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Homeowners are getting hit a second time

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Jan Somma-Hammel/Staten Island Advance

George Apolinaris and Maria Gil in front of their Graniteville home. Their bank accounts were frozen by their second-mortgage lender.

A new foreclosure tactic, whereby lenders or debt collectors holding second mortgages freeze bank accounts or garnish pay checks of already struggling homeowners, is emerging and making it even more difficult for people to hold onto their homes.

Lawyers for troubled Staten Island homeowners say they are beginning to see examples of clients who go to the bank to take out money and find that their accounts have been frozen or wiped out by other banks or debt collectors -- the entities holding second mortgages on houses already in default on the first and primary mortgage. Some are learning the lender or debt collector has already gone to court and secured a judgment to garnish paychecks.

It's a move more in line with the traditional debt collection industry, which typically targets credit card debt, and it's dragging the house and what little cash reserves people often have into the foreclosure battleground. Experts say it's an end-run by second lien holders around the traditional foreclosure process, which involves only the first mortgage holder and provides important legal protections for the homeowner.

"It's a fast and dirty process," Margaret Becker, lead attorney with the Homeowner Defense Project of Staten Island Legal Services in St. George, said of the new trend.

So far, she said, she's taken on two cases and she's heard similar stories from other attorneys.

In several emerging tales, homeowners say they learned about the garnishments only after their bank accounts dropped into the negative or paychecks diminished. And that is making it even more difficult for people to pay bills and modify the terms of the first mortgage to save homes from foreclosure. Homeowners being targeted often include the most troubled, or people who are behind on payments and whose homes are worth less than what is owed on the house.

"It just takes their money away so they don't have any money to afford a (loan) modification," Ms. Becker said of those who have been hit with judgments from second lien holders.

She is representing an Arden Heights woman who was talking to her bank about modifying the loan on her first mortgage. Then a debt collector, which bought the second mortgage on the house, won a judgment to garnish 10 percent of the woman's paycheck. That has jeopardized a good shot at a loan modification, said Ms. Becker.

George Apolinaris of Graniteville said his longtime companion, Maria Gil, got an unwelcome surprise when Ms. Gil tried to withdraw some money for groceries from two small bank accounts totaling $6,000 that the two maintained. The accounts were frozen and in the red for $250,000 -- twice the $126,000 owed on their second mortgage.

Apolinaris said the couple never received any notice about the court action that froze the bank accounts.

"They claim they handed a notice to somebody, but we don't know who it is," Apolinaris said.

Robert Brown, an attorney specializing in foreclosure and predatory lending cases, argued successfully in court that Ms. Gil had not been properly notified of judgment proceedings by attorneys for lender Citimortgage.

In court papers, Brown noted that the lender's debt collection law firm, Forster and Garbus, had been cited by state Attorney General Andrew Cuomo for problems in serving legal papers to defendants in civil suits, also known as "sewer service."

Last week, state Supreme Court Justice Judith McMahon sided with Brown and vacated the judgment, effectively unfreezing the couple's small bank accounts.

Brown now plans to make a counterclaim under predatory lending laws. He said the couple had fallen behind on their first mortgage but foreclosure proceedings had not yet begun.

"The second mortgage is just that -- it's second in priority, so they are sort of jumping the line and making it impossible for Ms. Gil to pay her first mortgage because they've frozen her bank account," said Brown.

The couple acknowledges their own financial missteps -- the kind that helped fuel the housing crisis.

Apolinaris bought a house in Clifton in 2004 as an investment, refinanced several times and then fell behind on payments after his tenant stopped paying rent and he was forced to evict. That house recently entered foreclosure.

Apolinaris said he used some of the money he took out of that house during those refinancings to buy the two-family home in Graniteville with Ms. Gil.

At the time, he said, both were working and making money and the housing market was booming.

The couple bought the home for $520,000 early in 2006 with an adjustable rate subprime loan from IndyMac bank, which was shut by the government last year. Less than a year later, they said, they refinanced to lower their interest rate and took out $20,000 to pay off credit card debt.

As part of the refinancing, they took out a mortgage in the amount of $464,000 from HSBC bank with an interest rate of 6.8 percent, and a simultaneous second loan from Citimortgage for $126,000. The latter loan came with an interest rate of 9.5 percent. In all the refinancings, the couple never used an attorney.

Josh Zinner of the Neighborhood Economic Development Advocacy Project in Manhattan said some lenders or trusts for banks that went out of business are selling off second mortgages today to debt collectors for pennies on the dollars. Those debt collectors are then going after the homeowners' bank accounts or pay checks to recoup whatever money they can.

"The backdrop to that is there are real fundamental problems in the debt buyer industry," said Zinner. "The combination of the second mortgage problem with all the abuses in the debt collection industry is toxic, and could really create havoc for homeowners who are trying to avoid foreclosure on their primary mortgage."
