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New England Regional Midweek Update
6/14/2023

Dear Stewart Partners,

We begin this week's Midweek Update by wishing everyone happy and joyful celebrations of all the upcoming holidays over the next few days. First, today is Flag Day, which commemorates the adoption of the flag of the United States on June 14, 1777. Next, we have Father's Day on Sunday, June 18th, which was made a national holiday by President Woodrow Wilson in 1972. Then on Monday, June 19th, we want to wish everyone a happy Juneteenth, which was first celebrated in Texas on June 19, 1865 to commemorate the end of slavery. Please note many government offices, including the Registries of Deeds, will be closed in honor of Juneteenth. Check with your local offices for closings.

This week we are bringing to your attention a recent U.S. Supreme Court decision that impacts tax title foreclosures by municipalities. Specifically, the discussion in the case focused on the legality of divesting a homeowner of the equity in the foreclosed property, which some have labeled "home equity theft." As you will see, this ruling could change what happens to the excess amount collected after a tax sale in some of our New England states. We will also be discussing expectations for the Housing Market for the remainder of 2023. Finally, we are providing a link to a helpful security newsletter.

Tyler v. Hennepin County, Minnesota, No. 22-166

On May 25, 2023, the Supreme Court held that upon seizure of real property for unpaid property taxes, the Takings Clause of the Fifth Amendment of the U.S. Constitution does not allow Minnesota to appropriate more than it is owed.

By way of background, Geraldine Tyler, a 94 year old resident of Hennepin County, Minnesota, bought a condominium in Minneapolis in 1999 and lived there until 2010, when she moved to a senior community. After she moved, she stopped paying taxes on the condominium and by 2015, she had accumulated over $15,000 in unpaid taxes, interest and penalties on her condominium. Tyler received notices of the foreclosure action from the County, but did not respond during Minnesota's three-year redemption period. As such, the County took possession of the property and sold the condominium at auction for $40,000.   After paying off the delinquent tax bill, the $25,000 excess received from the sale was retained by the County.

Tyler sued the County alleging that the retention of the excess proceeds from the sale violated the Takings Clause of the Fifth Amendment, which provides that "private property [shall not] be taken for public use, without just compensation" and the Excessive Fines Clause of the Eighth Amendment of the U.S. Constitution. (Because Tyler agreed that her Fifth Amendment claim, if successful, would fully remedy her harm, the Court did not address her Eighth Amendment claim).

Tyler argued that real estate equity should be considered private property and that the County should not retain more than what she owed. As such, she is therefore entitled to the excess proceeds. The Minnesota District Court dismissed Tyler's suit, and the U.S. Court of Appeals for the Eighth Circuit affirmed that decision concluding that, under Minnesota state law, Tyler had no property interest in the profits the County obtained from the sale of her condominium. Tyler then petitioned the U.S. Supreme Court and was granted certiorari on January 13, 2023.

The U.S. Supreme Court found that Ms. Tyler had standing and then confirmed that the Takings Clause protects private property interests beyond those defined by state law. The Court referenced historical precedent which dictates that "while the County had the power to sell Tyler's home to recover the unpaid property taxes it could not use the tax debt to confiscate more property than was due."

In a unanimous decision, the Supreme Court held that Tyler had a protected property right in the excess value of her condominium the County had seized and therefore the County violated the Takings Clause. This decision will impact the government's power over individual property rights. The Court pointed out that most states, but not all of them, require excess value to be returned to the taxpayer whose property is sold to satisfy outstanding tax debt. Those states that currently allow the retention of the surplus equity may need to update their statutes in order to conform to this decision. The decision could also impact private investors who often buy up tax liens from municipalities in that they may now find that it's not as profitable if they're not entitled to receive the excess proceeds. It is important to note that, although the decision only addressed the sale of the property by a municipality to satisfy the tax debt, it raises questions as to the impact and consequence of a tax title foreclosure pursued by a private citizen of a tax title purchased from a municipality, which can occur in some New England states under out statutes.

The Tyler decision will impact how cities and towns deal with tax lien foreclosures and we will continue to monitor the implications of this ruling and keep you informed.

If you are being asked to insure a title out of a tax title foreclosure, please contact your state underwriter prior to insuring, as such transactions are considered to be an extra-hazardous risk.

To read the full Supreme Court decision, please follow this link:
https://www.supremecourt.gov/opinions/22pdf/22-166_8n59.pdf

Predictions for the Housing Market for the second half of 2023

Everyone in the real estate industry is trying to predict what the market will do in the rest of 2023. There are statistics and trends we can review for the first half of the year that may suggest what is coming up in the second half of 2023.

On the plus side, there is speculation that the Federal Reserve will not raise interest rates in June. As of this writing we have not heard from them. The unemployment rate is rising somewhat, which will help tamp down inflation. Home prices are declining. May was the third consecutive month of year-over-year national home price declines after a record 131 months of increases. The median existing home sales price declined 1.7% to $388,800 in April compared to a year ago. Single-family construction starts rose for the third consecutive month, increasing 1.6% in April. If new construction rises, inventory will increase. Because many homeowners have significant equity in their homes, foreclosures should not increase. Borrowers in default may choose to sell rather than forfeit the equity in their homes, thereby adding to inventory.

On the minus side, as of June 8, 2023, Bankrate.com reported an average 30-year fixed mortgage rate of 7.06%. These elevated rates limit the ability for purchasers, and especially first-time homebuyers, to afford buying a home. The housing supply also remains low, in part because homeowners who were able to take advantage of the record low interest rates of 2020 and 2021 are reluctant to sell and move to a significantly higher rate. At the current sales pace, unsold inventory of existing homes is at a 2.9-month supply, according to the National Association of Realtors. Though up from 2.2 months a year ago and 2.6 months in March, supply is low by historical standards.

So, what are the predictions? Due, in part, to the ongoing inventory crunch keeping home prices elevated, many economists predict the housing market is more likely to correct itself from the jumps in home prices we've seen over the past few years rather than crash. Sales prices do vary by region with prices in the West seeing the most decline and prices in the Southeast increasing year-over-year. Home shoppers may be encouraged about buying if the rates do not rise again this month. If rates come down to the 6% range, buying becomes more affordable for those making less than $100,000/year. Experts think it unlikely that the rates will see those cuts this year.

For those of us in the real estate industry, it is still a sit and wait situation for the remainder of 2023.

SANS "OUCH!" NEWSLETTER

In our continuing efforts to educate our partners about security risks, below is a link to the SANS Security Awareness "Ouch!" newsletter, this month entitled "Securing Your Financial Accounts". The newsletter also contains additional links to increase your cyber-security savvy. Please share with your colleagues, clients, friends and family!

SANS Security Awareness "Ouch!" newsletter

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