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Foreclosure process amended

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Litigation, Cyprus

- 🕒 Introduction
- 🕒 Amendments
- 🕒 Comment

Introduction

In 2014 the Transfer and Mortgage of Properties Law was amended to introduce a streamlined foreclosure process aimed at helping banks to address the persistently high levels of non-performing loans and the issue of so-called 'strategic defaulters' (ie, borrowers that have the means but not the intention to service their debt).

Several of the amendments were ambiguously drafted and borrowers were quick to oppose them. Numerous court appeals were filed, most of which were successful in suspending foreclosures that had already begun (for further information please see "Courts consider confusion surrounding foreclosures").

Consequently, the 2014 amendments failed to achieve the desired outcome of reducing non-performing debt. With Cypriot banks' non-performing loans still at 43% of total borrowing (the second highest in the European Union following Greece), Parliament has decided on additional reforms.

Amendments

The new amending law took effect on publication in the *Official Gazette* on 13 July 2018. It has retrospective effect and its new, simpler, more creditor-friendly provisions will apply not only to new foreclosures, but also existing uncompleted foreclosure proceedings, together with any existing challenges to them.

The new amending law appears to close all loopholes and remove all inconsistencies which borrowers have successfully used to challenge foreclosure proceedings in recent years, resulting in divided judicial opinion. One of the most common grounds of appeal was that the new foreclosure process could not be used for the sale of mortgaged property already ordered by the court, which made it inapplicable to a large number of mortgaged properties. The 2018 amendments have addressed this problem by expressly stating that the new foreclosure process can also be used in such cases.

Prior to the 2018 amendments, borrowers could file an appeal against an ongoing foreclosure if a civil action against the mortgage debt was pending. This right has now been greatly restricted, as the borrower will now need to succeed in obtaining an interim injunction against the lender within the course of the civil action in order to be able to file an appeal.

The right of borrowers to appeal has been further restricted by the repeal of Article 44(IC), which entitled borrowers to file an appeal if their legitimate interests had been infringed by an act or notice made or served by the lender.

However, a new ground of appeal has been added for those borrowers that will be accepted in the new government debt relief scheme for debts secured on principal private residences, known as Estia, provided that they comply with their obligations under the scheme. The definition of such residences has been narrowed to exclude any property valued at more than €350,000.

The 2018 amendments also aim to speed up the disposal of repossessed property and widen the potential market by introducing the possibility to dispose of property via online auctions. In addition, to facilitate the sale of distressed loans, the amending law introduces a mechanism for dividing mortgages without affecting their overall priority.

Comment

The government views non-performing loans as the principal obstacle to economic development and the latest amendments demonstrate a clear intention to resolve the ambiguities created by the previous laws and mitigate recent delays. Only time will tell whether all loopholes have been closed or whether borrowers and their advisers will find new means of postponing the day of reckoning.

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