

New York Law Journal

Foreclosure Conferences Get Off to Modest Start

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03-10-2009

On a brisk late-winter morning, homeowners facing foreclosure crowded around the fourth floor of Queens Supreme Court on Sutphin Boulevard, waiting to be called into a small rectangular room with high windows and one long table.

Inside, court attorney-referee Leonard Florio sifted through loan documents and paperwork as the other parties, including the homeowner and the attorney for the lender, sat quietly at the table. Mr. Florio asked the homeowner, Greg Chavez, if he had consulted a lawyer prior to the conference.

Mr. Chavez, a 17-year veteran of the New York City Police Department, said he consulted with a legal aid provider the day before but was not represented by counsel. His monthly home payments went from approximately \$1,700 to \$2,700 when the adjustable rate on his 30-year mortgage increased in October 2007.

"The rate exploded exponentially," Mr. Florio said before inquiring as to Mr. Chavez's financial situation. The next question was for the attorney for the bank. "He was making payments on this loan, yes?" The attorney nodded and Mr. Florio moved on, trying to broker another mortgage modification.

The conference provided a glimpse inside the practical application of Chapter 472 of the Laws of 2008, passed by the New York Legislature last August, requiring mandatory court intervention in response to the mortgage foreclosure crisis (NYLJ, Oct. 1, 2008).

Reports Chart Foreclosure Rate Increase, Outline Laws

A new industry survey by the Mortgage Bankers Association shows a record 5.4 million U.S. mortgage holders were either behind on their payments or in foreclosure at the end of last year.

The law covers foreclosures on subprime or "high-cost" mortgages on one- to four-family residences since Jan. 1, 2003. It requires a lender to file a specialized request for judicial intervention when initiating a foreclosure summons and complaint. Courts then notify property owners of their right to a resolution conference and provide details about legal

The sharpest increases in loans 90-days past due were in Louisiana, New York, Georgia, Texas and Mississippi, reflecting a spreading recession and massive job losses nationwide.

Meanwhile, another report by the National Consumer Law Center, a consumer advocacy legal organization, predicts foreclosure filings from 2008 will top 1 million nationwide, an 81 percent increase over 2007.

The report also ranked foreclosure protection laws by state. For example, more than 30 states, including Alabama, Minnesota and Utah, do not require court involvement in foreclosures.

New York scored strong with laws including mandatory court conferences for subprime residential mortgage foreclosures but ranked behind other states in categories such as allowing homeowners the right to redeem their default post-sale and requiring a housing emergency access fund.

While there are no pending proposals to amend the New York law, attorneys hailed last week's Capitol Hill move to allow Chapter 13 bankruptcy judges to amend loan terms as a necessary next step.

"The current law provides a good framework but the law itself could be tightened up," said Josh Zinner, a co-director of legal service and consumer advocacy group NEDAP. Mr. Zinner said the law could be extended to cover loans other than subprime and nontraditional loans and provide protection to homeowners.

Allowing judges to modify home loans would "help those who can help themselves" said Long Island bankruptcy attorney Richard S.

service providers who can represent them.

More than 150,000 foreclosure proceedings are pending statewide dating back to 2003. And as many as 30,000 cases will need mandatory court intervention over the next 10 to 18 months, according to Office of Court Administration officials.

Before the law's enactment, subprime mortgage holders facing foreclosure defaulted 90 percent of the time, said Paul Lewis, chief of staff for Chief Administrative Judge Ann Pfau. Attorneys for lenders would simply file a summons and complaint and wait for the homeowner to default, Mr. Lewis said.

"We saw that the numbers were creeping up," Mr. Lewis said of the number of defaults, before the courts' attempt to change foreclosure filings from a "paper process to a people process."

More than 5,400 foreclosures were filed in Queens in 2008, compared with just over 1,800 in 2005, according to court records.

Under the new rules, the conference must be held within 60 days, before a judge, a judicial hearing officer or a court attorney-referee.

In Queens, that man is Mr. Florio, 42, an eight-year court veteran with close-cropped hair and an impeccable tie knot. He oversees the conferences with obvious knowledge of the law. A former insurance defense practitioner, Mr. Florio takes a no-nonsense approach that aims to "cut

Feinsilver, because it would allow homeowners to make lower payments reflecting the decreased value of their homes.

The congressional vote on the bill, which is part of President Barack Obama's \$75 billion housing plan, is set to take place this week.

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through the red tape" and bring parties to a practical agreement that, in a best case scenario, allows homeowners to keep their homes.

"We have to look at where the income is and whether the person will be strapped," Mr. Florio said, noting that homeowners are sometimes too eager to accept

proposed terms without actually considering the cumulative state of their finances.

"[People] say, 'I can do it, I can do it . . . if I cut the phone in the house and then the gas and the lights,'" he said, adding that the ideal situation is a "meeting in the middle" between homeowner and lender.

Uphill Battle

But practitioners representing homeowners say such agreements are few and far between, due to an untenable economic situation.

"A lot of people are in trouble because they have overextended themselves and taken these loans and are in danger of losing their homes," said Glendale attorney Andrew L. Jaloza, who has represented a dozen homeowners in conference proceedings pro bono.

On the other hand, he said, "banks are overwhelmed and their hands are tied because they sold off the loan to another investor," in some cases, years ago.

"It's very rare that a settlement conference itself leads to a different resolution than otherwise would have happened," Mr. Jaloza said. The ultimate solution would be to amend the bankruptcy laws and allow judges to modify the terms of the loan, he said (NYLJ, Feb. 26).

Official settlement conference statistics are not kept but despite the mandatory conferences, around 90 percent of foreclosures still proceed unopposed, according to court officials. Of the remaining 10 percent, resolutions are reached in few cases.

Queens County Supreme Court Justice Jeremy S. Weinstein, the county's administrative judge, said that in his opinion the program is a success "for the one homeowner who stays in their home" as a result of the conference.

"Like any other administrative program, it takes time," Justice Weinstein said.

New York State Unified Court System Foreclosure Cases Filed 2005-2008				
County	Year of Filing			
	2005	2006	2007	2008
ALBANY	424	502	554	520
ALLEGANY	79	84	82	80
BRONX	686	892	1,250	1,589
BROOME	328	313	309	287
CATTARAUGUS	157	148	167	129
CAYUGA	176	171	166	149
CHAUTAUQUA	304	308	272	255
CHEMUNG	160	195	174	174
CHENANGO	74	96	89	91
CLINTON	100	100	122	97
COLUMBIA	74	92	107	151
CORTLAND	47	107	81	77
DELAWARE	52	85	88	96
DUTCHESS	276	445	667	871
ERIE	2,726	2,285	2,187	1,971
ESSEX	49	59	50	66
FRANKLIN	63	58	55	60
FULTON	160	159	161	206
GENESEE	137	181	153	124
GREENE	65	76	83	121
HERKIMER	118	164	146	120
JEFFERSON	106	122	143	139
KINGS	1,827	2,299	3,128	3,791
LEWIS	40	48	34	22
LIVINGSTON	135	145	131	125
MADISON	120	131	134	140
MONROE	1,917	1,988	1,917	1,902
MONTGOMERY	96	83	43	167
NASSAU	1,310	1,781	2,852	3,920
NEW YORK	209	161	258	285
NIAGARA	530	719	571	440
ONEIDA	393	421	414	342
ONONDAGA	1,053	975	882	1,080
ONTARIO	205	233	208	214
ORANGE	8	15	371	1,200
ORLEANS	171	204	126	113
OSWEGO	289	292	302	287
OTSEGO	81	90	102	111
PUTNAM	1	6	8	53
QUEENS	1,842	2,397	4,007	5,453
RENSSELAER	315	339	383	402
RICHMOND	594	671	960	1,366
ROCKLAND	183	282	410	676
SARATOGA	155	223	315	302
SCHENECTADY	332	428	463	481
SCHOHARIE	66	60	65	73
SCHUYLER	41	27	24	25
SENECA	73	92	78	52
ST LAWRENCE	119	135	118	120
STEUBEN	204	186	175	179
SUFFOLK	2,016	2,862	4,679	7,111
SULLIVAN	126	213	301	394
TIOGA	72	80	91	78
TOMPKINS	78	71	67	50
ULSTER	190	295	410	521
WARREN	87	106	150	160
WASHINGTON	129	157	166	163
WAYNE	293	269	241	220
WESTCHESTER	565	883	1,239	1,676
WYOMING	72	90	89	79
YATES	52	46	46	55
Total	22,350	26,145	33,064	41,201

While acknowledging that most cases are beyond salvage, in the cases where foreclosure can be avoided by an agreement, the judge characterized the court's role as "making people understand that something's got to give."

Of the 271 conferences held in his court, nine cases have settled and two were discontinued by stipulation. But there are 87 cases outstanding, where the bank and the homeowner are trying to work out settlements. The others are pending.

Meghan Faux, co-director of a foreclosure prevention project of South Brooklyn Legal Services, said she expects settlements or workouts will be easier to come by in mandatory cases because homeowners are not as far behind in their payments. But she stressed that getting a favorable result is rare and difficult.

"We are asking for payment histories to make sure that our clients owe what the lenders say they owe and there is a fair amount of resistance," she said. "The lenders say those documents are litigation, and that's stunning to me."

Ms. Faux also expressed concern about courts taking a more active role in guiding parties to a settlement, rather than "baby-sitting" the case. Some judicial officers will "get the lender on the phone" and ask pointed questions, while others will allow the lender's attorney to go into the hall and talk with the lender outside the court's presence, she said.

The courts' role is to help foster a resolution, Mr. Lewis said, helping parties "come to some sort of an agreement" and not necessarily pushing for a settlement where the facts do not support one. He noted that the legislative mandate did not include additional funds for state courts to allocate to the conferences, meaning each county has had to shift resources around as necessary.

Justice Weinstein agreed, calling it "nothing short of a miracle" that the conferences continue to be held with no additional resources.

Favorable Facts

Mineola attorney Graham Kistler, who has taken on several cases in Long Island, described his most recent settlement conference as "better than I hoped for" but said he had favorable facts on his side.

His client, a single mother of three who lost her husband seven years ago, has had to spend more on medical care for her ailing mother. She struggled making the \$3,400 payment on her Freeport home. The lender proposed a \$3,500 payment with a capitalization and extension of the 30-year loan, as well as lowering the interest rate to 8.3 percent from 8.4 percent.

"That's just setting somebody up for failure," Mr. Kistler said, adding that opposing counsel Victor Spinelli advised Mr. Kistler's client to reject the lender's offer and promised to "work on it." The case remains unresolved, Mr. Kistler said, pointing out that ultimately, the decision to enter into a settlement or a workout remains with the bank.

Mr. Spinelli, an attorney with the Law Offices of Steven J. Baum in Westbury, could not be reached for comment.

Foreclosures in Nassau County also have increased to 3,920 in 2008 from 1,310 in 2005.

Neighboring Suffolk County has been hit hard. In 2008, 7,111 foreclosures were filed, compared with 2,016 in 2005.

Justice H. Patrick Leis, the Suffolk County administrative judge, said he has shifted court resources in anticipation of the settlement conferences, the first batch of which was scheduled for last week. But, he said, of the 13 cases slated on the docket, only three homeowners had indicated they would attend a conference.

Absent participation from the homeowners, he said, even the court's "best efforts" would not yield any positive results.

But rare, positive results do happen. Outside Mr. Florio's courtroom, Mr. Chavez said he thought the proceeding went as well as he could have hoped and he expected to reach a resolution with the lender.

"It feels good," he said of the chance to lay out his situation in front of Mr. Florio. "He feels that this can be worked out."