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Foreclosure and the Letter of the Law

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Many lenders are struggling with increased restructures and foreclosures presently. A recent case from the United States Bankruptcy Court for the District of Massachusetts highlights some additional care and precaution which may now be necessary in Massachusetts.

Massachusetts is generally thought to have one of the easier foreclosure statutes to consummate a foreclosure sale. The recent case of Strayton v. Champion Mortgage, a Division of Key Bank, USA, 2007 Bankr. LEXIS 177, illustrates some hidden danger.

In the Strayton case, the foreclosing mortgagee held an equity line of credit on the debtor's home. The debtor had entered into a forbearance agreement with the bank, which it subsequently defaulted on. Over a seven month period, the debtor and the defendant engaged in significant negotiations regarding a further forbearance agreement. During this time period, loan officers on the account were changed numerous times and the forbearance agreement was never consummated. A few months after the default, a foreclosure proceeding was commenced, which was followed by a foreclosure sale. The court found that the lender followed the exact letter of the law. It also found, as a matter of law, that the defendant did no more than comply with the statutorily prescribed mechanisms to consummate the foreclosure sale.

In enjoining the bank from consummating the foreclosure sale, the court made light of the bank's defense that it followed custom and practice by complying with the statute. It further found that the bank conducted "no marketing, no appraisal, no real estate broker contact, no inquiry into the market regarding either value or prospective buyers; no inspection effort." It also found that significant value would be lost to the estate if the foreclosure sale was consummated as the court believed the property to be worth approximately \$325,000, and foreclosure sale resulted in a bid of \$130,000, subject to a first mortgage of \$100,000.

While the foreclosure statute is clear on its face, the court does remind us all that in consonance with earlier bankruptcy cases, in re Edry, 201 B.R. 604, 606 (Bankr. D. Mass

1996), the foreclosing mortgagee must use "reasonable diligence" in consummating its foreclosure sale.

As the economy continues to muddle along, a word of caution is being suggested to avoid needless delay and expense when a few additional proactive steps could assist in the consummation of a sale.

As always, please feel free to contact any of us at the office with any questions you might have.

Sincerely,

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