

# NEW RULES FOR SERVICERS

Recent Bankruptcy Case Law Affecting Mortgage  
Servicing and Foreclosure Actions in South Carolina

A hand holding a sign with the number 45. The sign is a red circle with a white border and the number 45 in white. The hand is light-skinned and is holding the sign from the bottom left.

45

A hand holding a sign with the number 12. The sign is a red circle with a white border and the number 12 in white. The hand is light-skinned and is holding the sign from the bottom center.

12

A hand holding a sign with the number 23. The sign is a red circle with a white border and the number 23 in white. The hand is light-skinned and is holding the sign from the bottom right.

23



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**FRMS THROUGHOUT THE COUNTRY** are understandably wary of violating regulations placed on the mortgage servicing industry amid the pandemic. As foreclosures proceed towards something resembling pre-pandemic norms in 2022, firms must remain mindful of these new rules while looking out for any official clarifications. Relatedly, a review of recent decisions of the United States Bankruptcy Court in the District of South Carolina offers a view into how creditor's rights may be impacted throughout the state in the coming year. To that end, synopses of some of the most relevant cases are included below.

In *In re McCollum*, C/A No. 15-03502-JW (Bankr. D.S.C. Feb. 4, 2021), the Court addressed whether debtors were entitled to a discharge pursuant to 11 U.S.C. § 1328 while there were outstanding post-petition mortgage payments. As the parties had entered into a post-petition forbearance agreement from which the missing mortgage payments stemmed, the Court held that § 1328(i) provided that the debtors were entitled to a discharge under § 1328(a). Further, the Court found that the mortgage creditor's claim was provided for under 11 U.S.C. § 1322(b)(5) and would therefore not be discharged. As such, this decision seeks to encourage mortgage creditors in South Carolina to engage in post-petition workouts with debtors, as their underlying claims will remain protected by the Bankruptcy Code.

The Court further cemented this approach in *In re Campbell*, C/A No. 15-06738-JW (Bankr. D.S.C. Feb. 9, 2021). The debtor in this case was afforded a discharge after completion of plan payments, despite outstanding post-petition debt stemming from a relief-from-stay settlement order. The

settlement payments were excluded from the discharge as they were deemed to be part of a forbearance agreement. These decisions allow far more flexibility to all parties when considering possible non-bankruptcy workouts.

Another case impacting mortgage servicing and foreclosures in South Carolina is *In re Morgan*, C/A No. 20-04434-HB (Bankr. D.S.C. Apr. 14, 2021). In *Morgan*, the debtor had filed prior under chapter 13 protection to forestall the judicial sale of his primary residence following a judgment of foreclosure. This earlier bankruptcy matter was dismissed shortly after its filing and state court proceedings resumed. The debtor's residence was again directed to be sold at public auction and an Amended Notice of Sale was entered.

The creditor subsequently purchased the residence at auction, became the owner of record and initiated eviction proceedings against the debtor. The debtor then filed the present bankruptcy matter, arguing that he was allowed a right to cure the mortgage default and retain the residence pursuant to 11 U.S.C. § 1322(c)(1), on the basis



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that the foreclosure was not conducted in accordance with applicable non-bankruptcy law. The Court failed to agree, finding that the creditor was entitled to relief from stay pursuant to 11 U.S.C. 362(d)(1) because the foreclosure deed indicating the creditor's ownership was publicly recorded pre-petition.

The Court further noted that the foreclosure sale divested the debtor of his interest in the property and that any right the debtor had to cure ended when the gavel fell at the public auction. This decision reaffirmed the "Gavel Rule" as being alive and well in South Carolina. Moreover, the Court stated that the *Rooker-Feldman* doctrine prevented it from considering the

debtor's request to review the foreclosure process, as the state court was in a better position to address such concerns. This decision serves to reestablish the "Gavel-Rule" as a bright line test for when a debtor's interest in property is extinguished and should provide creditors with some sense of ease against federal attacks upon the form of judicial sales.

This year, as with any, servicers and their counsel have an ongoing duty to keep up with both changing regulations as well as any judicial opinion that affects their interpretation. The relative amount of recently imposed rules may require more vigilance than prior years, but the underlying errand remains the same. [a](#)