of 30 years; or

c. Twenty years from the *date on which the debtor defaulted*, which default has not been cured, as to any of the obligations or covenants contained in the mortgage or in the note,

bond, or other obligation secured by the mortgage, except that if the date to perform any of the obligations or covenants has been extended by a written instrument or payment on account has been made, the action to foreclose shall not be commenced after 20 years from the date on which the default or payment on account thereof occurred under the terms of the written instrument.

N.J.S.A. §2A:50-56.1 (emphasis added).

The Bankruptcy Court was required to determine whether subsection "a" or subsection "c" controlled the analysis. At the heart of the dispute was whether the acceleration of the note changed the "maturity date" stated in the note (March 1, 2037) to the date of

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default (June 1, 2007).

The Bankruptcy Court looked to the legislative history of the FFA and found it to be of limited guidance. Although it is clear from the legislative history that the New Jersey legislators were seeking to: (a) bring foreclosure actions more in line with the six-year statute of limitations for contract claims; and (b) codify the established case law holding that the statute of limitations for foreclosure actions is 20 years, there is no guidance on whether the term "maturity date" includes the date an accelerated loan is due and payable *after acceleration*.

Looking for other extrinsic aids, the Bankruptcy Court reviewed other sections of the FFA and the

statute of limitations for contracts and negotiable instruments. Section 2A:50-56 of the FFA provides that a mortgagee must send out a notice of intention to foreclose "before any residential mortgage lender may *accelerate the maturity* of any residential mortgage obligation." N.J.S.A. §2A:50-58(a) (emphasis added). The statute of limitations for negotiable instruments provides a lawsuit to collect on a negotiable instrument must be commenced "within six years after the due date or dates stated in the note or, if the date is accelerated *within six years after the acceleration due date.*" N.J.S.A. §12A:3-113 (emphasis added).

The Bankruptcy Court ultimately held that the acceleration of the loan accelerated the maturity date to the date of default. Since

the foreclosure action was not commenced within six years of the accelerated maturity date, the claim was time barred and the mortgage was voided—the debtor no longer had a mortgage. The mortgagee filed a notice of appeal and the matter is presently before the U.S. District Court for the District of New Jersey.

The language in the loan documents in question may help the mortgagee's chances on appeal. The adjustable rate note executed by the debtor has an express definition of "Maturity Date." Specifically, the note provides: "If, on March 1, 2037, I still owe amounts under the Note, I will pay those amounts in full on that date, which is called the "Maturity Date." Also, in the default and remedy section of the note and mortgage, the term "maturity" is not used when discussing acceleration of the loan. Since the face of the note defines Maturity Date, there is a strong argument that the six-year statute starts to run on March 1, 2037.

The statute of limitations for residential foreclosures is the shorter of three time periods, two of which are discussed above. However, the third time period (36-year time period under subsection "b") lends guidance to the overall statutory scheme. It seems clear that the 36-year statutory period in subsection "b" was included since most residential mortgages have a term of 30 years or less, and the mortgagee must file a complaint within six years of the end of that term. However, if the term of the mortgage is 15 years (also a popular option), the complaint would have to be filed within 21 years under subsection "a." Finally, in either case, if there is a default for any reason, the complaint would have to be filed within 20 years of the date of default, regardless of acceleration or the maturity date of the loan. Whether this interpretation of the statute is reasonable is now in the hands of the U.S. District Court. ■