Massachusetts Supreme Court Further Muddies Foreclosure Waters

October 21, 2011 - The Massachusetts Supreme Court has been quite active in its oversight of bank foreclosure procedures. Although it is a small state, the State Supreme Court's ruling could have a real impact on foreclosures taking place in other states. That's because the court is leading the pack among non-judicial foreclosure states in determining which bank procedures used in foreclosure are legal, and which procedures are illegal. While no other state courts will be bound by the rulings in Massachusetts, it is fairly common practice for courts in one state to look to look at rulings on similar cases in other states. And since 29 States and the District of Columbia all use some form of non-judicial foreclosure, the rulings in Massachusetts could have a huge impact on lawsuits taking place around the country.

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As early as 2008, the courts in Massachusetts had inserted themselves in the foreclosure crisis taking place in the state. In May of that year, the Suffolk Superior Court ordered one company to halt all foreclosure activity within the state. Then in January of this year, the State Supreme Court reversed a number of mortgages because the banks involved in them had broken state law with the procedures they used.

Now the court has stepped further into the dispute by ruling that a man who purchased a property from US Bank in 2006 never actually received title to the property because US Bank had violated state law when it foreclosed on the property. The case, known as Bevilacqua v. Rodriguez, creates a huge problem for Mr. Bevilacqua and anyone else who may have purchased a foreclosed property in Massachusetts under similar conditions, and for banks in general. It also presents a major problem for foreclosures nationwide.

In this particular case, US Bank had foreclosed on a property as the mortgage servicer. That means that the bank didn't own the mortgage but it was still collecting monthly payments on behalf of the actual owner of the mortgage. This is a

common practice. When the owner of the property stopped paying the mortgage, US Bank moved to foreclose. But the bank never received an assignment of the mortgage from the actual mortgage owner. An assignment would have given the bank the right to foreclose. The court ruling states that without that assignment, the bank didn't have the right to foreclose in the first place. That means that title never transferred to the bank. It also means that the bank never had a right to transfer title to Bevilacqua.

What is not disputed in the case is that the prior owner of the property had stopped making payments on their loan. Furthermore, there is no doubt that someone had the right to foreclose because the loan was delinquent. Unfortunately, none of that is of much help to Bevilacqua. As it stands now, the foreclosure is reversed and the property is back in the prior owner's name.

To make matters even worse, on the property Bevilacqua purchased, he built three condos and sold two of them off to new buyers. That means that the new owners of the condos are also in trouble.

The court did recognize the Bevilacqua does have a vested interest in the property and some rights. He was told that he could file for foreclosure against the property himself. But there is no guarantee that if he does that he will wind up with the property. That's because anyone could come in and place an offer on it. In the event someone else offers more than Bevilacqua, that someone else could wind up being the proud owner of all three condos and Bevilacqua could wind up losing his entire investment, along with the other two condo owners.

The court ruling is likely to make the purchase of any foreclosed property in Massachusetts much less attractive. It could make it impossible for anyone other than a cash buyer since title companies are unlikely to want to issue title insurance policies on foreclosed properties in the state. It also likely to make purchasing any home in the state more difficult. If banks are forced to sit on large inventories of property in the state, they are less likely to have money to lend for other purchases.

Non-judicial foreclosures are the primary form of foreclosure in 19 states and the District of Columbia. Another nine states split their foreclosures between judicial and non-judicial.

It is well known that banks around the country were skirting procedures that were legally required by the states when foreclosing. The legal requirements surrounding foreclosures in each state are well documented and banks simply have no plausible excuse for ignoring them.

If courts in other states choose to look at what Massachusetts is doingâ€¦ and there is no reason to believe that they won't - we expect to see more issues like this around the country.

For a list showing the most common forms of foreclosure used in each state, click here.

byJim Malmberg
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