

“Ancient” Mortgage

Q There is a mortgage which was due more than 6 years ago. Can I omit this as an “ancient” mortgage?

A Perhaps.

There are several issues to consider:

Statute of Limitations: The case of Security National Partners v. Mahler, 336 N.J. Super 101 (App.Div. 2000) held that a 20 year limitation period governs mortgage foreclosures. The 20 year period begins to run from the date the mortgagor fails to make payments.

In 2009, NJSA 2A:50-56.1 was enacted which establishes a statutory limitation period for residential mortgages. That statute states that an action to foreclose a residential mortgage may not be started after the first of the following events occurs:

- 6 years expires from the maturity date stated in the mortgage;
- 36 years expires from the date of the recording of the mortgage (as long as the mortgage itself does not provide for a longer repayment term)
- 20 years expires from the date the borrower defaulted.

We emphasize that the Statute only applies to residential mortgages; if the mortgage is not residential, the 6 year limitation period does not apply at all. Remember the 6 year period runs from the maturity date of the residential mortgage and is applicable only if it is the first of the limitation periods to expire.

Mortgagor: Where the borrower on the mortgage in question is a prior owner, the best practice is to obtain a copy of their owners policy to determine if the mortgage may be omitted under the inter-underwriter indemnification treaty or in the alternative with a letter of indemnity from the present owner’s underwriter. Absent that, proof of payment should be obtained if available. If proof of payment is not available, we may be still willing to omit the mortgage based upon the statute of limitations discussed above but only as a last resort. Assistance from a member of our underwriting department should be obtained for mortgages where the maturity date is less than 20 years ago.

Where the borrower on the mortgage in question is the present owner, it is unlikely that underwriting will omit based upon the fact that the statute of limitations may have expired.