LEGAL LEAGUE 100
QUARTERLY
SUMMER 2019
COMMITTED TO THE INDUSTRY, INTEGRITY, AND BEST PRACTICES

National

Savings Clauses in Foreclosure

By Van Ness Attorneys

An overlooked topic in foreclosure law is the effect of savings clauses in loan documents. Notes, mortgages, modifications, and just about any other document affecting the validity or viability of a loan may have a savings clause. Review of loan document templates is necessary because savings clauses may be helpful but also may not completely solve the issues they were meant to address.

Simply put, a savings clause is a clause that provides that a contract will remain intact and enforceable to the extent allowable by law, even if certain portions of the contract are deemed invalid or unenforceable. These clauses can be general and apply to the contract as a whole or can be specific and apply to key provisions or subject areas of the contract.

A general savings clause is frequently styled as a "severability" clause because the contract explains that the parties intend for the court to sever any portion of the contract that is legally invalid or unenforceable while maintaining the remainder of the agreement. These clauses are helpful to clarify issues that may be severed. See generally *Gessa v. Manor Care of Fla., Inc.*, 86 So. 3d 484, at *passim* (Fla. 2011). However, courts may find certain portions of the clause ineffective. For instance, a limitations of remedies provision is not severable, regardless of whether the contract contains a severability clause. *Id.*at 490-491 & n. 5. Thus, a severability clause may be an attractive addition to a loan document, but it must be understood that there are circumstances under which the provision will, itself, not be enforced.

In the case of mortgage promissory notes, a specific savings clause will usually be focused on interest and the calculation of payments. These clauses may clarify that interest shall not accrue or be charged at any unlawful rate. This type of savings clause can have multiple purposes. First, it can act to attempt to sever any provision that would allow for unlawful interest. Second, it can function as evidence of intent.

This second function is helpful in the face of a claim or defense that the loan at issue is usurious. Usury occurs when a loan is intentionally given with an interest rate that exceeds the maximum amount allowable by law. A usurious loan is subject to a setoff against recovery and, in some cases, cancellation of the debt or damages.

Florida law used to provide that a savings clause that expressed a desire for the loan to be nonusurious was sufficient to warrant dismissal of a charge of usury. However, that has changed. In *Levine v. United Cos. Life Ins. Co.*, 638 So. 2d 183, 184 (Fla. 3d DCA 1994), the court examined a mortgage note that "expressly stated that interest was to be charged only at a lawful percentage." The court held that the "inclusion of this language in loan documents has been held to warrant dismissal of a usury claim." Id. [citing *Forest Creek Dev. Co. v. Liberty Property Sav. & Loan Ass'n*, 531 So. 2d 356, 357 (Fla. 5th DCA 1988)]. The opinion in Levine, 638 So. 2d at 184, was later disapproved by the Florida Supreme Court to the extent that it explained, "A savings clause is one factor to be considered in the overall determination of whether the lender intended to exact a usurious interest rate." *Levine v. United Cos. Life Ins. Co.*, 659 So. 2d 265, 267 (Fla. 1995). (Internal quotations omitted.) In other words, the savings clause now presents an issue of fact that is to be weighed in making a determination of whether a usurious loan was given.

Savings clauses should be used wisely. They may be helpful in a defensive posture once litigation ensues, both in terms of rescuing the enforceability of an agreement and in expressing the intent of the parties at the time of the agreement. However, it should not be taken as a given that either of these strategies will work in any particular case.

National

Chapter 13 Bankruptcy: A Matter of Definition

By Seth J. Greenhill, Padgett Law Group

The term "provided for" has been a long-standing concept within the context of Chapter 13 bankruptcy—especially when it pertains to mortgage arrears. In fact, there have seldom been cases from appellate courts that fully analyze its meaning. However, on December 6, 2018, the Eleventh Circuit Court of Appeals in *Dukes v. Suncoast Credit Union* (*In re Dukes*), 909 F.3d 1306 (11th Cir. 2018), a case of first impression, finally gave meaning to the phrase "provided for" in Section 1328(a) of the Bankruptcy Code.

On February 18, 2009, Mildred Dukes filed for Chapter 13 Bankruptcy. In her plan, she stated that no money would be paid to Suncoast Credit Union (the first mortgage holder on her primary residence) and that any money paid would be paid directly to Suncoast and not through the bankruptcy trustee. Suncoast did not object to the plan and the court issued an order confirming the plan in May of 2010.

Dukes made all of her required payments to the trustee and, upon completion, the bankruptcy court issued a discharge pursuant to 11 U.S.C. §1328(a). During the interim, Dukes defaulted on her obligation to Suncoast and Suncoast subsequently foreclosed and sought a deficiency judgment against her. In 2014, Suncoast moved to reopen the bankruptcy and seek a determination as to whether or not Dukes' personal liability had been discharged. The bankruptcy court found that Suncoast's mortgage was not "provided for" by the plan, as it was paid outside and, thus, not discharged. Dukes appealed to the district court, which affirmed the bankruptcy court's ruling. Dukes ultimately appealed to the Eleventh Circuit.

"Chapter 13" continued on Page 3

LEGAL LEAGUE 100
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SUMMER 2019

From the Chair

The first quarter has flown by, and there has been a lot of important activity. In April, I attended the Five Star Government Forum in Washington, D.C., where HUD Secretary Dr. Ben Carson opened the event with an overview of the current state of the agency. We also heard from FHA Commissioner Brian D. Montgomery, Assistant Secretary of HUD, who provided a look into the challenges and progress being made at HUD and FHA. It was clear that he understands the challenges that those of us who represent clients that service HUD loans are facing.

To that end, I also had the privilege of attending the 2019 National Mortgage Servicing Association's (NMSA) Annual Member Meeting on behalf of Legal League 100. The NMSA is composed of executives representing over 35 of the industry's top servicers. The agenda for the meeting was thorough and included a keynote address from Dror Oppenheimer, who was selected by Commissioner Montgomery as part of the team that is leading his goals for the department.

The next day, a task force from the NMSA had the opportunity to meet with Commissioner Montgomery for a one-on-one meeting where they were able to review a well-presented series of issues and recommendations. While we all understand that change at this level can be slow in coming, we can report that the Commissioner is fully apprised of the issues impacting the servicing of HUD loans and is committed to working with the industry to move HUD to a better place.

Two weeks after the NMSA meeting, the 2019 Legal League 100 Spring Servicers Summit was held at the Hotel Adolphus in Dallas, Texas, and it was a terrific event. Turnout was very good, as has been the feedback I have received from servicers who attended the event. A solid presentation of developments in default litigation and an overview of how unrecorded loan modifications and title issues impact the foreclosure process was well received. Another session explored challenges in communicating with servicers and firms, followed by a servicer and GSE panel on the current state of the industry. The day was filled with valuable information for Legal League 100 members, servicers, and everyone else who attended.

I was proud to announce re-election of Neil Sherman to the League's Advisory Council, along with new members Jane Bond of McCalla, Raymer, Leibert, Pierce, LLC; Ryan Bourgeois of Barrett, Daffin, Frappier, Turner & Engel, LLP; and Daniel Chilton of Robertson, Anschutz & Schneid, PL. Congratulations to each of them, and I look forward to working together closely during my tenure as Chair. Special thanks also go to the outgoing Advisory Council members, Richard Nielson, Reimer Law Co.; Michele Gilbert, Gilbert Garcia Group, P.A.; and Erin Laurito, Padgett Law Group, who have all provided years of devoted time and energy to Legal League 100.

The Advisory Council continues to work on initiatives to bring value to the membership, and I look forward to what's to come.

Sincerely,
Roy Diaz
SHD Legal Group, P.A.
Chairman, Legal League 100 Advisory Council

ROY DIAZ, SHD LEGAL GROUP P.A.

Roy Diaz has been a member of the Florida Bar since 1988, concentrating his practice in the areas of real estate, litigation, and bankruptcy. Diaz has represented lenders, servicers of both conventional and GSE loans, private investors, and real estate developers throughout his career, with an emphasis on the mortgage servicing industry for more than 22 years. Diaz is admitted to Federal Court practice in the United States District Court for the Southern, Middle, and Northern Districts of Florida.

"Chapter 13" continued from Page 1

The Fine Print

In determining the meaning of "provided for," the Eleventh Circuit looked to a previous Supreme Court decision, in *Rake v. Wade*, 508 U.S. 464, 113 S. Ct. 2187, 124 L.Ed.2d 424 (1993), in which the Supreme Court determined that "[t]he most natural reading of the phrase to 'provid[e] for by the plan' is to 'make a provision for' or 'stipulate to' something in a plan." The Eleventh Circuit found that the debtor's plan, by stating that Suncoast would be paid outside, did not set forth a repayment and consequently, did not "provide for" Suncoast.

The Eleventh Circuit rejected the debtor's broad reading of *Rake*, in which the debtor argued that a mere reference to the mortgage is sufficient for the plan to "provide for" it. In so doing, the Eleventh Circuit found that *Rake* stands for the proposition that a claim is "provided for" where the plan supplies the terms that will govern the repayment of the claim.

In *Mayflower Capital Company v. Huyck* (*In re Huyck*) 252 B.R. 509, 515 (Bankr. D. Colo. 2000), the bankruptcy court for the District of Colorado found that a Chapter 13 plan that called for the ongoing mortgage payments to be made outside the plan while the arrears were cured inside the plan did not discharge the debtor's obligation on the ongoing contractual payments since said payments were not "provided for."

Similarly, the bankruptcy court for the Eastern District of North Carolina came to the same conclusion based on analog facts in *In re Hunt*, No. 14-02212-5 DMW, WL 128048 (Bankr. E.D.N.C. Jan. 7, 2015).

By the same token, the district court for the Southern District of Florida found that by stating that the mortgage would "be paid directly," the plan did not provide for the mortgage and it was not subject to the discharge [*Bank of America, N.A. v. Dominguez* (*In re Dominguez*) No. 1:12-CV-24074—RSR (S.D. Fla. Sept 24, 2013)].

Nonetheless, the only case that lends any support to the debtor's argument is out of the Ninth Circuit [*Matter of Gregory*, 705 F.2d 1118 (9th Cir. 1983)]. In *Gregory*, which predated *Rake*, the Ninth Circuit found that Chapter 13 plan that specifically stated that it would pay zero dollars to unsecured creditors effectively "provided for" that claim in order to make it subject to the discharge. In distinguishing *Gregory*, the Eleventh Circuit found that, unlike the proposed plan by Mildred Dukes, the plan in *Gregory* did stipulate to terms for the unsecured creditors (i.e. it proposed to pay zero dollars). Contrast that with Dukes' plan that stated that the loan would be paid direct and outside.

As if often the case, when a debtor proposes to cramdown (i.e. value) a loan inside the plan, either the Chapter 13 plan, confirmation order, or cramdown order is silent with regard to payment of taxes and insurance or states that it is to be treated outside the plan. In either case, the loan is de-escrowed and the debtor is responsible for the payment of taxes and insurance.

Not surprisingly, debtors often fail to pay the taxes and insurance when due and either the lender or servicer is forced to advance these in order to protect its collateral. The question boils down to whether or not these escrow advances are "provided for" and subject to the discharge under §1325(a)? A reading of *Dukes* suggests otherwise.

Based on this, it is imperative that steps be taken prior to recording a release of lien or satisfaction of mortgage in order to recoup any escrow advances made on behalf of the debtor. While the below provide some examples of how to do this, it is important to consult with experienced bankruptcy counsel since each jurisdiction has different requirements. In other words, what is suitable in one jurisdiction may not be suitable in the other.

If the jurisdiction follows the Federal Rules of Bankruptcy Procedure, it is recommended to file a Post-Petition Fee Notice. For instance, Fed. R. Bankr. P. 3002.1(c) provides in part "the holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable **against the debtor** or against the debtor's principal residence" (emphasis added). Thus, even if the cramdown is not a primary residence [which is typically not unless the anti-modification provision of §1322(c)(2) applies], the amount disbursed is recoverable against the debtor since it is not "provided for" and thus, not subject to the discharge.

Another option to be considered is to file a Motion to Compel Modified Plan for Escrow. The argument here is that the escrow advances are to be treated as an administrative expense pursuant to §503(b). In fact, said section defines administrative expense to include "the actual, necessary costs and expenses of preserving the estate."

Other options to be considered are the filing of a Motion for Relief from Stay (due to lack of adequate protection) as well as a Motion to Dismiss pursuant to §1307(c). It may also be a wise idea to file a Motion for Determination of Non-Dischargability. Doing this will result in a comfort order stating that said amounts (i.e. the escrow disbursements) are not discharged. This will provide a shield to any potential action for violation of discharge injunction down the road.

Accordingly, it is imperative that action is taken to either recoup escrow advances prior to satisfaction of mortgage or release of lien being recorded. In addition, based on a reading of the Dukes case, as well as the other cases cited within, it appears that other jurisdictions have reached the same result regarding the "provided for" language in §1328(a). We are hopeful that this will continue to remain the majority view and provide an avenue for creditors to recoup escrow advances.

Seth J. Greenhill, Bankruptcy Attorney, Padgett Law Group
Seth J. Greenhill is a bankruptcy attorney with Padgett Law Group (PLG). Greenhill has practiced law in the field of creditors rights' for nearly seven years. He has been with PLG for two years and is based out of the firm's Fort Lauderdale, Florida, office. The primary focus of Greenhill's practice is bankruptcy litigation.

States: Hawaii

The Impact of *Blake v. Alexander & Baldwin, LLC,* on Hawaiian Foreclosures

By Sally E. Garrison and Peter T. Stone, The Mortgage Law Firm

State-specific statute of limitations (SOL) cases establishing different applications of legal theory require mortgagees to focus on creating state-specific processes to ensure the loan portfolios move in a methodological way. These processes generally produce the desired results. However, as this is a developing area of law, the processes must remain nimble to accommodate evolving case law. A recent case in Hawaii will challenge the established processes, but unlike many other SOL changes, there's a better strategy available for the mortgagee.

In Hawaii, the SOL for enforcement of a note is six years. HRS §490:3-118. Hawaii has, by statute, adopted accrual analysis in determining when the statute begins to run, starting on "the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date." Id. Consequently, the exact language of demand letters is extremely important in determining if acceleration has occurred.

The SOL can be restarted by some new occurrence expressing the debtor's express or implied intention to repay. *First Hawaiian Bank v. Zukerkorn,* 2 Haw. App. 383, 385, 633 P.2d 550, 552 (1981). This principle was further defined by *Blake v. Alexander & Baldwin, LLC,* 143 Hawaii 330, 430 P.3d 891 (Ct. App. 2018). The *Blake* court emphasized the importance of the debtor's intent. Id. To restart debt liability, the occurrence must be made by the debtor such that it expresses intention to repay and cannot be made by someone else to bind the debtor. Id. Specifically, the *Blake* court stated, "[a]s expressed in Zukerkorn, '(a) new promise by the debtor to pay his debt, whether then barred by the applicable statute of limitations or not, binds the debtor for a new limitations period.' [**Zuckercorn**]. As argued by [Alexander & Baldwin], the rule expressed in Zukerkorn applies to extend the statute of limitation to assert claims against the debtor. It does not apply to the circumstances in this case, where plaintiffs (the debtors) have paid part of an outstanding amount and seek to revive time-barred claims they wish to now assert." Id. After the SOL has run, the mortgagee cannot unilaterally bind the debtor as such an action lacks intent; only the debtor can express the requisite intent to renew the debt.

Hawaii distinguishes the difference between an action to recover a debt pursuant to a note and an action to foreclose a mortgage. *Bowler v. Christiana* Tr., a Div. of Wilmington Sav. Fund Soc, FSB, 143 Hawaii 235, 426 P.3d 459 (Ct. App. 2018). The SOL for enforcing a mortgage is 20 years. HRS §657-31. The Supreme Court of Hawaii stated, "The mortgage and note are two distinct securities, and nothing but payment of the debt will discharge the mortgage." Id. quoting *Campbell v. Kamaiopili,* 3 Haw. 477, 478 (HI. Kingdom 1872); see also HRS § 506-8; Bowler, 143 Hawaii 235, 426 P.3d 459 (Ct. App. 2018). These statutes run concurrently; "A mortgagee may foreclose on the mortgage after the statute of limitations has run on an action to recover on the underlying note, except that the mortgagee is not entitled to a deficiency judgment." Id. Deficiency relief is forgone, but as a practical matter, that relief is rarely sought. Considering appreciating property values in Hawaii and recent case law, this approach provides the most direct path to recovery without substantial debt forgiveness.

This approach will also avoid the collateral exposure for claims related to the Hawaiian statutory affirmation requirements, which specifically demand " … that the attorney has verified the accuracy of the documents submitted, under penalty of perjury and subject to applicable rules of professional conduct." HRS § 667-17. This requirement provides an opportunity for both the borrower and the trial court to challenge the affirmation. The affirming attorney is obligated to verify that no false statements of facts appear in the records relied upon to the best of his or her knowledge. Considering that a creditor cannot unilaterally renew obligations, affirmation based on unilateral payment changes risk the counsels' good standing with the state bar,

"Hawaii" continued on Page 6

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may violate Rule 3.3 of the Hawaii Rules of Professional Conduct, and may draw perjury claims and court sanctions. The affirming attorney may provide explanatory details to supplement the statutory affirmation; however, explanations of unilateral debt forgiveness may attract litigation. Further, any judgment obtained based on an affidavit that is later deemed improper risks vacation.

The current approach to foreclosure at or beyond the note's SOL should be re-evaluated. The best practice in Hawaii is to preserve the payment history, avoid unilateral payment changes, foreclose the mortgage, and seek full recovery of the debt up to the total foreclosure sale proceeds from appreciated property values. This strategy provides the greatest opportunity for recovery and reduces liability exposure.

Sally Garrison, Managing Member, Oklahoma, The Mortgage Law Firm

Sally Garrison received a B.A. in Economics, Environmental Science, and Political Science from Claremont McKenna College in 1995. She received her J.D. from the University of Oklahoma, College of Law, in 2000. During her studies at the University of Oklahoma, she also attended the Oxford Summer Program at Queen's College, focusing on the European Union and intellectual property. Before beginning her work in real estate litigation, Garrison taught as an adjunct professor at the University of Oklahoma College of Law in the areas of intellectual property, copyright, contracts, and law in cyberspace.

Peter Stone, Managing Attorney, Hawaii, The Mortgage Law Firm

Peter Stone joined The Mortgage Law Firm in 2013. Stone was admitted to the Hawaii State Bar in 1980 and has over 38 years' experience in complex Hawaii real estate and business transactions and related commercial litigation, including representing national lenders in nonjudicial and judicial foreclosures of residential and commercial properties on all the Hawaiian islands. Stone has established relations with all Hawaii escrow and title companies and has defended lenders in borrower actions alleging lender liability, wrongful foreclosure, title claims, and violation of Hawaii and Federal laws. Stone graduated from Hastings College of the Law at the University of California and is a member of the Hawaii State Bar Association's Collection Law and the Real Estate and Financial Institutions Sections. He served six years as a part-time Hawaii District Court Judge and is the past President and current member of the Senior Counsel Division of the Hawaii State Bar Association.

States: Illinois

Illinois Appellate Court Dismisses Appeal as Moot for Failure to Perfect Stay

By Natalie Burris, Codilis & Associates, P.C.

The First Appellate District of Illinois recently held that Illinois Supreme Court Rule 305(k) applies to appeals involving residential mortgage foreclosures. See *Deutsche Bank National Trust Co. v. Roman*, 2019 IL App (1st) 171296. Rule 305(k) provides that if the appellant fails to perfect a stay of judgment within the time for filing the notice of appeal, "the reversal or modification of the judgment does not affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed […]." Ill. S. Ct. R. 305(k). As such, absent a stay, the appeal is moot.

An Illinois Supreme Court case, *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523-24 (2001), established the elements for a court when considering whether a third party's acquisition renders an appeal moot: (1) the property passed pursuant to a final judgment, (2) the right, title, and interest of the property passed to an individual or entity who is not a party to the action, and (3) the appellant failed to perfect a stay of judgment within the time allowed for filing a notice of appeal.

In *Roman*, the Appellate Court found that all three elements were satisfied. At the judicial sale, a third-party purchaser was the successful bidder. The mortgagors timely appealed after the circuit court confirmed the judicial sale. However, the mortgagors unsuccessfully sought a stay in the trial court and failed to request a stay from the Appellate Court. The Appellate Court found that the property passed pursuant to a final judgment when the circuit court confirmed the judicial sale.

The main point of contention in *Roman* was whether the third-party purchaser was considered a party to the foreclosure proceedings. The Appellate Court pointed out our Supreme Court clearly set forth in *Steinbrecher* that when a third party acquires title pursuant to the judgment and sale, that third party was not "one by or against whom a lawsuit is brought," nor did it have a stake or standing in the lawsuit. The Appellate Court noted the public policy undergirding Rule 305(k): to safeguard the integrity and finality of judicial sales, and without a policy of finality and permanence, "no person would purchase real property involved in a judicial proceeding, if afterwards he incurred the hazard of losing the property due to facts unknown to him at the time of the sale." Accordingly, the Appellate Court found in Roman that the third-party purchaser was merely a purchaser who had no interest in the litigation other than to protect its future possessory interest in the subject property and dismissed the appeal as moot pursuant to Rule 305(k).

Natalie Burris, Lead Attorney, Codilis & Associates, P.C.

Natalie Burris is a member of the appellate practice group at Codilis & Associates, P.C. She received her Juris Doctor in 2012 from DePaul University College of Law, and her Bachelor of Arts in 2005 from Wheaton College, Illinois.

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Significant Changes to New Jersey Foreclosure Process

By David Lambropoulos, Stern & Eisenberg, P.C.

On April 29, 2019, New Jersey Gov. Phil Murphy signed into law a legislative package consisting of nine bills to address the state's "foreclosure crisis." This legislation will have a direct and significant impact on operations within the State of New Jersey. A brief summary of each bill is provided below for your convenience.

This legislative package brings about significant changes to longstanding New Jersey practices and procedures. Please ensure all relevant members of your team are made aware of these changes.

A664—Effective first day of the seventh month following enactment

- Expands mediation eligibility to include multi-family homes.
- Expands mediation eligibility to include homes where the borrower's immediate family resides.
- Requires that notice of mediation availability be included in the pre-foreclosure Notice of Intent to Foreclose.
- Requires that notice of mediation availability again be provided at service (in English and Spanish).
- Requires that a person with settlement authority be available to appear on behalf of the lender or servicer telephonically or in person.
- Provides for a civil penalty of up to $1,000 for failure to appear.
- Increases the filing fee of a foreclosure complaint $155. These funds are to be used to fund the mediation program.

A4997—Effective 90th day following enactment

- Entitled "Mortgage Servicer's Licensing Act."
- Requires mortgage loan servicers to obtain a license from the Commissioner of Banking and Insurance.
- Sets forth broad range of criteria for licensing qualification.
- Requires annual reporting and renewals.
- Initial application fee is $1,000; annual renewal fee is $3,000. Fees are non-refundable.
- Requires the posting of a Surety and Fidelity Bonds.
- Imposes broad record-keeping and reporting responsibilities.
- Permits the Commissioner to bar any person who knowingly violates the act from servicing or brokering activities. Imposes civil and criminal liability for such violations.

A4999—Effective 90th day following enactment

- Requires the filing of creditor contact information with the summons/complaint and Lis Pendens. Contact information for a representative for property maintenance purposes **and** who is authorized to accept service on behalf of the creditor must be provided. **Both of these representatives must be located in the State of New Jersey.**
- In addition to filing this information with the summons/complaint and lis pendens, it must also be sent to the municipal clerk and the mayor of the town.
- Any subsequent changes to the above contact information must be disclosed within 10 days of same.

It is imperative that the requisite information be provided to us at the time of referral, as we will not be able to file the complaint without same.

A5001—Effective immediately

- Revises Statute of Limitations for Residential Mortgages.
- Applicable to residential mortgages executed on or after effective date (4/29/19).
- Reduces statute of limitations for initiating foreclosure due to non-payment from 20 to six years.

A5002—Effective immediately

- Allows condo associations to include late fees, fines, expenses, and attorneys' fees in an association lien.
- Continues to provide six-month limited priority to condo liens; exempts association liens from 60-month expiration period if they are renewed annually.

S3411—Effective first day of fourth month following enactment

- Requires NOI to be sent within 180 days of filing foreclosure complaint—must be re-sent if first legal not filed within 180 days.
- Requires additional language to be included in NOI: (1) Notice of Mediation availability; and, (2) that a receiver shall be appointed if the mortgage is secured by a multifamily property that meets the eligibility criteria of the Multifamily Housing Preservation and Receivership Act.
- Limits reinstatements of an action dismissed without prejudice for lack of prosecution to three. Fee to reinstate is two times the amount of the filing of a foreclosure complaint. No portion of a reinstatement fee may be passed on to a debtor.

S3413—Effective 30th day following enactment

- Makes certain changes to vacant and abandoned property procedure.
- Increases sheriff's time to sell the property following an order that it is vacant and abandoned from 60 to 90 days.
- Special Master application may be made if the sheriff cannot hold the sale within 90 days.

S3416—Effective immediately

- Requires NOI to include language stating that the lender is either licensed in accordance with the New Jersey Mortgage Lending Act or exempt from same.
- Eliminates a reference to entities that are out of state in section 1 of the bill.

S3464—Effective 90 days after enactment

- Requires sheriff to conduct sale within 150 days of receiving Writ of Execution (permits special master application if sheriff is not able to do so).
- Requires plaintiff's counsel to prepare deed for sheriff.
- Limits sheriff's sale adjournments to five (debtor and lender may each use two unilaterally, and a fifth may be used if both parties agree). Practically, this will limit plaintiff's adjournments to two in most cases. After the two-adjournment threshold is met, a motion for additional adjournments must be filed.
- Limits adjournments to 30 calendar days.
- Increases borrower adjournments from 28 days (two two-week adjournments) to 60 days (two 30-day adjournments).

David Lambropoulos, Esq., Managing Attorney, Stern & Eisenberg's New Jersey office. *David Lambropoulos oversees all facets of the firm's day to day operation. Prior to entering private practice, Lambropoulos served as a Judicial Law Clerk for the General Equity Division of the Superior Court of New Jersey. Lambropoulos is a former United States Marine who was Honorably Discharged following two combat deployments to Iraq. Lambropoulos is a lifelong South Jersey resident and an avid sports enthusiast.*

(left to right) Jonathan Grim, Director of Research and Recovery for Carrington Mortgage Services, LLC; Amy Neumann, VP, Foreclosure and Attorney Manager, Flagstar Bank; Jacquelyn S. Pardue, Director of Purchasing and Vendor Management, Gateway First Bank; Lee S. Raphael, Owner and Managing Attorney, Prober & Raphael, A Law Corporation; J. Anthony Van Ness, Van Ness Law Firm

John Abel, Senior Deputy Attorney General, Pennsylvania Office of the Attorney General.

Legal League 100 Spring Servicer Summit

"Legal League 100 members play a critical role within the mortgage servicing industry," said Ed Delgado, President and CEO of Five Star Global. "Today's conversations are an important step in continuing to strengthen best practices that benefit both the industry and homeowners."

"I'm looking forward to more in-depth conversation about newer issues and looking forward to hearing from industry leaders from the servicing and legal side," said Caren Castle, The Wolf Firm.

Legal League 100 Chair Roy Diaz of SHD Legal opened the day's activities, noting some of the year's major developments such as the Supreme Court's ruling in *Obduskey v. McCarthy & Holthus,* in which the justices ruled 9-0 that businesses engaged in nonjudicial foreclosure proceedings are not considered "debt collectors" under the Fair Debt Collection Practices Act.

The *Obduskey* case was once again a hot topic within the day's first full panel, with Matthew E. Podmenik, General Counsel & Managing Partner for McCarthy Holthus, LLP, providing the firm's perspective and the panel then discussing some of the aftermath they're seeing. Discussion turned to how some state governments are working to institute more of their own laws regarding debt collection or even implementing their own state-level versions of the Consumer Financial Protection Bureau. This will only make it even more critical that servicers and their partner law firms are attentive to issues of compliance and stay abreast of the latest developments.

"If you look at the attendees and the panelists, they're extraordinary," Podmenik said. "There's been plenty of time to network, but to me it's been more of an educational experience, and I have a lot of information to take back to my shop."

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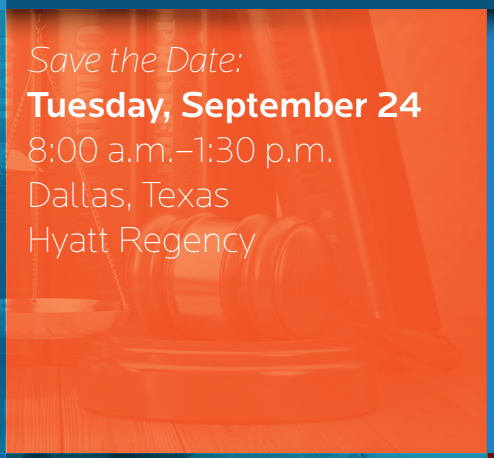
Members in Session

The 2019 Legal League 100 Fall Servicer Summit

Save the Date:
Tuesday, September 24
8:00 a.m.–1:30 p.m.
Dallas, Texas
Hyatt Regency

Legal professionals working within the default servicing space cannot afford to miss the 2019 Legal League 100 Fall Servicer Summit, happening this September 24 in Dallas, Texas.



Attendance at this event will allow you to share knowledge and gain insights from representatives of companies such as **Fannie Mae, Wells Fargo, PennyMac, Flagstar,** and **Roundpoint Mortgage Servicing.**

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MOVERS & SHAKERS

CODILIS & STAWIARSKI ANNOUNCES LEADERSHIP CHANGES

The Codilis family of firms is pleased to announce that Adam E. Codilis and Gregory J. Moody have become shareholders of Codilis & Stawiarski, P.C. (C&S), the Codilis firms' Texas office. Moody will serve as President of the firm, and Codilis as VP.

In addition to serving as President at C&S, Gregory Moody will continue to serve as President of Codilis, Moody & Circelli, P.C., and VP at Codilis & Associates, P.C. Likewise, Adam Codilis will continue to serve as President of Codilis & Associates, P.C. Both Moody and Codilis are shareholders in all of the Codilis firms and have combined industry experience of more than 40 years.

Aaron J. Demuth has also joined the firm and will be serving as Managing Attorney. Demuth has been with the Codilis family of firms since May of 2010, most recently in the role of Lead Attorney at Codilis & Associates, P.C. Demuth is excited to bring 18 years of legal and management experience to his new role as Managing Attorney of the Codilis Texas office. He will be leading an office that has been in Texas for more than 25 years and looks forward to building on its established reputation and expanding its client base.

Bringing in new leadership at C&S and strengthening ties with the other Codilis firms will permit greater efficiencies throughout the Codilis network. It is expected to further enhance the firm's compliance program and the quality of the services it provides to its clients for years to come. As Adam Codilis stated, "I couldn't be more pleased with the progress of the Texas office and our ability to provide the same level of customer service and dedication to our clients that they presently see in each of our other states."

Moody added, "The Codilis family of firms has come so far in recent years, and being a part of its continued growth as a member of the leadership team for the great state of Texas is a blessing, to say the least."

PADGETT LAW GROUP, PLG, ANNOUNCES MARISSA M. YAKER AS MANAGING ATTORNEY

Padgett Law Group (PLG) has announced that Marissa M. Yaker has been promoted to Managing Attorney over the firm's multi-state foreclosure practice. The promotion includes the firm's foreclosure practices in Florida, Georgia, Tennessee, Arkansas, and Texas. In her new role, Yaker will specifically focus on FHA timelines, general processing timelines, and client education related to foreclosure changes, updates, and news across PLG's multi-state footprint.

"Timeline, turnaround, and quality are hallmarks of the PLG experience, and each of these are areas where Marissa excels. We are thrilled to have her in this expanded role where she'll be able to share her talents for thoroughness, quality legal work, and efficient operational excellence with more of our clients and other PLG team members," said Robyn Padgett, PLG's Chief Development Officer.

SCHILLER, KNAPP, LEFKOWITZ & HERTZEL, LLP, ANNOUNCES ADDITION OF PARTNER GREGORY J. SANDA, ESQ.

Schiller, Knapp, Lefkowitz & Hertzel, LLP, has announced the promotion of Gregory J. Sanda to its partner ranks. Sanda is jointly responsible for the firm's complex foreclosure litigation and eviction departments. His practice also focuses on commercial mortgage foreclosures, appellate work, and commercial litigation. For several years, Sanda has instructed on all topics related to foreclosure and has presented at various industry events on developments in foreclosure law, post-foreclosure issues, including eviction, the FDCPA, and other debt collection law and regulation. He is admitted to practice in New York and is a member of the New York State Bar Association and the Creditors' Association of Upstate New York. Sanda is a graduate of the University of Massachusetts, the George Washington University Law School, and the George Washington University School of Business.

"Since joining our firm five years ago, Greg has contributed greatly to the firm's continued success. Together with his extensive litigation background and business insight (MBA) he will continue to add tremendous value and expertise to our firm and within the partnership ranks," said William Schiller, Managing Partner at Schiller, Knapp, Lefkowitz & Hertzel, LLP.

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