

Only Time Will Tell

Foreclosure timelines vary from state to state leaving mixed results in the world of completed foreclosures. Are judicial timelines hurting the industry or helping it?

With Thomas J. Fritzlen and Robert Klein

« C O N T R I B U T O R S »



Thomas J. Fritzlen, Jr., is the president of Martin, Leigh, Laws & Fritzlen, P.C., a leading Midwest litigation and creditors' rights firm serving Missouri, Kansas, and southern Illinois. He serves on the inaugural Advisory Board to the Legal League 100, is a managing member of the Default Attorney Group ("DAG"), and frequently speaks at educational training

for servicers and lenders, and at national industry events such as the MBA and USFN. Fritzlen has been recognized as a Missouri-Kansas "Super Lawyer" for each of the last five years, and has 25 years of trial and appellate experience in general civil and complex litigation, including numerous bench and jury cases in state and federal courts.



Robert Klein is founder and chairman of Safeguard Properties. Since founding Safeguard in 1990, he has grown it into the largest mortgage field service company in the country, providing services in all 50 states, the Virgin Islands, and Puerto Rico. He has been an industry advocate to advance best practices and has led key initiatives to build relationships between

government officials and the mortgage industry and to find workable solutions to improve neighborhoods and communities. He currently serves as chair of the National Vacant Properties Registration Committee of the Mortgage Bankers Association.

Foreclosure is a fear that every homeowner hopes to avoid; however, during the economic collapse it became an all too apparent reality for many Americans, but not in the same manner as one would expect because the laws in certain states differ from the laws in other states. Judicial states prolong the foreclosure timelines in certain states allowing some homeowners to stay in their homes for longer periods of time and in other states forcing others out immediately, putting more vacant homes on the market and changing the face of entire communities. How are these laws impacting the recovery? Thomas J. Fritzlen and Robert Klein weigh in.

According to Thomas J. Fritzlen

There are differing perspectives on both sides of this issue. For example, FHFA has recently criticized states for increasing the time in which it takes to foreclose. The Center for American Progress, while recognizing some benefits of timely foreclosures has complained that any potential plans to charge higher guarantee fees in states where laws have contributed to extended foreclosure timelines would unfairly punish borrowers. From the practitioner's point of view, there is little doubt that in some instances, state laws have added to the costs and contributed to unnecessary delays. Higher costs and longer delays hurt the industry and aggravate an already mind-numbing gauntlet of requirements through which lenders and servicers must run daily. However, there may be a "silver lining." To the extent such laws can help restore lenders' credibility and to the extent such laws can help restore public confidence in the foreclosure process, the industry will be strengthened.

The economic crisis revealed isolated as well as systemic problems and abuses, including robo-signing, inadequate, defective (or worse) documentation, questionable or non-existent proof of ownership, and difficulties in providing the courts with adequate evidentiary support. No doubt these problems were aggravated by the high volume of defaulted loans.

The states' (and courts') reaction to these problems was swift and reflected an unprecedented erosion of credibility and confidence, which our industry has long enjoyed. Gone are the days of routinely accepting the averments of lenders and counsel as true—even the most routine processes and documents are now subject to higher standards of proof and skeptical scrutiny. In the past, lenders could count on courts generally accepting, without questioning, the accuracy and veracity of their representations. However, in a few short years, such deference has vanished. Public confidence in our industry is at an all-time low. As a result, the industry has been required by various states' laws to go to extremes (some would say) in order to process even routine foreclosure cases.

This is the new order. Where is the "silver lining"? These may present additional hurdles and burdens, but they also present us with an opportunity to re-establish credibility and confidence. As we work through the foreclosure inventory, the new rules will encourage lenders and servicers to re-establish credibility one case at a time.

This will demonstrate to borrowers, the courts, and the public that our industry is willing to meet the challenges we face—that we will provide accurate affidavits and documentation and complete and unassailable assignments, and that we have exhausted all alternatives prior to foreclosure. While the mistrust may be ebbing, it will take time to restore complete confidence. With daily, consistent attention to detail, we will begin to restore confidence in the mortgage industry.

Another benefit of these more stringent requirements may be to enhance the perception that the process is fair. This may deter the endless legal challenges, which only add to delays.

We need to embrace these new laws and welcome the opportunity that they present to restore public confidence and to re-balance the equities in the process. If we do so, we will realize their "silver lining."

According to Robert Klein

The discussion surrounding foreclosure timelines in judicial states is far-reaching and multi-faceted because each state operates as its own jurisdiction with absolute authority over its individual procedures and governing protocols. What can be effectively argued is that increased foreclosure timelines leave properties vacant for longer periods of time, which has a lasting impact on local communities—and, in particular, on the neighbors of the vacated properties that sit empty and dark, inviting blight, crime, and vandalism.

I think everyone agrees that when a property is vacant, everybody—from the family next door to local businesses across town—suffers from the vulnerabilities that abandoned properties

inherently bring. An unoccupied property in general, especially if it is boarded with plywood, will drive down the property values of the surrounding neighbors, which, in turn, has an obvious and damaging impact on the local community as a whole. It's a natural progression for this type of scenario to play out on any one of our streets, in any corner of our country.

There's no argument against the realization that vacated properties are not helping anybody, but the effects of elongated timelines are certainly more pronounced in judicial than non-judicial states. Texas, a non-judicial state, does not have an extended foreclosure timeline; after three missed payments foreclosure is initiated on the home. Illinois, a judicial state, recently passed a law that says if a property is vacant it will fast-track it to foreclosure instead of the foreclosure process taking two years on average. In New York, the foreclosure dockets are backlogged for three years, leaving vacant properties vulnerable to vandalism, crime, and deterioration no matter how well they are being maintained by mortgage servicers and their field service partners.

There is hope for an acceptable resolution to this issue and I think the solution is already happening. While foreclosure timelines are, by and large, decided by state law, it's a complicated matter, with more and more states taking a step back to examine their own processes because too many times homes are left unattended and unoccupied as homeowners cut ties and set out to find alternative housing solutions.

The conversation surrounding these very diverse and distinct laws is a necessary discussion because, in almost every case, there are neighbors—good, respectable, creditworthy neighbors—who are making their payments on time each and every month and living within their means in the homes that they've purchased. Yet these neighbors are made vulnerable because of the unfortunate circumstances that may have fallen on the neighbor who lost their home. It is a loss for everyone when a property sits vacant for a long time—the servicer, the investor, the home's next buyer, the neighbors, the community, and the municipality.

A swift resolution that makes it possible for the next buyer to see the potential within the empty, lifeless rooms of a vacant foreclosed home . . . that is the fuel that can ignite the spark that we once called the American Dream. **DS**