



New Cases Shed Light on the Requirement of Lenders to Record Mortgage Satisfaction

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Two important cases this summer have addressed the requirement that lenders record mortgage satisfactions within the required 30-day time period under New York law. One case addresses the “triggering event” for the 30-day time period typically required for lenders to present a satisfaction of mortgage for recording, while the other discusses the possibility for a dismissal of a class action lawsuit if a lender pays the lead plaintiff the required statutory penalty for failing to record a satisfaction within the required timeframe.

The two New York statutes at issue are New York State Real Property Actions and Proceedings Law (“RPAPL”) § 1921 and New York Real Property Law (“RPL”) § 275. RPAPL § 1921 and RPL § 275 both require a mortgagee to execute a satisfaction of mortgage and arrange to have the satisfaction recorded within 30 days. Failure of the mortgagee to do so entitles the borrower to a penalty based on when the satisfaction was recorded. The amounts are \$500 for satisfaction not recorded within 30 days, \$1,000 for satisfaction not recorded within 60 days, and \$1,500 for satisfaction not recorded within 90 days. RPAPL § 1921 also provides that if the loan is secured by a one-to-six family, owner-occupied residential structure or condominium and the mortgagee fails to deliver the satisfaction of mortgage within 90 days, the mortgagee is liable to the mortgagor for the greater of \$500 or the economic loss to the mortgagor.

In June, a New York federal court handed down a decision regarding the triggering event for the time frames in RPAPL § 1921 and RPL § 275. The plaintiff in the putative class action claimed that the 30-day period to present satisfaction for recording runs from the date the loan was paid off. The lender, on the other hand, argued that it runs from the date the satisfaction of mortgage was signed. The court agreed with the plaintiff and held that the purpose of these statutes is for an expedited recording of satisfaction and therefore the 30-day time period runs from the date the loan is paid off.

This decision further illustrates that a plaintiff’s case will not be automatically dismissed if he or she cannot prove the exact date of payoff. In this case, although the plaintiff could not prove the actual date the loan was paid off, the Court found that the plaintiff reasonably ascertained the date she paid off the loan since her house was sold on May 11, 2012, and the payoff did not accrue interest. Since the county clerk generally records “expeditiously upon presentment,” it was reasonable to infer that the lender presented the satisfaction for recording after the 30-day time frame since the satisfaction was recorded on June 21, 2012, which was 41 days after the possible payoff date.

In August, a Florida federal court addressed the effects of a lender offering the lead plaintiff in a class action the statutory penalty under the New York statutes. In this case, it took the lender more than 106 days to record the lead plaintiff's mortgage satisfaction on property owned in New York. Under RPAPL § 1921 and RPL § 275, lenders are liable for penalties of up to \$1,500 if they are more than 90 days late in presenting satisfactions for recording. The lender offered the plaintiff the penalty of \$1,500 but the plaintiff did not accept it and said the relief was an improper attempt at "picking off" the lead plaintiff and thereby blocking the class action.

The Magistrate Judge held that the case should be dismissed as moot because the plaintiff was already offered full restitution and the District Judge affirmed this holding. Currently, the U.S. Courts of Appeals are split on whether an unaccepted offer of a settlement can render claims of a lead plaintiff in a class action lawsuit moot and the Supreme Court is set to hear a case on this issue in October of 2015 (in the case of *Campbell-Ewald Co. v. Gomez*). Currently, the Second Circuit (which includes New York) holds that such a settlement offer, by itself, does not automatically render a case moot.

The above cases emphasize the importance for financial institutions to promptly present mortgage satisfactions for recording upon the payoff of a loan, but in no event more than 30 days after the payoff.

If you have any questions regarding these cases or the requirements for recording of mortgage satisfactions in general, please feel free to contact Joseph D. Simon at [516-357-3710](tel:516-357-3710) or via email at jsimon@cullenanddykman.com.

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