OLR Bill Analysis
sSB 911

AN ACT CONCERNING THE OPENING OF A JUDGMENT OF STRICT FORECLOSURE.

SUMMARY

This bill limits the ways in which a judgment of strict foreclosure can be opened in a bankruptcy proceeding. Under current law, any bankruptcy petition, even one that does not invoke a bankruptcy stay, automatically opens a judgment of strict foreclosure. The bill prohibits the opening of a judgment of strict foreclosure unless an automatic bankruptcy stay arises upon the filing of a bankruptcy petition under the bankruptcy code (see BACKGROUND).

Also under the bill, notwithstanding the provision described above, a strict foreclosure judgement must not be opened despite the filing of a bankruptcy petition if:

1. a prior order granting in rem relief (i.e., stay relief) from the automatic stay has been issued pursuant to the federal bankruptcy code in favor of the plaintiff or the plaintiff’s predecessor in interest regarding the subject property;

2. the order has been recorded on the appropriate land records; and

3. the in rem relief is still binding on the subject property at the time of the filing of the bankruptcy petition.

The bill allows any party, person, or entity taking title by virtue of a judgment of strict foreclosure to, at any time, file with the court an affidavit or other document that shows that the judgment was not opened, notwithstanding the filing of a bankruptcy petition by a mortgagor (borrower).

The bill also makes conforming changes.
EFFECTIVE DATE: October 1, 2019

OPENING A JUDGMENT OF STRICT FORECLOSURE

Judgment Automatically Opened

Under current law, except as otherwise prohibited, a strict foreclosure judgment is automatically opened when a mortgagor files a bankruptcy petition. Under the bill, when a mortgagor files a bankruptcy petition the strict foreclosure judgment is automatically opened only if, and to the extent that, the mortgagor files a bankruptcy petition that also imposes an automatic stay pursuant to the federal bankruptcy code.

Opening the Judgment Prohibited

Under the bill, as under current law, a strict foreclosure judgment must not be opened if title to the relevant property has already passed to someone else. The bill additionally prohibits the opening of a judgment if the automatic stay pursuant to the bankruptcy code does not come into effect upon the filing of the bankruptcy petition.

Judgment Set Aside Except Law Days

Under existing law, unchanged by the bill, when a strict foreclosure judgment is opened, other than the setting of "law days" (i.e., the period in the foreclosure process within which a debtor must repay the debt or lose all rights to the property), the judgment cannot be set aside.

BACKGROUND

Strict Foreclosure

With a strict foreclosure, no actual foreclosure sale is held. Instead, the lender goes to court to try and obtain a court order demonstrating the borrower is in default of the mortgage. If successful, the title transfers to the lender immediately. However, the court sets an established amount of time in which the borrower may redeem the property, but if he or she fails to do so, the title becomes absolute to the lender and the borrower no longer has any claim to the property. The lender then has 30 days to record a certificate of foreclosure, which must contain a description of the property, the foreclosure
proceedings, the mortgage, and the date the title became absolute.

**Automatic Stay in Bankruptcy**

Federal law governs bankruptcy matters. Under bankruptcy law, an automatic stay is an automatic injunction that stops actions by creditors, with certain exceptions, to collect debts from a debtor who has declared bankruptcy. Under the Bankruptcy Code (11 USC § 362(a)), the stay begins when the bankruptcy petition is filed.

**Related Court Cases**

In *Canney v. Merchants Bank*, the US Court of Appeals for the Second Circuit held that, once a state court issues a strict foreclosure judgment, a defaulting mortgagor cannot gain an indefinite extension of time to cure the default by filing a bankruptcy petition. Overruling prior bankruptcy court holdings, *Canney* allowed the bank that received the foreclosure judgment to take full title to the property when neither the bankruptcy trustee nor the mortgagor redeemed the mortgage within the later of (1) the passing of the law days set in the foreclosure judgment and (2) 60 days of the bankruptcy filing (*Canney v. Merchants Bank*, 284 F.3d 362 (2nd Cir. 2002)).

In *Provident Bank v. Lewitt*, 84 Conn. App. 204 (2004), the Connecticut Appellate Court applied the *Canney* decision to judgments of strict foreclosure in Connecticut.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 36  Nay 0  (04/12/2019)