

Disclaiming Redemption Rights in Kansas

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A recent district court case may change how parties disclaim going forward in Kansas. In *Nationstar Mortgage LLC v. The Heirs at Law of Karen*

E. Steddum-Menefee, deceased (No. 2020-CV-000473, Eighteenth Judicial District, Oct. 30, 2020) the borrower's heirs disclaimed any interest into or against the subject property being foreclosed upon and were dismissed from the case.

In Kansas, it is a common occurrence for heirs or other parties who were named in the foreclosure action, but who may not have a real interest in the property, to disclaim and request dismissal from the action. Doing so may allow that individual or other entity to avoid potential credit reporting issues or just the general hassle of being included in a judicial foreclosure. The Disclaimers of Interest filed in this case did not specifically reference the right of redemption.

Subsequent to the Disclaimers, the heirs then assigned their rights of redemption to a third party, Lighthouse Properties of Wichita, LLC ("Lighthouse"). The foreclosure was judicialized and at the sheriff's sale, the property was sold to a different third party, an individual named Mirza Balg ("Balg"). Lighthouse then paid funds into court to redeem the property.

Balg filed a Motion to Set Aside Redemption of Property arguing, *inter*

alia, that the heirs' disclaimer included the right to redeem and, therefore, the assignment of redemption rights was invalid. Lighthouse countered that argument by stating that the heirs unquestionably own the property under Kansas intestate laws and those rights included the right to redeem. Lighthouse also argued that Kansas caselaw shows a long history of the courts and Kansas legislature zealously protecting rights of redemption.

In Kansas, it is a common occurrence for heirs or other parties with no real interest in the property but were named in the foreclosure action to disclaim and request dismissal from the action.

The district court found the legislative history and caselaw regarding the protection of redemption rights to be most compelling and found the heirs had valid rights of redemption and, based on the general, boilerplate language used in the

Disclaimers of Interest, that those pleadings did not include the specific right of redemption – noting that if it was intended that the right of redemption be included in the Disclaimers of Interest, those documents could be easily modified to reflect the same.

Of note, the court here also found it influential that Balg took no affirmative action to protect his interest by way of either seeking to obtain the redemption rights or seeking to extinguish the redemption rights.

The opinion also suggested that this issue would be a good candidate for appellate review based on there being no cases specifically on point with the facts in this case. As of the date of the drafting this article, no appeal has been undertaken.

To avoid issues with redemption where parties are disclaiming, firms, servicers, and investors in judicial foreclosure states may want to consider a specific reference to the right of redemption in those related pleadings.

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