Changes in New Jersey Sheriff's Foreclosure Sale: How Residential and Non-Residential Properties Are Impacted - *New Jersey Law Journal*

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In the last five years, initially in 2019 and more recently as of January 2024, New Jersey has enacted major changes to the sheriff's foreclosure sale process. The primary purpose, as expressly stated in the legislative history and reflected in the lion's share of changes made, has been for increased protection for residential homeowners with mortgages on their primary residences. However, some of the changes also affect sheriff's foreclosure sales of non-residential properties. This article briefly summarizes the major changes and notes some of the ways this practice area has changed and may continue to change going forward.

The 2019 Amendment

In 2019, the New Jersey legislature adopted several significant changes to the state's foreclosure laws, particularly as concerns the procedures for a sheriff's sale. The amendments of N.J.S.A. 2A:50-64 and N.J.S.A. 2A:17-36 codified certain administrative procedures to the foreclosure sale process stemming from the increased foreclosures arising primarily out of the 2008 financial crisis. The amendments attempted to rectify various issues raised by the uptick in the amount of abandoned blighted properties.

First, as concerns both residential and non-residential foreclosure sales, the 2019 amendments require the sheriff to conduct a foreclosure sale within 150 days of the sheriff's receipt of a writ of execution. See N.J.S.A. 2A:50-64. Next, the amendments modified the adjournment process by restricting the number of times an adjournment could take place. The statute states that the parties “may make five adjournments of the sale, two at the request of the lender, two at the request of the debtor, and one if both the lender and debtor agree to an adjournment, and no more.” N.J.S.A. 2A:17-36. Each adjournment can be no more than 30 calendar days in length, and any additional requests for time beyond that provided in the revised statute are subject to the court's discretion and approval, regardless of whether the parties agree. Previously, the borrower was limited to two adjournment requests, but the foreclosing plaintiff effectively had unlimited ability to adjourn a sale. Second, N.J.S.A. 2A:50-64, as amended, prescribes the specific content required to be included in the deed when a property is transferred through a sheriff's sale. The required form of deed must be delivered to the sheriff within 10 days of the sale. Previously the deed preparation generally was handled by the sheriff's office. The amended statute calls for plaintiff's attorney to prepare and submit the deed to the sheriff's office.

The changes above had a twofold purpose and effect. First, by restricting the time period in which the sheriff has to close on the property transfer and limiting the number of adjournments of the sale, the intended outcome over time is that

fewer properties in a municipality are left abandoned as the foreclosure procedure unfolds. Second, those changes along with the state requiring very specific content to the deed, were intended to bring a degree of uniformity to sheriff's sale practices throughout the state relating to foreclosure properties. As discussed below, while the 2019 amendments did bring about some degree of uniformity, at least with respect to the specific changes enacted, there remains notable variation in the conditions of sale pronounced by the various sheriff's offices throughout the state.

The Amendments Effective January 2024

Effective January 2024, the foreclosure sale procedures in the state of New Jersey went through significant additional changes, almost solely in regard to sheriff's sales of residential properties. Although the new amendments to the statute known as the Community Wealth Preservation Program (CWPP), which amends N.J.S.A. 2A:50-64 and N.J.S.A. 22A:4-8, was predominantly focused on residential foreclosures, there are certain provisions of which practitioners dealing with non-residential foreclosures should be aware. It is worth noting that the new amendments, which became law immediately upon Gov. Phil Murphy signing in January 2024, have not yet been formally codified into the statutes themselves. This should happen within the next several months. Moreover, as the January 2024 law changes are still relatively new, some Sheriff's offices have updated their websites to reflect the new provisions of the CWPP pertaining to residential sales while others have not yet done so.

The CWPP almost entirely concerns “residential properties,” which the act defines as real property within the state that is “utilized as a primary residence or dwelling.” The CWPP expressly excludes real property that is owned for “investment, commercial, or business purposes or real property containing more than four residential units.” While the CWPP for the most part does not apply to commercial loans and non-residential properties, it does apply to sheriff's sales of residential properties owned by business entities.

As regards residential properties, the CWPP makes several significant changes to the required notice of sheriff's sale. Now, the foreclosing plaintiff must disclose whether the residential property is vacant, tenant-occupied, or owner-occupied prior to completion of the sale, and afford supervised access to the successful bidder if the plaintiff has access. Additionally, for residential properties, foreclosing plaintiffs must provide notice of the plaintiff's “upset price” four weeks prior to the sheriff's sale, which is posted on the sheriff's website. The CWPP defines the “upset price” as the “minimum amount that a foreclosed-upon property shall be sold for in a sheriff's sale as determined by the foreclosing plaintiff.” This upset price is not the maximum amount the plaintiff is allowed to bid at the sale, but rather the lowest price that the plaintiff will accept less commissions. The CWPP states that the upset price cannot be increased by more than 3% on the day of the sheriff's sale. Finally, for residential properties, the CWPP significantly expands the rights of certain classes of persons and entities before and at the sheriff's sale who intend to occupy that residential property as their primary residence.

These above-referenced CWPP provisions do not apply to non-residential properties. Thus, foreclosing plaintiffs of non-residential properties are not required to disclose in advance plaintiff's upset price. In the past, some county sheriff's offices discouraged, or even precluded an announcement of an upset price by a foreclosing plaintiff, as potentially suppressing bidding. For example, Hudson County's presently posted conditions of sale state: “Plaintiffs are not allowed to announce their upset price.” Now, with advance disclosure of an upset being required for residential property foreclosures, it will be interesting to see whether the various county sheriff's offices will become more open to allowing an upset price to be stated if the foreclosing plaintiff of non-residential property so decides.

The one important area in which the new amendments clearly impact both residential and non-residential sheriff's sales is the section amending N.J.S.A. 22A:4-8, which pertains to sheriff's fees and commissions. Prior to the amendment, the fees were calculated as 6% of sales of up to $5,000 and 4% above that amount. Now, as pertains to foreclosure sales, the amended law provides that: “On a sale conducted in accordance with section 12 of P.L. 1995, c.244 (C.2A:50-64), the sheriff

shall be entitled to charge [6%] on a sale by virtue of an execution; however, if a sale reverts to the foreclosing plaintiff, the fee to be charged on a sale by virtue of an execution shall be $150."

The law remains the same as to when a writ of execution is issued to the Sheriff, but the matter is subsequently resolved without the need for a sheriff's sale, and, at that time, the sheriff is entitled to "one-half of the amount of percentage allowed" had the sale taken place. N.J.S.A. 22A:4-8.

In sum, over the last five years, there have been some major changes to the laws regarding sheriff's foreclosure sales in New Jersey. Although the primary concern and purpose behind the changes have been to update the procedures for sheriff's foreclosure sales of residential properties, there are some important changes that also apply to non-residential properties. While the amendments, particularly those in 2019, did bring some degree of uniformity, there remain notable variations in the prevailing conditions of sale announced by the various sheriff's offices. For example, there is no uniformity in the amount of minimum opening bid ($100 in certain counties; $1,000 in others), as well as in what minimum incremental increase is required on successive bids ($1,000 minimum increment in many counties; in Hudson, it presently is $5,000 until plaintiff stops bidding, then $2,000 until sold). As noted above, how each Sheriff's office handles the announcement of any upset price with respect to non-residential properties also can vary from county to county. Consequently, practitioners are wise to check the conditions of sale of the sheriff's office in the county in which the property is located, which are generally posted on its website, well in advance of any scheduled sheriff's sale, and plan accordingly.

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