MAKING THE MOST OF IN REM RELIEF

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In Rem relief orders can be a.. powerful tool for mortgage servicers and foreclosure attorneys to complete successful foreclosure actions because they prevent the automatic stay triggered by bankruptcy filings from affecting their foreclosure action. In cases where one or multiple defendants repeatedly file for bankruptcy, the in rem order can sometimes be the only way to successfully complete a foreclosure sale. But even when a servicer has in rem relief, there are still challenges to effectively relying upon that relief. The statutory guidelines must be followed precisely in order to get to a foreclosure sale without a stay violation.

<u>The In Rem Order Must be Recorded</u>

A foreclosure action should always remain on hold pending the recording of the in rem order. The section of the bankruptcy code that provides for in rem relief (11 U.S.C. § 362(d)(4)) provides that if an order is granted pursuant to this section, it is binding in any other case that is filed for a period of two years from the date of entry of the order, but only if "recorded in compliance with applicable State laws governing notices of interests or liens in real property". This means that when a bankruptcy judge grants in rem relief, the servicer does not really have in rem relief until after the order is recorded with the county where the property is located. If the foreclosure firm sets a foreclosure sale date before the in rem order is recorded, and a defendant in the foreclosure files a new bankruptcy case, the foreclosure firm will have to cancel the sale. This results in a waste of time and money that could easily be avoided by keeping the foreclosure on hold until the in rem order is recorded.

<u>Inform Foreclosure Counsel Whenever There is an In Rem Relief Order</u>

The law firm handling the foreclosure action is not always the firm that handles the related bankruptcy case. When this occurs, and the law firm that obtains in rem relief is not the firm handling the foreclosure, it is imperative that the existence of the in rem order be communicated to the foreclosure firm. This ensures that the file is handled properly so that sales are not scheduled until after the in rem order is recorded, and sales are not cancelled unnecessarily for new bankruptcy filings. Servicers should implement procedures that ensure that their foreclosure counsel is promptly made aware that a recorded in rem order is in place by clearly noting the file with a banner or watermark and/or by sending the firm a message. This alerts everyone who touches the file as to how the loan should be handled while it is covered by the in rem order. These orders provide an effective tool for completing foreclosure sales, but they can only be used if the foreclosure firm is aware that they have one to rely on.

In situations where a borrower has filed multiple bankruptcies with no intention of completing the case or there is an obvious intent to abuse the bankruptcy process by other defendants using tag-team repeat filings to delay the foreclosure, pursuing in rem relief is clearly the most effective course of action, however there is still work to be done after the court grants the order. Quickly recording the order, waiting to schedule the sale until after the order is recorded, and notifying the foreclosure firm of the existence of the in rem order are all vital steps in the process.

As with any matter in New York, New Jersey or Pennsylvania which affects and concerns our clients, we remain available to assist and look forward to hearing from you.