

End Stages of Foreclosure Legal Issues in Housing Court



Summary proceeding - generally

- Creature of statute
- “Special proceeding” governed by RPAPL Article 7 and CPLR Article 4
- In derogation of common law
- Requires strict compliance with statute

**Note: if judgment of foreclosure and sale also directs delivery of possession of the property, purchaser may move in Supreme Court to compel delivery pursuant to RPAPL 221

RPAPL 713 – grounds where no landlord/tenant relationship exists

“A special proceeding may be maintained under this Article after a 10-day notice to quit has been served upon the respondent in the manner prescribed in section 735, upon the following grounds:

(5).....the property has been sold in foreclosure **and either the deed delivered pursuant to such sale, or a copy of such deed, certified as provided in the civil practice law and rules, has been exhibited to him.**

Notice to quit – who signs

- If signed by a party other than the petitioner, must be accompanied by a power of attorney showing agency
- A power of attorney issued to loan servicer in connection with servicing obligations that does not specifically include matters relating to holdovers, tenancy or possession does not suffice. DLJ Mortgage v. Grant, 28 NYS3d 820 (Dist. Ct. Nassau Co. 2016)

Exhibiting the referee's deed

Attaching copy of deed to notice to quit that was served by “nail and mail” was insufficient to satisfy requirement of “exhibiting” the deed. Home Loan Services Inc. v. Moskowitz, 31 Misc. 3d 37 (App. Term 2d Dep’t 2011).

Declined to follow: Hudson City Savings Bank v. Lorenz, 39 Misc.3d 538 (Dist. Ct. Suffolk Co. 2013)

Exhibiting the deed, cont.

- Holding that deed must be exhibited to respondent personally; service on person of suitable age and discretion insufficient:

Deutsche Bank Nat'l Trust Co. v. Dirende, 49 Misc. 3d 1159 (Justice Ct. Pound Ridge 2015);
U.S. Bank N.A. v. Eichenholtz, 37 Misc.3d 536 (Justice Ct. Yorktown 2012)

Exhibiting the deed, cont.

- Requirement satisfied in commercial holdover where member of petitioner LLC exhibited the deed to store owner's son, deemed to be his agent. 1644 Broadway LLC v. Jimenez, 51 Misc.3d 887 (Civ. Ct. Kings Co. 2016)

RPAPL 1305 does not apply to former owners

- Requires certain notice to tenants
- Gives tenants right to occupy for 90 days from date of mailing of notice or, if there is a lease, remainder of lease term
- Former owners/mortgagors specifically excluded from definition of “tenant”

Defenses relating to title

- RPAPL 743: Answer may raise any legal or equitable defense
- Housing Court lacks jurisdiction to adjudicate affirmative claim for title, but may adjudicate a defense that respondent owns the subject property or the petitioner does not.
- The determination of such a defense in Housing Court has res judicata/collateral estoppel effect.

Nissequogue Boat Club v. State of NY, 14 A.D.3d 542
(2d Dep't 2005)

Some title issues that have been determined in Housing Court

- Adverse possession. City of NY v. Akbar's Self-Help, Inc., 25 Misc.3d 129 (App. Term 2d Dep't 2009)
- Constructive ownership. Freire v. Fajardo, 28 Misc.3d 137(A) (App. Term 2d Dep't 2010)
- Gap in chain of title, heirs excluded from deed. Kosc Development, Inc. v. Scott, 28 Misc.3d 138(A) (App. Term 2d Dep't 2010)
- Life estate. Paladino v. Sotille, 15 Misc.3d 60 (App. Term 2d Dep't 2007)

Chopra v. Prusik

9 Misc.3d 42 (App. Term 2d Dep't 2005)

- Holdover pursuant to RPAPL 713(5)
- Respondent was former owner who claimed deed theft
- Procedural posture: motion to vacate default pursuant to CPLR 5015(a)(1)
- Held: respondent's claim that she is the owner of the property constitutes meritorious defense over which Housing Court has jurisdiction
- Defense preserved because respondent not named in foreclosure
- Determination will have no res judicata effect against mortgagee, who was not a party to the holdover

Chopra v. Prusik – take away

- Deed theft may be litigated in Housing Court but issue must have been preserved. If respondent was named in foreclosure case, foreclosure judgment probably res judicata.
- Mortgagee not affected by Housing Court judgment; may still claim “bona fide encumbrancer for value.” To regain title, owner has to void not just deed but mortgage.
- Housing Court is inferior forum. Discovery by leave of court only. Proceedings are summary. Huge volume.

Final note – the banks continue to be sloppy

HSBC Bank USA v. Jefferson, NYLJ 4/28/16 (Civ. Ct. Richmond Cty)

Mortgagee, represented by Druckman Law Group, brought holdover 8 days after it sold the property.

Sanction against counsel for frivolous litigation -- \$3,000.