PUBLICATION

Maryland Changes Rules for Enforcement of Rights and Remedies Under Loan Documents Secured by Residential Property [Ober|Kaler]

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The Maryland General Assembly has enacted legislation (House Bill 274/Senate Bill 708) that significantly impacts secured lenders' rights to enforce financing documents secured by residential property. The legislation -- which is aimed at limiting the window in which lenders can file for deficiency judgments against defaulting borrowers -- shortens the statute of limitations for actions to enforce certain promissory notes and other agreements. It also provides that a "motion for deficiency judgment" will be the lender's *sole* remedy after a residential foreclosure sale.

In Maryland, a civil action must be filed within three years of the accrual of a claim under an ordinary contract. When parties observe the necessary formalities to execute a promissory note, instrument or other contract "under seal," however, a longer twelve-year statute of limitations applies to an action to enforce such agreement. Generally, an agreement is executed "under seal" when the body of the agreement expressly states the intent of the parties to create a sealed instrument. When parties manifest such intent, the "under seal" status of an agreement confers a valuable right.

The new legislation carves out deeds of trust, mortgages or promissory notes signed under seal and secured by "owner-occupied residential property"[1] from the longstanding twelve-year statute of limitations for enforcing sealed instruments. Although the legislation is designed to apply to consumer loans and foreclosed-upon homeowners, commercial financing documents executed under seal could also be affected by the shorter statute of limitations if those documents are secured at least in part by owner-occupied residential property (e.g., if a business owner grants a lien on his or her residence to secure a guaranty of a business loan).

The remedies available to a lender or noteholder to recover a deficiency after a foreclosure sale of residential property will also be limited by the bill. If the proceeds of a residential foreclosure sale do not cover the outstanding balance of the loan, the exclusive remedy available to the lender or noteholder under the bill will be a motion for deficiency judgment, which must be filed within three years of court ratification of the accounting of the foreclosure sale. Again, commercial obligations may fall within the ambit of the new limitation of remedies if those obligations are secured by owner-occupied residential property.

The legislation was designed to and does benefit borrowers by shortening the time in which they can be pursued for deficiency judgments and by giving them a shorter path to recovery from foreclosure. Lenders and noteholders should be mindful of the new shorter limitations period and limitation of remedies when assessing their options to enforce their rights under financing documents secured by owner-occupied residential property.

The enrolled bill is expected to be signed by Governor O'Malley and will become effective July 1, 2014.

For more information about this topic or assistance with real estate financing or workout issues, please contact the author, Walter R. Kirkman, or any member of the Ober|Kaler Creditors' Rights, Workouts and Bankruptcy Group.

[1]"Owner-occupied residential property" is defined by statute as "residential property in which at least one unit is occupied by an individual who: (i) Has an ownership interest in the property; and (ii) Uses the property as the individual's primary residence." MD. CODE ANN., REAL PROP. § 7-105.1(a)(7).