

Can I sue for wrongful foreclosure after my property was sold to a third party buyer?

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Answer: Maybe, but if the foreclosure sale occurred during the Great Recession time period, unless you have already sued, you are probably too late.

During the Great Recession there were many foreclosures, as we all know. Some of these foreclosures in Massachusetts were done by companies that did not have a proper title in order to sell the property by foreclosure, as was exemplified by the well-known *U.S. Bank Nat'l Ass'n v. Ibanez* case. 458 Mass. 637 (2011). There was a follow up case, *Bevilacqua v. Rodriguez*, that made it clear that even third party buyers from foreclosures that suffered from an "Ibanez problem" shall we say, did not have title to the property. 460 Mass. 762 (2011). This created a great deal of uncertainty and havoc to the real estate foreclosure market.

In comes the Massachusetts Legislature with the fix. Part of the fix was the passage of "An Act Clearing Title to Foreclosed Properties" in 2015 that amended Mass. Gen. Laws c. 244, § 15 which was intended to provide protections to bona fide subsequent purchasers of foreclosed properties. Section 15 (c) of the act sets a time frame for challenging the foreclosure by taking certain acts and if these acts are not conducted within that time frame, the affidavit of sale that a bona fide subsequent purchaser files will provide good title despite the fact the foreclosure had a defect. Specifically, the act requires a plaintiff to commence an action and record a copy of it with the registry of deeds. This must be done within three years following the recording of the affidavit of sale by the new buyer or one year after the law's effective date (arguably 31 Dec 2016), whichever is later.

The reason why the foreclosure defense wave of recent years appears to have been stemmed is because, at least for those whose foreclosure sale was more than 3 years ago, the intended effect of this statute in cutting off and barring foreclosure defense claims has come. This is because the one year deadline of 31 December 2016 has now passed and the statute is being strictly interpreted. A recent decision illustrates this.

In *Kenney v. Brown* the plaintiff brought suit challenging the validity of the foreclosure sale in time but failed to file the complaint at the registry of deeds, instead filing a different document. Misc. 16-000530, (Mass. Land Ct., July 27, 2017). The plaintiff then filed the complaint with the registry but after the deadline. The defendant argued that Mass. Gen. Laws c. 244 § 15 applied to bar the plaintiff's complaint as time barred. The plaintiff raised a number of arguments that he acted within time, one of them being that the document he filed, instead of the complaint, was sufficient. Another was that the deadline was really 23 February 2017 instead of 31 December 2016 due to other laws. In *Kenney* the court rejected the plaintiff's arguments. It is important to note, whether the deadline is really 31 December 2016 or 23 February 2017 does not matter to the rest of us, because both have passed now.

The wave of foreclosures and the headline grabbing legal decisions from the efforts to defend against the same were an interesting time in our Massachusetts history. But it appears that this chapter in our history has been written and the events of the past largely serve as lessons for the future.

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