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Fourth Circuit Narrows Definition of "Branch Office" Under HUD's Face-To-Face Requirement

On April 20, 2020, the United States Court of Appeals for the Fourth Circuit, in a case of first impression held in *Jacqueline Dawn Stepp v. U.S. Bank National Association and ALG Trustee, LLC*, No. 19-1067, that U. S. Bank (the "Bank"), was entitled to an exception from the requirement under 24 C.F.R. § 203.604(c)(2) (the "Regulation") that it conduct a face-to-face meeting with the borrower before initiating foreclosure of its FHA mortgage. The Regulation allows for this exemption when "the mortgaged property is not within 200 miles of the mortgagee, its servicer or a branch office of either". Counsel for the Bank and counsel for ALG Trustee LLC ("ALG"), Alyssa Szymczyk and Jason Murphy of Orlans PC, successfully argued that a bank office that conducts no mortgage related business does not qualify as a "branch office" entitling the Bank to rely on the exception to the face-to-face meeting requirement under the Regulation. This decision from the Fourth Circuit whose jurisdiction includes Maryland, Virginia, West Virginia, North Carolina, and South Carolina, is a welcome development in light of the expansive reading being given the term in some jurisdictions. Click here for the case: Opinion 19-1067.

This case was before the Appeals Court on an appeal filed by Ms. Stepp following the dismissal of her complaint by the United States District Court for the Western District of Virginia at Harrisonburg, seeking damages and rescission of the foreclosure sale for failure to offer a face-to-face meeting. As the office within 200 miles of Stepp's house was located in Richmond, both the District Court and the Appeals Court considered the specific type of activities that were conducted at that location. Stepp relied on a broad interpretation of a "branch office" in her argument, essentially deeming any bank office a "branch office". The Bank and ALG countered that the pinpoint focus must be on the actual activities conducted at that location.

The Appeals Court flatly rejected Stepp's argument instead reasoning that words in a

regulation are to be read in context, not isolation, and that in order to properly ascertain the application of the Regulation and its exception, there should be at minimum, “an office at which some business related to *mortgages* is done”, noting that U.S. Bank’s office in Richmond was devoted exclusively to the management of constructive trusts. The Court further stated that a bank office that conducts no mortgage-related business, “even if within 200 miles of a mortgagor’s home, will be poorly positioned to discuss the mortgage-specific loss mitigation options outlined by the statute, ‘such as special forbearance, loan modification, pre-foreclosure sale, support for borrower housing counseling, subordinate lien resolution, borrower incentives, and deeds in lieu of foreclosure.’”

The Court also pointed out that defining a “branch office” as one requiring conducting of mortgage-related business (accepting checks, paying checks, and lending money) is in accord with other banking statutes definition of “branch offices” and that the lower courts common sense definition was consistent with the regulatory text and its purpose.

If you have specific legal questions about your files, please feel free to contact our attorneys referenced below.

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