

What is the best way to manage mortgage foreclosures?

Lecture by Me Patrick Safar, French Civil law Bailiff, International Association of Judicial Officers.

First of all, I would like to thank you for inviting me to this meeting.

It 's a great pleasure for me to be here, and for us to have a little time together so that I can explain the basic steps of one of the most useful proceedings in France ...the mortgage foreclosure system.

This is my second time in Washington DC, I came here 3 years ago, to participate in a congress organized by the International Association of Judicial Officers.

At the end of the congress we all made 4 wishes ...
The 4th one was very ambitious:

“This Congress invites all stakeholders of the legal, judicial and economic world to participate with the Judicial Officers in the creation of the world Code of Enforcement.”

Already 3 years have passed, and the road is long...

But today, we have the possibility to make a contribution which could bring about a convergence in our proceedings.

My topic today is to describe to you our French mortgage foreclosure proceedings and show you how it has some advantages which you may find interesting.

It's not the simplest procedure but it's one of the most effective proceedings leading creditors to getting their money back

Mortgage foreclosure proceedings are the most efficient way for creditors to release their security interest.

The mortgage, which some have chosen to baptize as the “queen of securities,” is still an unparalleled success.

Usually, secured creditors implement this procedure, because it provides them with a great degree of security and certainty, however it is not unknown for unsecured creditors to use the same proceedings.

Before dealing with the 3 questions showing you the advantages of this procedure, I'd like to show you the plan of the French mortgage foreclosure proceedings.

This plan is recorded on the USB key given to you.

As you can see, from the beginning of the procedure, every creditor registered on the property is notified and all details of the property are recorded. All foreclosure proceedings start like this.

At the beginning, after the order to pay has been served, there are two possibilities:

An equitable procedure or an enforcement procedure.

Both procedures are under the supervision of the Court.

In an equitable procedure, the debtor is allowed to find a purchaser himself.

In an enforcement procedure, the property will be auctioned.

Flexibility is therefore the main feature of the recent reform to the law of foreclosure proceedings in France.

1/ What does flexibility mean in foreclosure proceedings? And how is this flexibility implemented?

A/ Flexibility allows the debtor to find a purchaser himself.

The request for a voluntary sale may be submitted and adjudicated prior to the service of summons to appear at the directions hearing (it then suspends the course of the proceedings), or it may be submitted by the debtor at the directions hearing, as we have already seen on the plan.

This option is of course under the control of the judge who checks that the price offered for the foreclosed property is at the market price.

- What specific areas of the proceedings does the judge control?

At the reminder hearing the debtor tells the judge he/she has found a purchaser and gives the price offered by this purchaser.

The judge checks that the price is at market value, and if so, he allows the sale.

- How is the market price fixed?

The judge has many indicators and statistics such as those given by notaries. This will enable him to confirm that the price is at market value.

- How is the sale closed?

After the reminder hearing the sale is closed by a deed drafted by a notary. The judge inspects the draft deed and checks that the full price has been deposited in an escrow account.
(Later the judge will also check that all registered creditors have been paid by examining a creditors claim list)

B/ Flexibility means also that the claimant is not systematically forced to become the owner of the foreclosed property.

In some systems the foreclosed property is automatically transferred to the claimant creditor.

On the other hand, the claimant creditor may want to impose a starting auction price which is too high, and if no one is prepared to buy it at that price (there aren't any bidders), the foreclosed property will become his own property.

This flexibility assures also that the property will be sold at market value.

2/ What are the advantages of flexibility in foreclosure proceedings?

A/ When we let the debtor find a purchaser himself, this may result in a sale of the property at a better price while making the procedure less traumatic for the debtor.

Why is this procedure less traumatic than enforcement proceedings?

Generally the debtor has the impression that he/she has a certain control over the procedure and sells the property without any pressure and is therefore more likely to quit the property quietly without further complications.

Therefore there is no need to apply to the court for the debtor's eviction.

However if the owner acquires the property by auction without the debtor being involved, the debtor could cause difficulties, which may lead to eviction proceedings being required.

This can take a long time.

For instance, in France the eviction proceedings may take up to 2 years!

The occupier has a lot of legal protection, which is very time consuming.

For example:

- In the winter period (from November 1st to March 15th no eviction from private property may take place)
- The claimant creditor has a duty (not prescribed by law, however customarily the claimant creditor must endeavour to find alternative accommodation for evicted persons)
- The police will only help the bailiff in eviction proceedings after they have completed a social report on the potential evictee (this can be a long process)

The eviction procedure can be complicated and take time, which is a good reason why the debtor should, if possible, be involved in the sale process.

B/ When we don't systematically force the claimant creditor to become the owner of the foreclosed property, we don't force him to have among his assets a property which he doesn't need or want !

This also allows the claimant creditor to be less hesitant before granting a credit, knowing if the debtor doesn't pay, he can recover the money rather than a property he doesn't want.

3/ Why flexibility does not damage security but rather reinforces it?

A/ Allowing the debtor to find a purchaser himself doesn't damage security, because the foreclosure proceedings are notified to every mortgage creditor.

Their registered charge will, of course, be cancelled when the property is sold and they will get their money back.

On the other hand, generally speaking, the price of a sale by mutual agreement will be much higher than an auction price.

How are the foreclosure proceedings notified to every mortgage creditor?

In France, *huissiers de justice* (bailiffs or sheriffs) are in charge of serving notification on creditors.

Under French law, bailiffs are obliged to serve documents on the recipient by hand. If this method is impractical or impossible, then bailiffs have to draft a detailed report of the measures taken to find the recipient.

So, we really know how the creditor is notified (document served on him by hand, to a person found at his/her home or left at the bailiff's office)

How is the registered charge cancelled?

The judge asks the clerk of the mortgage registry to delete the charge when the highest bidder pays the price, so that the property can be transferred to the purchaser free from all encumbrances.

How are the creditors reimbursed?

The clerk of the court drafts a statement of claims and creditors are reimbursed in proportion to the amount of their claims.

The escrow of the purchase price and the balance of the payment fully expunge all mortgages on the property and any charges incurred by the debtor.

B/ Allowing the creditor not to automatically become the purchaser does not damage his/her claim.

Because the purchaser will pay the debt and will only have title to the property once all the charges have been deleted.

Of course this will be in the order of priority that they are registered and in proportion to the auction price.

This reinforces mortgage security.

Conclusion.

Before finishing, I'd like to bring to your attention one final but very important point concerning a recent change in the law, which puts the purchaser in a safer and more advantageous position.

This advantage is not linked to flexibility but is very important to reinforce the security of the purchaser who becomes owner of a foreclosed property.

The major novelty of the law of 2006 is that the sale judgment includes an eviction order on the foreclosed party.

Unless the sales contract expressly provides for the continued occupation by the debtor of the foreclosed property, the purchaser may enforce the eviction order that he/she holds against the foreclosed party and against any other occupant who cannot legitimately contest the order.

The following parties will not be affected by the eviction order: a tenant, a life tenant, or any other holder of a right to enjoyment and occupancy by virtue of any instrument whatsoever.

Flexibility is therefore the main feature of our French mortgage foreclosures system and I think it is the best way to manage foreclosure proceedings.