

Publications

Home Free ... Or Not So Fast?

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Natalia Steele, a partner in the Vorys Cleveland office, authored an article titled "Home Free ... Or Not So Fast?" for *Servicing Management* magazine's November-December 2016 edition.

The article states:

"Ohio courts recently have crystallized what seems to be an obvious but apparently little articulated idea that separate remedies - and separate statutes of limitations - may be available to mortgage holders when they seek to obtain judgment on a debt versus when they are out of time or otherwise unable to collect an in personam judgment on a note and simply seek to foreclose a mortgage - i.e., proceed against the property 'in rem.'"

Ohio is no different from many other judicial foreclosure states; the statute of limitations applicable to foreclosures, based on the Uniform Commercial Code provision governing enforcement of negotiable instruments payable at a definite time, is six years from either 1) the ultimate due date or 2) the date of acceleration of the entire balance due under the note. Also unremarkable is Ohio's position that, barring any intervening reinstatements of the debt, the acceleration occurs when a written notice of acceleration is first given to the borrower or when a foreclosure is first filed.

What does stand out in Ohio is that earlier this year, the Ohio Supreme Court, in the Holden decision, clarified Ohio law on standing and explained that although a mortgage holder of a borrower who has been discharged in bankruptcy had no standing to seek personal judgment on the note against the borrower, the mortgage holder did have standing to foreclose the mortgage and pursue a judicial sale of the property. Thus, the maturity date set out in the mortgage is not accelerated by calling the entire note balance due."