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Zombie Second Mortgages Attacking Macon, Georgia

Attorneys’ phones are ringing off the hook as a constant issue arises in the local neighborhoods of Macon-Bibb County. This increasing problem is referred to as, “Zombie Second Mortgages.” As seen in its name, Zombie Second Mortgages come back to haunt homeowners across the nation.

According to Sarah Bolling Mancini, an attorney at the National Consumer Law Center and co-writer on Georgia Real Estate Finance & Foreclosure Law, Zombie Second Mortgages are where there are two mortgages on a house. The first mortgage is in first position. Then there is a second mortgage, that is for a much smaller amount of money.

Mancini said, “Because the second mortgage bankers are second in priority, they do not want to foreclose unless the house is worth enough money to pay off the first mortgage and still give them some money. Therefore, they were not in the process of foreclosing for a long time. But now, they are coming back out of the woodwork.”

The reason this is occurring more frequently is because the value of homes is increasing. Back in the years 2010 and 2011, houses had tanked in value and the second mortgages were under water, where if they had tried to foreclose, they would not have gotten any money and it all would have gone to the first mortgage.

“They just sat back and did not communicate with the homeowners at all. So we have heard from a number of homeowners in Georgia and around the country, who are now getting contacted by the second mortgage, that it's been ten years, and they have not heard anything in ten years,” Mancini said. “Suddenly, they are coming back and saying ‘you owe us ten years worth of interest that you haven't been paying.’ It really puts people in a bind, where there is no good solution for them.”

Jennifer Rentenbach, an attorney at Atlanta Legal Aid Society, said that the abusive terms of these actions mainly target minority communities.

These loans are not federally backed mortgages. They are mainly subprime loans that are intended for lower income people during the subprime lending boom in 2006, 2007, and 2008. The loans have been dormant for the past ten years until just recently resurfacing.

Rentenbach represented a client, a 63 year old African American woman, who filed a complaint in the court regarding this issue.

The filed document says, “This Complaint alleges claims against Defendants arising from their

improper conduct in connection with the collection of her dormant second

mortgage loan, including attempted wrongful foreclosure, breach of contract and declaratory judgment, and violations of the Fair Debt Collection Practices Act (FDCPA) and the Truth in Lending Act (TILA).”

The federal law titled, “Truth in Lending Act,” requires lenders to send a monthly mortgage statement. This law was put into place in 2014. Coming out of the last foreclosure crisis, this required a number of new protections.

Mancini said, “And so all of these lenders have not been sending statements to people. And that's part of why people didn't realize they still owed the money, or they didn't know who owns their loan.”

These mortgage lenders are typically exploitative companies seeking out borrowers they would be more likely to foreclose on.

According to the complaint, “The originating lender, IndyMac, was a predatory mortgage lender

known for making subprime mortgages that included confusing and abusive

features that created a high likelihood of foreclosure.”

Georgia is a “non-judicial foreclosure” state. This means you do not have to file a lawsuit and are able to do it non-traditionally. Because of this, they all do it non-traditionally because it is cheaper.

The statute of limitation is what tells a bank or or any company the time limit for when they can file a lawsuit or take an action. For lenders, their statute of limitation does not start to run until the end of the loan.

Mancini said, “It seems really unfair to the homeowners, but there is nothing that legally bars them from foreclosing.”

If the homeowner being foreclosed on has a good lawyer, the homeowner can win. This includes being able to save their home, and usually reducing the balance they owe on the second mortgage.

“Our approach is, we are always going to try first to settle a case without litigation. We've settled a number of these without having to file litigation,” Rentenbachn said. “The couple cases we have taken for full representation in litigation, we have started asking for those records. And the debt buyers don't have the records to show where statements were being sent. What we are seeing is they do not have to record right, they just aggressively move forward as if everything was done the way it's supposed to have been done.”

Many people think it is a scam at first because the foreclosure is coming out of nowhere.

According to Rentenbach, sometimes clients run into issues such as not knowing where to go for help, not being able to afford private attorneys, or coming to the attorneys way too late.

Zombie Second Mortgages are a big issue everywhere in the country right now, especially Macon, Georgia where more than half of the residents are minorities. In some states, people have much better legal arguments than in Georgia where it is harder to win those cases. However, Atlanta, Georgia law firms are experiencing a few cases a month, which is a high percentage.