

From: Susan J. Steckel
Sent: Monday, April 13, 2020 10:14 AM
To: Michael Sirotkin and Tom Stevens
Subject: S. 333

Dear Senator Sirotkin and Representative Stevens:

I'm a solo practitioner in Cabot. I represent community based banks and financial institutions in commercial and residential foreclosures and loan workouts. I just received a copy of S.333 on Friday and have significant concerns.

The bill's intent is laudable; I don't think anyone wants to execute on a foreclosure writ of possession at this time if it will render someone homeless. However, the bill as proposed is overly broad and will lead to unintended adverse consequences. The bill pertains to all dwelling houses, regardless of who owns or occupies them. It contains no exception for vacant properties or consensual foreclosures. There's no benefit to anyone in staying foreclosures on vacant properties. These properties are subject to vandalism and potential infestations with vermin, resulting in health and safety concerns. Continuing or completing foreclosures on abandoned properties will not displace anyone. Extending the timeframe for these foreclosures is likely to harm mortgagors because they will ultimately be liable for a larger deficiency as the property continues to set idle and deteriorate. Also, since Protecting Tenants at Foreclosure is now in effect permanently, foreclosures on rental dwellings that are not owner occupied will not render anyone homeless, because the tenants cannot be evicted through the foreclosure process anyway.

I have a pending case where the auction was held in January and we are awaiting confirmation of the sale by the court. The property is vacant and there are surplus sale proceeds that will be paid to the mortgagor. The bill as drafted would stay the motion for confirmation and force the mortgagor to wait longer to receive diminishing surplus proceeds that he really needs.

Because of the definition of "emergency period") Section (d) of the bill is retroactive to March 13. What happens to foreclosure complaints that were commenced by service between March 13 and the effective date of the bill? Will we need to serve the mortgagor and all of the other defendants a second time after the emergency period ends? Doing so will only increase the costs for which the mortgagor will ultimately be liable, and create additional stress and confusion for all concerned.

It's not clear whether a redemption period in a foreclosure judgment previously entered continues to run. Suspension of redemption periods is unnecessary and will create confusion and extra work for already overburdened court staff. By revising Section c (1) to read "...all pending actions for ejectment under 12 V.S.A. chapter 169, actions for foreclosure under 12

V.S.A. chapter 172 involving an owner occupied dwelling house and any outstanding orders for possession or writs of possession ...” the goals of the legislation can be met without tying the hands of courts.

Foreclosures in Vermont, and residential foreclosures in particular, take a long time. CFPB rules prevent the first filing of a foreclosure action with respect to owner occupied dwellings until the loan is at least 120 days past due. Thus, it’s highly unlikely any residential foreclosure filed between now and the end of the emergency will be related to COVID-19. A residential foreclosure filed today is unlikely to result in eviction for at least 9-12 months. Most residential homeowners can request mediation, which provides another mechanism to address the financial impact of COVID-19. Because courts have been working with limited staff, foreclosures will move even more slowly for the foreseeable future.

Vermont’s community based banks are doing everything possible to work with borrowers who have been affected by COVID-19 and the current state of emergency. In most cases, residential mortgagees affected by COVID-19 can defer payments for 90 days. In addition, all of the local and regional financial institutions I work with have voluntarily chosen to defer requests for writs of possession until the current state of emergency is over. Courts have issued orders which address the emergency situation without painting with such a broad brush. A sample order is attached. Because foreclosure is an equitable action, courts have discretion to order stays when appropriate and I believe they will use that discretion wisely. I question whether the bill is necessary, but in any case, it should be limited to orders and writs that will render people homeless during the emergency, i.e., issuance and execution of writs of possession. Thanks in advance for your consideration. I would be happy to discuss further if it would be helpful.

Respectfully,
Su Steckel

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