



FINANCIAL RESTRUCTURING & BANKRUPTCY DEPARTMENT

ALERT

NEW JERSEY COMMERCIAL MORTGAGE FORECLOSURE TIMELINE

By Michael J. Viscount, Jr.

The current economic environment has resulted in a need for commercial banks and other lending vehicles to look to collateral for recovery on defaulted loans. Enforcement of mortgages through legal foreclosure is again becoming a necessity as evidenced by the large number of foreclosure lawsuits under consideration by the courts in our region. The foreclosure process is time-consuming, even if uncontested. In some instances, foreclosure of a mortgage securing a commercial debt can take 10 to 14 months just to process the paper work. It can take even longer when the commercial debtor chooses to litigate defenses.

This alert will address the legal and procedural requirements for the commencement of a mortgage foreclosure action and the timeline to complete the foreclosure process from initiation to Sheriff's sale and recordation of the Sheriff's deed.

Day 1	Initial review. Organize loan documents, order foreclosure searches and prepare and send out acceleration and demand letter if not previously done by trustee.	although commercial matters in excess of \$2 million are to be expedited and may turnaround sooner.)
Day 20	Receipt and review of foreclosure searches.	Day 48 Prepare and mail for filing lis pendens to County Clerk.
Day 27	Prepare complaint naming as defendants the mortgagor, holders of junior liens and any others with an interest in the property or who might be liable for the secured debt.	Day 50 Prepare a summons to be served on each defendant with a copy of the complaint and forward all to a contractor who will make service.
Day 38	After approval of complaint, submit to a foreclosure service in Trenton for review and approval. For an extra fee of less than \$100, the service reviews, files and processes all foreclosure and judgment pleadings and at the end issues a certificate of regularity that helps for title insurance purposes.	Day 61 Receive filed lis pendens and order continuation searches.
Day 48	Receive filed copy of complaint. (Backlog in the Foreclosure Unit of Superior Court is presently four weeks from the date of submission,	Day 75 Receipt and review affidavits of service upon all defendants joined in complaint. This may take longer or be shorter depending upon the number of defendants to be served.
		Day 90 Receipt and review continuation searches and amend complaint as necessary to add any additional parties who acquired interests

- between first search and date of filing of lis pendens.
- Day 96 Submit for filing amended complaint to join additional defendants revealed on continuation searches.
- Day 98 Time to file an answer to complaint expires (35 days exclusive of date of service) for all defendants except State of New Jersey and United States of America.
- Day 99 Receive filed copy of amended complaint. (Backlog presently four weeks from the date of submission to foreclosure unit.)
- Day 100 Prepare and mail service of process of amended complaint upon additional defendants by subpoena service company. Prepare certification of mailing amended complaint upon defendants previously served with complaint via regular mail and certified mail.
- Day 105 Time to file an answer to complaint expires (60 days exclusive of date of service) for defendants except State of New Jersey and United States of America.
- Day 115 Receipt and review affidavits of service upon additional defendants joined in amended complaint. Process payment to subpoena service company.
- Day 115 Revise certification of mailing amended complaint to defendants. Receipt, review and assemble into said certification postmarked certified mail receipt slips and signed certified mailing green cards as proof of service.
- Day 150 Time to file an answer to amended complaint expires (35 days exclusive of date of service) for all defendants except State of New Jersey and United States of America.
- Day 175 Time to file an answer to amended complaint expires (60 days exclusive of date of service) for defendants State of New Jersey and United States of America.
- Day 177 Prepare and submit for filing default package, consisting of affidavits of service and summons, notice to State of New Jersey, certification as to military status, certification of mailing amended complaint, certification of inquiry and request and certification of default.
- Day 193 Receipt and mail filed copy of default to all defendants via regular mail. Prepare certification of mailing filed copy of default.
- Day 195 In preparation for filing and serving motion for entry of final judgment, prepare and forward to lender to complete and sign a certification of amount due plaintiff. This needs to be in a specific form and contain specific information that is sometimes challenging to obtain from some lenders.
- Day 202 Finalize certification of amount due plaintiff and prepare motion for entry of final judgment.
- Day 203 Prepare and submit for filing motion and request for final judgment by default. Full package to Foreclosure Unit consists of notice, motion, certification of amount due, certification re mortgage loan documents (need to see the originals or at least have a custodian's certification), certification of mailing filed copy of default, certification of search fees and service fees, certification of counsel, final judgment and writ of execution. Assemble certified copies of loan documents to be marked as exhibits.
- Day 229 Receive filed copy of final judgment package including the writ of execution to the Sheriff, and foreclosure service judgment package review and issuance of certificate of regularity.
- Day 236 Mail via regular mail filed copies of final judgment to defendants. Prepare and file certification of mailing filed copy of final judgment.
- Day 239 Prepare and submit writ of execution package to Sheriff to process and schedule Sheriff's sale consisting of writ of execution, concise legal description, announcements at sale, endorsement on writ, tax map and affidavit of consideration.
- Day 241 Sheriff processes writ of execution package, schedules, posts and publishes Sheriff's sale. (Sheriff publishes notice of Sheriff's sale once a week for four consecutive weeks prior to the date scheduled for sale.) Proofread notice of Sheriff's sale prior to publication. Prepare and file certification of proof of mailing notice of Sheriff's sale serving all defendants via regular mail and certified mail.

- Day 257 First date scheduled for Sheriff's sale (six to eight weeks from date of submission to Sheriff's Office). Prepare letter to all defendants and serve via regular mail and certified mail giving notice of new date for Sheriff's sale.
- Day 257 Defendant's first request for two-week statutory adjournment of sale. It is statutory and will be granted without question.
- Day 271 Defendant's second request for two-week statutory adjournment of sale – also statutory and will be granted without question.
- Day 285 Sheriff's sale held.
- Day 295 Defendant's 10-day right to challenge the sale or redeem expires.

- Day 315 Sheriff prepares and mails to plaintiff's counsel Sheriff's deed (between 14 to 30 days after date of Sheriff's sale).
- Day 320 Review and mail Sheriff's deed to County Clerk's Office for recording and order title insurance policy to insure Sheriff's deed.
- Day 324 Receive, review and forward to client recorded Sheriff's deed and title insurance policy insuring the Sheriff's deed.

For more information on this topic, please contact Michael J. Viscount, Jr. at 609.572.2227 or mviscount@foxrothschild.com or any member of the firm's [Financial Restructuring and Bankruptcy Department](#) in Pennsylvania, New Jersey or New York.



Michael J. Viscount, Jr.
Partner
Midtown Building
Suite 400
1301 Atlantic Avenue
Atlantic City, NJ 08401
609.572.2227
mviscount@foxrothschild.com

Michael is a commercial lawyer whose practice focuses primarily on the representation of public and private business owners, municipal entities and creditor groups in matters involving corporate debt restructuring, workouts, bankruptcies, banking and finance, real estate, dispute resolution and other complex commercial matters. He is a seasoned practitioner who employs a practical approach to develop creative solutions to address the needs of financially distressed companies and their lenders, vendors and owners.

Fox Rothschild's Financial Restructuring and Bankruptcy Department includes highly experienced attorneys dedicated to practicing in all areas of debtor and creditor law, bankruptcy and related workouts and litigation. The practice is anchored by a group of seasoned attorneys who have a wealth of knowledge and experience in this area and leverage that experience to develop and implement practical solutions. Fox has an especially strong presence and noteworthy familiarity with the state and federal courts in Delaware, New York, New Jersey, Pennsylvania, Nevada, California, Florida and Connecticut, and our lawyers have represented the firm's clients in many courts throughout the United States. Our attorneys offer a full service representation to lenders and borrowers and address the most complex issues arising in connection with debt recovery and defense matters in and out of bankruptcy by drawing upon the support and knowledge of the other attorneys in the multitude of disciplines within the firm.



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